
Environmental Register

March 2012 - Number 693

The Environmental Register is a Publication of the Illinois Pollution Control Board

Thomas Holbrook, Chairman

Board Members:

Thomas E. Johnson, Carrie Zalewski, Jennifer A. Burke, and Deanna Glosser

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

During March, the Board acted in several rulemaking dockets, and I've summarized that activity below. As always, information about these proceedings is available through the Clerk's Office Online (COOL) at our Web site at www.ipcb.state.il.us.

On March 1, 2012, in Setback Zone for Fayette Water Company Community Water Supply: Amendments to 35 Ill. Adm. Code 618 (R11-25), the Board adopted a first-notice opinion and order proposing to establish a setback for six wells owned by the Fayette Water Company. See 36 Ill Reg. 4015 (Mar. 16, 2012).

On March 13 and 14, 2012, in Proposed Amendments to Clean Construction or Demolition Debris (CCDD) Fill Operations: Proposed Amendments to 35 Ill. Adm. Code 1100 (R12-9), the Board held additional hearings. On February 2, 2012, the Board adopted a first-notice opinion and order amending rules for these operations to allow uncontaminated CCDD and uncontaminated soil to be used as fill at quarries, mines and other excavations.

On March 15, 2012, in Triennial Review of Water Quality Standards for Boron, Fluoride and Manganese: Amendments to 35 Ill. Adm. Code 301.106, 302.Subparts B, C, E, F and 303.312 (R11-18), the Board adopted a first-notice opinion and order proposing to update these water quality standards and various other water regulations.

On March 15, 2012, in 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), the Board adopted regulations implementing Public Act 96-908 and amending the UST regulations. See 36 Ill. Reg. 4886, 4894, 4898 (Mar. 30, 2012).

On March 15, 2012, in Standards and Limitations for Organic Material Emissions for Area Sources; Amendments to 35 Ill. Adm. Code Part 223 (R12-8), the Board adopted a second-notice proposal intended to reduce emissions of volatile organic material (VOM) from various consumer and commercial products and aerosol coatings. See 36 Ill. Reg. 727 (Jan. 20, 2012). The proposal appears on the agenda of the April 17, 2012, meeting of the Joint Committee on Administrative Rules.

On March 15, 2012, in Proposed Amendments to Nonhazardous Special Waste Hauling and the Uniform Program (35 Ill. Adm. Code 809) (R12-13), the Board adopted a first-notice opinion and order. In a proposal filed October 28, 2011, the Illinois Environmental Protection Agency (Agency) indicated that Public Act 97-220, effective July 28, 2011, effectively withdrew Illinois from the Uniform State Hazardous Materials Transportation and Registration Program and that the proposed amendments were necessary to remove references to it.

On March 15, 2012, in Concentrated Animal Feeding Operations (CAFOs): Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504 (R12-23), the Board accepted for hearing an Agency proposal to amend the Board's agriculture related water pollution regulations.

Please visit our website (www.ipcb.state.il.us) for more information on the rulemakings described above, as well as information on our docket of contested cases.



Sincerely,

A handwritten signature in dark ink that reads "Thomas Holbrook". The signature is written in a cursive style with a large, sweeping initial "T".

Thomas Holbrook
Chairman

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Appellate Update

Illinois Environmental Protection Agency v. Illinois Pollution Control Board and Prime Location Properties, LLC, 2012 IL App (5th) 100072-U

On March 2, 2012, the Fifth District Appellate Court issued a unanimous Rule 23 order affirming the Board in Illinois Environmental Protection Agency v. Illinois Pollution Control Board and Prime Location Properties, LLC, 2012 IL App (5th) 100072-U. The court's decision (Ord.) was authored by Justice Chapman, with Presiding Justice Donovan and Justice Welch concurring. The Board reversed an IEPA determination in an underground storage tank (UST) appeal (Prime Location Properties, LLC v. IEPA, PCB 09-67 (Aug. 20, 2009, Nov. 9, 2009)). The court's order upholding the Board is summarized below, beginning with an overview of the facts and the 3 issues raised by IEPA in appealing the Board's decision. This is followed by more detailed factual and procedural background and the court's analysis of and ruling on each of the 3 issues.

Overview. Prime Location Properties, LLC (Prime) purchased an abandoned gas station in April 2006. Ord. at ¶¶ 2, 3. It took several years to locate and confirm leaks from all 7 of the site's USTs. Ord. at ¶ 2. In November 2005, IEPA issued a determination rejecting Prime's proposal to remove all 7 tanks because, at that point, leakage had been confirmed from only 2 USTs. Ord. at ¶¶ 2, 7. IEPA's November 2005 letter also noted that leaks from any of the other USTs would be treated as a separate incident. *Id.* Subsequently, Prime removed all 7 USTs, confirmed all were leaking, and sought cleanup cost reimbursement from the Leaking Underground Storage Tank Fund (LUST Fund). Ord. at ¶ 2. On January 27, 2009, IEPA denied Prime's request because the company failed to follow procedures for reporting the leaks as a separate incident. Ord. at ¶¶ 2, 10.

