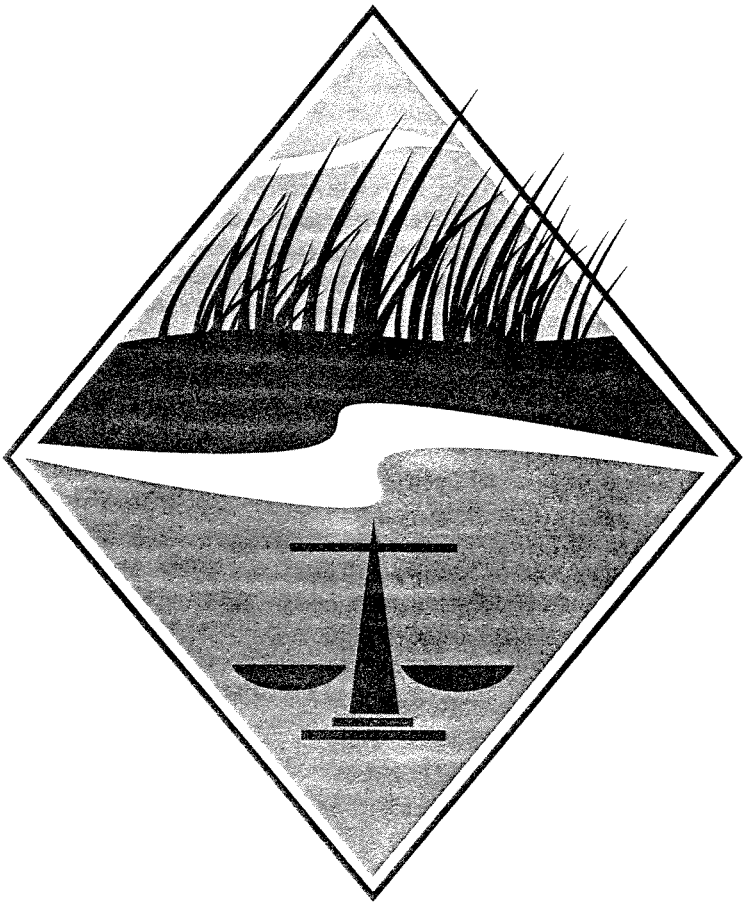
1970-1995

25 Years of Providing a Public Forum for Resolving Environmental Issues



State of Illinois
1995
Pollution Control Board
Annual Report

Message from the Chairman

Claire A. Manning
Chairman—State of Illinois Pollution Control Board

Honorable Jim Edgar, Governor of Illinois
Honorable Members of the General Assembly:

In Fiscal Year 1995, the Board celebrates completing its twenty-fifth year of operation. Over the years, the complexity and number of environmental issues have steadily increased, as has the volume of regulations that the Board must consider and adopt. With Congress now debating major environmental policy changes, the Board's role in amending and adopting the State's environmental regulations will continue to play an important role in state government. Illinois has already embarked on updating and streamlining some of its most important environmental cleanup programs, notably the State's Leaking Underground Storage Tank (LUST) program and the recently passed "Brownfields" legislation. Working with the IEPA, the regulated business community, and the environmental community, the Board is now in the process of adopting rules for these programs that will assure the maximum flexibility for individuals required to comply while assuring the environment is adequately protected.

Amid developing rules for these major programs, the Board's caseload for contested cases has continued to grow. The Board has shown that it can function effectively by doing more with less. We have significantly reduced the average time it takes to settle cases, while our overall headcount has remained unchanged. Moreover, the Board hopes to move away from General Revenue Funding toward dedicated fund revenues in order that the State have more resources available for education, mental health, corrections, etc.

As the Board enters its second quarter century of operation, we can be proud of the strides we have made in the environmental area, yet we are committed to continued improvement. Whether the future brings more environmental regulation or less, the Board remains the public forum before which individuals may appeal decisions and participate in how the laws of Illinois are implemented. Through its openness and commitment to developing consensus on these issues, the Board has shown that government can play a positive role in assuring that effective rules can be made sensible and reasonable. Rules work best for all when they are made easier to understand and when all parties have had a voice in their development.

We are pleased to share with you the Annual Report of the Illinois Pollution Control Board for Fiscal Year 1995. This annual report provides information on all aspects of the Board's activities and responsibilities for protecting the environment under the Illinois Environmental Protection Act and, specifically, discusses the Board's accomplishments between July 1, 1994, and June 30, 1995.

Claire A. Manning

Claire A. Manning
Chairman - State of Illinois Pollution Control Board

Governor
Honorable Jim Edgar

Chairman
Claire A. Manning
Springfield

Members
Emmett E. Dunham II
Elmhurst

Ronald C. Flemal
DeKalb

G. Tanner Girard
Grafton

Marili McFawn
Inverness

J. Theodore Meyer
Chicago

Joseph C. Yi
Park Ridge

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148 North Third Street
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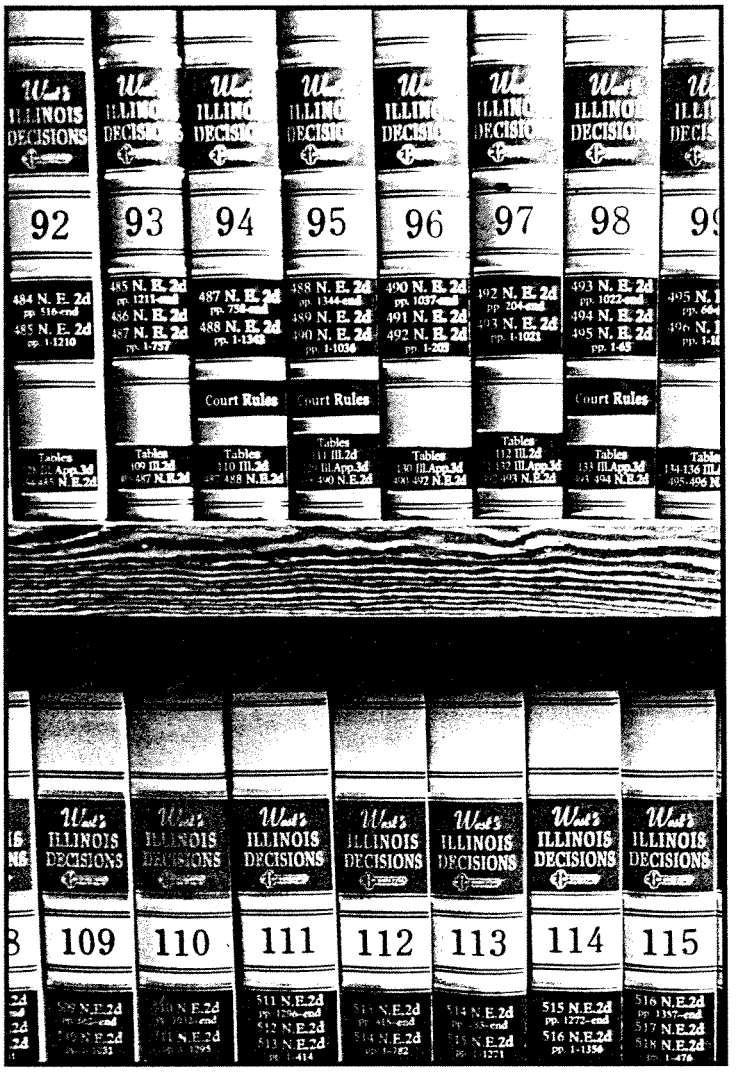
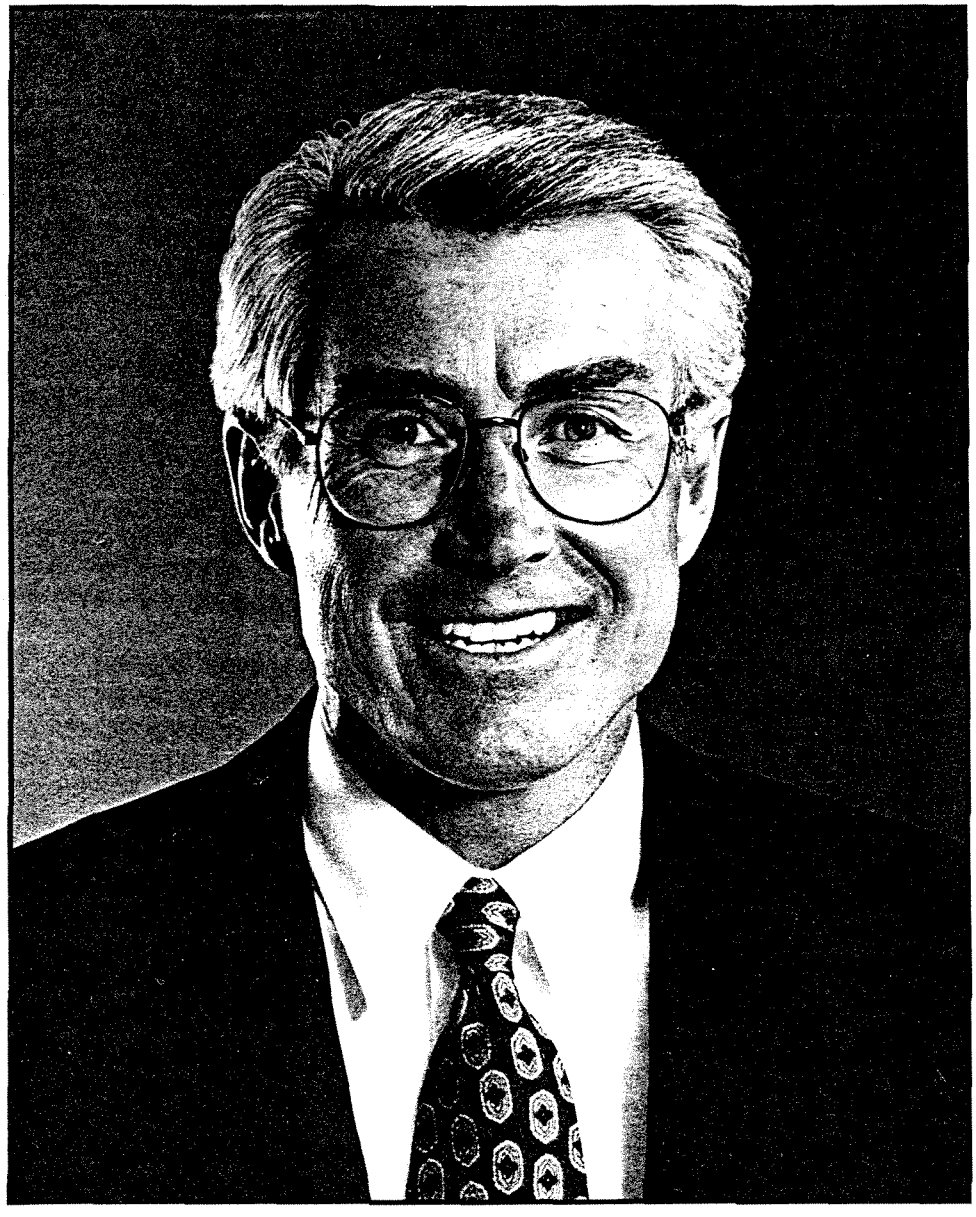
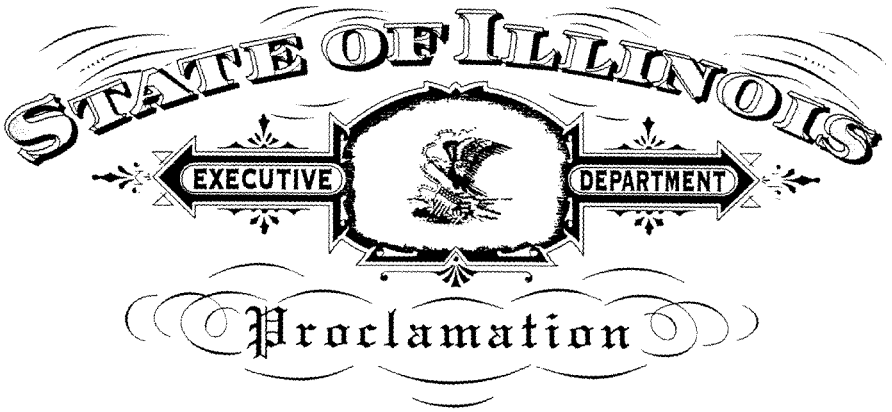


In This Annual Report:



HONORABLE GOVERNOR JIM EDGAR
State of Illinois



Proclamation

WHEREAS, the Illinois Pollution Control Board was created in 1970 with the enactment of the state's Environmental Protection Act; and

WHEREAS, the Board is charged with developing environmental rules and standards, as well as providing a forum by which parties and individuals can appeal such contested cases as enforcement actions, variances, adjusted standards, permit appeals, and landfill siting appeals; and

WHEREAS, those dedicated individuals who have served on the Board over its 25-year existence have brought with them expertise in law, biology, chemistry, earth sciences, and professional engineering, as well as experience serving in the state and local government, the environmental community, and the private sector; and

WHEREAS, the Board continues to strive to achieve a fair and proper balance between protecting the state's environmental health and assuring the state's regulations are economically reasonable and technically feasible; and

WHEREAS, the Board has made major strides in speeding up the processing of its ever-increasing caseload with fewer resources, this at a time when the state and federal government's environmental mandates grow ever more complicated; and

WHEREAS, the Board will continue to assist the state in bringing about the most effective, yet flexible and economical means of implementing the state's environmental regulatory programs in the future;

THEREFORE, I, Jim Edgar, Governor of the State of Illinois, proclaim September 6, 1995, as Pollution Control Day in Illinois.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Illinois to be affixed.

Done at the Capitol in the City of Springfield, this NINTH *day of* AUGUST *in the Year of Our Lord one thousand nine hundred and* NINETY-FIVE *, and of the State of Illinois the one hundred and* SEVENTY-SEVENTH

SEAL OF THE STATE OF ILLINOIS
AUG. 26TH 1818

George H Ryan
SECRETARY OF STATE

Jim Edgar
GOVERNOR

Pollution Control Board Members

In 1970, as they are today, Illinois Pollution Control Board (Board) members are appointed by the Governor and confirmed by the Illinois Senate. The Governor alone appoints one of the seven Board members to act as Chairman. All serve staggered, three-year terms. All Board members are technically qualified and bring considerable expertise to their full-time positions. During their terms, all members are subject to rules and constraints applied to the judiciary concerning sources of additional income and conduct with parties surrounding the substance of pending matters.

Over its 25-year history, the Board has been honored with many dedicated board members who, with the aid of a highly professional legal and technical staff, have legislated and adjudicated thousands of issues and cases to effect a balance between essential Illinois environmental and economic interests. The following is an acknowledgment of their dedication to the Board.

Then...

Appointed in 1970 by Governor Richard B. Ogilvie, the first Illinois Pollution Control Board Members charted the agency's initial course. They are (standing) Chairman David P. Currie, formerly the Governor's Coordinator of Environmental Quality and Professor of Law at the University of Chicago, appointed Chairman July 1970-Dec. 1972, Chicago; (seated L to R) Dr. Samuel R. Aldrich, former Professor of Agriculture at the University of Illinois, appointed Aug. 1970-July 1972, Urbana; Jacob D. Dumelle, P.E., an engineer and former Chief of the Lake Michigan Basin Office of the Federal Water Quality Administration, appointed Chairman by Governor Daniel Walker, August 1973-Nov. 1988, served Aug. 1970-Dec. 1991, Oak Park; Samuel T. Lawton, Jr., an attorney, former Mayor of Highland Park and Chairman of the old Air Pollution Control Board, appointed Acting Chairman in Dec. 1972-July 1973, served Aug. 1970-July 1973, Highland Park; and Richard J. Kissel, former attorney for Abbott Laboratories, appointed in July 1970-June 1972, Lake Forest. Chairman Dumelle was reappointed in 1973 and 1976 by Governor Walker and in 1980 by Governor James R. Thompson.

Spanning 25 Years Of Illinois Pollution Control Board Members

Donald A. Henss, appointed by Governor Richard B. Ogilvie, reappointed by Governor Daniel Walker, July 1972-Oct. 1975, Moline

John L. Parker, appointed by Governor Richard B. Ogilvie, Aug. 1972-Dec. 1972, Joliet

Roger G. Seaman, appointed by Governor Daniel Walker, March 1973-Nov. 1974, Chicago

Dr. Russel T. Odell, appointed by Governor Daniel Walker, Sept. 1973-Sept. 1975, Champaign (deceased)

Sidney M. Marder, P.E., appointed by Governor Daniel Walker, Sept. 1973-Jan. 1975, Peru

Philip Zeitlin, R.A., appointed by Governor Daniel Walker, Nov. 1974-July 1977, Chicago

Irvin G. Goodman, appointed by Governor Daniel Walker and reappointed by Governor James R. Thompson, Nov. 1974-April 1983. Medinah/Oak Brook (deceased)

James L. Young, appointed by Governor Daniel Walker and reappointed by Governor James R. Thompson, Oct. 1975-Oct. 1979, Springfield

Dr. Donald P. Satchell, appointed by Governor Daniel Walker and reappointed by Governor James R. Thompson, Dec. 1975-June 1981, Carbondale

Nels E. Werner, P.E., appointed and reappointed by Governor James R. Thompson, July 1977-Feb. 1983, Chicago (deceased)

)an G. Anderson, appointed and reappointed by Governor James R. Thompson, Mar. 1980-Nov. 1993, Western Springs

Donald B. Anderson, appointed by Governor James R. Thompson, July 1981-Mar. 1984, Peru (deceased)

Walter J. Nega, appointed by Governor James R. Thompson, Feb. 1983-Dec. 1986, Chicago (deceased)

Bill S. Forcade, appointed by Governor James R. Thompson and reappointed by Governor Jim Edgar, Nov. 1983-Oct. 1993, Chicago

Dr. John C. Marlin, Chairman, Nov. 1988-April 1993, appointed and reappointed by Governor James R. Thompson, Nov. 1983-April 1993, Urbana

Edward Nezda, appointed by Governor James R. Thompson, Mar. 1987-Mar. 1987, Chicago

Michael Nardulli, appointed and reappointed by Governor James R. Thompson, Oct. 1987-Feb. 1994, Chicago

...And Now

Gathered outside the James R. Thompson Center office building in Chicago, current Illinois Pollution Control Board members are (L to R) Dr. Ronald C. Flemal, DeKalb; J. Theodore Meyer, Chicago; Chairman Claire A. Manning, Springfield; Joseph C. Yi, Park Ridge; Marili McFawn, Inverness; G. Tanner Girard, Grafton; and Emmett E. Dunham II, Elmhurst.

About The Board Members

Current Illinois Pollution Control Board members bring a balance of various qualifications and backgrounds to the environmental cases they process. Comprised of legal, engineering, biological, geological and environmental science expertise, the Board reviews nearly 500 environmental cases annually and holds public hearings on more than 250.

Chairman Claire Manning was first appointed to the Board and designated Chairman by Governor Jim Edgar in May 1993. She was reappointed in May 1995. Her current term expires June 30, 1998. Chairman Manning is an attorney vith a J.D. from Loyola University. She was an original Member of the Illinois State Labor Relations Board and was instrumental in designing that Board and the public sector labor relations system in Illinois. Chairman Manning was a Visiting Professor at the University of Illinois' Institute of Labor and Industrial Relations; President-Elect of the National Association of Labor Relations Agencies; and Chief Labor Relations Counsel for the State of Illinois. She is also an arbitrator listed with the Federal Mediation and Conciliation Service.

Board Member Emmett Dunham formerly served as Environmental Manager for Enterprise Companies and Valspar Corporation. Prior to that, he was Regulatory Compliance Engineer with Acme/Borden and a Pollution Control Officer, biologist and microbiologist with the Metropolitan Water Reclamation District of Chicago. Mr. Dunham holds a J.D. from Kent Law School and an M.S. and B.A. in biology. He has taken numerous post-graduate courses in environmental and chemical engineering from the Illinois Institute of Technology. Mr. Dunham was appointed to the Illinois Pollution Control Board in November 1993 by Governor Jim Edgar. His term expires June 30, 1996.

Board Member Ronald Flemal holds a Ph.D. and B.S. in biology from Princeton University and Northwestern University, respectively. Dr. Flemal was formerly a Professor of Geology at Northern Illinois University. Previously, he served as a Geologist with the U.S. Bureau of Mines in Denver and a Research Affiliate with the Illinois Geological Survey in Urbana. Dr. Flemal was appointed by Governor James R. Thompson in May 1985 and reappointed by Governor Jim Edgar in November 1993. His term ends June 30, 1996.