Prime petitioned the Board for review of IEPA's January 27, 2009 determination. Ord. at ¶ 2. The Board reversed IEPA's determination and IEPA appealed. *Id.* On appeal before the Fifth District, IEPA argued that (1) the Board "lacked jurisdiction to consider Prime's petition because the initial petition for review was filed on its behalf by a corporate officer who was not an attorney," (2) the Board "erred in failing to give preclusive effect to the IEPA's earlier decision [of November 2005] that any additional leaks would be treated as a separate incident," and (3) the Board "abused its discretion in awarding Prime attorney fees without proof of payment." *Id.* The court affirmed the Board on each issue. Ord. at ¶¶ 1, 28-29.

Factual and Procedural Background. In 2001, Metropolis Oil and Gas Company (Metropolis), the entity which sold the property to Prime, discovered and reported a petroleum release from the site's USTs. Ord. at ¶ 3. Metropolis and its environmental consultant, CW3M Company, were aware that there were a total of 7 USTs on the site, but CW3M could locate only 4. Ord. at ¶ 4. CW3M informed IEPA that removal of the 4 USTs would undermine the structural integrity of the building and canopy on the site. IEPA requested further investigation to determine which USTs were leaking. *Id.* Twice, Metropolis and CW3M proposed removing the structures to allow for all 7 USTs to be removed. Ord. at ¶ 5. Both times, "IEPA refused to approve the plans for removal of the tanks and structures, and instead sought further investigation to determine which of the tanks were leaking." *Id.*

As reflected in an August 2005 corrective action plan, further investigation allowed CW3M to confirm leaks from 2 of the 4 located USTs, but it was still not possible to access the other 2 located USTs to determine if they were leaking, and the locations of the 3 other USTs were still undetermined. Ord. at ¶ 6. In its November 2005 determination, "IEPA refused to approve any action associated with the five tanks that CW3M had not yet been able

to access to confirm whether they were leaking.” Ord. at ¶ 7. Further, “IEPA noted, without explanation, that any additional leaks confirmed ‘must be reported as a new release.’” *Id.*

In a December 2005 amended budget, CW3M noted its disagreement with IEPA’s statement that only 2 USTs showed evidence of a possible release, but CW3M stated that it was “modifying the budget in accordance with the IEPA’s November 2005 request ‘in order to move the site forward.’” Ord. at ¶ 8. After Prime purchased the property in April 2006, Prime’s consultant, Environmental Management, Inc. (EMI), eventually “demolished the structures on the property, removed all seven storage tanks, and confirmed that all of the tanks had been leaking.” Ord. at ¶ 9. On January 27, 2009, IEPA rejected the plan and budget associated with this work because of “Prime and EMI’s failure to treat the leaks from the five additional tanks as a new release and follow procedures for reporting it as such.” Ord. at ¶ 10.

In March 2009, Prime timely filed with the Board a petition, signed by a Prime officer who was not a licensed attorney, seeking review of IEPA’s January 27, 2009 determination. Ord. at ¶ 10. “In accordance with longstanding practice and policy,” the Board required that Prime “submit an amended petition for review through an attorney before proceeding in the matter.” *Id.* In April 2009, Prime did so. *Id.* After hearing, the Board “issued a detailed written decision addressing all three of the issues raised in this appeal.” Ord. at ¶ 11. First, regarding its jurisdiction over the petition, the Board noted that “under circumstances similar to those present here, it had ‘consistently interpreted’ relevant regulations ‘as requiring that counsel file an appearance and amended petition, not as requiring that the case be dismissed.’” *Id.* Second, on the merits, the Board explained that all 7 USTs were last used in 1987, all 7 USTs were reported in 2001 as leaking, and IEPA never specifically determined that the 5 inaccessible or not-yet-located USTs were not leaking in 2001. Ord. at ¶ 12. Because the Board “concluded that the evidence submitted showed that all seven tanks were leaking when the release was first discovered and reported,” the Board remanded the matter to IEPA to consider the merits of the plan and budget Prime had submitted. *Id.* Third and finally, the Board awarded attorney fees to Prime for its costs in appealing IEPA’s determination. Ord. at ¶ 13. IEPA appealed. *Id.*

Whether the “nullity rule” applied to Prime’s petition for review filed with the Board by a non-attorney where Board’s rules do not define filing the petition as “the practice of law.” IEPA’s argument that the Board lacked jurisdiction over Prime’s petition was based upon the “nullity rule,” which provides that “any action taken in a legal proceeding on behalf of another party by a person who is not authorized to practice law is considered null and void.” Ord. at ¶ 14. Prime’s petition for review was timely filed under Section 40(a)(1) of the Environmental Protection Act (Act) (415 ILCS 5/40(a)(1)), within 35 days after Prime received IEPA’s January 27, 2009 determination, but the petition was filed by a non-attorney. *Id.* Prime’s amended petition, filed by an attorney, was filed after the 35-day period. *Id.* IEPA argued that because the original petition, filed by a non-attorney, was “null and void,” the amended petition “could not relate back” to the date on which the original petition was filed and “could not confer jurisdiction” on the Board. *Id.*

The Board and Prime argued, first, that under the Act and the Board’s procedural rules, petitioning for review with the Board does not constitute the practice of law and, second, that “the nullity rule has been relaxed recently, and this is not a case where application of the nullity rule is necessary to protect the public and the integrity of the courts from the unauthorized practice of law.” Ord. at ¶ 15. The court stated “[w]e agree with the first of these arguments and need not consider the second.” *Id.*