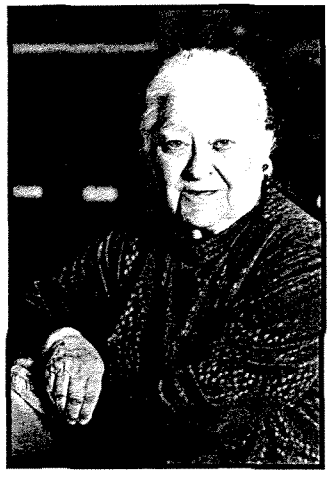
Board Member G. Tanner Girard was first appointed in February 1992 and reappointed in June 1994 by Governor Jim Edgar. Dr. Girard's background is highlighted with a Ph.D. in science education from Florida State University. He holds an M.S. in biological science from the University of Central Florida and a B.S. in biology from Principia College. He was formerly Associate Professor of Biology and Environmental Sciences at Principia College and a Chairperson and Commissioner of the Illinois Nature Preserves Commission. He also was President of the Illinois Audubon Society and Vice-President of the Illinois Environmental Council. Dr. Girard's term expires June 30, 1997.

Board Member Marili McFawn brings expertise as a former law Partner at Schiff, Hardin and Waite. She also served as Attorney Assistant to former Illinois Pollution Control Board Chairman Jacob Dumelle, former Vice-Chairman Irvin Goodman, and current Board Member J. Ted Meyer, and as an Enforcement Staff Attorney for the Air and Public Water Divisions at the Illinois Environmental Protection Agency. Ms. McFawn has a J.D. from Loyola University and a B.A. in English. She was first appointed to the Board in February 1993 and reappointed in May 1995 by Governor Jim Edgar. Ms. McFawn's term ends June 30, 1998.

Board Member J. Theodore Meyer's long history of distinguished service to the Board began with his first appointment by Governor James R. Thompson in June 1983. He was last reappointed in June 1994 by Governor Jim Edgar. His term expires June 30, 1997. Mr. Meyer was a State Representative, 28th District, in the Illinois General Assembly from 1966-1972 and 1974-1983. Among his many honors, he held the Chairmanship of the House Energy and Environment Committee. Mr. Meyer has a J.D. from DePaul University and a B.S. in biology and chemistry from John Carroll University. He has also completed post-graduate science courses at the University of Chicago.

Board Member Joseph C. Yi, the newest member of the Board, is a Professional Engineer and Registered Asbestos Abatement Management Planner. He has a B.S. in civil engineering. Mr. Yi–formerly a Partner and Vice President of Nakawatase, Rutowski, Wyns and Yi, Inc.–also held the positions of Transportation Engineer, Business Enterprise Bureau Chief, and Director of Finance and Administration at the Illinois Department of Transportation. He was also a City Engineer for the City of Evanston. Governor Jim Edgar appointed Mr. Yi to the Board in September 1994 and reappointed him in May 1995. His term expires June 30, 1998.

Eileen L. Johnston– Illinois' *Grande Dame* of Environmental Education



In environmental circles, she is often called the "Woman Ever-Vigilant in the Pollution Fight." Her background in environmental education and her unceasing mission to make Illinois a better place to live have given her a reputation honored by many across the state.

Only one word can describe Illinois environmental educator and activist Eileen L. Johnston–**persistent**.

For more than 30 years, Johnston has dedicated much of her time and personal resources to educating the public on *environmental issues and improving Illinois' environmental* uality. However, her efforts haven't gone unnoticed. An Environmental Educator in Wilmette, she is the recipient of the USEPA's Environmental Quality Award in 1974, the University of Michigan's S. Spencer Scott Award for distinguished service in 1988, and most recently, the 1994 Richard Beatty Mellon Award presented by the Air & Waste Management Association for her civic and environmental contributions.

Johnston first became active in Illinois environmental issues in 1966. When on a cruise in Lake Michigan, she became alarmed at the visible pollution of the lake and its ecosystem. In 1967, when the federal government held conferences on Lake Michigan, Johnston testified that the Great Lakes had become waste dumps, and the health of citizens was in jeopardy. Since then, she has organized and sponsored 72 educational cruises on Chicago waterways urging people to become environmentally active. Approximately 7,000 people from schools and colleges, state agencies, industry and the general public have attended her cruises. Many state and federal environmental agency and organization speakers, including representatives from the Pollution Control Board, have presented informative programs while on the cruise.

Conferences are another of her educational tools. Currently preparing her 44th, Johnston focuses her conferences on such issues as waste management, solar energy, acid rain, global climate change, ozone depletion and health effects of ozone.

When Johnston first became involved in environmental issues and began setting up her conferences, she traveled to many state agency hearings and the Illinois legislature. She loves people and found it easy to get acquainted with them and gain their support.

"It was no problem at all. They knew I was conscientious and what I was all about," Johnston said. "I joke about it. The senators would frequently see this lady with a red hat in the balcony, until one day I was introduced to them by a senator on the floor. That's how I got to know them. It's good to be acquainted with your legislators."

Over the years, Johnston has seen the adoption of many environmental regulations and programs designed to improve Illinois' environment. Since her field trips around Lake Michigan with Cub Scout and Girl Scout troops in the late 1950s, she has seen a considerable recovery in air and water quality.

"There's been so much improvement," she said. "I was very upset about the conditions around Lake Michigan in the early days. After listening to people like Jacques Cousteau and Barry Commoner, I wasn't so sure that good old earth was going to survive. I do feel encouraged now. People are more aware and working very hard to do something about it, so I think we have a fighting chance."

According to Johnston, working as a citizen on environmental issues is a matter of awareness and education. Her advice to interested people is to take environmental education courses and get to as many environmental agency conferences and board hearings as possible. She also suggests joining environmental groups such as the League of Women Voters, *National Resource Defense Council, National Wildlife* Federation, and others. As far as active government participation, Johnston urges people to appear before Congress, keep in touch with their state and federal representatives and senators, and write letters. "For citizens, writing letters is one of the best things they can do," she said. On the subject of education, Johnston hopes today's students will become more involved in engineering and environmental sciences.

Eileen Johnston continues to pursue her quest to educate people on their environment and the steps they can take to make a difference, but she admits she has had to slow down a bit. When asked, "Someday when your work is finished with the environment, what would...," she cut the question short.

"It won't be. As long as I'm breathing, I'll be trying to do something," she said. "I'll just stick with it."

Illinois Pollution Control Board—Its History, Powers and Duties

Over its 25 years of existence, the Board's rulemaking and adjudicatory functions have remained the same, but its responsibilities and procedures have undergone dramatic changes.

In 1970, the Illinois General Assembly adopted the Illinois Environmental Protection Act (Act) which created The Illinois Pollution Control Board (Board), the Illinois Environmental Protection Agency (IEPA) and the Institute for Environmental Quality (Institute).

In essence, the three-body environmental system granted the Board authority to adopt environmental regulations and adjudicate cases, the IEPA power to enforce compliance with environmental regulations, and the Institute the duty to act as a research agency to propose regulations to the Board and provide technical information for public hearings.

For nearly four years, Illinois' environmental system operated under this initial structure, establishing a regulatory, enforcement and judicial process to accomplish the environmental goals required by the Illinois Environmental Protection Act of 1970.

System Undergoes Structural Changes

In 1975, the General Assembly made a significant structural amendment to one of the Board's sister agencies. Previously the technical research arm of Illinois' environmental system, the Institute for Environmental Quality was now charged with preparing economic impact studies on all significant Board regulations, both proposed and existing. New Board rules were postponed until the content of the Institute's studies was determined by a separate economic and technical advisory committee appointed by the governor and considered in public hearings.

Three years later in 1978, the Institute's impact study functions were transferred to the then newly formed Illinois Institute of Natural Resources, later renamed the Department of Energy and Natural Resources (DENR). This year the DENR was reorganized and made part of the Illinois Department of Natural Resources (DNR), which combined four other state environmental agencies.

In 1992, however, the economic impact studies requirement was removed from the Environmental Protection Act, removing the DNR's participation in the regulatory process. In place of the often-expensive government economic impact studies, the Board still considers the "economic reasonableness and technical feasibility" of every proposed rule and obtains cost-assessment information from the parties.

Procedures Revamped

Although the Board's and IEPA's functions haven't significantly changed over their history, their procedures and responsibilities have.

The most far-reaching procedural change occurred in 1977 with the adoption of the Illinois Administrative Procedure Act (IAPA). As it applies to Board rulemakings, the IAPA ensures that state agencies adopt rules within their statutory authority and comply to a state style on form and limitations on content. The act also sets requirements for public notice and written and oral comments, as well as consideration for general economic impact, and specifically, impact on small municipalities and businesses. Currently, proposed rules are reviewed by the Secretary of State's Administrative Code Division for compliance and style format, the General Assembly's Joint Committee on Administrative Rules (JCAR) for compliance with the Board's enabling statute and IAPA requirements, and the Small Business Office of the Department of Commerce and Community Affairs for impact of proposed rules on small businesses.

In May 1987, a "White Paper" known as the Schneiderman Report was commissioned by Governor James R. Thompson. It reviewed Illinois' environmental regulatory system, which led to several administrative changes streamlining the system. The first major change came in the late-1980s. SB 1834 established new regulatory processes for decisions on adopting rules implementing various federal clean air, land and water programs. Increased reliance upon "identical in substance" and federally required rulemakings allowed the Board to "pass-through" federal rules implementing federal programs

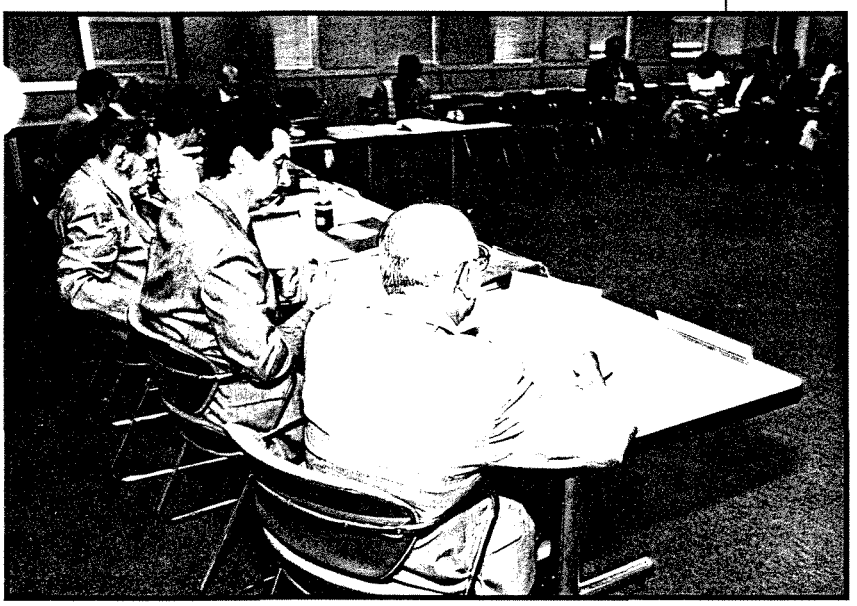
more quickly.

SB 1295, the second major legislative revision, took effect in September 1992. The result was the state's improved capability to timely fulfill various requirements mandated by the federal Clean Air Act Amendments of 1990 (CAAA). This legislation created a fast-track rulemaking system allowing the Board to impose strict limitations and deadlines on its proceedings to ensure adoption of CAAA rules no later than 150 days after receiving the IEPA's proposals.

Present Board Powers and Duties

Quasi-legislative and quasi-judicial, the Board adopts environmental regulations and hears contested cases. It determines, defines and implements environmental control standards in accordance with the Illinois Environmental Protection Act (Act) while acting for the state regarding standards submitted in accordance to federal laws covering environmental protection.

The Board, consisting of seven technically qualified members appointed to three-year terms by the Governor and confirmed by the Illinois Senate, conducts hearings on complaints charging violations of the Illinois Environmental Protection Act or regulations brought by the State or citizens. The Board also hears contested cases involving decisions of the IEPA, Office of the State Fire Marshal (OSFM), and local government landfill and incinerator siting decisions.



The Board meets at least twice each month in Chicago for hearings.

Each Board Member has responsibility for the various types of regulatory proceedings and contested cases. The Board also has the power to subpoena witnesses and can prescribe established fees for IEPA inspection and permitting services.

The Board generally conducts its business at meetings at least twice a month. Formal Board action is conducted at publicly noticed meetings in accordance with the "Open Meetings Act." Matters are typically discussed at one meeting and proposed for a vote the following meeting. A vote of four of the seven Board Members is required for all final Board determinations. The Board's decisions must be made in writing and supported by findings of fact and conclusions of law.

Duties and responsibilities of the Board are divided into two specific categories–rulemakings and contested cases. Regulations adopted by the Board concern air, land, water, public water supply, mine- and livestock-related pollution; hazardous and non-hazardous waste; noise; and atomic radiation and are codified under 35 Ill. Adm. Code Parts 200-1000. Rules are handled through four types of rulemaking proceedings–general rulemaking, identical in substance rulemaking, federally required rules and CAAA fast-track rules. Here are the circumstances that define each type of rulemaking:

Rulemakings

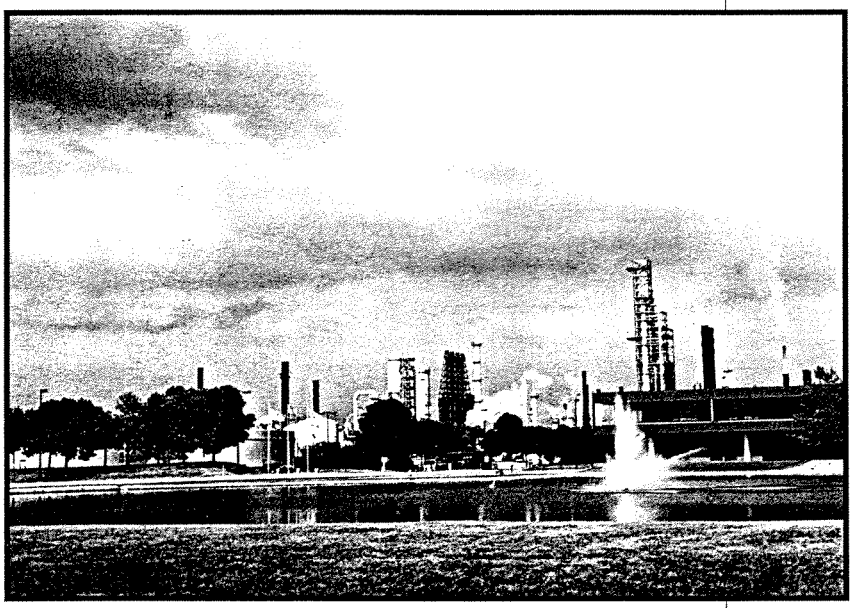
General Rulemaking

Any person or the IEPA may submit a petition for adoption, amendment or repeal of the applicability of a general or site-specific regulation. If the proposal meets statutory requirements, the Board accepts the proposal and schedules at least one public hearing for site-specific rules and two hearings for general rules.

Although a formal economic impact study is no longer required by state law, the Board is still required to conduct at least two economic impact hearings for general rules and make a written determination on whether the rules will have an adverse economic impact on the People of Illinois. The proponent of the proposed rule is also required to describe the sources and facilities affected by the rule and its economic impact.

All proposed rules are required to be published in the *Illinois Register* establishing a 45-day "first-notice" period during which the Board must accept written public comment. The Board must conduct a public hearing during this time period or prior to first notice under certain conditions. Once

the 45-day notice period has expired, the Board may alter the rule pursuant to public comments or on its own initiative and then proceed with a 45-day "second notice." During this time, no substantive changes can be made except by request of the Joint Committee on Administrative Rules. If the Committee



Industry often works in partnership with Board to develop rules.

makes no objections, the Board may adopt the rules, file them with the Secretary of State and publish them in the *Illinois Register*. If the Committee objects, the Board may publish a refusal to respond to the objections in the *Illinois Register* and proceed to adopt and file the rule over the objection. The Committee may then act to suspend the rule and introduce a joint resolution in the General Assembly seeking to repeal the rule.

IAPA requirements also grant the Board power to make both emergency and peremptory rulemakings without prior notice or opportunity for comment to implement non-negotiated and non-discretionary court orders.

In Substance Rulemaking

"Identical in substance" rulemakings are used by the Board to "adopt regulations identical in substance to federal regulations or amendments initiated by the administrator of the USEPA." This procedure provides the greatest exemption from IAPA general rulemaking requirements.

Opportunity must be given for public comment on these rules, and the Board may consolidate multiple federal rulemakings into one proceeding. Final rules must then be adopted within one year of adoption of the first federal rule consolidated. Identical in substance dockets are opened twice a year. Completion requires coordination of the Board, IEPA, Attorney General and the USEPA.

The Board typically drafts identical in substance "proposals for public comment" and establishes a 45-day comment period by publishing them in the *Illinois Register*. During this time the three other coordinating state and federal agencies exchange draft comments and file final comments. The Board then reviews the comments and adopts final rules consistent with the USEPA regulations with minor exceptions. Rule filings take up to 30 days to allow the commenting agencies time to add technical information or make corrections.

Federally Required Rules

Required rules are needed to meet the standards of the federal Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act, and the Safe Drinking Water Act (SDWA).

Subject to IAPA rulemaking, hearing and economic impact study requirements, the Board determines whether a study should be performed within 60 days. However, the DNR is given a six-month deadline to complete the study. If the study deadline is not met, the Board may proceed to adopt federally required rules without it.

CAAA Fast-Track Rules

CAAA fast-track procedures were proposed by the IEPA to adopt federal USEPA Clean Air Act Amendment rules in a timely manner. The procedures require the Board to take specific actions and enforce deadlines triggered by the date of receipt of the proposal. The Board has no power to alter these deadlines.

The process must be completed within 150 days. During that period, a schedule covering seven actions goes into effect. The schedule includes filing deadlines, hearing notifications and rule adoptions. A copy of a schedule for these actions can be obtained by contacting the Board.

Contested Cases

A variety of federal and state contested cases are heard by the Board. The Board considers a contested case to be an enforcement action, permit appeal, variance, an adjusted standard ruling, administrative citation and landfill siting appeal. Regarding cases initiated by the State, the Board

hears standard enforcement actions and administrative citations. Complaints can be filed by the IEPA, Attorney General and State's Attorneys to enforce violations against the Illinois Environmental Protection Act (Act) or Board rules. Additionally, a citizen can file a complaint alleging a violation of the Act or its regulations. If the complaint is neither frivolous or duplicitous, it is treated like a State enforcement action.

Standard Enforcement Actions

Generally, at least one public hearing must be held for the complainant to prove that the "respondent has caused or threatened to cause air or water pollution, or that the respondent has violated or threatens to violate any provision of the Act, Board rule or regulation, permit, or term of conditions thereof." In some enforcement cases where the parties agree to settle, the hearing requirement may be waived. However, the waiver request can be denied by the Board. Additionally, the Board may hold a hearing if a hearing request is received from the public.

Board Orders in these cases may include direction to cease and desist from violations, permit revocation, imposition of civil penalties, and/or posting of performance bonds or other security to correct violations. Substantial monetary civil penalties per violation may also be ordered by the Board.

Administrative Citations

Administrative citation proceedings are brought before the Board by the IEPA or local governments. These citations contain a copy of an inspection report and must be served within 60 days of the violation. The respondent may file a petition for appeal within 35 days. If no appeal is filed, the Board makes a finding of violation and imposes a non-discretionary $500-per-violation fee. If appealed, a hearing is held. The burden of proof is then on the complainant. The Board may then find for or against the complainant. If it finds against, it must impose a statutory penalty and hearing costs.

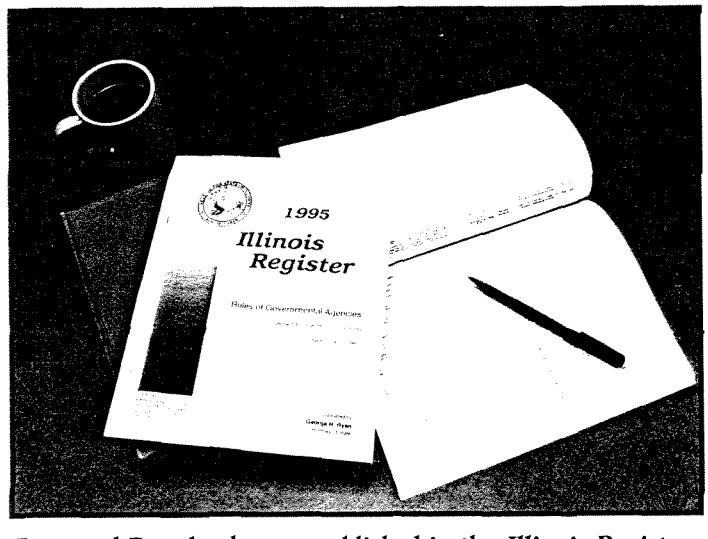
Regulatory Relief Mechanisms

Variances and adjusted standards may be granted to petitioners who seek relief from the Act or regulations, provided the petitioner can show that compliance with the regulation would impose "arbitrary or unreasonable hardship," and that the request is consistent with federal law.

Short-term variances of not more than 90 days during a calendar year, called provisional variances, and longer term variances for up to five years are available to the petitioner. If requested by the petitioner or for certain types of variances, the Board will hold a hearing for long-term variances. A hearing is also mandatory if any member of the public requests one within 21 days of filing the petition.

The Board must act on provisional variances within two days of receipt of an IEPA recommendation that they be granted. Most longer term variances are decided within 120 days of filing the petition, or the petitioner may "deem the request granted for a period not to exceed one year." An exception to the 120-day decision period is made for variances of rules implementing Resource Conservation and Recovery Act (RCRA), Underground Injection Control (UIC) and National Pollutant Discharge Elimination System (NPDES) programs. If the Board fails to act in these cases, the petitioner may bring an action in an Illinois Appellate Court.

An adjusted standard is a "permanent variance" from general regulatory standards granted by the Board to a petitioner for a particular pollution source. The result of an adjusted standard proceeding is a "site-specific rule," adjudicatory and exempted from rulemaking requirements of the Act and IAPA. The petitioner must demonstrate specific factors relating to its facility which the Board did not rely upon in adopting the general rule in order to qualify for a favorable ruling for the requested standard.



Proposed Board rules are published in the *Illinois Register.*

As with variances, adjusted standard cases may require a hearing if requested by the petitioner or any other person within 21 days of filing the petition. There are no statutory decision deadlines for these cases.

Permit and Siting Appeals

The Board reviews decisions made both by the IEPA concerning permits and by local government on sitings of pollution control facilities. Applicants may make appeals on the IEPA's denial of a permit or conditions it places on any permit issued.

Hearings are held on all permit appeal cases and require the applicant to prove that, prior to the IEPA's permit decision, no violation of the Illinois Environmental Protection Act would have occurred if the permit had been issued.

Board decision deadlines for permit appeals are the same as variances–within 120 days of filing the petition. If the Board fails to act within the deadline on RCRA, UIC and NPDES permits, the petitioner is entitled to bring action before an Illinois Appellate Court. For all other permits, failure to timely act allows the petitioner to "deem the permit issued."

Regarding local siting decisions, municipalities and counties may grant site location approval for pollution control facilities if the applicant demonstrates the site meets nine specific statutory criteria. If the applicant is denied approval, the denial or any conditions placed upon the approval may be appealed to the Board. The process also allows third parties to appeal a granted approval by third parties if they are affected by the proposed facility and if they participated in the municipal or county public hearing.

The Board reviews whether the siting decision was consistent with the nine statutory criteria and whether the process was fundamentally fair. Public hearings must be held for these appeal cases, and the Board must take final action within 120 days of filing the petition.

Underground Storage Tanks

The Act also allows appeals before the Board of final determinations made by the IEPA and the OSFM regarding the Illinois Underground Storage Tank program. The Board receives these IEPA decisions to determine if a petitioner is eligible to access Illinois' Underground Storage Tank Fund (UST), and whether the petitioner has satisfied certain statutory requirements concerning corrective action. With the exception of OSFM appeals where there is no statutory decision deadline, appeals of IEPA UST decisions are decided within 120 days.

Other Board Obligations

Other actions occasionally processed by the Board include trade secret determinations, water well setback exceptions, designation of regulated groundwater recharge areas, actions for recovery of costs of removal or remedial action incurred by the State as a result of release or substantial threat of a release of a hazardous substance or pesticide, special waste delisting appeals, and solid waste management fee exemption appeals. Duties imposed by other Acts include pollution control facility tax certifications, appeals of Lake Michigan discharge permits issued by the IEPA, and appeals of OSFM determinations.

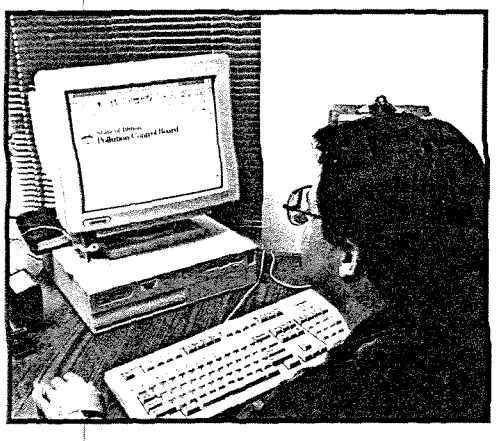
Board Puts Key Information on Internet

Attorneys, businesses, environmental groups, other state regulatory agencies and the general public can soon surf the Internet for the latest Pollution Control Board information.

Joining the Internet World Wide Web, the Board will begin loading a summary of all its key legislative and judicial actions on computer for immediate retrieval. If you're on the Internet system in your home or office, Board information can be found on the State of Illinois Home Page under the "State Agencies" heading (http://gov.state. il. us/).

The Board is planning to list a summary of rulemakings, appellate updates, new cases, final actions and a calendar of hearing dates on the Home Page. Articles of interest about the Board, legislative actions affecting environmental issues and guidelines for public participation in Board functions will also be available.

According to Pollution Control Board Chairman Claire Manning, the Board hopes to put much of its current printed information on the system. In addition, Barclays Law Publishers will be publishing Board opinions, orders and rulemakings as a subscription service in both hard copy and electronic formats.



"We'll be informing all of the parties interested in the Board's activities to take advantage of the system," Manning said. "We hope as the various on-line services become more available to everyone, we can supplement much of the Board's printed publications with an up-to-the-minute on-line service."

Manning hopes that within five years, much of the Board's information will be totally computer accessible.

Conversations on the Board

Straight Talk on How the Board Began, Where It Is Today and Where It's Going

In 1970, the Illinois Pollution Control Board's first Chairman was David P. Currie. Currie and four other governor-appointed Board Members took on the challenge to establish the Board and fit it into a newly formed regulatory system charged with protecting Illinois' environment. Twenty-five years later, Claire A. Manning holds the Board's chairmanship. She has built upon the foundation formed by Currie and other Board Chairmen to position the Pollution Control Board as a highly respected agency for the resolution of environmental regulatory disputes. Over the past 25 years, Illinois' environmental issues and their focus have changed. Our interviews with former Chairman Currie and Chairman Manning provide interesting insight into those changes and the Board's 25-year history.

Claire A. Manning, Chairman–Pollution Control Board

In May 1993, Claire A. Manning was appointed Chairman of the Illinois Pollution Control Board by Governor Jim Edgar. Reappointed in May 1995, Chairman Manning's reputation as a fair and impartial adjudicator on the Labor Board was exactly what Governor Edgar wanted to head the Illinois Pollution Control Board. Chairman Manning also brought some unique approaches with her to manage the Board's functions and steer it toward the 21st century. Here are some of her philosophies about the Board and the state's environmental system.

How do you see your role as Pollution Control Board Chairman and the responsibilities that accompany your position?

My major responsibility is to lead the Board in the direction of providing a fair and consistent forum for the adjudication of all environmental disputes and the setting of environmental standards. It's not always an easy task. There are seven Board members, and each brings his or her independent responsibilities and backgrounds. That's as it should be...it provides the depth of decision-making for the Board.

When you were first appointed as Board Chairman, what were some of the policies and procedures you wanted to change or improve?

The first improvement was relationships with other government entities. In my former state positions, I had a lot of dealings with other state agencies. At the Labor Board, I gained significant experience in being a decision-maker with the state as a party. In that capacity, I learned that for our decisions to be consistent and respected by both parties, and for our Board to have integrity, we had to respect the positions of all parties involved. Whether you agree or disagree with them or you think they should have used a different process or procedure, you have to respect their functions.

When I came to this Board, a major difficulty had been a breakdown in communications, for whatever reason, between the Board and the Illinois Environmental Protection Agency (IEPA). I feel I've been successful in engendering a spirit of respect among the Board for the IEPA, and the IEPA's respect for the Board's functions has turned around as well.

Secondly, the Board does an amazing number of different functions, all with different ramifications. We are here because of our specialized expertise and our special ability to deal with environmental law. Because of that specialty, we have a responsibility to the public to not only operate like a court but as an administrative agency that can prioritize its court

functions. We need to provide the parties with a better process and a more specialized product than they would get in court.

Is the Board moving in that direction?

We are currently discussing a revamp of the Board's procedural rules. We hope to get something out for public input soon.

What about the Board's role in handling its cases?

In the Board's earlier years, it received much of its information and testimony from contractual hearing officers. Although many contract hearing officers were good, the Board, out of necessity, made its decisions based on a cold record. Also, the relationship between the parties and the Board was somewhat distant because of the contractual hearing officer arrangement. The parties simply developed the record, and the Board Members reviewed each and every record. This may have worked well when the Board's responsibilities were fewer, but today, this is not always practical.

"The Board is now at the front end of the process."

It was also very different from the type of situation I was used to at the Labor Board where the hearing officers were very effective case managers. They allowed the parties all the latitude needed to present their case. So, I established the concept of Board-employed Staff Hearing Officers. We improved our case management. With some types of citizen enforcement cases, we even help parties settle or withdraw cases before they go through lengthy litigation. That's because we are in a better position to help the parties decide what issues are most important. The Board is now at the front end of the process.

How does the Board work with the general public on issues?

In the first few months on the Board, I met with many members of the public interested in the process. One of the things that environmental groups consistently told me was that the Board needed to be more accessible to the public. I agreed. The Board needs to provide a forum for public view, and the Board has a long history of encouraging that position. I think our process needs to be made easier, however. Those that routinely practice before us find it quite easy enough, but attorneys and citizens who don't, find it cumbersome. We need to make case processing and rule-making easier and encourage a more facilitative process. Well over half of our cases are filed by people who are unfamiliar with the process and don't know our regulations. Because of that, we continually hit stumbling blocks and find ourselves answering all kinds of administrative questions at the Board level. By providing checklists and the necessary forms at the clerk level, the Board can run more smoothly. That also supports my desire to have the Board right there at the beginning of the process.

You mentioned contested cases. Have you initiated any changes in the Board's rulemaking function?

In the regulatory context, the concept of rulemaking and environmental management had changed from what it was in the earlier days of the Board. This was largely the result of federal regulations, and most recently the Clean Air Act. The 1970s was an era of development of regulations to impose on industry. When I came to the Board, industry quite well knew there were all these regulations it had to follow. Today, it's not so much an issue of whether there will be regulations, but how to develop standards that are workable, feasible, economically achievable and environmentally progressive. Over the course of years, industry has become a partner with the Illinois EPA. It is healthy for the Board to respect that partnership and be there if it broke down, but not necessarily presume that our rulemaking function superseded agreements forged by that cooperation.

Taking all this into consideration, I tried a more informal approach to rulemaking. We started using a little-known provision in the statute called "Pre-Hearing Conferences in Rulemaking" where we called the parties in to find out–without a formal regulatory hearing–where they were, what issues were still involved, who was going to proceed on what types of issues, how long it was going to take, and whether they could reach agreement on some of the issues. The pre-hearing conferences have allowed the Board to facilitate the development of the rule, rather than merely imposing the rules.

You talked about industry, or the regulated community. How difficult is it to balance Illinois' environmental interests with economic interests and still achieve the Board's goals?

It's always difficult, because economic costs are easier to assess than benefits to the environment. However, over the years the Board has done and continues to do an excellent job in bringing about that balance. It's because of the structure. The IEPA is there to present us with all we need to know regarding the public interest, the need for environmental protection and the need for a particular decision. On the other side of the coin, the regulated community is there

giving us all the information we need about the costs of a given regulation, whether the regulation is technically feasible and whether it thinks there is a better way. Also, citizen and environmental groups are treated as equal participants in the Board's public rulemaking. Because we get all these perspectives, and our job is to decide which parts of those perspectives make better public policy, we have created a balance.

"We're here to make the process work and provide the parties with what they need–good decisions."

Regarding regulations, the present U.S. Congress has sparked a controversy proposing a weakening of current environmental regulations and the cutting of the USEPA's budget by one-third. If approved, how will these changes affect the Board and Illinois' environmental regulatory system?

The debate in Washington over environmental regulations does not surprise me. And it doesn't surprise me at all that there's a backlash. Because of the obviously cumbersome system of environmental regulations that has developed over the years, one can understand why the regulated community believes there is a better way. So, debating these issues is healthy, as we're approaching the 21st century.

Nonetheless, I think it would be a serious mistake for federal or state environmental policy to immediately stop or backslide. We've made significant improvements in our environment over the years using those regulations. What we need to do now is assess where we've come from and where we need to go environmentally and work together in terms of how we want to get there.

Some of the initiatives with the USEPA, like 3M Company's XL program, are wonderful initiatives. They allow more latitude for the regulated community to make environmental decisions through citizen input and government cooperation and approval.

If the federal government reduces the USEPA's role, how would Illinois respond?

If the federal government does place a moratorium on regulations or cut the USEPA's size, the Board's policy-making function becomes even more crucial. In terms of the federal government analyzing the cost/benefit ratio of federal regulations, it could look to the Board to provide a more experienced and knowledgeable environmental forum without the statistical and cost problems.

And because we have a Governor who is committed to the concept of the protection of the environment, the state will ultimately pick up the responsibility of environmental protection to ensure the health of the public and protection of the environment. The Illinois EPA will grow, and the Board's function will be greater.

How would you rate Illinois business and industry in terms of their environmental responsibility?

For the most part, they're very sophisticated in their knowledge of environmental regulations. There is a gaining in the area of what I call "corporate responsibility." I see people who, I believe, are sincere about their obligation to the environment. That's not to say there's not an industry out there skating on the edges or totally working outside the law, but the majority of corporate leaders I've met have a desire for the environmental process to work, a commitment to the quality of life for the state's citizens, and the desire to be an economically viable entity. A lot of people are trying to put those three things together.

I also think it's unhealthy in the 1990s to approach the position being suspicious of corporate motives. For the last 10 years, my position on decision-making has been extremely neutral. So when I came here, it was not with a bent one way or the other–either the environmental cause or industry's economic concerns. I understand how to listen to people and divergent concerns and come up with a reasonable and fair approach. I'm simply a decision-maker.

Does politics play a role in the Board? If so, how do you handle it effectively?

There is a great deal of understanding on the part of government and the Governor's Office that they need to have a respect for the independent function of the Board. I can say I've never gotten a call or been requested to decide an issue one way or the other. I do know that whatever decision I make has to be reasonable and justifiable. Only if I were to make a decision without those considerations are questions later raised.

I've worked in state government for a long time, so I understand politics. I'm a person who has respect for government and for the process. Even though I have to be aware of the legislative issues because I'm the Chairman, I'm not a creature of politics–nor are my decisions guided by political expediency.

So it has to be a decision justified and supported one-hundred percent?

Exactly. When I came here from the Labor Board, the Governor's Office knew my record. I was neutral and had gained support from both management and labor. They knew I would decide cases based on what I thought was a proper reading of the law. They also knew what *ex parte* communications means. We just don't do it.

I've been really pleased with Governor Edgar's understanding of these principles of neutrality. Based on his Board appointments, he's tried to take politics out of the issues by appointing qualified non-political people.

Characterize your staff and how you would rate their performance considering the caseload the Board maintains?

"What we need to do now is assess where we've come from... where we need to go environmentally and...how we want to get there."

I think they're excellent. They're committed, they're *knowledgeable*. And that's true of all the people–the newer staff since my appointment and the ones here before. When we hire, we look for people with those commitments who can work hard. They have to work hard because our caseload has grown so much.

I have to say, too, that I'm very demanding. In terms of policy questions, I'm always asking why, to what end and for what reason. The staff is very, very intelligent, and everyone is learning from each other.

You said you consider yourself demanding. Has there been a difference in your approach as Chairman from when you were first appointed until now?

When I started, I tried to make some changes immediately–perhaps before I had the other Board Members' understanding that some of those changes needed to happen. What I've tried to do since then is temper my desire for change in a direction which I believe is in the best interest of the Board and with an understanding of the value of a collaborative approach. As Chairman, I still believe that in terms of pure administrative issues, the Board needs to be managed by one person. In the absence of an Executive Director, that person is me. And, indeed, this agency needs to be managed, because it has too many cases and too few people not to have a good manager at its helm. But, with decision-making and all process issues, I have a great deal of respect for my colleagues, consult them on where I believe the Board needs to go, and have become much better at engaging in the necessary dialogue.

We've talked about the Board's relationship with the regulatory community. What about relationships with other state agencies and environmental groups?

We're here to make the process work and provide the parties with what they need–good decisions. To do that, a healthy respect for all the players in that process has to be maintained. We may disagree with how the IEPA did its job, on an industry's particular approach, or an environmental group's perspective, but without a healthy respect for all their interests and where they're coming from, the process breaks down. They are all people doing a job and are committed to their perspectives. We have to respect those perspectives.

Taking a look at the Board from a completely different perspective, how has it affected the state's legal profession?

Environmental law and environmental regulations, in general, have created a wealth of opportunity for private practices. There are very good lawyers who routinely practice before the Board. It would be my hope that the Board has given them a very effective forum and that in the future we can work with the environmental bar in partnership to determine how the Board can better deal with all of the environmental matters of interest to its clients.

What issues do you think the Board could better handle?

While I believe we do an excellent job with the structure we have, there are other issues where we may provide a better forum than either the federal or circuit courts because of our specialty and administrative expedience.

I'd like to expand the role of the hearing officers on certain types of cases such as administrative citations, so that more Board Member time is available for larger issues such as permit appeals and complicated rulemakings.

I'm thinking of the possibility in the future of engaging in dialogue on whether mediation or arbitration services in the environmental arena on a voluntary basis by lawyers and the regulated community might not be used for certain kinds of cases. This is particularly true where one corporation is making a liability claim against another corporation or with citizens' noise enforcement claims. The Board may be in a

better position at the field level to help them come to a resolution between each other.

What changes would you like to see in the overall environmental system to improve the Board's effectiveness?

One of the changes I would advocate is that environmental law take into consideration Illinois' natural resources expertise. Illinois has very good natural resource scientific expertise in the form of the Illinois Geological Survey, Water Survey and History Survey. I would like to see the Board have the authority to tap into that expertise and use it more readily where it's necessary for environmental progress of the state.

Another process issue under the Environmental Protection Act is the Board's role in enforcement cases. Different from the Labor Board where exclusive jurisdiction was paramount, environmental enforcement cases can either be filed in circuit court or before the Board. It presents some difficulties in that the court has the authority to enjoin an enforced-against entity and issue immediate cease and desist orders.

"We need to focus on a more holistic approach to environmental quality...look at the environment from all its perspectives."

The Board, however, is the one with the specialized expertise to look at the technical issues–the underpinnings of the case. The idea of contrary jurisdiction in environmental enforcement matters is something we should discuss and consider changing. If the Board has the necessary powers and staff resources, it would be the most effective exclusive jurisdiction forum. And because all our decisions are immediately appealable under the Illinois Appellate Court system, the parties should feel safe that the judiciary will look at them.

Over the past 25 years, how has the state's environmental picture changed or improved?

It's totally clear that in the areas of air, water and land there has been significant improvement in the traditional pollution concerns–emissions and groundwater contamination. In terms of where we need to go, we should continue these progressive trends, but also better protect our resources from an ecosystems standpoint. We need to focus on a more holistic approach to environmental quality, not necessarily from a regulatory standpoint, but in broader terms than pollution emissions or chemical constituents. Look at the environment from all its perspectives–air, water and land–in a more efficient system of ecomanagement. We also need to consider concepts such as pollution prevention to control pollution at the front end rather than finding ways of dealing with pollution after it has been created.

Your term ends June 30, 1998. When that day comes, what contributions would you like the Board to have achieved for Illinois' environment?

I want the Board to be a forum of integrity that is respected for its ability to fairly, and based on a consistent set of principles, provide everyone interested in environmental decision-making with workable and environmentally sound resolutions.

David P. Currie was appointed in July 1970 as the first Chairman of the newly formed Illinois Pollution Control Board. Currie, formerly the Governor's Coordinator of Environmental Quality, was already an expert on Illinois environmental issues, championing several pieces of legislation through Illinois' General Assembly. Even with his environmental law experience and background, Currie's task to position the Board within Illinois' environmental regulatory system was an arduous one. Today, former Board Chairman Currie is the Edward H. Levi Distinguished Service Professor at the University of Chicago Law School. He recalls the early days of the Board and his successes in developing key environmental regulations.

David P. Currie, First Chairman, Pollution Control Board

As the first Chairman of a newly established state program, what was the major task facing you in setting up Board operations?