The court acknowledged that “the prohibitions against the unauthorized practice of law the nullity rule is meant to enforce are applicable to nearly all administrative proceedings.” Ord. at ¶ 18. The court was persuaded, however, that the filing of the petition for review here “does not constitute the practice of law under the [Act] and relevant regulations,” which renders the nullity rule inapplicable. *Id.* The Act provides that an “applicant” may petition the Board for review of IEPA’s determination (415 ILCS 5/40(a)(1)). *Id.* The Board “[r]egulations promulgated under the Act expressly differentiate between petitioning for review and appearing at hearings.” *Id.* Specifically, the court noted that “[w]hile the regulations state that the applicant may petition for review (35 Ill. Adm. Code 105.204(a) (2011)), they provide that parties must be represented by a licensed attorney ‘when appearing before’ the IPCB (35 Ill. Adm. Code 101.400(a)(2) (2011)).” *Id.* The court also emphasized that an administrative agency’s interpretation of the statutes and regulations it enforces is entitled to substantial weight and deference, relying upon the statement in the Board’s decision that the Board has never dismissed a petition for review under these circumstances, but rather has “required applicants to obtain representation and submit an amended petition for review prior to proceeding, as happened in this case.” *Id.*

Whether a comment in an earlier determination letter of IEPA precluded IEPA from later determining that UST leaks sprang from a single incident. IEPA asserted that because its final determination of November 2005 was not appealed, the letter’s statement that any additional leaks would be considered a separate release must be given “preclusive effect.” Ord. at ¶ 19. The court agreed with the Board that “the November 2005 letter did not decide the relevant question of whether the additional five tanks were leaking at the same time the original leak was reported.” *Id.* IEPA’s November 2005 determination stated that leaks from only two USTs had been confirmed and that IEPA therefore approved only the costs associated with the excavation of those two USTs and cleanup of surrounding soil. Ord. at ¶ 20. The November 2005 letter added: “Furthermore, any additional [tanks] that are found on-site and contamination that may be associated with those [tanks] must be reported as a new release and handled accordingly.” *Id.* IEPA maintained that this added language constituted a final determination that “the leaks from the five additional storage tanks were not part of the release initially reported in 2001.” *Id.* However, the court ruled that “[u]nder the facts of this case, we find this position untenable.” *Id.* The court found that IEPA’s November 2005 letter failed to address “the factual question” of whether all 7 USTs were leaking when the contamination was discovered in 2001. Ord. at ¶ 21. Moreover, “in November 2005, it was impossible for the IEPA to make such a determination” because “three of the tanks had not even been located, and while it appeared that two additional tanks were leaking, this could not be confirmed due to their inaccessible locations.” *Id.* The court held that IEPA’s November 2005 letter did not have “a preclusive effect on determinations made later” because the letter “did not—and could not—address the question involved.” *Id.*

The court also agreed with the Board that while IEPA’s November 2005 determination letter “constituted preapproval of certain corrective action to be performed,” the letter “did not limit the scope of any corrective action that could be taken in the matter as site investigation progressed.” Ord. at ¶ 22. The court acknowledged that Section 57.7(e) of the Act (415 ILCS 5/57.7(e)) “provides that an applicant may proceed with additional investigation and cleanup beyond what the IEPA approves in advance,” after which the applicant may seek LUST Fund reimbursement “for such work, subject to IEPA approval.” Ord. at ¶¶ 22, 23, citing 35 Ill. Adm. Code 734.310(e), 734.335(d). The court found the Board’s position to be “consistent with what actually occurred in this case,” as “[o]nly after Prime was able to access all seven tanks and confirm that all of them were leaking could a factual determination be made as to whether they were leaking in 2001 when the contamination was first discovered and, therefore, part of the same release.” Ord. at ¶ 23. “Consistent with this, we find that the IPCB correctly determined that the November 2005 decision letter did not preclude a later determination that all seven tanks were a part of the same release.” *Id.*

The court concluded its discussion of this appeal ground by noting that because IEPA failed to argue that the Board’s findings were against the manifest weight of the evidence, the court presumed the findings to be adequately supported by the record. Ord. at ¶ 24.

Whether the Board abused its discretion in awarding attorney fees to Prime without requiring proof that Prime paid the fees. The court first noted that Section 57.8(l) of the Act (415 ILCS 5/57.8(l)) provides that “the attorney fees of the prevailing party in a petition for review are among the costs that can be reimbursed from the fund, although other legal costs are not.” Ord. at ¶ 26. The court then disposed of IEPA’s argument that the Board abused its discretion by awarding attorney fees to Prime despite Prime’s failure to submit evidence that the company had actually paid its attorney. Ord. at ¶ 25. Prime’s attorney submitted an affidavit outlining the fees he charged for the various services provided. Ord. at ¶ 27. “This is generally sufficient where attorney fees are permitted by statute.” *Id.* The court also found the Board’s ruling consistent with the UST regulations that require applicants to submit “invoices, not proof of payment, for corrective action costs they seek to have reimbursed.” *Id.*, citing 35 Ill. Adm. Code 734.605(b)(9). In concluding that there had been no abuse of discretion by the Board, the court observed that IEPA did not argue that the fees charged were unreasonable. Ord. at ¶ 27.