Everything had to be done. We were starting essentially with a blank slate. We had an incomplete set of air and water pollution regulations that, in many respects, were inadequate. Previously there had been two part-time citizens' boards attached to the Department of Public Health–the Air Pollution and Water Pollution Control Boards. The Department of Public Health had a technical staff, and the boards' functions were essentially to ratify the staff's conclusions. The new legislation created an independent, full-time Pollution Control Board that did its own work and made its own decisions.

Apart from simple organization, our first task was to review existing regulations. We reviewed the state water quality standards and compared them with the federal USEPA guidelines. We got a lot of help from USEPA people in Chicago and their many publications. Their publications outlined the harmful effects of various kinds of air and water pollution and summarized the available technology for curing these problems. So we came up with a proposal for a whole new set of water quality standards, which we adopted. We also developed standards for mercury contaminants in the water, which were a great concern at the time.

"We provided a safety valve with 'citizen action.' It's quite amazing what the citizens' groups did."

Apart from organizing the Board and hearing pollution violation cases and variance requests brought before us, our initiatives were mostly in rulemaking. We wanted to make sure we had an adequate set of rules for air and water pollution, and later we turned our attention to noise and solid waste disposal. We were also required to issue state licenses for nuclear reactors. So right off the bat, we had some very important nuclear licensing proceedings, mostly involving Commonwealth Edison.

Once the task of getting the Board up and running was completed, how difficult was it to get all five Board Members going in the same direction?

The Board operated wonderfully. The other four Board Members came from a variety of backgrounds. Dick Kissel had been working in industry, Sam Aldrich came from the world of agriculture, Jacob Dumelle had been doing pollution work for the federal government, Sam Lawton had been Mayor of Highland Park and was a lawyer and had been with me on the Air Pollution Board.

What amazed and pleased me was the degree of teamwork

we achieved and the willingness to think about the merits of questions rather than taking positions representing our backgrounds. We didn't always agree on everything, but there was wide consensus that we had to look for the best solution in terms of balancing the costs and benefits of control and that we needed to be more strict than we had been in the past. And the presence of Dick Kissel on the Board, working with the rest of us to reach a common goal without taking an adversarial position, was particularly important in making the programs work and making them acceptable to industry. It was Governor Ogilvie's very wise decision to put a variety of people on the Board rather than stacking it with a lot of dedicated environmentalists. He really made it work. We owe the whole program to him. He was very farsighted.

How did the Board interrelate with the other state agencies formed by the new legislation?

The Board was intended to be a small body that made decisions rather than going out and doing the initial research. We relied very heavily on the other two agencies created by the same legislation–the Illinois Environmental Protection Agency (IEPA) and the Institute for Environmental Quality (IEQ). In 1972, when we were developing an implementation plan for air quality standards to satisfy not only state but federal requirements, we called upon them to make detailed scientific-supported proposals in the form of proposed regulations. Then we held detailed hearings on the plan, heard comments and then made our decision. We had very good relationships with the two agencies and got a lot of good information. It worked very well.

How effective were public hearings in achieving your goals?

Public hearings were really quite wonderful, a process that worked very well. I'm a big believer in them for both regulatory issues and adjudicatory matters. There were lots of interested public groups–the League of Women Voters, law students and many others–who were very concerned about the environment and studied the proposals made and sometimes made proposals on their own. We also got a lot of information from industry. They knew what they could do and what it would cost them to do it. We took some things with a grain of salt because they were not disinterested, but we avoided a lot of mistakes by listening to what they had to say.

"Public hearings were quite wonderful...I'm a big believer in them...."

How did the Illinois Environmental Protection Act of 1970 assist you in developing the initial set of regulations?

The Act helped us mostly by not tying the Board's hands. It was essentially a blank check. It was drafted that way intentionally, because it was felt that the legislature was not the place to resolve complicated technical issues. We didn't want the regulations to be the result of a political decision. We wanted a decision that considered the costs and benefits of particular pollution control measures. The statute authorized us to adopt whatever measures were necessary at acceptable costs to protect the environment and public health.

What was the political and social atmosphere of the public in the early 1970s surrounding environmental issues?

We were riding the crest of the wave. It was a time when all of a sudden the public was very excited about the environment and recognized we had not been protecting it the way we should. There was a blossoming of public interest that translated into a flood of new legislation and regulations.

The public and the governor were really behind us. Industry knew it had to play ball, and that we were serious. Instead of stonewalling, industry would come in and work with us. They were suspicious, but we were able in most cases to work with them very well and persuade them they would get a fair hearing. It's very important to be procedurally fair and give everybody the opportunity to present their point of view–to know what the proposals and arguments are so that they feel they've been treated fairly and heard. It also makes the regulations better, and our environment a better place to live.

How was the Board's relationship with environmental groups?

We had very good relations with many environmental groups. One of the great things about it was that we were able to include a provision in the original statute that permitted suits by ordinary citizens. From past experience, we were not willing to entrust the entire enforcement process to a state agency. Sometimes agencies were not as vigorous as they should have been in prosecuting polluters. In addition to strengthening the state agency and appointing people to it who had the right attitude about enforcing the law, we also provided a safety valve with "citizen action." It's quite amazing what the citizens' groups did.

We had a suit by the League of Women Voters filed against the North Shore Sanitary District for dumping inadequately treated sewage into Lake Michigan. It turned out to be an extraordinarily effective suit. We ultimately told the sanitary district to clean up its act and get out of Lake Michigan entirely. We also got a lot of help from citizens in nuclear licensing proceedings. A group of students from my environmental law course took an interest in this subject and essentially were the lawyers on the opposite side of Commonwealth Edison, which was seeking the permit. As a result of their intervention, we were able to issue a more restrictive permit than federal law required.

"We were riding the crest of the wave. It was a time when...the public was very excited about the environment."

What were some of the major Board rulemakings that occurred during your chairmanship?

Probably the most comprehensive rules were the water quality standards and the air pollution implementation plan reducing particulate matter and sulfur dioxide. We also made rules on asbestos in the air and mercury in the water and adopted noise regulations and a set of comprehensive rules on solid waste.

Some of our more important actions came in adjudicatory proceedings, such as the limitations placed on radioactive emissions, until the federal court told us we had no business in the field because it was preempted by federal law. With the acquiescence of Commonwealth Edison, which said it was entirely technically and economically feasible, the Board made the emissions standards more stringent by a factor of 10 than those currently applicable under federal law. Federal law later incorporated those standards.

As the Board got under way, did the volume of your cases grow?

Yes, we were quite busy. We had constant rulemaking proceedings, and by the end of the second year we had approximately 300 individual cases a year. Those were both enforcement and variance proceedings. Many were quite simple, but others, like the regulatory rulemaking issues, were very time-consuming.

When you finished your Board chairmanship two and one-half years later, did you feel you accomplished what you came there to do?

I was very happy with what we had done. Obviously there was more work to do, but the main architectural work was done. I had been in the fortunate position of being able to put most of my ideas about pollution control into effect. I do think we made a difference.

A Glance at Three Veteran Board Staffers

Behind the Board's contested cases, rulemakings, and appeals is a highly skilled professional staff that is responsible for the research and construction of legal and scientific documentation and operations of the Board. The staff members below have been with the Board through much of the agencies existence. They are three of many hard-working people who have dedicated their expertise and skills to improvement of Illinois' environment.

SANDRA L. WILEY

Sandra (Sandy) L. Wiley currently serves as the Board's Executive Coordinator. She is responsible for assisting the Chairman in the development and implementation of the Board's external policy and performance goals, and for managing special project assignments. Sandy was hired by the original Board in January 1972 as office coordinator and later served as administrative manager. Previous state service included the University of Illinois at Navy Pier and Chicago Circle campuses and the Illinois Sesquicentennial Commission. Ms. Wiley attended Northwestern and DePaul Universities.

KATHLEEN M. CROWLEY

Kathleen M. Crowley has served as the Board's Senior Attorney since creation of the position in 1988, reporting in turn to Chairmen Dumelle, Marlin and Manning. Kathleen joined the Board in 1980 as attorney assistant to Member Anderson. She has participated in the drafting of many of the Board's major contested cases and opinion and orders, and has acted as hearing officer in various significant rulemakings including those for non-hazardous waste landfills, procedural rules revision, water toxics, and airport noise. In addition to advising the Chairman and Members, her current duties include supervision of staff attorneys, providing legal direction to the Clerk's Office, and acting as liaison to the Office of the Attorney General concerning appeals. Ms. Crowley is a graduate of the Northwestern University School of Law and Mundelein College of Loyola University (Chicago). She was previously employed as a staff attorney at the Better Government Association (a citizens' oversight group) and was then engaged in the general practice of law.

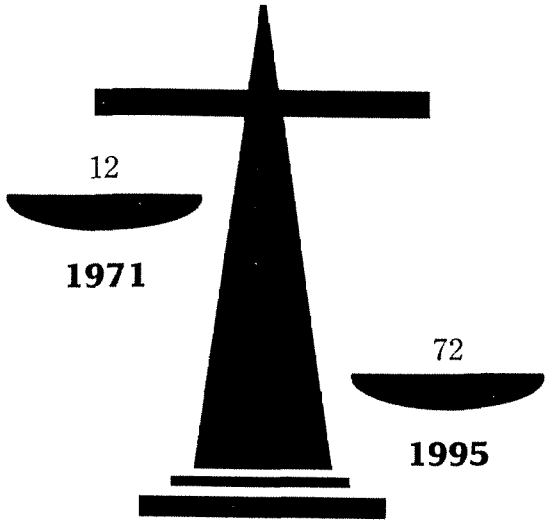
DOROTHY M. GUNN

Dorothy M. Gunn has served as Clerk of the Board since 1984, acting as the official custodian of the Board's records, including agendas and minutes, and preparing and certifying records for appeal. Ms. Gunn joined the Board in 1975 as a staff secretary and later served as private secretary to deceased Board Member Irvin G. Goodman and as a staff accounting assistant. Ms. Gunn's state service began in 1968 at the Youth Opportunity Center, and in 1970 she joined the Bureau of Employment Security, Department of Labor. Ms. Gunn attended Kennedy King College and Northwestern University.

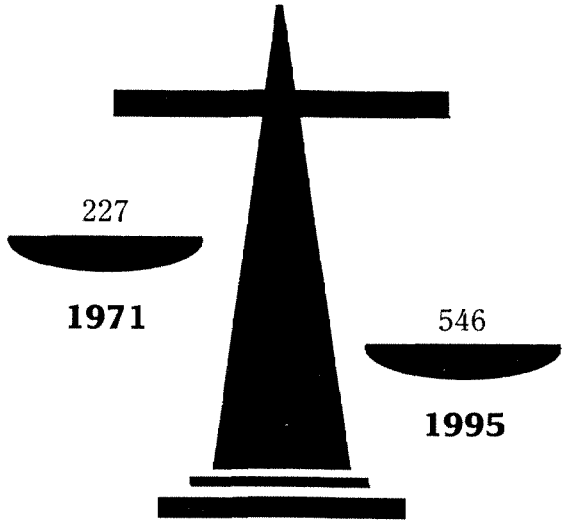
Pollution Control Board Caseloads— How They Balanced Out Over 25 Years

From the early 1970s when Illinois' environmental regulations were first established until today's focus on sound case resolutions, the Board's caseload has steadily increased. Here is a bottom-line comparison of fiscal year totals of cases, rulemakings, and opinions and orders heard and issued during the Board's 25-year history.

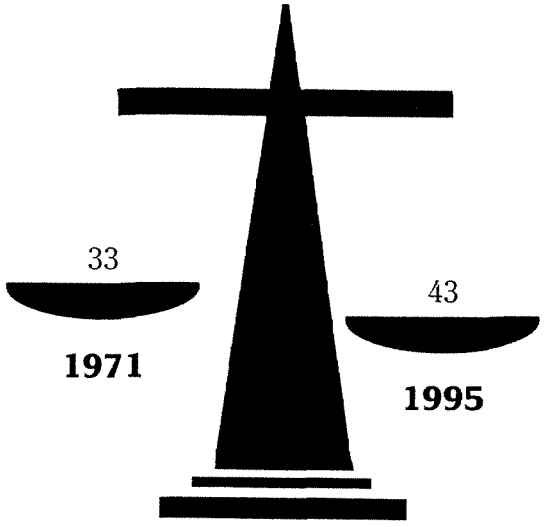
Enforcement Cases



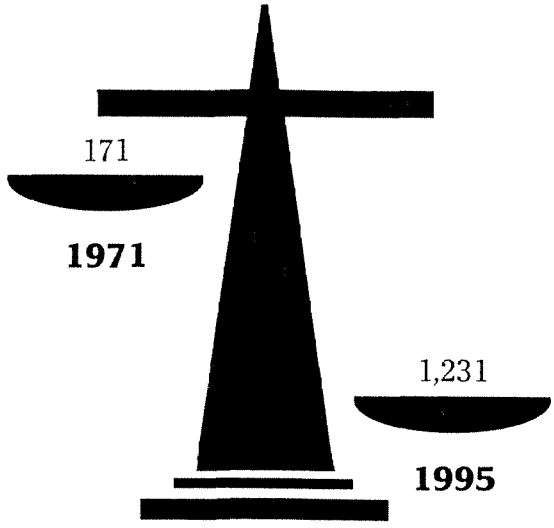
Contested Cases



Rulemakings



Opinions & Orders



SPECIAL MESSAGE ON THE ENVIRONMENT

RICHARD B. OGILVIE
GOVERNOR OF ILLINOIS
THURSDAY, MARCH 9, 1972

The following message on "Appropriations for Pollution Control" was entered into the public record in an address to the Illinois General Assembly by Governor Ogilvie in March 1972. In response to the Environmental Protection Act of 1970, funds for Illinois environmental issues and agency operations were high on the appropriations agenda. Here is how Governor Ogilvie viewed the needs of the Pollution Control Board and the citizens of Illinois:

RICHARD B. OGLIVIE
Governor, State of Illinois
1969-1973

"Effective pollution control costs money. Since 1969, appropriations for state government pollution control activity have increased sevenfold. For the next year, another increase in the pollution control budget is required.

"The Pollution Control Board has chronically run short of funds. I requested, and you appropriated every dollar which the board itself has requested. Nonetheless, the board has an extraordinary caseload–far greater than anyone predicted. This caseload–which the board cannot control–has produced deficiencies in the amounts appropriated for court reporting services.

"It is simply intolerable for our pollution program to be hamstrung by the lack of funds for court reporters. It is also intolerable for the high cost of transcripts to obstruct private citizens from having access to the board.

"I have recommended, and the board has agreed, to work with the Bureau of the Budget to achieve substantial economies. As a result of the bureau's study, significant savings can be realized without impact on the board's important duties. At the same time, we shall preserve one of the most important features of the Environmental Protection Act of 1970–unobstructed public access to the pollution enforcement machinery."

–Governor Richard B. Ogilvie
State Of Illinois

Major Judicial Appeals and Key Legislative Action—Highlights Over the Last 25 Years

Illinois' Pollution Control Board has heard thousands of environmental cases and adopted thousands of pages of environmental regulations in its 25 years of operation. To date, the Illinois Supreme Court has reviewed and issued opinions in about 35 cases, while the five districts of the Appellate Court have issued some 280 reported opinions. The Board has been affirmed in the substantial majority of its cases. The following are some of the key appeals which have defined the Board's relationship to the Illinois Environmental Protection Agency (IEPA), the Attorney General, various other state agencies, units of local government, the regulated community, the public and the courts themselves. Also included are major legislative actions and a few cases involving interpretation of the Environmental Protection Act (Act) in which the Board was not a party. ("Ill. 2d" citations are to Supreme Court decisions, while "Ill. App. 3d" citations are to appellate decisions.) NOTE: LEGISLATIVE ACTIONS HEADED IN GREEN.

1970-1972

Illinois Environmental Protection Act (Act) passed. Created the Illinois Environmental Protection Agency (IEPA) to administer and enforce the State's environmental laws and the Illinois Pollution Control Board to adopt regulations to implement such laws. Also directed the Board to function as the court of law to adjudicate enforcement actions brought against individuals by the IEPA, as well as appeals of IEPA decisions by individuals. Created the Institute for Environmental Quality as a research agency to propose regulations to the Board for final adoption.

1970 Constitution, Article VI adopted. Ensures the "right to a healthful environment" for all Illinois citizens.

No reported appellate cases in 1970-1972. Board adopted existing regulations of its predecessors, Sanitary Water Board and Air Pollution Control Board, and initiated and completed various air, water, noise, solid waste and radiation rulemakings. Fifty-five enforcement and variance cases were filed with the Board in its first five months; in its first two years, more than 600 cases and petitions of all types were filed, and the Board rendered decisions in nearly 400. In fiscal year 1992, the Board received 150 enforcement cases and 450 variance proceedings, and made final disposition of 374 enforcement and variance cases.

1973

O'Connor v. Rockford, 52 Ill. 2d 360. Non-home-rule unit of local government may not subject IEPA-permitted landfill to local zoning ordinances.

Citizens Utilities Co. v. Pollution Control Board, 9 Ill. App. 3d 158 (2d Dist.). Board may not impose money penalties as a condition to a variance.

1974

City of Waukegan v. Pollution Control Board, 57 Ill. 2d 170. Resolving contradictory holdings in various appellate districts, the Court stated that the Board's civil penalty power was not an unlawful delegation of judicial power or violation of separation of powers because the legislature or judiciary can effectively correct errors by the Board.

City of Monmouth v. Pollution Control Board, 57 Ill. 2d 170. In an "air nuisance" case under Section 9(a), the Supreme Court explained that the primary purpose of Board civil penalties is to "aid in enforcement of the Act" and punitive considerations are secondary. The Board's quasi-judicial acts are to be upheld unless "contrary to the manifest weight of the evidence."

Illinois Coal Operators Association v. Pollution Control Board, 59 Ill. 2d 305. The standard for review of Board's quasi-legislative rulemaking actions was found to be whether they are "arbitrary or capricious." Here, the 1973 noise regulations were upheld as constitutional over an equal protection challenge.

City of Chicago v. Pollution Control Board, 59 Ill. 2d 484. The home-rule City was allowed to legislate concurrently with the state on environmental control of a sanitary landfill and three incinerators.

1975

Institute for Environmental Quality required to submit Economic Impact Studies (EcIS) to Board with all new proposed environmental regulations.

Springfield Marine Bank v. Pollution Control Board, 27 Ill. App. 3d 582 and 27 Ill. App. 3d 964 (4th Dist.). In two cases, the Board denied variances to allow additional hook-ups to an overloaded sewage treatment plant. While noting that the hardship to the petitioners was substantial, the Court found that while the aggravation of a problem from a single variance might be small, the Board could appropriately draw a line somewhere.

1976

People ex rel. Scott v. Briceland, 65 Ill. 2d 485. While Act empowers IEPA to prosecute cases before the Board, the 1970 Constitution provides that the Attorney General is the sole officer entitled to represent the State's interest before the Board. The practical result is that IEPA staff attorneys may appear before the Board or the courts only with the permission of the Attorney General.

Processing and Books Inc. v. Pollution Control Board, 64 Ill. 2d 68. In a Section 9(a) air enforcement case, the Supreme Court resolved authority split to find complainant does not have burden of introducing evidence upon each of the criteria mentioned in Section 33(c) of the Act.

Commonwealth Edison Co. v. Pollution Control Board, 62 Ill. 2d 494. A 1972 "nondegradation" air rule upheld over challenge that it was an unlawful delegation of rulemaking authority to IEPA. Emission standards

for particulates and sulfur dioxide were remanded to the Board for further consideration of their "economic reasonableness and technical feasibility."

Carlson v. Village of Worth, 62 Ill. 2d 406. Supreme Court held that the Act pre-empts local zoning ordinances of non-home-rule governments as they relate to siting and location of landfills. The IEPA has the duty and authority to take local land use factors into consideration when issuing development permits for landfills.

1977

State's rulemaking process overhauled in state Administrative Procedures Act (APA) to allow greater public comment and participation, and to ensure all rules proposed by agencies (including the Pollution Control Board) are within an agency's statutory authority. All rules are to be reviewed by the Joint Committee on Administrative Rules (JCAR) prior to their going into effect.

Monsanto Co. v. Pollution Control Board, 67 Ill. 2d 276. Supreme Court ruled that the Board was correct in its determination that it lacked authority to grant permanent variances. The Board's decision to grant a variance is an exercise of its quasi-judicial authority, but when the Board sets conditions on a variance, it is exercising its quasi-legislative power and cannot be overturned unless its decision is arbitrary, capricious or unreasonable.

Modine Manufacturing Co. v. Pollution Control Board, 40 Ill. App. 3d 498 (2d Dist.). The Court upheld procedural rule, which provides that the Board may reconsider its final orders and held that differing standards of review should be applied to Board acts in a single case if they involve both quasi-judicial and quasi-legislative functions.

The Village of Lombard v. Pollution Control Board, 103 Ill. 2d 441. The Illinois Supreme Court ruled that the Board lacked authority to promulgate regulations on regional sewage treatment. The Court held that the Environmental Protection Act did not intend to involve the Board in the economics and politics of any county, and that the Board could not force local governments to cooperate. Local government authority and funding obligations were held to be outside the area of the Board's expertise.

1978

Institute of Environmental Quality duties transferred to the Department of Energy and Natural Resources (DENR). DENR continues to be required to submit EcIS to the Board for all new proposed environmental regulations.

Illinois Environmental Protection Agency v. Pollution Control Board, 69 Ill. 2d 394. Supreme Court declared that the Attorney General has the constitutional right to represent all state agencies involved in a case so long as he is not involved as a private individual or as a party. The Board may not hire private counsel without permission of the Attorney General.

Ashland Chemical v. Illinois Environmental Protection Agency, 64 Ill. App. 3d 169 (3rd Dist.). The 1977 particulate and sulfur dioxide emission rules were invalidated for failure to follow Commonwealth Edison (1974) mandate, and for failure to require preparation of EcIS.

Illinois State Chamber of Commerce v. Pollution Control Board, 67 Ill. App. 3d 839 (1st Dist.). Following Ashland Chemical (1978), the First District invalidated 1977 particulate & sulfur dioxide rules and also found new public hearing required.

Landfill Inc. v. Pollution Control Board, 74 Ill. 2d 541. The Board has the authority only to hold enforcement hearings upon citizen or IEPA complaints that allege activity causes or threatens pollution. The Board may not hear charges that the IEPA has failed to do its statutory duty. The Board may not by rule authorize third-party appeals not provided by the Act, since due process is served by Act's citizen enforcement provision.

1979

Illinois State Chamber of Commerce v. Pollution Control Board, 78 Ill. 2d. This was a review of 1978 air rules orginally adopted by the Board in 1971 and "validated" in 1977. The Court held that the Board was estopped from relitigating issues decided against it, but not appealed, in Ashland Chemical (1978), despite the fact that the Illinois Chamber was not a party to the Ashland appeal.

County of Cook v. John Sexton Contractors, 75 Ill. 2d 494. The power of Board to set uniform statewide environmental standards and power of home-rule county to zone property are distinct but concurrent powers that must be exercised cooperatively in the interest of environmental protection. Reconciled **O'Connor**, **Carlson**, and **City of Chicago** cases.

Wells Manufacturing Co. v. Pollution Control Board, 73 Ill. 2d 226. The Supreme Court held that before the Board can find that emissions "unreasonably interfere with the enjoyment of life or property," the complainant must prove that there is a technically feasible way to reduce emissions. In addition, the Court found that the complainant must also prove, because of the foundry's priority of location, that odors significantly increased during the specified period.

1980

Pollution Control Board given authority to adopt regulations "identical in substance" (IIS) to federal environmental rules for hazardous waste (RCRA). Since then, the IIS programs were expanded to include rules under the federal Safe Drinking Water Act, Underground Injection Control Program, Underground Storage Tank program, Wastewater Pre-Treatment program and others.

Rockford Drop Forge Co. v. Pollution Control Board, 79 Ill. Id 571. "Noise nuisance" Section 24 of the Act upheld over challenge to unconstitutional vagueness; Board noise rules do not violate equal protection rights.

1981

"SB 172" Local Siting Law passed. Sets up a new process by which local governments (counties and municipalities) may approve or deny applications for the construction or expansion of new landfills, incinerators, and waste transfer stations. Decisions by local governments are appealable to the Pollution Control Board.

Illinois Environmental Protection Agency v. Pollution Control Board, 86 Ill. 2d 390. In reviewing denial of air permits to U. S. Steel, the Court

found IEPA had a duty, under Sections 39 and 40 of the Act, to specify any reasons for permit denial it intends to raise before Board. Denial letter frames issues of fact or law in controversy in permit hearing.

1982

Borg-Warner Corp. v. Michael M. Mauzy, 100 Ill. App. 3d 862 (3rd Dist.). The 3rd District Appellate Court found that state APA applies to NPDES permit process and found state system grants due process.

Village of Hillside v. John Sexton Sand and Gravel Corp., 105 Ill. App.. 3d 533 (1st Dist.). The 1st District held that the IEPA procedure for transfer of landfill permits from a prior owner to the new owner was valid. Under 4(a) and 39(a) of the Illinois Environmental Protection Act, the IEPA has sole authority to establish such rules.

Pielet Bros. Trading Inc. v. Pollution Control Board, 110 Ill. App. 3d 752 (5th Dist.). This case traced the history and case law of the Section 21(d) exemption from permitting of landfill disposing solely of "refuse generated by the operator's own activities." Despite the wording of section 21(d), the courts have required permits in environmentally sensitive situations.

1983

Pollution Control Board expanded from 5 members to 7 members.

Celotex Corp. v. Pollution Control Board, 94 Ill. 2d 107. Validity of air regulation as applied to a source in a permit may be challenged in a permit appeal; Section 29 of the Act is not the exclusive provision of judicial review.

Wasteland Inc. and Roger Pemble v. Pollution Control Board and Illinois Environmental Protection Agency, 127 Ill. App. 3d 504 (3rd Dist.). The Board had found that Pemble and Wasteland violated numerous rules and regulations in the operation of a landfill site in Will County. The Board ordered the operating permit revoked, imposed a penalty of $75,000 and ordered Pemble and Wasteland to take remedial measures to cease and desist from further violations. The Court affirmed the Board, making this the highest penalty to sustain appellate challenge.

The County of Lake v. Pollution Control Board, Illinois Environmental Protection Agency and Browning-Ferris Industries, 120 Ill. App. 3d 89 (2nd Dist.). Citing **City of East Peoria v. Pollution Control Board** (1983), the Court held that "local authorities can impose technical conditions on siting approval." The Court also held that the County's condition which required that the IEPA impose all of the county's conditions in a permit and enforce those conditions thereby attempted to usurp "the exclusive power of the IEPA to grant or deny a permit."

1984

Vehicle Emissions Inspection program adopted. "Automobile tailpipe testing" program requires automobile owners living within the Chicago metropolitan collar county and Bi-State Metro East St. Louis areas to have their cars tested periodically in order to reduce ozone-harmful air pollution.

Pioneer Processing Inc. v. Illinois Environmental Protection Agency; The County of LaSalle ex. rel. Gary Peterlin v. Pollution Control Board; and The People v. Pollution Control Board, 102 Ill. 2d 119. In an appeal of the issuance of a construction permit for a hazardous waste site, the Attorney General was found to have standing to obtain judicial review of the Board's decision, despite lack of participation before IEPA or Board. Contested case provisions of APA apply to IEPA's proceeding here.

County of Kendall v. Avery Gravel Co., 101 Ill. 2d 428. The Supreme Court of Illinois found that permitting decisions of the IEPA pre-empted the county zoning ordinances. Where Avery Gravel Co. had been issued an IEPA permit to operate a surface mine, a non-home-rule unit such as the County was pre-empted from prohibition of activities associated with the mining.

Commonwealth Edison Co. and Illinois Power Co. v. Pollution Control Board, 127 Ill. App. 3d 446 (3rd Dist.). The 3rd District Appellate Court rejected petitioner's argument that the Board's RCRA regulations improperly delegate to the IEPA authority to terminate permits vested in the Board by statute. The Court upheld as reasonable the Board's construction that this IEPA termination authority applies only within the RCRA permitting process or where a permit transfer is involved.

1985

E & E Hauling Inc. v. Pollution Control Board, 107 Ill. 2d 33. In its first decision involving and SB172 case arising under section 39.2 of the Act, the Supreme Court found that the County was not disqualified from acting as a decision-maker on the grounds of bias where the county had earlier approved landfill expansion and would receive revenue from landfill. Public officials are considered to act without bias.

Illinois Power Co. v. Pollution Control Board and Illinois Environmental Protection Agency, 137 Ill. App. 3d 449 (4th Dist.). The Court reversed the Board's decision which affirmed the IEPA's decision on two permits. The Court held that no valid hearing was held within the statutory 90-day decision period on the petition for review of the IEPA's decision. The Court found that the 21-day notice provision of the Act was mandatory and failure to comply with it rendered the hearing void. Consequently, the Court's reversal allowed IPC to deem the permit issued as a matter of law.

1986

Solid Waste Management Act passed to reduce reliance on landfills and increase planning for alternative means of dealing with solid waste (such as reduction of waste at the source, recycling, etc.). Solid waste "tipping fee" enacted on the disposal of solid waste, this to fund enforcement activities by the IEPA and the State's recycling activities.

Administrative Citation program created. Authorizes the IEPA to issue a $500 citation (much like a traffic citation) to anyone guilty of open dumping or landfill violations. Unless the person chooses to appeal the citation to the Pollution Control Board, he must pay the citation.

Leaking Underground Storage Tank (LUST) program enacted to set guidelines by which owners of underground gasoline storage tanks must register their tanks with the State and by which they must clean up leaks that may contaminate (among other things) groundwater. Tank registration fees established to be deposited into a new LUST Fund, out of which tank owners may apply for reimbursement for their clean-up costs.

Dean Foods Co. v. Pollution Control Board and Illinois Environmental Protection Agency, 143 Ill. App. 3d 322 (2d Dist.). The Court reversed the Board's decision and remanded the proceeding directing the Board to hold a *de novo* hearing on Dean Foods' NPDES permit. The Court interpreted he Board's procedural rules as requiring the Board to review matters beyond the record and concluded that Dean Foods' evidence should not have been excluded from the Board's hearing.

City of Lake Forest v. Pollution Control Board and Thomas Greenland, 146 Ill. App. 3d 848. The Court reversed the Board's decision finding Lake Forest to be in violation of the Environmental Protection Act and ordering the city to cease and desist from further violations. The Court found that the only way Lake Forest could comply with the cease and desist order was to repeal its leaf burning ordinance. The Court concluded that this action exceeded the Board's authority. The Court found that the Board may not adopt any regulations banning the burning of landscape waste throughout the state, generally, but it may do so within limited areas if the required hearing and evidentiary standards are met.

Illinois Environmental Protection Agency v. Pollution Control Board and Waste Management Inc., 104 Ill. 2d 786. In this permit appeal review, the Supreme Court focused on the permitting roles assigned to the Board and IEPA, holding that the Board is not required to apply the "manifest weight of the evidence" standard to IEPA permit decisions; safeguards of a due process hearing are absent until hearing before Board.

1987

Central Illinois Public Service Co. v. Pollution Control Board, 116 Ill. 2d 397. In enacting the adjusted standards provision of Section 28.1 of the Act, the legislature did not intend to do away with site-specific rulemaking pursuant to Section 27. The Board could properly consider a petition for adjusted standard prior to its adoption of "standards and procedures" under Section 28.1

Citizens for a Better Environment v. Pollution Control Board, 152 Ill. App. 3d 105 (1st Dist.). The 1st District Appellate Court vacated the Board's 1986 Order adopting emergency rules in the Hazardous Waste Prohibition proceeding implementing Section 39(h) of the Act, finding no emergency existed under the Act or state APA.

Fred E. Jurcak v. Illinois Environmental Protection Agency, 161 Ill. App. 3d 48. The primary issue in the appeal was whether the Board had jurisdiction to review a condition imposed on an NPDES permit when the condition is also part of the Illinois Water Quality Management Plan. The Court found that, although the Board has a duty to review conditions if requested to do so by the permit applicant in a permit appeal, the Board has no authority to review the Plan.

1988

Pollution Control Board's rulemaking and variance process overhauled in response to the Schneiderman Report to allow for quicker compliance with changes in federal air, land and water pollution regulations. EcIS now optional, to be done by DENR at Board's request.

Prohibition enacted for disposal of landscape waste (leaves, grass, etc.) in landfills after 1990 in order to preserve shrinking landfill space, with hope that people will instead compost such waste.

Responsible Property Transfer Act passed to require property owners to inform potential buyers of the property of any environmental liability.

M.I.G. Investments Inc. v. Illinois Environmental Protection Agency, 122 Ill. 2d 392. The Illinois Supreme Court affirmed the Board's ruling on M.I.G. Investment's attempts to increase its Boone County Landfill without local site approval. Vertical expansion of a landfill requires local approval pursuant to Section 39.2.

1989

Prohibition enacted on the disposal of used scrap tires in landfills which, if allowed to amass outdoors and collect rainwater, provide breeding grounds for the disease-carrying Asian tiger mosquito. Strict new guidelines set up for proper disposal of scrap tires. Also, prohibition enacted on disposal of lead acid batteries (which contain polychlorinated biphenyls or "PCBs") in landfills.

Revenue for the LUST reimbursement fund boosted to address the ever-increasing number of leaking underground gasoline storage tanks discovered throughout the State.

***Village of Carpentersville v. Pollution Control Board**, 135 Ill. 2d 463.* In a permit case, the IEPA imposed a condition on a construction permit which required Cargill, Inc. to build a 100-foot incinerator discharge stack. Cargill objected on the basis that the Village's zoning ordinance prevented Cargill from building to that height. Finding that amendments to Section 39(c) of the Act had "overruled" **Avery Gravel** (1984) and earlier cases, the Court found that the Act no longer pre-empts local zoning ordinances. The Court further found that Section 39(c) did not unconstitutionally deny due process or equal protection, and that Article VI of the state constitution, which provides for the right to a "healthful environment," does not impose a duty on the General Assembly to "adopt uniform, statewide standards for environmental protection."

1990

18-month moratorium adopted for the construction of any new hazardous waste incinerators.

Maximum civil penalties for violations of the Environmental Protection Act increased from $10,000 to $50,000 for the initial violation, and from $1,000 per day to $10,000 per day for each day the violation continues.

Vehicle Emissions Inspection Program expanded to cover ever-growing Chicago metropolitan area. "Automobile tailpipe testing" program tests made stricter to assure car is properly maintained.

New standards adopted for the construction and operation of landscape waste compost facilities.

Landfill Operator Certification Program created for the certification of landfill operators.

1991

Gas station owners required to install Phase II vapor recovery systems to catch escaping ozone-harmful gasoline fumes from the pump nozzles. Applies to owners in the Chicago metropolitan collar county and Bi-State Metro East St. Louis areas.

Moratorium on the construction of new hazardous waste incinerators extended by an additional 3 years.

Program passed for the separation, transport, and disposal of potentially infectious medical waste (such as used gauze, bandages, needles, etc.) from hospitals, clinics, doctors' offices, dentists' offices, etc.

1992

New Clean Air Act Permit (CAAP) program passed to regulate numerous additional air pollutants emitted from stationary sources (factories, etc.), together with a new "fast-track" expedited rulemaking process before the Pollution Control Board in order to more quickly comply with federal Clean Air Act Amendments of 1990. EcIS requirement entirely dropped for all rules.

Waste Management of Illinois Inc. v. Pollution Control Board, 145 Ill. 2d 345. Construing Section 40.1(a)'s requirement for final Board action in local siting appeals within 120 days, the Court found that issuance of a written order within the time period is sufficient, even though the written opinion was not issued within this period. However, it did not conclude that the Order was necessarily final and appealable for purposes of review.

1993

Leaking Underground Storage Tank (LUST) program completely overhauled and altered to concentrate clean-ups and money spent on such sites that pose the greatest risk. LUST Fund bolstered again in order to pay off a backlog of $60 million owed by the State to tank owners for clean-ups already undertaken. Pollution Control Board's involvement in rulemaking plus increase in LUST appeals cases greatly increased under new LUST program.

Rebuttable presumption of innocence established for owners of land once contaminated with hazardous waste, upon a finding that the property no longer poses a health threat via the owner performing an environmental audit for the IEPA.

Grigoleit Co. v. Pollution Control Board, 245 Ill. App. 3d 337 (4th Dist.). The Court first determined that it had jurisdiction, and that Grigoleit Co. did not need to file for reconsideration before filing an appeal before the Court. It also affirmed all aspects of the Board's order that the IEPA must issue a permit, except to the extent the Board denied an award of attorney's fees against the IEPA.

Land and Lakes Co. v. Pollution Control Board, Village of Romeoville, and County of Will, 245 Ill. App. 3d 631 (3d Dist.). The Court reversed the Board's decision affirming the Village of Romeoville's denial of the petitioner's application for site approval of a proposed landfill expansion. Additionally, the Court remanded the case to the Village for a new public hearing on the grounds that the actions of Will County deprived Land and Lakes of a fundamentally fair hearing.

Strube v. Pollution Control Board, 242 Ill. App. 3d 822 (3rd Dist.). The Court affirmed the IEPA's denial of reimbursement from the Underground Storage Tank Reimbursement Fund. The Board decision had affirmed the IEPA denial of reimbursement for the costs associated with replacement of pavement. The Court agreed that Section 22.18 (e)(1)(C) must be read narrowly and specifically, denying the Strubes' contention that the statute had a broad remedial purpose. The Court agreed the restorative expenses associated with repaving were outside the statutory definition of corrective action.

Granite City Division of National Steel Co. v. Pollution Control Board, 221 Ill. App. 3d 68 (5th Dist.). The Illinois Supreme Court affirmed the Board's Water Toxics rules, upholding the 5th District Appellate Court decision which upheld the narrative standards, mixing rules, and derived criteria in an appeal filed by the Granite City Steel Division of National Steel Co., LaClede Steel Co., USS Division of USX Corp., and the Illinois Steel Group. The Court held that the rules were not unconstitutionally vague and not an improper delegation of the Board's rulemaking authority to the IEPA. The Court also found that the Board had properly considered the technical feasibility and economic reasonableness of the rules.

1994

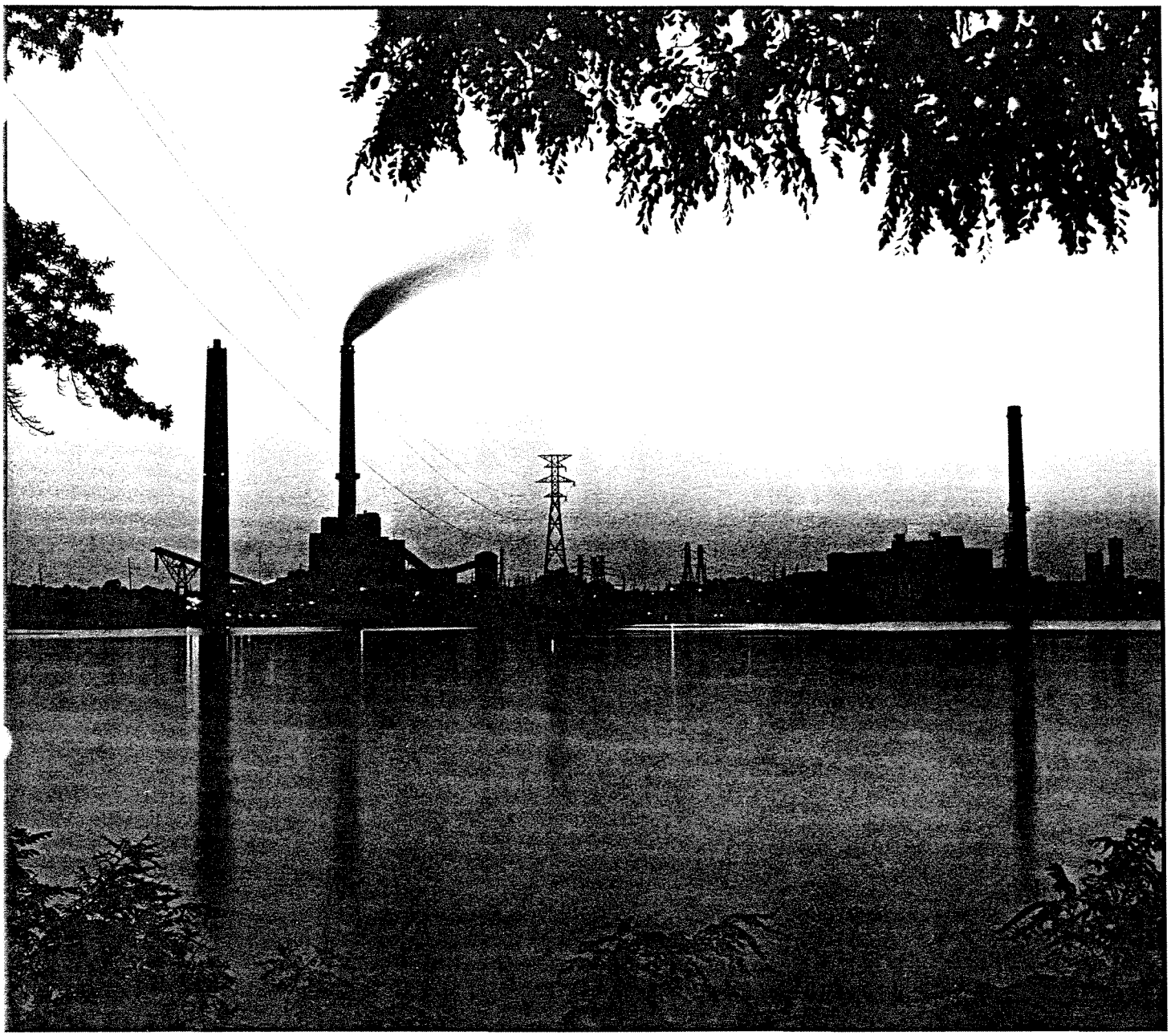
Vehicle Emissions Inspection program again expanded to include a larger geographic area within the Chicago metropolitan collar county and Bi-State Metro East St. Louis areas. "Automobile tailpipe testing" program test made far more comprehensive to detect pollution-causing problems in cars.