Rulemaking Update

Board Adopts First Notice Proposal to Establish a Setback Zone for Several Community Water Supply Wells Owned by Fayette Water Company, R11-25

On March 1, 2012, the Board adopted a first notice rulemaking proposal to establish a maximum setback zone for six community water supply (CWS) wells owned by Fayette Water Company in Fayette County. The wells are situated in the Kaskaskia River flood plain and serve portions of Fayette, Shelby, and Kaskaskia Counties. The

proposal was filed by the Illinois Environmental Protection Agency (IEPA) on April 21, 2011, and is docketed as In the Matter of: Setback Zone for Fayette Water Company Community Water Supply: Amendments to 35 Ill. Adm. Code 618, R11-25.

The rulemaking proposes a maximum circular setback zone of 1,000 feet from the Fayette Water Company wells. The IEPA states that it “considers these wells to be geologically sensitive and concluded that all the water system’s wells are highly vulnerable to contamination.” The IEPA states the regulation is intended to prevent contamination of the groundwater.

After conducting two public hearings in this matter and considering the entire record the Board proposed for first notice the amendments to Part 618. 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, R11-25, 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. 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].

For more information contact Tim Fox at 312-814-6085 or email at foxt@ipcb.state.il.us.

The Board Adopts First Notice Proposal in a Triennial Review of Boron, Fluoride, and Manganese Water Quality Standard Rules, R11-18

The Illinois Pollution Control Board (Board), on March 15, 2012, adopted a first notice proposal to amend the Board’s water quality standard (WQS) rules for boron, fluoride and manganese. The rulemaking proposal, docketed as In the Matter of: Triennial Review of Water Quality Standards for Boron, Fluoride and Manganese: Amendments to 35 Ill. Adm. Code 302.Subparts B, C, E, F and 303.312,R11-18, also includes various other clean-up amendments and updates. The proposal was filed on December 2, 2010, by the Illinois Environmental Protection Agency (IEPA).

The Board’s first notice proposal includes IEPA’s proposed updates to the boron, fluoride, and manganese water quality standards under the General Use standards in 35 Ill. Adm. Code 302.Subpart B, the Public and Food Processing Water Supply standards in 35 Ill. Adm. Code 302.Subpart C, and the Lake Michigan Basin Water Quality Standards in 35 Ill. Adm. Code 302.Subpart E. The Board determined that site specific rules and adjusted standards granted from the existing standards will continue to be valid without reapplication if relief from the standards as proposed continues to be necessary for the affected source.

The proposal also makes other clean-up amendments and updates, including the correction of chronic zinc standard and the repeal of the site-specific fluoride standard at 35 Ill. Adm. Code 303.312. Additionally, the Board adds cyanide test methods to the incorporations by reference in Parts 301 and 302. Finally, the Board is also amending the requirements in Sections 302.595 and 302.669 that the IEPA publish the derived water quality criteria in the *Illinois Register*, but requiring only an annual (rather than quarterly) publication. IEPA’s proposal was the culmination of a recent “triennial review” of standards required by the Federal Water Pollution control Act (FWPCA or Clean Water Act).

The Board has held two hearings on the IEPA proposal. 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. Additionally, the Board will schedule a public hearing during the first notice period. The Board encourages persons to file public comments on these proposed amendments. The docket number for this rulemaking, R11-18, 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. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

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For more information contact Kathleen Crowley at (312)-814-6929 or email at crowlek@ipcb.state.il.us.

The Board Adopts Amendments Under P.A. 96-908 to Underground Storage Tank Regulations, R11-22

On March 15, 2012, the Board adopted as final rules amendments to the Board's underground storage tank (UST) regulations. On February 18, 2011, the Illinois Environmental Protection Agency (IEPA) filed the original rulemaking proposal, which is docketed as In the Matter of: 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. The IEPA filed the proposal pursuant to Public Act 96-908 (P.A. 96-908), which was signed into law and became effective on June 8, 2010.

The amendments update the Board's regulations to reflect P.A. 96-908, effective June 8, 2010, amending UST provisions of Title XVI of the Environmental Protection Act. The Board updated Part 731 of the Board's regulations "to clarify the application of Part 734 to owners and operators subject to Title XVI. . . ." Part 732 was repealed because it no longer has any application after the enactment of P.A. 96-908. The Board also amended Part 734 to reflect statutory amendments adopted in P.A. 96-908.

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 (2010)). The Clerk's Office address is Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.

For more information contact Tim Fox at 312-814-6085 or email at foxt@ipcb.state.il.us.

Board Adopts Second Notice Proposal to Reduce Volatile Organic Material Emissions from Various Consumer Products and Aerosol Coatings, R12-8

On March 15, 2012, the Illinois Pollution Control Board adopted a second-notice proposal to amend Part 223 of the Board's regulations addressing volatile organic material (VOM) emissions from various consumer products and aerosol coatings. On July 13, 2011, the Illinois Environmental Protection Agency (IEPA) filed the proposal, which is docketed as In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources: Amendments to 35 Ill. Adm. Code Part 223, (R12-8). The Board will submit the proposed rules the Joint Committee on Administrative Rules for second-notice review under the Administrative Procedure Act.

Specifically, the proposal would amend Part 223 to "include limits in percent VOM by weight for adhesive removers, contact adhesives, non-aerosol antistatic products, electrical cleaners, engine degreasers, fabric refreshers, footwear or leather care products, graffiti removers, hair styling products, shaving gels, and wood cleaners." The Board also proposed to amend the existing Architectural and Industrial Maintenance rule in order to clarify it and simplify compliance.

The Board held two public hearings on the proposal, and received no comment on its proposed amendments during the 45-day first-notice comment period.

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]. The Clerk of the Board's address is: Pollution Control Board, James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601.

For more information contact Tim Fox at 312-814-6085 or email at foxt@ipcb.state.il.us.

Board Proposes First Notice Amendments to Waste Hauling Regulations Regarding Federal “Uniform Program”, R12-12

On March 15, 2012, the Board adopted for first notice publication in the *Illinois Register* proposed amendments to Part 809 of the Board’s solid waste and special waste hauling regulations. On October 28, 2011, the Illinois Environmental Protection Agency (IEPA) filed the proposal, which was docketed as In the Matter of: Proposed Amendments to Nonhazardous Special Waste Hauling and the Uniform Program: 35 Ill. Adm. Code 809, R12-13.

The IEPA made its proposal in response to Public Act 97-220, effective July 28, 2011. P.A. 97-220 amends Sections 21 and 22.2(1) and (1-5) of the Environmental Protection Act (415 ILCS 5/1 *et seq.*) to remove Illinois from the federal Uniform State Hazardous Material Transportation Registration and Permit Program (Uniform Program). The proposed amendments accordingly delete mentions of the Uniform Program from Part 809 of the Board’s rules.

The Board has held two public hearings on the proposed amendments. 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, R12-13, 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. Any questions about electronic filing through COOL should be directed to the Clerk’s Office at (312) 814-3629.

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For more information contact Tim Fox at 312-814-6085 or email at foxt@ipcb.state.il.us.

Board to Hold Hearings on IEPA Proposal to Amend the Board’s CAFO Regulations, R21-23

On March 15, 2012, the Illinois Pollution Control Board accepted for hearing a proposal to amend Parts 501, 502, and 504 of the Board’s regulations dealing with the Board’s agriculture related water pollution regulations. On March 1, 2012, the Illinois Environmental Protection Agency (IEPA) filed the proposal, which is docketed as In the Matter of: Concentrated Animal Feeding Operations (CAFOs): Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504, R12-23. The Board will hold public hearings in various locations of the state on the IEPA proposal prior to adoption of a proposed opinion and order for first notice publication in the *Illinois Register*.

The IEPA states that the rulemaking proposal has two chief purposes. First, the IEPA seeks to amend Parts 501 and 502 “so that they are consistent with, and as stringent as, the current federal CAFO regulations.” The IEPA argues that failure to adopt these proposed amendments “could result in withdrawal of federal delegation of the NPDES [National Pollutant Discharge Elimination System] program itself to the State of Illinois.” Second the IEPA seeks to “establish the state technical standards which are mandated by the federal rule, but not prescribed for the states.” The United States Environmental Protection Agency has indicated that “Illinois still needs to establish standards that address the rate at which manure, litter, and process wastewater may be applied on crop or forage land where the risk of phosphorus transport is high, as well as standards for land application on frozen soil and snow.”

By order of March 23, 2012, the hearing officer entered an order establishing a schedule for hearings and for the prefilings of testimony and questions in advance of hearings. Hearings will be held:

First Hearing : Beginning Tuesday, August 21, 2012
10:00 AM
Sangamo Room
1021 N. Grand Avenue E., North Entrance
Springfield

Second Hearing: Tuesday, October 16, 2012
10:00 AM
St. Clair County Court House
County Board Meeting Room B-564, 5th Floor
10 Public Square
Belleville

Third Hearing: Tuesday, October 23, 2012
10:00 AM
Brookens Administrative Center
Lyle Shields (County Board) Meeting Room
1776 E. Washington
Urbana

Fourth Hearing: Tuesday, October 30, 2012
10:00 AM
DeKalb Municipal Building
City Council Chambers, Room 200
200 S. 4th Street
DeKalb

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For more information contact Tim Fox at 312-814-6085 or email at foxt@ipcb.state.il.us.

Board Actions

March 1, 2012
Chicago, Illinois

Rulemakings

R 11-25	<u>In the Matter of: Setback Zone for Fayette Water Company Community Water Supply: Amendments to 35 Ill. Adm. Code 618</u> – The Board adopted a first notice opinion and order in this rulemaking proposal to amend the Board's public water supplies regulations.	5-0 PWS
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Administrative Citations

AC 12-1	<u>IEPA v. Gaylon L. and Lois J. Harrell</u> – The Board granted complainant's motion to voluntarily dismiss the administrative citation.	5-0
AC 12-24	<u>IEPA v. Robert A. Gerdes</u> – The Board found that this Livingston County respondent violated Section 55(k)(1) of the Environmental Protection Act (415 ILCS 5/55(k)(1) (2010)), and ordered respondent to pay a civil penalty of \$1,500.	5-0

AC 12-29	<u>IEPA v. H&M Salvage & Discount Co. and Carl Hagler</u> – The Board accepted for hearing respondents’ petition for review of this administrative citation involving a Perry County facility.	5-0
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Adjudicatory Cases