Chemrex v. Pollution Control Board, 257 Ill. App. 3d 274 (1st Dist.). The Court reversed a Board denial of eligibility for reimbursement from the Underground Storage Tank Fund. In 1991, Chemrex promptly reported multiple releases, complied with all pertinent statutory and other requirements, and undertook corrective action. Late in 1991, the General Assembly amended reimbursement provisions that excluded tanks based on their prior contents. The IEPA denied reimbursement based on the statutory change. The Court stated that since the tank owner had complied with the statute and rules by performing all required tasks, to avoid retroactive application of law and denial of a vested right, the IEPA should have allowed reimbursement without regard to the intervening statutory changes.

1995

"Brownfields" redevelopment initiative passed to overhaul nearly all land pollution clean-ups other than underground storage tanks (which program similarly overhauled in 1993). New program designed to focus money and resources on those sites that pose the greatest risk to the environment. Lesser clean-up standards provided depending upon the future land use of the contaminated property. No further remediation ("clean") letter to be issued by IEPA upon approval and completion of a clean-up to limit future liability to the property owner.

(See 1995 Judicial Review Section.)



Illinois Pollution Control Board
1995 Annual Report

- Annual Legislative Review
- Judicial Appeals
- Enforcement Cases, Rulemakings, Contested Cases, and Opinions & Orders

1995 Legislative Review

BILLS PASSED AND SIGNED INTO LAW

Public Act 89-50 (SB 336 from 1995) Effective July 1, 1995

Creates the Department of Natural Resources Act to enact the Governor's Executive Order this past spring combining the Department of Conservation (DOC), the Department of Mines and Minerals (DMM), the Department of Transportation's Division of Water Resources (IDOT/DWR), the Abandoned Mined Lands Reclamation Council, and certain parts of the Department of Energy and Natural Resources (DENR) into a super-agency, to be known as the Department of Natural Resources (DNR). Provides that the Department of Energy and Natural Resources' Division of Recycling be transferred to the Department of Commerce and Community Affairs (DCCA). *A much more comprehensive bill making all the additional "cleanup" changes to the various departments' duties and responsibilities is expected to be introduced either this fall or next spring.*

Public Act 89-68 (SB 364 from 1995) Effective January 1, 1996

Amends Section 60 of the Employee Commute Options Act. Prohibits the Department of Transportation (IDOT) from enforcing the Employee Commute Options (a.k.a., car pooling) program under the federal Clean Air Act unless and until the federal government threatens Illinois with sanctions, i.e., the loss of federal road funds.

Public Act 89-79 (SB 461 from 1995) Effective June 30, 1995

Amends Section 10 of the Environmental Protection Act to exempt bakery ovens in the Chicago metropolitan nonattainment ozone area from certain Clean Air Act emission restrictions on bakery ovens adopted by Pollution Control Board rules on April 20, 1995, by repealing Subpart FF, Title 35 Ill. Admin. Code, Sections 218.720-218.730 and 219.720-219.730.

Also amends Sections 22.8 and 39.5 of the Act to remove the current $550,000 statutory maximum cap on the amount of Permit and Inspection (P&I) Funds that may be appropriated by the General Assembly to the Pollution Control Board in any given fiscal year. Also eliminates the current one-time statutory cap of $400,000 on the amount of Clean Air Act Funds that may be appropriated by the General Assembly to the Pollution Control Board.

Public Act 89-86 (SB 830 from 1995) Effective June 30, 1995

Amends Section 2.02 of the Open Meetings Act to clarify that certain public bodies (including the Pollution Control Board) are exempt from the 48-hour advance notice requirement for a closed meeting, provided the body votes to hold the closed meeting at a regular open meeting for which proper notice was given. Also clarifies that any public body must post its agendas for its regular meetings at the public body's principal office and at the location where the public meeting is to be held.

Public Act 89-93 (SB 327 from 1995) Effective July 6, 1995

Amends Sections 3.32, 3.53, 3.76, 21, and 22.15, and adds a new Section 3.94 to the Environmental Protection Act. Exempts from the definition of a "pollution control facility" the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only that waste generated on the site or facility when used in connection with response actions pursuant to the federal CERCLA Act of 1980, the federal RCRA Act of 1976, or as otherwise authorized by the IEPA. Expands the definition of "coal combustion waste" to include coal when burned in combination with up to 20% (now 10%) petroleum coke and other fossil fuel. Adds a new definition for "coal combustion by-product" and specifies purposes for which the by-products may be used (such as for road pavement base, cement, foundation backfill, mine subsidence, etc.). Directs the Department of Mines and Minerals (now the Department of Natural Resources) to foster the use of coal combustion by-products in road and other construction activities.

Public Act 89-94 (SB 448 from 1995) Effective July 6, 1995

Amends Section 22.2 of the Environmental Protection Act; Sections 3, 8, 9, 10, 12, 19, and 22.2 of the Illinois Pesticide Act; and adds new Sections 19.3, 29, and 30 to the Illinois Pesticide Act. Creates the Agrichemical Facility Response Action Program, to be administered by the Department of Agriculture, for the remediation of pesticide contamination around certain agrichemical facilities. Creates the Agrichemical Facility Response Action Program Board to review and recommend to the Department corrective action plans. Sets forth authority for the Director of the Department of Agriculture to implement and administer the program. Provides for funding the Program from the Agrichemical Incident Response Trust Fund. Subjects all Department administrative decisions under the Program to administrative review, and authorizes the Department to undertake emergency rulemaking to implement the Program.

Public Act 89-99 (SB 48 from 1995) Effective July 7, 1995

Amends Section 7-102 of the Public Utilities Act. Exempts Clean Air Act emissions trading from the requirement of having an Illinois Commerce Commission (ICC) hearing beforehand.

Public Act 89-101 (SB 68 from 1995) Effective July 7, 1995

Amends Sections 22.16b and 22.2b of the Environmental Protection Act. Requires the IEPA to deny a permit application

for the construction, development, or operation of any new municipal waste incinerator if: 1) the IEPA finds in the permit application any noncompliance with any current state laws or rules, or 2) the application indicates to the IEPA that the proposed incinerator will not be able to reach the State's current mandated air emissions standards within 6 months of beginning operation. Prohibits the IEPA from granting any limit of liability waiver to any person who is seeking a construction or development permit to build a new municipal waste incinerator or other new waste-to-energy facility in the future.

Public Act 89-102 (SB 84 from 1995) Effective July 7, 1995

Amends Section 39.2 of the Environmental Protection Act. Removes the current exemption to the "SB 172" local siting law for any new or expanded pollution control facilities (landfills, incinerators, and waste transfer stations) sited in unincorporated Cook County.

Public Act 89-122 (SB 789 from 1995) Effective July 7, 1995

Amends Sections 3.47 and 3.83 of the Environmental Protection Act and adds a new Section 3.48-5 to clarify that facilities which store sealed solid waste transfer containers (such as intermodal containers handled by trucks and railroads) are not classified as storage sites or waste transfer stations. This exempts such sites from being subject to the "SB 172" local siting law and the related tipping fees, provided the waste is not removed from the container at the site. Limits this exemption to provide that such containers, when unloaded, may only be stored at the site for up to 24 hours at a time (excluding Saturdays, Sundays, and holidays), and that such containers must be covered at all times so as to protect the container from water, rain, wind, or leaking. Also allows uncovered containers of construction or demolition debris *only* to be stored at such sites. Wherever these criteria are not met, the site would continue to be classified as a waste transfer station, subject to local siting, as well as the applicable solid waste tipping fees.

Public Act 89-123 (SB 995 from 1995) Effective January 1, 1996

Amends the Statute on Statutes to add a new Section 1.35. Defines "paralegal." Includes paralegal fees within the statutory definition of attorney fees.

Public Act 89-143 (SB 231 from 1995) Effective July 14, 1995

Amends Section 22.14 of the Environmental Protection Act. Exempts any pollution control facility in existence on January 1, 1988, as expanded before January 1, 1990, from the current setback requirement. Applies only to facilities that process and transfer municipal waste for both recycling and disposal purposes, provided such facilities do not accept landscape waste or other waste in the same vehicle load. *As a practical matter, this provision of the bill will currently affect only one recycling facility in the State located in Crestwood, Illinois, and owned by USA Waste.*

Amends Section 4 of the Sanitary District Act of 1917 and Section 4 of the North Shore Sanitary District Act to prohibit any sanitary district created under either Act from employing any individual as a wastewater [treatment plant] operator whose Certificate of Technical Competency is suspended or revoked under the current rules adopted by the Pollution Control Board. *These two Acts effectively cover the North Shore Sanitary District plus the 45 or so larger downstate sanitary districts (such as Rockford, Springfield, Champaign, Danville, etc.). Not covered by this provision are the Metropolitan Water Reclamation District (MWRD), the American Bottoms Sanitary District (Metro East area), or the numerous unincorporated smaller sanitary districts throughout the State (since such districts typically employ only one wastewater operator who already must be certified at all times).*

Public Act 89-158 (SB 107 from 1995) Effective January 1, 1996

Amends Section 22.2 of the Environmental Protection Act. Provides that the State or any local government shall *NOT* be deemed the owner or operator of a site where the State or local governmental unit acquired the property through bankruptcy, foreclosure, tax delinquency, abandonment, or similar means, other than the case where the State or local government caused or contributed to the release or threatened release of a hazardous substance from the facility, in which case the State or local government shall be subject to the liability provisions in the same manner and to the same extent as any nongovernmental entity. Where the State or local government acquires property under this bill in such a way as not to be deemed the owner or operator, the person who owned, operated, or otherwise controlled activities at the facility immediately beforehand would be deemed the owner or operator.

Public Act 89-161 (SB 162 from 1995) Effective July 19, 1995

Amends Section 2 of the Gasoline Storage Act. Clarifies that both aboveground and underground gasoline storage tanks must be in compliance with any and all municipal or home rule unit zoning ordinances. Also clarifies that municipalities may enforce any of their own zoning ordinances or regulations for aboveground gasoline storage tanks. *Effectively codifies current practice.*

Public Act 89-164 (SB 214 from 1995) Effective July 19, 1995

Adds a new Section 22.2c to the Environmental Protection Act. Provides a process under which the owner of any real property contaminated by hazardous substances or petroleum products may go to court (but not the Board) in order to compel an adjacent property owner to allow him to enter the adjacent property to complete the remediation. The bill would only apply where the owner of the property cannot reasonably accomplish the cleanup without entering the adjoining property, and where the adjacent landowner refuses to allow the owner to enter his property. In such cases, the court would be required to prescribe the conditions of the entry and determine the amount of damages, if any, to be paid to the adjacent landowner

as compensation for the entry. The court could also require the owner to give bond to the adjacent landowner to secure performance and payment.

Public Act 89-173 (SB 460 from 1995) Effective July 19, 1995

Adds a new Section 9.8 to the Environmental Protection Act. Requires the IEPA to develop an emissions market system for the reduction, banking, and trading of emissions credits in order to reduce ozone-harmful air emissions. Requires the IEPA to propose rules to implement the program to the Pollution Control Board. Requires the Board to adopt such rules. Sets forth extensive criteria in the bill for what the Board must include in its final adopted rules. *As written, the bill only lays out the broad parameters of what the program is to consist of exactly and how it should work. All the details are required to be set forth in the Board's rules. Both the IEPA and industry have told the Board that the bill was intentionally constructed this way to allow both sides the maximum leeway and flexibility in developing the program during the Board's rule-making process.*

Public Act 89-200 (SB 629 from 1995) Effective January 1, 1996

Amends Section 21.1 of the Environmental Protection Act. Extends from October 9, 1994, to April 9, 1997, the deadline by which municipal solid waste landfills must comply with the financial assurance requirements of the State's federally mandated Subtitle D landfill program. *This change in state statute is strictly "cleanup" in nature, as it mirrors a change made first at the federal level, and subsequently made in the Board's rules for the State's Subtitle D landfill program.*

Also amends the same Section 21.1 to authorize municipal solid waste landfills that are currently required to obtain a performance bond or security for closure and post-closure financial assurance to obtain the bond from any company licensed to sell insurance by the Department of Insurance (DOI) *or*, at a minimum, an insurer, excess insurer, or surplus lines insurer licensed to issue insurance in one or more other states.

Amends Section 39.2 to extend from 2 years to 3 years the length of time a county board's or municipality's "SB 172" local siting approval for construction or expansion of a sanitary landfill is good for before the landfill applicant would have to go back through the siting process again. "SB 172" approval for incinerators and waste transfer stations would remain 2 years, as is current law.

Amends Section 54.12 of the Environmental Protection Act. Exempts from the definition of a "tire storage site" (together with exempting from the annual $100 state fee) those retail stores that sell tires, provided the retailer stores less than 1,300 recyclable (used) tires on site, and stores the tires inside a building or in such a manner as to prevent the tires from accumulating water.

Also adds new Sections 54.06a, 54.10b, 54.11a, 54.12a, and 54.12b to add new definitions to the Environmental Protection Act for the terms "recyclable tire," "tire carcass," "tire derived fuel," "tire retreader," "tire storage unit," and "tire transporter" to the Act.

Adds a new Section 57.12A to the Title XVI (Petroleum Underground Storage Tanks) of the Environmental Protection Act. Effectively provides "holders of a secured interest" up to one year to sell or otherwise dispose of any property acquired through foreclosure, etc., that contains on it a leaking underground storage tank before being considered "the owner or operator" of the property for liability purposes.

Public Act 89-300 (HB 358 from 1995) Effective January 1, 1996

Amends the Environmental Protection Act by adding a new Section 22.47. Requires the IEPA to collect and dispose of any hazardous wastes left over in school laboratories throughout the State.

Public Act 89-328 (HB 412 from 1995) Effective August 17, 1995

Amends Section 9 of the Environmental Protection Act. Exempts certain small country grain elevators (those that handle less than 2 million bushels of grain per year) from the requirement that they have pollution control equipment to catch grain dust over dump-pit areas, provided they do not create a nuisance under Section 9(a) of the Act. Provides that, with respect to newer (post-June 30, 1975) country grain elevators, this exemption shall only apply provided the elevator is at least 1,000 feet away from any residential or populated area as defined in current rules and regulations. Also codifies other current rules that new post-1975 grain elevators located in major population areas (delineated in the existing rules) must have pollution control equipment in dump-pits. No elevators that handle over 2 million bushels of grain per year would be exempt from the requirement that they have pollution control equipment over dump-pits.

Public Act 89-336 (HB 929 from 1995) Effective August 17, 1995

Amends Section 22.14 of the Environmental Protection Act. Exempts any pollution control facility in existence on January 1, 1988, as expanded before January 1, 1990, from the current setback requirement. Applies only to facilities that process and transfer municipal waste for both recycling and disposal purposes, provided such facilities do not accept landscape waste or other waste in the same vehicle load. *This identical provision is also contained in SB 231, which was signed into law as P.A. 89-143 on July 14, 1995, effective July 14, 1995. As a practical matter, this provision of the bill will currently affect only one recycling facility in the State located in Crestwood, Illinois, and owned by USA Waste.*

AMENDATORILY VETOED BILLS

SB 276

Creates the Alternative Fuels Act and amends the State Finance Act to add a new Section 5.403. Creates a rebate program to be administered by the IEPA for individuals who convert their vehicles in order to use alternative fuels (liquid petroleum gas, 80% ethanol fuel, bio-based fuel, fuels derived from biomass, or electricity). The Program would be funded by a $20 per vehicle decal fee paid by individuals and companies that choose to participate in the program, the proceeds of which would be used for the rebate program as well as for an ethanol research program. Creates an Alternative Fuels Advisory Board to assist in the development and implementation of the Program.

Governor's amendatory veto would: 1) transfer responsibility for licensing alternate fuel vehicles from the IEPA to the Secretary of State; 2) add a requirement that a portion of the program be earmarked for participation by small business.

BILLS PASSED BUT NOT YET ACTED UPON

The following bills, passed last spring, were not yet acted upon by the Governor at press time.

HB 544
SB 46

Creates a new Title XVII, subtitled "Site Remediation Program," in the Environmental Protection Act, as well as amending Sections 22.2 and 22.7 of the Act. This legislation is the "Brownfields" initiative. Creates a new remediation process for cleaning up contaminated sites (both voluntary and required), other than those: 1) already on the federal Superfund National Priorities List (NPL), 2) currently permitted by the IEPA or subject to federal or state closure laws, 3) those for which remedial action has already been required by the State or federal government, or 4) those subject to state or federal underground storage tank laws.

Provides for risk-based cleanup actions for sites or portions of sites (similar to the process for underground storage tanks), and based upon background area characteristics and the future proposed land use of the site (i.e., residential v. industrial). Authorizes any remediation applicant (RA) to utilize either the IEPA directly or hire his own licensed professional engineer to oversee all cleanup work at the site. Subjects all work conducted by the RA to IEPA review and approval, but allows for the RA to appeal any IEPA determination to the Board. Upon the IEPA giving its approval to the RA's final remedial action completion report, the IEPA would be required to issue the RA a No Further Remediation letter, the limitations and proposed future land use of which would be contained in the letter, carry from owner to future owner, and be filed with the county recorder of deeds. Authorizes the IEPA to void the No Further Remediation letter under certain limited circumstances, subject to appeal to the Board. Requires the IEPA to propose rules to the Board within 9 months of the effective date of this bill, after which the Board would be required to adopt final rules within 9 months of the IEPA's proposing them. Prior to the Board's final adoption of rules, provides that the program operate under the Board's current underground storage tank program rules.

Effectively replaces the current joint and several liability for any clean-up actions *under any part of the EPAct* with a limitation that a party be held liable only for his proportionate share of liability for a site. Authorizes a landowner to seek cost recovery from a third party, subject to rules adopted by the Board. Provides immunity for the State and local governments under certain circumstances where the governmental unit had nothing to do with the contamination.

NOTE: In addition to the same Brownfields legislation contained in SB 46, **HB 544** also contained the following provision:

Amends the Environmental Protection Act. Authorizes industrial hygienists to conduct environmental audits under the 1993 "innocent landowner bill" without first providing a $550,000 bond. *This change places industrial hygienists (which were recently placed under the regulation of the Department of Professional Regulation), on the same footing as geologists regarding environmental audits.*

HB 729

Amends the Environmental Protection Act by adding a new Section 17.8. Establishes a private environmental laboratory testing certification program to be administered by the IEPA. Imposes annual certification fees on private laboratories that wish to be certified to test public water supplies and water pollution. Authorizes the IEPA to establish testing procedures for certified laboratories.

Also amends Section 5B of the Illinois Water Well Construction Code. Requires local water well ordinances to include in the information contained in a water well construction permit the depth of the well and depth of the lowering of the aquifer affected by constructing the well. Requires such information to be forwarded to the Department of Public Health (DPH).