PCB 04-16	<u>People of the State of Illinois v. Packaging Personified, Inc.</u> , – The Board denied in part and granted in part respondent’s motion for reconsideration. The Board’s on its own motion ordered a supplemental hearing and briefing on penalty with the record to close on August 28, 2012. The stay of the September 8, 2011 order will continue pending final Board action.	3-2 A-E Members Glosser and Zalewski dissented
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PCB 12-99	<u>People of the State of Illinois v. Alton Irrigation, Inc.</u> , – In this water enforcement action concerning a Peoria 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) (2010)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$10,000.00, and to cease and desist from further violations. Respondent also agreed to pay an additional \$1,062.22 for the reasonable value of fish destroyed.	5-0 W-E
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PCB 12-112	<u>People of the State of Illinois v. Berteau-Lowell Plating Works, Inc.</u> , – The Board accepted for hearing this air enforcement action involving a site located in Cook County.	5-0 A-E
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PCB 12-118	<u>Paul Schwendener, Inc. v. IEPA</u> – The Board granted this request for a 90-day extension of time to file an underground storage tank appeal on behalf of this DuPage County facility.	5-0 UST Appeal 90-Day Extension
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March 15, 2012 Chicago, Illinois

Rulemakings

R 11-18	<u>In the Matter of: Triennial Review of Water Quality Standards for Boron, Fluoride and Manganese: Amendments to 35 Ill. Adm. Code 301.106, 302.Subparts B, C, E, F and 303.312</u> – The Board adopted a first notice opinion and order in this rulemaking proposal to amend the Board’s water regulations.	5-0 Water
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R 11-22	<u>In the Matter of: 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</u> – The Board adopted a final opinion and order in this rulemaking proposal to amend the Board’s underground storage tank regulations.	5-0 Land
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R 12-8	<u>In the Matter of: Standards and Limitations for Organic Material Emissions for Area Sources: Amendments to 35 Ill. Adm. Code Part 223</u> – The Board adopted a second notice opinion and order in this rulemaking proposal to amend the Board’s air pollution control regulations.	5-0 Air
R 12-13	<u>In the Matter of: Proposed Amendments to Nonhazardous Special Waste Hauling and the Uniform Program (35 Ill. Adm. Code 809)</u> – The Board adopted a first notice opinion and order in this rulemaking proposal to amend the Board’s solid waste and special waste hauling regulations.	5-0 Land
R 12-23	<u>In the Matter of: Concentrated Animal Feeding Operations (CAFOs): Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504</u> – The Board accepted for hearing the Illinois Environmental Protection Agency’s (IEPA) March 1, 2012 proposal filed to amend the Board’s agriculture related water pollution regulations. The Board granted the IEPA’s motion for waiver of copy requirements and waived the requirement to file nine copies of the materials.	5-0 Water

Administrative Citations

AC 11-24	<u>IEPA v. Dennis Heck and Deanna Harris</u> – The Board granted complainant’s motion to voluntarily dismiss the administrative citation against Deanna Harris. The Board found that Dennis Heck violated Sections 21(p)(1), (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2010)), and ordered respondent to pay a civil penalty of \$3,000. (The Board previously found that Dennis Heck defaulted because he failed to submit an amended petition for review with the Board as directed in the June 16, 2011 order. <u>IEPA v. Dennis Heck and Raymond A. & Deanna Harris</u> , PCB 11-24, slip op. at 2 (August 4, 2011).)	5-0
AC 12-23	<u>IEPA v. Barbara J. Spradlin</u> – The Board found that Barbara Spradlin defaulted for failure to submit an amended petition for review with the Board as directed in the February 2, 2012 order. The Board found that Barbara Spradlin violated Sections 21(p)(1), (p)(3), (p)(4), (p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(4), (p)(7), and 55(k)(1) (2010)), and ordered respondent to pay a civil penalty of \$7,500.	5-0
AC 12-25	<u>IEPA v. Johnson Truck Sales, Inc.</u> – The Board found that this White County respondent violated 21(p)(1), 21(p)(4), 21(p)(7), and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(4), 21(p)(7), 55(k)(1) (2010)), and ordered respondent to pay a civil penalty of \$6,000.	5-0
AC 12-26	<u>IEPA v. Gary Bloodworth</u> – The Board found that this Williamson County respondent violated Sections 55(k)(1), 55(k)(2), and 55(k)(3) of the Environmental Protection Act (415 ILCS 5/55(k)(1), 55(k)(2), 55(k)(3) (2010)), and ordered respondent to pay a civil penalty of \$4,500.	5-0
AC 12-27	<u>IEPA v. Republic Services of Indiana, L.P.</u> – The Board found that this Lawrence County respondent violated Sections 21(o)(5), 21(o)(10), 21(o)(12) of the Environmental Protection Act (415 ILCS 5/21(o)(5), 21(o)(10), 21(o)(12) (2010)), and ordered respondent to pay a civil penalty of \$1,500.	5-0

- AC 12-28** IEPA v. Southern Indiana Tire, Inc. – The Board found that this Crawford County respondent violated Section 55(k)(1) of the Environmental Protection Act (415 ILCS 5/55(k)(1) (2010)), and ordered respondent to pay a civil penalty of \$1,500. 5-0
- AC 12-30** IEPA v. JR’s., Mobile Homes, Inc., CMH Homes, Inc., and David R. Moser – The Board granted complainant’s motion to voluntarily dismiss the administrative citation. 5-0

Adjudicatory Cases

- PCB 10-100** Rolf Schilling, Pam Schilling and Suzanne Ventura v. Gary D. Hill, Villa Land Trust, and Prairie Living West, LLC – The Board denied Horve Contractors, Inc. (Horve’s) motion to dismiss the alleged violations of Sections 12(a), 12(b) and 12(d) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), 12(b), 12(d) (2010)). The Board granted Horve’s motion to dismiss the alleged violation of Section 12(f) of the Act without prejudice (415 ILCS 5/12(f) (2010)). Gary D. Hill and Prairie Living West (collectively, Prairie) may file an amended third-party complaint addressing the Section 12(f) allegation by April 16, 2012. The Board accepted the Prairie third-party complaint for hearing. 5-0
L-E,
Citizens
- PCB 11-85** Holland Energy, LLC v. IEPA – The Board granted petitioner’s motion for voluntary dismissal of this National Pollutant Discharge Elimination System permit appeal. 5-0
P-A, Water
- PCB 12-13** People of the State of Illinois v. Knight Hawk Coal, LLC – In this water enforcement action concerning a Jackson 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) (2010)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$14,750.00, and to cease and desist from further violations. 5-0
W-E,
NPDES
- PCB 12-64** People of the State of Illinois v. Cordray Brothers, Inc., – 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 Ogle County facility, the Board ordered publication of the required newspaper notice. 5-0
W-E
- PCB 12-85** People of the State of Illinois v. Charles Cowell – In this air enforcement action concerning a Randolph 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) (2010)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$30,000.00, and to cease and desist from further violations. 5-0
A-E

PCB 12-96	<u>Conserv FS, Inc. - Woodstock v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s (IEPA) recommendation, the Board denied certification of the eight bulk liquid storage tanks as pollution control facilities of Conserv FS, Inc. located in McHenry County for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)). (The Board previously certified that portions of the identified facilities are pollution control facilities on January 5, 2012, as recommended by the IEPA. <u>Conserv FS, Inc. - Woodstock (Property ID No. 13-09-306-003) v. IEPA</u> , PCB 12-96 (Jan. 5, 2012).)	5-0 T-C, W
PCB 12-97	<u>Logan Agri Service, Inc. - Griggsville v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s (IEPA) recommendation, the Board denied certification of the 13 bulk liquid storage tanks as pollution control facilities of Logan Agri Service, Inc. located in Pike County for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)). (The Board previously certified that portions of the identified facilities are pollution control facilities on January 5, 2012, as recommended by the IEPA. <u>Logan Agri Service, Inc. - Griggsville (Property ID No. 43-033-07) v. IEPA</u> , PCB 12-97 (Jan. 5, 2012).)	5-0 T-C, W
PCB 12-98	<u>LaSalle County Farm Supply - Ottawa v. IEPA</u> – Upon receipt of the Illinois Environmental Protection Agency’s (IEPA) recommendation, the Board denied certification of the eight bulk liquid storage tanks as pollution control facilities of LaSalle County Farm Supply located in LaSalle County for the purpose of preferential tax treatment under the Property Tax Code (35 ILCS 200/11-10 (2008)). (The Board previously certified that portions of the identified facilities are pollution control facilities on January 5, 2012, as recommended by the (IEPA). <u>LaSalle County Farm Supply - Ottawa (Property ID No. 22-25-333-000) v. IEPA</u> , PCB 12-98 (Jan. 5, 2012).)	5-0 T-C, W
PCB 12-100	<u>People of the State of Illinois v. Home Depot U.S.A., Inc.,</u> – In this water enforcement action concerning two separate facilities located in St. Clair and Madison Counties, the Board granted relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (415 ILCS 5/31(c)(1) (2010)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$12,000.00, and to cease and desist from further violations.	4-0 W-E Holbrook abstained
PCB 12-104	<u>People of the State of Illinois v. Walk Stock Farm, Inc.,</u> – In this water enforcement action concerning a Cumberland 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) (2010)), accepted a stipulation and settlement agreement, and ordered the respondent to pay a total civil penalty of \$5,000.00, and to cease and desist from further violations.	5-0 W-E
PCB 12-119	<u>People of the State of Illinois v. Evergreen FS, Inc.,</u> – Upon receipt of a complaint accompanied by a proposed stipulation and settlement agreement, and an agreed motion to request relief from the hearing requirement in this land enforcement action involving a facility located in Tazewell County facility, the Board ordered publication of the required newspaper notice.	5-0 L-E