ILLINOIS POLLUTION CONTROL BOARD
ENFORCEMENT CASES FILED BY FISCAL YEAR

Filed By	FY71-89	FY90	FY91	FY92	FY93	FY94	FY95	% Difference Between FY94/FY95
Citizens								
Water	90	0	2	1	1	1	2	100%
Air	76	1	3	3	1	2	1	-50%
Land	37	0	0	5	3	1	5	400%
Public Water Supply	12	0	1	0	0	0	0	0%
Noise	32	9	11	11	7	5	4	-20%
Underground Storage Tank	0	0	0	2	0	1	5	400%
Special Waste Hauling	1	0	0	0	0	0	0	0%
TOTAL	**248**	**10**	**17**	**22**	**12**	**10**	**17**	**70%**
Attorney General*								
Water	407	5	3	0	3	4	6	50%
Air	429	61	18	18	29	43	28	-35%
Land	363	1	0	7	12	9	10	11%
Public Water Supply	101	1	0	0	0	0	0	0%
Noise	36	0	0	0	0	0	0	0%
Underground Storage Tank	0	0	0	0	0	0	1	100%
Special Waste Hauling	5	2	0	0	0	0	2	100%
EPCRA	0	0	0	0	0	0	8	100%
TOTAL	**1,341**	**70**	**21**	**25**	**44**	**56**	**55**	**-2%**
GRAND TOTAL	**1,589**	**80**	**38**	**47**	**56**	**66**	**72**	**9%**

**The Attorney General files cases on behalf of the Illinois Environmental Protection Agency and the People of the State of Illinois.*

ILLINOIS POLLUTION CONTROL BOARD
NUMBER OF OPINIONS AND ORDERS ISSUED BY FISCAL YEAR

Type	FY71-89	FY90	FY91	FY92	FY93	FY94	FY95	% Difference Between FY94/FY95
Cases								
Opinions & Orders	4,072	95	143	128	138	171	134	-22%
Orders	7,345	746	594	763	875	1,065	959	-10%
Dissenting	278	42	91	26	21	9	13	44%
Concurring	207	18	32	12	16	13	13	0%
Supplemental Statements	68	3	3	1	1	2	6	200%
TOTAL	**11,970**	**904**	**863**	**930**	**1,051**	**1,260**	**1,125**	**-11%**
Regulations								
Opinions & Orders	522	79	53	59	50	64	56	-13%
Orders	921	78	77	79	77	55	43	-22%
Dissenting	51	6	2	4	2	0	3	100%
Concurring	28	6	6	2	2	3	0	-100%
Supplemental Statements	10	0	0	2	1	5	4	-20%
TOTAL	**1,532**	**169**	**138**	**146**	**132**	**127**	**106**	**-17%**
GRAND TOTAL	**13,502**	**1,073**	**1,001**	**1,076**	**1,183**	**1,387**	**1,231**	**-11%**

**Includes Final Decisions.*

ILLINOIS POLLUTION CONTROL BOARD
CONTESTED CASES FILED BY FISCAL YEAR

Type of Filing	FY71-89	FY90	FY91	FY92	FY93	FY94	FY95*	% Difference Between FY94/FY95
Variances								
Water	1,528	16	20	31	13	19	30	58%
Air	1,207	15	11	10	11	80	135	69%
Land	152	46	60	43	29	26	21	-19%
Public Water Supply	242	15	23	9	6	8	11	38%
Noise	26	0	0	0	0	0	0	0%
Special Waste Hauling	21	0	0	0	0	0	0	0%
TOTAL	**3,176**	**92**	**114**	**93**	**59**	**133**	**197**	**48%**
Enforcement								
Water	496	5	5	1	4	5	8	60%
Air	506	62	21	20	30	45	31	-31%
Land	400	1	0	14	15	10	16	60%
Public Water Supply	113	1	1	1	0	0	0	0%
Noise	68	9	11	11	7	5	4	-20%
Special Waste Hauling	6	2	0	0	0	0	2	100%
Other**	0	0	0	0	4	18	13	-28%
TOTAL	**1,589**	**80**	**38**	**47**	**60**	**83**	**74**	**-11%**
Permit Appeals	694	49	59	44	43	52	55	6%
Landfill Siting Reviews	69	5	10	5	16	10	12	20%
Administrative Citations	419	210	80	80	61	83	115	39%
UST	0	2	15	62	64	48	76	58%
Adjusted Standards***	0	7	1	14	11	19	17	-11%
Other	201	2	0	0	3	2	0	-100%
GRAND TOTAL	**6,148**	**447**	**317**	**345**	**317**	**430**	**546**	**27%**

**Includes 31 cases which were re-opened for consideration by the IPCB in FY95.*

***Includes Underground Storage Tank Enforcements and Emergency Planning & Community Right-To-Know Act Enforcements.*

****By Statute, Adjusted Standards modify rules but are considered adjudicatory proceedings.*

ILLINOIS POLLUTION CONTROL BOARD
RULEMAKINGS FILED BY FISCAL YEAR

Type of Filing	FY71-89	FY90	FY91	FY92	FY93	FY94	FY95	% Difference Between FY94/FY95
Water	123	6	4	4	6	4	5	25%
Air	238	4	7	16	7	12	13	8%
Land	59	12	15	11	11	17	21	24%
Public Water Supply	10	0	0	2	5	2	3	50%
Noise	26	0	0	1	0	0	0	0%
Other (Procedural Rules, Etc.)	52	0	2	1	0	0	1	100%
TOTAL	**508**	**22**	**28**	**35**	**29**	**35**	**43**	**23%**

Judicial Review of Board Decisions

Introduction

Pursuant to Title XI, Section 41, of the Act, both the quasi-legislative and the quasi-judicial functions of the Board are subject to review in the appellate courts of Illinois. Any person seeking review must be "qualified" and must file a petition for review within 35 days of the Board's final order or action. A "qualified" petitioner is any person denied a permit or variance, any person denied a hearing after filing a complaint, any party to a Board hearing, or any person who is adversely affected by a final Board order.

Administrative review of the Board's final order or action is limited in scope by the language and intent of Section 41(b). Judicial review is intended to ensure fairness for the parties before the Board but does not allow the courts to substitute their own judgment in place of that of the Board. The standard for review of the Board's decision is against the manifest weight of the evidence. The standard for review of the Board's quasi-legislative actions is whether the Board's decisions are arbitrary or capricious. Board decisions in rule-making proceedings and in imposing conditions in variances are quasi-legislative. All other Board decisions are quasi-adjudicatory in nature.

The appellate courts reviewed Board decisions in fiscal year 1995. The cases are organized by Section of the Act and discussed below.

Enforcement

The Act provides for standard enforcement actions in Section 30 and for the more limited Administrative Citation (AC) in Section 31.1. The standard enforcement action is initiated by the filing of a formal complaint with the Board. The filing of a complaint is not limited to the IEPA or the Attorney General's office. Section 31(b) states that "any person" may file an enforcement complaint. After the complaint is filed, a public hearing is held where the burden is on the complainant to prove that "respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate a provision of the Act or any rule or regulation of the Board or permit or term or condition thereof." The Board is authorized by Sections 33 and 42 to direct a party to cease and desist from violation, to revoke a permit, to impose civil penalties, and to require posting of bonds or other security to assure correction of violations. Under Section 42(b)(4) of the Act, the Board in administrative citation cases is authorized to require a civil penalty of $500 for each violation plus hearing costs incurred by the Board and IEPA.

Anne Shepard, James Verhein, and Jerold Leckman v. The Illinois Pollution Control Board, Northbrook Sports Club, and the Village of Hainesville, No. 2-94-0864, ___ Ill. App. 3d ____, ____ Ill. Dec. ____, ____ N.E.2d _____ (2nd Dist., May 4, 1995)

The petitioners in this case, PCB 94-2, appealed a Board decision dismissing their complaint and the appellate court affirmed the Board.

The complaint before the Board alleged that shooting activities at the Sports Club property caused noise pollution and interfered with the petitioners' enjoyment of their homes and recreational activities, and depressed their property values. The petitioners sought a cease and desist order for all sound emissions violating the Act and penalties for the violations. Additionally, the petitioners requested that the Board adopt more specific criteria to eliminate such noise pollution. The Club filed a motion to dismiss the complaint as frivolous, arguing that it is a skeet, trap, and sports club exempt from the Board's regulatory power. The Board dismissed the complaint finding that the Club was an organized amateur or professional sporting activity and therefore exempt from the Board's noise standards. Petitioners filed a motion for reconsideration and the Board denied.

The issues on appeal were whether or not Sections 3.25 and 25 of the Act prohibit the Board from hearing noise complaints which are common-law nuisance actions, whether the Board properly construed the above Sections of the Act, whether the Board erred in placing the burden of proof for the exemption under those Sections on the petitioners, and whether the exemptions in Sections 3.25 and 25 of the Act are constitutional.

At the time of the appeal, Sections 3.25 and 25 of the Act provided an exemption from the noise standards promulgated by the Board for various types of sporting facilities in existence before January 1, 1975. The appellate court found the exemptions to be constitutional. Additionally, the Court held that the Board's noise regulation at 35 Ill. Adm. Code 900.102 is subject to these exemptions.

The appellate court upheld the Board's interpretation that the club was in existence prior to January 1, 1975, even though the club had moved to its current site after January 1, 1975. Further, the Court rejected the petitioners' arguments that the Board erred by placing the burden of proof for proving the club was not exempt under the Act on them rather than on the respondents, and that the conclusions the Board drew should be reversed as being arbitrary or unreasonable. Specifically, the Court found that the Board did not impose a burden of proof on the petitioners simply because it found

their arguments to be unpersuasive and that the Board's conclusions were amply supported by the record.

'erald B. Miller v. The Pollution Control Board et al., 267 Ill. App. 3d 160, 204 Ill. Dec. 774, 642 N.E.2d 4775 (4th Dist., September 30, 1994)

This appeal involved an administrative citation (AC 92-37) where the Board found Gerald Miller used his property as an open dump resulting in the occurrence of litter and imposed a $500 penalty. Additionally, the Board, in a separate order, ordered Miller to pay hearing costs of $952.25. The appellate court affirmed the finding of a violation but found the amount of costs assessed by the Board was an abuse of discretion.

In Docket A of the administrative citation proceeding, the Board found that Miller violated Section 21(p)(1) of the Act by having junked cars, trucks, farm equipment, household refuse, appliances, machinery parts, wire, metal construction materials, storm windows, window framing, wood, batteries and cans strewn about his property. The Court upheld this finding. Additionally in Docket A, the Board ordered Miller to pay costs that would later be assessed in Docket B. In the Docket B order, the Board assessed $952.25 in costs. Miller appealed both determinations.

The Board first argued that the Court did not have jurisdiction ›ver Miller's first appeal of the Docket A order because the appeal ›as filed more than 35 days after the entry of the order. The Court held that the Docket A order was not a final order of the Board, stating that a final order must terminate the litigation between the parties on the merits or otherwise dispose of the rights of the parties. Therefore, the order was not final for purposes of appeal until after the Docket B order. Miller had properly appealed after that order.

Next, the Court held that the Board could no longer bifurcate the proceedings and that the entry of two final orders (Docket A and B) in this case was improper. However, the Court rejected Miller's argument that, because bifurcation was improper, the Docket B order of the Board was void. The Court held that it was the bifurcation which was improper, not the imposition of costs, and that the assessment of costs was not void merely because costs were assessed in the "second final order."

The Court rejected Miller's argument that the administrative citation procedure violates the separation of powers principle by allowing the Board to act in a judicial capacity without guidelines and standards. Additionally, the Court rejected Miller's argument that the due process clause is violated by the administrative citation process because the Board may not consider mitigating evidence or assess a lesser penalty. In the first instance, the Court held that because the Board had no discretion in establishing a penalty amount, standards ınd guidelines were unnecessary. In the second instance, the Court held that because administrative citations are a minimal penalty akin to a traffic ticket, consideration of mitigating or aggravating factors was not necessary. In addition to the above arguments, the Court rejected several other arguments by Miller that the administrative citation procedure violates the constitution.

Finally, Miller argued that the Board abused its discretion in assessing hearing costs of $952.25. The costs were: attorney fees ($60), expert witness fees ($20), preparation and mailing of documents ($10), court reporter's attendance fee ($200), travel time ($126), mileage ($49.25), transcript (33 pages at $4 per page equaling $132), hearing officer's appearance fee ($300), travel expenses ($45), and parking fee ($10). The fees were assessed based on affidavits of costs submitted by Sangamon County (the prosecuting entity under a delegation agreement with the IEPA) and the Board. No explanation was given for the costs of the hearing officer or the court reporter. Additionally, the Board made no finding as to the reasonableness of costs.

The Court held that the costs were unreasonable since the Board included costs which were not properly hearing costs and assessed excessive costs without any explanation. Specifically, the Court held that it was improper for the Board to include the County's attorney fees in the hearing costs. Additionally, the Court found that although witness fees may be included in costs, it was improper to charge Miller for the appearance of the County officer responsible for the initiation of the administrative citation proceeding. The Court stated that because the witness was a solid waste inspector for the County and his duty includes inspection of property and enforcement of the Act, his duties impliedly include a duty to testify. As for the fee for preparation and mailing of the citation, the Court held it was proper to charge for the actual cost of the mailing but not for the preparation of the document. The Court held that, although charging for court reporter's fees is proper, in this case the costs were unreasonable. Additionally, the Court held that the Board should not have charged Miller the court reporter's travel expenses because no reason was given for the use of a court reporter from Peoria. The Court also was disturbed that the Board did not explain why the hearing officer was paid $300 to preside over a 30- to 60-minute hearing. The Court reversed the Board's finding of costs and remanded for the assessment of proper and reasonable costs.

Rochelle Disposal Service v. The Illinois Pollution Control Board, 266 Ill. App. 3d 192, 203 Ill. Dec. 429, 639 N.E.2d 988 (2nd Dist. 1994)

In this administrative citation case, the petitioner, Rochelle Disposal Service, appealed two orders of the Board (AC91-45, AC 92-26) finding it guilty of violating the Act.

In the first case, the petitioner and the City of Rochelle were charged with allowing garbage to remain uncovered overnight at the landfill in violation of Section 21(o)(5) of the Act. The petitioner filed a motion to dismiss stating it was not a proper party since the operating permit for the landfill was issued to the City of Rochelle (for whom Rochelle Disposal Service operates the landfill under contract)

and not the petitioner. The Board denied the motion and later issued an opinion finding that both the petitioner and the City had violated Section 21(o)(5) of the Act. The Board held the defendants jointly and severely liable for the $500 fine.

In the second case, the petitioner and the City of Rochelle were charged with violating Section 21(o)(12) of the Act for not containing and collecting litter at the end of the operating day. The petitioner again filed a motion to dismiss stating it was not a proper party since the operating permit for the landfill was issued to the City and not the petitioner. The Board denied the motion and later issued an opinion finding the City and Rochelle Disposal Service had violated Section 21(o)(12) of the Act and were liable for a $500 penalty.

On appeal the petitioner alleged that the Board erred by finding the petitioner was a proper party subject to the administrative citation process. Additionally, the petitioner argued that the Board erred by finding that there was evidence to sustain the finding of violation and by deciding it did not have the authority to mitigate the penalty.

First, petitioner argued that only the named holder of the permit to operate a landfill may properly be subject to the administrative citation process. Thus, because the City held the permit in this case, Rochelle Disposal Service believed the City was the only one subject to an administrative citation action. The Court disagreed, finding that Section 21 states, "no person" shall engage in certain acts deemed to violate the Act and that the word "person" does not mean permittee in administrative citation cases.

Next, the petitioner argued that the Board did not have enough evidence to find it guilty of a violation of the Act. The Court found, however, that the Board's decision in both cases was not against the manifest weight of the evidence.

Finally, the petitioner argued that the Board erred by ruling it did not have the statutory authority to mitigate the penalty. The Court concluded that the Board was correct, stating that the statute is clear and unambiguous when it states the Board "shall" impose a penalty of $500 for each violation. The Court went on to explain that there is no provision for mitigation of administrative citation fines and, therefore, the Board does not have the statutory authority to mitigate the fine.

Site Location Suitability Appeals

The Act provides, in Sections 39(c) and 39.2, for local government participation in the siting of new regional pollution control facilities. Section 39(c) requires an applicant requesting a permit for the development or construction of a new regional pollution control facility to provide proof that the local government has approved the location of the proposed facility. Section 39.2 provides for proper notice and filing, public hearings, jurisdiction and time limits, specific criteria, and other information that the local governments must use to reach their decision. The decision of the local government may be contested before the Board under Section 40.1 of the Act. The Board reviews the decision to determine if the local government's procedures satisfy the principles of fundamental fairness and whether the decision was against the manifest weight of the evidence. The Board's final decision is then reviewable by the appellate court.

Ogle County Board, on Behalf of the County of Ogle and the State of Illinois, et al. v. The Illinois Pollution Control Board, ____ Ill. App. 3d ____, 208 Ill. Dec. 489, 649 N.E.2d 545 (2nd Dist. 1995)

This case involved an appeal of local siting approval under Section 39.2 of the Act. The appellate court affirmed the Board's reversal in PCB 93-114 of the Ogle County Board's siting decision granting approval for expansion of a landfill.

Following the decision of the Ogle County Board (Ogle County) to grant siting approval to Browning-Ferris Industries of Illinois (BFI), appellee Leonard Carmichael filed an appeal with the Board. At hearing, Carmichael raised a question as to sufficiency of the prefiling notice required by Section 39.2 of the Act. The Board reversed Ogle County's approval of siting based on the notice issue. The Board denied the motion of Ogle County and BFI for reconsideration and this appeal followed.

Section 39.2 of the Act requires in part that, fourteen days prior to a request for siting approval, the applicant shall serve written notice upon owners of property within the subject area not solely owned by the applicant and on all owners of the property within 250 feet of the lot line of the subject property. Additionally, notice must be served upon members of the General Assembly from the legislative district in which the proposed facility is located.

On October 27, 1992, BFI sent the required notice seventeen days prior to its filing of the application via registered mail. The recipient post office received the letters by October 30; however, two letters were not delivered to the recipients until after the fourteen-day deadline. In the case of one letter sent to Todd Pfab, an owner of land adjacent to the landfill, the post office attempted delivery on October 28, 1992, but no one was home and a yellow slip was left informing the person that the post office was holding registered mail. The letter was picked up on November 3, 1992. Similarly, in the case of the second letter addressed to Senator Rigney, on October 28, 1992, a yellow slip was placed in his post office box which was his designated address. An agent for the Senator picked up his mail on November 2, 1992, and signed the return receipt. Neither Pfab or Rigney challenged the timeliness of the notice.

Carmichael testified at the public hearing before Ogle County and submitted written comments. Mr. Pfab also submitted written comments; however, he did not challenge the timeliness of his notice. At hearing before the County, BFI submitted the return receipt green

cards, without objection, as evidence of its compliance with the preapplication notice. On May 10, 1993, Ogle County found that all notice was properly given and that it had jurisdiction to hear and grant or deny the application of BFI for siting approval.

Carmichael then filed a petition with the Board challenging the County's decision to grant the application. This petition challenged only the fundamental fairness of the hearing procedures before Ogle County. It was not until the public hearing before the Board that Carmichael first alleged that the prefiling notices to Pfab and Senator Rigney were defective. The Board reversed Ogle County's decision, stating that notice was not properly given pursuant to Section 30.2 of the Act, and, therefore, Ogle County lacked jurisdiction to hear the request for siting approval.

The questions on appeal were whether Carmichael had standing to appeal, whether Carmichael had standing to contest the timeliness of the notice to Senator Rigney and Pfab, whether Carmichael waived his challenge to the timeliness of the prefiling notice, whether the prefiling notice was timely, and whether Ogle County was denied fundamental fairness.

The appellate court held that Carmichael had standing because he was so located as to be affected by the proposed landfill. Additionally, the Court affirmed the Board holding that the issue of prefiling notice is a jurisdictional prerequisite to a county board's authority to act over a given siting proposal. Thus, because the issue is jurisdictional, the Court reasoned, it may be raised at any time by any person with standing in the case.

The Court then addressed the issue of timeliness of the notice and again affirmed the Board. Specifically, the Court held that the return-receipt-requested provision in Section 39.2 required the actual receipt of the notice as evidenced by the signing of the return receipt. However, the Court specifically declined to express an opinion on whether a potential recipient who refused to sign a receipt of notice may be held in constructive receipt of the notice for purposes of the statute.

The Court affirmed the Board's reversal of the Ogle County Board's siting decision granting approval for expansion of a landfill. Specifically, it held that Ogle County lacked jurisdiction, because the prefiling notice was not timely. Thus, the siting approval by the County was void.

Eugene Daly, Jane Schmit, Carl Williams, South Cook County Environmental Action Coalition, Citizens for a Better Environment v. The Pollution Control Board, The Village of Robbins, and The Robbins Resource Recovery Company, 264 Ill. App. 3d 968, 202 Ill. Dec. 417, 637 N.E.2d 1153 (1st Dist. 1994)

This case involves a citizens' appeal in PCB 93-52 of the Board's decision which upheld the Village of Robbins' decision to approve siting of a new regional pollution control facility consisting of a solid waste incinerator and recycling plant. The appellate court affirmed the Board finding.

On appeal, Eugene Daly and the other citizens contended that the public hearing before Robbins was fundamentally unfair and that the Village Board acted arbitrarily in finding that the facility met the flood-proof criterion.

First, in Section 39.2(a)(iv), the appellants contended that the hearing was unfair because a rally in support of the incinerator was held at the hearing site immediately before the hearing took place. At the rally, buttons, hats, and literature in support of the facility were passed out. The Board found that the rally was not part of the hearing and the Court affirmed.

Next the appellants argued that the hearing was unfair because the hearing officer stated that anyone could submit sworn statements within 30 days after the hearing. The petitioners argued that sworn statements are not required by the Act. The Board found that, although Section 39.2(c) of the Act does not require sworn statements, the hearing officer's use of the term did not "chill" opponents' opportunity to make written statements. The Court agreed, and additionally pointed out that although the record shows that the hearing officer used the term "sworn statements," he also referred to "written statements" without the term "sworn."

Finally, the appellants argued that the hearing was unfair because it was held "with haste," i.e., in one long session which began at 6:40 p.m. on December 22, 1992, and concluded at 2:30 a.m. on December 23, 1992. The Board rejected this argument and the Court held that the record supported its decision. Thus, the Court held that the Board's ruling that the hearing was fundamentally fair was not against the manifest weight of the evidence.

The next issue before the Court was whether the Village Board "complied with the siting approval process." The appellants contended that one of the nine statutory requirements for siting was not met. Appellants argued that the Village Board failed by not including in its siting ordinance an express condition that the site be flood-proofed. The Court found that because the Village ordinance stated "the facility is designed to be flood-proofed" that this was evidence that the Village recognized that Section 39.2(4) of the Act requires that the facility be flood-proofed. The Court specifically rejected a Board member's dissenting opinion which argued that use of the word "facility" in the Village ordinance was insufficient to ensure the land or site surrounding the facility would be flood-proofed. The Court held that the record was clear that the applicant submitted a comprehensive plan for flood-proofing and that it was the plan in its entirety that the Village found to be in compliance with the statute.

Turlek et. al. v. The Illinois Pollution Control Board, The Village of Summit and West Suburban Recycling and Energy Center Inc., No. 1-94-2829, 1st Dist., June 26, 1995

In this local siting case, the issues before the Court were whether Summit had jurisdiction to consider West Suburban Recycling and Energy Center's (WSREC) 1993 application for siting, whether the proposed incinerator was necessary to serve the waste disposal needs of the intended service area, whether the proposed incinerator met the flood-proofing criterion, and the proper legal standard for denying the petitioner's motion for reconsideration.

In 1992, WSREC filed an application with Summit for siting of a municipal waste-to-energy facility. After public hearings on the application, Summit granted siting on October 19, 1992. In February of 1993, the Board reversed Summit's siting approval and remanded the siting process to Summit. The Board reversed on the grounds that Summit failed to make WSREC's application available to the public. On remand, the Board stated that WSREC could reinstate its application without further amendment within 35 days. WSREC appealed the Board's order to the appellate court and filed with the Board a motion to stay its order pending the appellate court ruling. In April of 1993, the Board denied WSREC's motion to stay.

On June 8, 1993, WSREC mailed legal notices to property owners indicating its intent to file a new application with Summit for siting of a larger but substantially similar facility located on the same property. On June 14, 1993, the appellate court dismissed WSREC's appeal for lack of jurisdiction since the Board's February order was not final. Later in June, WSREC filed its new application for the larger facility. Public hearings were again held and Summit approved the application in early December of 1993. The petitioners appealed this decision to the Board and the Board affirmed Summit's granting of siting approval. The Petitioners filed a motion for reconsideration, which was denied, and then filed the appeal which is the subject of this case before the appellate court on August 25, 1994.

The first argument addressed by the Court was that Summit lacked jurisdiction to entertain WSREC's second application. Petitioners argued that Section 39.2 prohibits an applicant from filing a request for siting approval which is substantially the same as a request which a local authority had disapproved because the applicant failed to prove one of the nine statutory criteria within the preceding two years. The Court explained, however, that this Section did not apply to this case since WSREC's application was approved, not disapproved, by Summit and the Board's reversal was based on a violation of a procedural requirement, not on the basis of failure to meet one of the nine statutory criteria. Additionally, the appellate court questioned if the applications were substantially similar since the second facility proposed was significantly larger than the first.

Next, petitioners argued that local authorities did not have the statutory authority to have jurisdiction over two applications for the same site from the same applicant. The appellate court rejected this argument, finding no statutory prohibition against an applicant having concurrent applications.

The Court next rejected all of petitioners' arguments that the Board erred in finding the proposed facility was necessary. The main basis for the first argument was that Summit failed to include two of the five reports which supported its necessity decision when it submitted the record of the proceedings to the Board. The Board held, however, that there was sufficient evidence in the record to support the Village's decision exclusive of the two missing studies. The Court held that because the reports were largely duplicative of the reports before the Board and because they supported the necessity of the incinerator and did not contain evidence that the incinerator was unnecessary, that the Board had enough support for its decision without the missing reports.

Petitioners' next argument that the facility was not necessary stemmed from Summit's reliance on a 1991 report forecasting the remaining life of a landfill was misplaced and that they should have used a 1993 report instead. The Court pointed out, however, that the difference in life spans listed in the two reports was approximately 30 days. Thus, the Court rejected the argument that Summit and the Board did not have an accurate picture of the area's waste needs. Petitioners also argued that Summit did not consider the implications of recycling and other alternative waste disposal means. The Court found that the record showed that two environmental experts testified to these issues and that Summit had adequately addressed this issue in its written decision granting siting.

The petitioners' final argument on necessity was that without the Illinois Retail Rate Law (220 ILCS 5/8-403.1) the facility would not be profitable. The Court rejected this argument stating that profitability is not indispensable to a finding of necessity.

The petitioners next attacked the Board's affirmance of Summit's decision that the site was flood-proofed as required by Section 39.2(a)(iv) of the Act. The Court rejected this argument, stating that Summit based its determination that the site was designed to be flood-proofed on evidence in the record. Additionally, the Court held that Section 39.2(a)(iv) of the Act is satisfied when local authorities find a facility is designed to be flood-proofed and flood-proofing is a precondition of the ultimate site suitability.

Finally, the petitioners argued that the Board used an incorrect standard in denying their motion for reconsideration. The Court, however, rejected this argument and stated that the Board's order denying the motion for reconsideration makes it clear that the Board applied the correct standard of review.

Permit Appeals

The Board is authorized to require a permit for the construction, installation and operation of pollution control facilities and equipment. Under Section 39 of the Act, it is the duty of the Illinois Environmental Protection Agency to issue those permits to applicants. Permits are issued to those applicants who prove that the permitted activity will not cause a violation of the Act or the Board

regulations under the Act. The IEPA has the statutory authority to impose conditions on a permit to further ensure compliance with the Act. An applicant who has been denied a permit or who has been granted a permit subject to conditions may contest the IEPA decision at a Board hearing pursuant to Section 40 of the Act. The final decision of the Board is reviewable by the appellate court.

Citizens Utilities Company of Illinois and The Village of Plainfield v. The Illinois Pollution Control Board, The Illinois Environmental Protection Agency, and the Village of Bolingbrook, 265 Ill. App. 3d 773, 203 Ill. Dec. 487, 639 N.E.2d 1306 (3rd Dist. 1994)

This case involves an appeal from the IEPA issuance of a National Pollution Discharge Elimination System (NPDES) permit to the Village of Bolingbrook filed by Citizens Utilities and The Village of Plainfield. In the case before the Board, the IEPA filed a motion to dismiss the appeal (PCB 93-101) for lack of subject matter jurisdiction. The Board agreed and dismissed the appeal, finding that the issues in the joint petition for review were related solely to the Facility Planning Areas (FPA) and not to the issuance of the permit.

Prior to this case, Bolingbrook initiated proceedings before the IEPA to add a tract of unincorporated land between Bolingbrook and Plainfield to its FPA. Citizens and Plainfield intervened in opposition and Plainfield filed a separate application to include the same tract in its FPA. The IEPA granted Bolingbrook's requests and also ordered the creation of three new FPAs. Under Bolingbrook's proposal for the FPA, Bolingbrook stated that it would construct and own and operate a new treatment plant to serve the tract in question and other areas. The permit for the new plant is the subject of the appeal in this case.

The issues in this case on appeal were twofold: first, whether the Board lacked subject matter jurisdiction over the case, and second, whether the Board has jurisdiction to hear third-party petitions opposing the issuance of an NPDES permit by the IEPA. The Court focused on the Board's ability to hear third-party NPDES appeals. Basing its decision on **Landfill Inc. v. The Illinois Pollution Control Board**, 74 Ill. 2d 541, 26 Ill. Dec. 602, 387 N.E.2d 258 (1978), the Court held that the Board does not have the right to hear third-party NPDES appeals. Thus, the Court never reached the issue of subject matter jurisdiction since it held that the Board lacked the statutory authority to hear the case, and that the Board properly dismissed the appeal.

Underground Storage Tank Fund Reimbursement

On September 13, 1993, Governor Edgar signed into law P.A. 88-496, "Petroleum Leaking Underground Storage Tanks." P.A. 88-496, also known as H.B. 300, added new Sections 57 through 59 to the Act and repealed Sections 22.13, 22.18, 22.18b, and 22.18c. The new law did not create new programs, but instead substantially amended the administration of the program and the method by which petroleum leaks are remediated in Illinois. One significant change was the division of program administration between the IEPA and the Office of the State Fire Marshall (OSFM). Under the new law, the OSFM is not only responsible (as it was in the past) for early action activities such as supervising tank pulls, but it is also responsible for determining whether an owner or operator is eligible to seek reimbursement for corrective action from the Illinois Underground Storage Tank Fund (Fund) and for determining the applicable deductible. These decisions are then directly appealable to the Board. Additionally, the law focuses on risk-based cleanup and site assessment and directs the IEPA to make various determinations concerning corrective actions and the appropriateness of various items for which reimbursement is sought from the Fund. The law contains several points where an owner or operator can appeal an IEPA decision to the Board while going through the remediation process.

The Township of Harlem v. The Environmental Protection Agency, 265 Ill. App. 3d 41, 202 Ill. Dec. 516, 637 N.E.2d 1252 (2nd Dist. 1994)

Despite P. A. 88-496's passage two years ago, the appellate case reported in this fiscal year was an appeal of a Board decision based on the old UST law. Under the old law, Sections 22.18, 22.18b, and 22.18c of the Act provided for enforcement liability and Fund eligibility for owners and operators of underground storage tanks (UST). Section 22.18b contains eligibility requirements for accessing the Fund. Owners and operators who were eligible to access the Fund may have been reimbursed for the costs of corrective action or indemnification. Section 22.18b also explained the deductible amounts which had to be subtracted from the total amount approved by the IEPA for each claim.

This case (PCB 92-83) involved an appeal from a denial by the IEPA of reimbursement from the Fund. Harlem appealed to the Board, which upheld the IEPA's denial. In this appeal, Harlem argued that the Board erred by determining that the nozzle from which the gasoline spilled was not part of the underground storage tank system. The appellate court disagreed with Harlem and affirmed the Board.

The facts of this case were not in dispute. One of Harlem's employees found that fuel had spilled from a pump on the premises over a weekend. The pump was connected to a UST. After the spill, Harlem paid for the clean-up and then filed an application for reimbursement from the Fund. The IEPA denied reimbursement and the Board upheld the IEPA.

In the appeal Harlem maintained that the release from the pump nozzle was a release from a UST within the meaning of the statute. In summary, Harlem argued that the statute should be construed broadly to effectuate its remedial purposes. The Board argued in opposition, stating that the statute has a narrow purpose, which is to eliminate damage caused by leaking from USTs.

The Court affirmed that the Board's interpretation was consistent with the purpose of the statute. The Court stated that a spill from a pump is not a spill from a UST and that the purpose of the Fund was to alleviate environmental damage from USTs. The Court further distinguished USTs from pumps and nozzles by stating that owners had control over pumps and nozzles and that it was reasonable to burden owners with their cleanup. On the other hand, owners have little control over a UST once it is in the ground.

Non-Published Orders and Summary Orders

The Illinois Supreme Court issued two Orders concerning the publication of appellate court opinions. MR10343 sets limits on the number of opinions an appellate district may publish annually and sets page limitations for those opinions. Additionally, MR10343 states that the executive committee of the First District in conjunction with the presiding justices of other districts would establish procedures to determine which cases will be filed as opinions and orders under Supreme Court Rule 23. MR3140 amends Supreme Court Rule 23 by allowing a case to be disposed of by opinion only if it establishes a new rule of law, explains a current rule of law, or resolves, creates or avoids apparent conflicts of authority within the court. In light of the fact that fewer opinions are being published because of these new Orders, the Board has included some non-published decisions which the Board felt were significant in this summary section.

Environmental Control Systems Inc. v. The Pollution Control Board, Madison County Conservation Alliance, Richard Worthen, Clarence Bohm, Harry Parker, George Arnold, Clinton Aufderheide, Mary Aufderheide, William Dorris, and Mary Dorris, No. 5-91-0328 (5th Dist., June 29, 1995)

This case is an appeal of a Board decision vacating siting approval granted by the Madison County Board. This appeal centered upon the issue of jurisdiction of the appellate court to hear the appeal.

The Board vacated the County Board's siting approval in PCB 90-239 and it was appealed to the appellate court. In the original appeal for review, Environmental Control Systems (ECS) named only the Board and the Madison County Conservation Alliance. The Board then moved for dismissal for failure to name the County Board as a respondent. More than eight months after the final Board order was entered, ECS filed a motion to add the County Board as a party. In its order, the Court focused on whether the failure to name the County Board as a respondent deprived it of jurisdiction under Supreme Court Rule 335. 134 Ill. 2d R. 335.

The Court based the majority of its ruling on **Lockett v. Chicago Police Board,** 133 Ill. 2d 349, 549 N.E.2d 1266 (1990). In doing so, the Court held that the requirement to name the County Board as a party is mandatory. (See Section 40.1 and 41 of the Act and 134 Ill. 2d R. 335(a).) Thus in order to find that the Court has jurisdiction over the appeal, there must have been a good faith effort by ECS to properly name the "agency and all other parties of record as respondents."

In this case, the Court found that ECS did not make a good faith effort to comply with the requirement that the County Board be named as a party. The Court held that the failure to name the County Board as a respondent, the failure to seek leave to add the County Board until more than eight months after the issuance of the final Board order, and the fact that the motion to add the County Board was not filed until after the Board filed its motion to dismiss for lack of jurisdiction all contributed as factors which showed a lack of good faith effort.

Citizens Opposed to Additional Landfills v. The Illinois Pollution Control Board and Laidlaw Waste Systems Inc., and the Perry County Board of Commissioners, No. 5-93-0282 (5th Dist., April 3, 1995)

On review of this proceeding, the appellate court reversed the Board on jurisdictional grounds and remanded the case to the Board for further consideration. At issue was whether the Board properly found in PCB 92-131 that Laidlaw served the property owners with notice of the request for siting approval, whether adjacent property owners were timely served, and whether the Board's decision that the site was located outside the 100-year flood plain was against the manifest weight of the evidence.

Section 39.2(b) of the Act requires that the siting applicant serve notice upon owners of property within the subject area not solely owned by the applicant and on owners within 250 feet of the lot line of the subject property. Additionally, this Section provides that the owners are the people or entities which appear from the authentic tax records in the County where the facility is to be located. In this case, Laidlaw sent out notice to owners of property within 400 feet in each direction informing owners of Laidlaw's intent to file an application for local siting.

After the County Board granted Laidlaw approval for siting, a petition for review of that decision was filed with the Board. At that time, jurisdictional issues were raised. The opponents argued that Matilda Poiter, a landowner within 250 feet of the site was not served with notice of the application and that another landowner, William Walker, did not receive notice at least 14 days prior to the filing of the application. At hearing before the Board, Poiter testified that she did not receive notice. Additionally, two real estate tax bills were entered concerning the land in issue.

Laidlaw in its brief argued that it served notice on all property owners listed in the authentic tax records of the Perry County Supervisor of Assessments. In their reply brief, the opponents stated that Ms. Poiter's interest could have been ascertained from the Supervisor of Assessments of Perry County and they attached copies of the property index cards. Additionally, they attached affidavits from Ms. Poiter stating that she had paid taxes on the property for 19 years. Laidlaw filed a motion to strike the exhibits arguing that because they were not introduced at hearing they were beyond the scope of review.

The Board found that the allegation of improper notice was unsubstantiated based on the evidence before it. Additionally, the Board held that even considering the evidence in the briefs, there was sufficient evidence to prove that Ms. Poiter appeared in the supervisor of assessment's records.

Next, Mr. Walker testified that he owns property near the site and did not receive notice until 13 days before the application was filed. Laidlaw argued that he was not entitled to notice since he was not listed as a property owner with the supervisor of assessments and did not own property within 250 feet of the proposed site. The Board found that the opponents failed to establish that Mr. Walker owned property within 250 feet of the site. Additionally, the Board found that the opponents failed to prove that Mr. Walker appeared on the authentic tax records relied on by Laidlaw in serving notice.

The Court held that the Board erred in relying on the assertions in Laidlaw's briefs that it utilized the records in the Perry County Supervisor of Assessments' office to determine whom notice should be sent to. Laidlaw presented no evidence at hearing that it did this, and before the County Board simply stated that it ascertained the owners from the authentic tax records of Perry County. Additionally, the Court stated that because the opponents in their brief were trying to rebut Laidlaw's assertions which were unsubstantiated by the record, the evidence should have been considered and the Board erred by granting Laidlaw's motion to strike.

Additionally, the Court ruled that the Board erred by accepting Laidlaw's contention that the Supervisor of Assessments' records were the authentic tax records of Perry County since no evidence was offered to prove this assertion. Therefore, the Court reversed and remanded the decision to the Board to allow the Board to hear evidence concerning what are the authentic tax records of Perry County.

The Court also remanded to the Board the question of whether Perry County lacked jurisdiction over Laidlaw's application since notice was received after 14 days before the filing of the application. The Court left it for the Board to determine whether the statute requires receipt within 14 days or only that notice be sent within 14 days of the filing of the application.

Marathon Oil Company v. The Illinois Environmental Protection Agency and the Illinois Pollution Control Board, No. 5-94-0295 (5th Dist., March 9, 1995)

In this case, Marathon Oil appealed from a Board order (PCB 92-166) finding in favor of Marathon on certain issues and remanding other issues to the IEPA. At issue were the terms and conditions of a NPDES permit issued by the IEPA.

The Court in this case dismissed the appeal for lack of jurisdiction finding that the Board's order was interlocutory. The Court found that because the Board remanded the case to the IEPA to determine certain values in the mixing/dilution, that the IEPA was performing more than just a ministerial act, such as issuing or not issuing a permit. Thus, because the Board retained jurisdiction, the case was not properly before the appellate court.

Illinois Environmental Protection Agency v. The Illinois Pollution Control Board and Permatreat of Illinois, No. 5-94-0237 (5th Dist., March 9, 1995)

In this case, the Fifth District affirmed the Board's decision (PCB 93-159) which struck certain conditions imposed by the IEPA in a final-closure permit for a hazardous waste pile.

Illinois Landfills Inc. v. The Illinois Pollution Control Board, No. 4-94-0041 (4th Dist., December 14, 1994)

In this siting approval case the City of Hoopeston granted Illinois Landfill Inc. (ILI) siting approval for an expansion of its regional pollution control facility. The decision was then appealed to the Board (PCB 93-106). The respondents, several citizens, and a local hospital challenged the siting on the basis that the City's findings as to five of the statutory criteria were improper, that the record was devoid of evidence on one of the criterion, that the City did not have proper jurisdiction to make a decision, and that the hearing before the City was fundamentally unfair.

The Board in its decision reversed the City, finding that the City had not properly addressed the first criterion in Section 39.2(a)(i) of the Act. The City did not find the expansion necessary to accommodate the waste needs of the 31-county area it intended to serve but instead had found it necessary to serve the waste needs of the Hoopeston and Vermillion County area. The Board then upheld the City's finding on the remaining statutory criteria, found the City had jurisdiction, and found the hearing to be fundamentally fair. The Board did not remand the case to the City for a finding as to whether the facility was necessary.

The appellate court reversed the Board and remanded the case to the City for a complete finding on the need for the proposed facility. With regard to criterion one, the Board found that the City's decision was incomplete and did not comport with the requirements of the statute. The appellate court held that the Board was correct in finding that the statute requires local siting authorities to find need with reference to the entire intended service area of a proposed facility. However, the Court was careful to explain that "entire" must be interpreted to mean area as a whole. Thus if a portion of the intended service area did not need the facility but as a whole the intended service area was in need of the facility, the criterion would be satisfied.

In holding that a remand was proper, the Court stated that when the Board finds a local authority did not comply with the statutory requirements, the case should be remanded. In doing so, the Board will prevent local authorities from failing to reach a decision on a criterion in the hopes that it would be deemed a failure to act and local siting would be approved.

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