New Cases

March 1, 2012 Board Meeting

- 12-106** WRB Refining LLC (Wastewater Treatment Upgrade Project) v. IEPA – No action taken.
- 12-107** WRB Refining LLC (New Units Condensate Recovery Project) v. IEPA – No action taken.
- 12-108** WRB Refining LLC (New Units Water Recycle Project) v. IEPA – No action taken.
- 12-109** WRB Refining LLC (WWTP CPI Header Upgrade Project) v. IEPA – No action taken.
- 12-110** WRB Refining LLC (New Sour Water Stripper Project) v. IEPA – No action taken.
- 12-111** WRB Refining LLC (Wood Stove Sewer Repair Project) v. IEPA – No action taken.
- 12-112** People of the State of Illinois v. Berteau-Lowell Plating Works, Inc., – The Board accepted for hearing this air enforcement action involving a site located in Cook County.
- 12-113** WRB Refining, LLC (WWTP CPI Header Bypass Project) v. IEPA – No action taken.
- 12-114** WRB Refining, LLC (SPCC Oil Spill Containment Upgrades and SPCC Dike Restoration) v. IEPA – No action taken.
- 12-115** WRB Refining, LLC (Waste Water Flow Meter for NPDES Project) v. IEPA – No action taken.
- 12-116** WRB Refining, LLC (Hartford Load Docks Project) v. IEPA – No action taken.
- 12-117** WRB Refining, LLC (Hartford Integration Water Pollution Prevention Projects) v. IEPA – No action taken. – No action taken.
- 12-118** Paul Schwendener, 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 DuPage County facility.
- AC 12-30** IEPA v. JR's., Mobile Homes, Inc., CMH Homes, Inc., and David R. Moser – The Board accepted an administrative citation against these Jefferson County respondents.

March 15, 2012 Board Meeting

- 12-119** People of the State of Illinois v. Evergreen FS, Inc., – Upon receipt of a complaint accompanied by a proposed stipulation and settlement agreement, and an agreed motion to request relief from the hearing requirement in this land enforcement action involving a facility located in Tazewell County, the Board ordered publication of the required newspaper notice.
- AC 12-31** IEPA v. Carlos Enterprises Auto Repair and Elias Carlos – The Board accepted an administrative citation against these Winnebago County respondents.
- R 12-23** In the Matter of: Concentrated Animal Feeding Operations (CAFOs): Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504 – The Board accepted for hearing the Illinois Environmental Protection Agency's (IEPA) March 1, 2012 proposal filed to amend the Board's agriculture related water pollution regulations. The Board granted the IEPA's motion for waiver of copy requirements and waived the requirement to file nine copies of the materials.

Provisional Variance

IEPA 12-09 West End Disposal Landfill v. Illinois Environmental Protection Agency— On March 1, 2012, the Illinois Environmental Protection Agency granted West End Disposal's (West End) request for a 45-day provisional variance pursuant to 35 Ill. Adm. Code Part 180. The IEPA temporarily waived the requirement for financial

assurance so West End can accept materials in a new cell. West End is a municipal waste landfill located at 1710 McFarland Road, Thompsonville, Saline County. During the early morning hours of February 29, 2012, a tornado rated an EF4 by the National Weather Service and other severe weather causes deaths, injuries, and extensive property destruction in the vicinity of nearby Harrisburg. West End seeks to aid cleanup efforts and is the nearest Illinois EPA-permitted landfill to Harrisburg. The IEPA granted the provisional variance in accordance with its authority contained in Sections 35(b), 36(c), and 37(b) of the Illinois Environmental Protection Act (415 ILCS 5/35(b), 36(c), and 37(b)), and 35 Ill. Adm. Code Part 180.

IEPA 12-10 DeKalb Sanitary District v. Illinois Environmental Protection Agency -- The Illinois Environmental Protection Agency granted DeKalb Sanitary District’s (District) request for a 40-day provisional variance, subject to conditions from limits for 5-day Chemical Biological Oxygen Demand (CBOD₅), Ammonia Nitrogen, and Flows (MGD) required in NPDES Permit II 0023027. The District is the Designated Management Authority for planning, collection and treatment of wastewater in its Facilities Planning Area (FPA) which includes DeKalb Township, Afton Township and parts of Cortland Township. The District requested the provisional variance while it repairs the Rotary distributor of the #2 Trickling Filter in its wastewater treatment plant. Additional time is required to ensure proper re-growth on the filter media. The provisional variance is effective from March 5, 2012 to April 13, 2012.

Public Act 93-0152 (Senate Bill 222) amended Sections 35-37 of the Illinois Environmental Act (415 ILCS 5/5(b) (2010)) 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. If the IEPA denies a provisional variance request, then the applicant may initiate a proceeding with the Board for a full variance.

Calendar

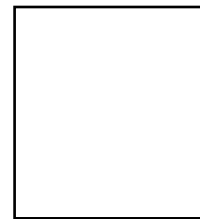
4/5/2012 11:00 AM	Illinois Pollution Control Board Meeting	James R. Thompson Center 100 W. Randolph Street Chicago
4/19/2012 11:00 AM	Illinois Pollution Control Board Meeting	Videoconference Chicago/Springfield James R. Thompson Center Hearing Room 11-512 100 W. Randolph Street Chicago And 1021 N. Grand Avenue East Oliver Holmes Conference Room 2012 N Springfield

<p>5/3/2012 11:00 am</p>	<p>Illinois Pollution Control Board Meeting</p>	<p>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</p>
<p>5/17/2012 11:00 am</p>	<p>Illinois Pollution Control Board Meeting</p>	<p>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</p>
<p>6/7/2012 11:00 am</p>	<p>Illinois Pollution Control Board Meeting</p>	<p>James R. Thompson Center 100 W. Randolph Street Chicago</p>
<p>6/21/2012 11:00 am</p>	<p>Illinois Pollution Control Board Meeting</p>	<p>James R. Thompson Center 100 W. Randolph Street 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