

**REGULATORY  
DEVELOPMENT AND THE  
BOARD'S ROLE AMID  
EVOLVING FEDERAL AND  
STATE PRIORITIES**

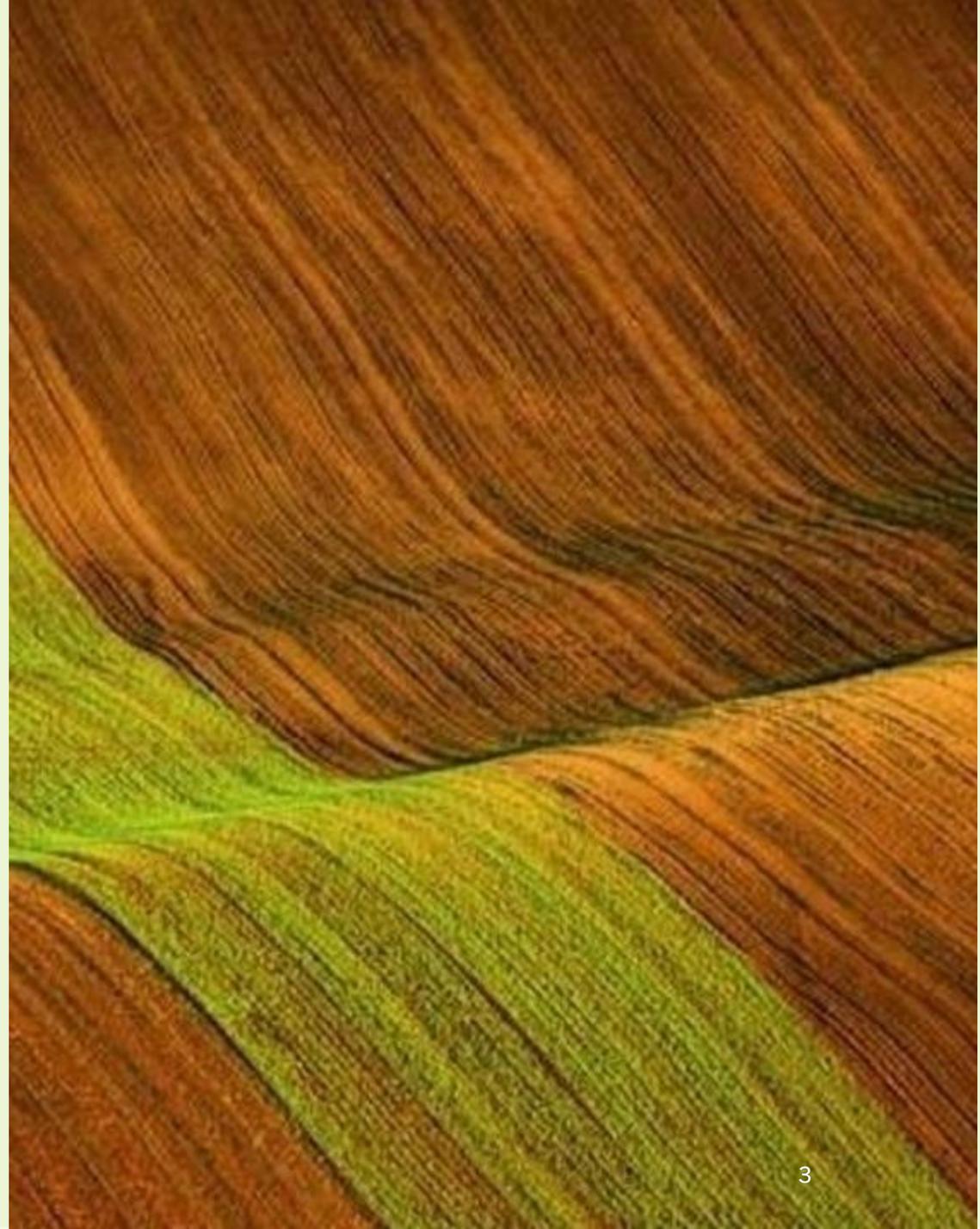
**ILLINOIS POLLUTION CONTROL  
BOARD MEMBER  
JENNIFER A. VAN WIE**



# AGENDA

- Structure of the Board and Staff
- Rulemaking Process Before the Board
- New Source Review – Part 203
- Navigating the changing federal environmental landscape
- Other regulatory updates

# **STRUCTURE OF THE BOARD AND STAFF**



# STRUCTURE OF THE BOARD

## 5 BOARD MEMBERS

- Appointed by Governor
- Confirmed by Senate
- 3-year terms, can be reappointed
- Bipartisan
- Each Member has **verifiable technical, academic, or actual experience** in the field of **pollution control or environmental law and regulation**



## CURRENT BOARD MEMBERS

- CHAIR BARBARA FLYNN CURRIE
- BOARD MEMBER JENNIFER A. VAN WIE
- BOARD MEMBER MICHAEL MANKOWSKI
- BOARD MEMBER MICHELLE GIBSON
- BOARD MEMBER ANGELA TIN



# **STRUCTURE OF BOARD STAFF**



# BOARD STAFF

- **General Counsel**

- Marie Tipsord

- **Staff Attorneys (6)**

- Research & Writing, Hearing Officers, and Legislative Liaison

- **Attorney Advisors (5)**

- Assist Board Members

- **Technical Unit**

- Anand Rao – Chief Environmental Scientist
  - Essence Brown – Environmental Scientist

- **Administrative Staff (6)**

- Board Clerk, Fiscal, IT, and Administrative Support Staff

**BOARD  
FUNCTIONS**

**QUASI-  
LEGISLATIVE  
(RULEMAKING)  
and  
QUASI-JUDICIAL  
(ADJUDICATIONS)**

A landscape photograph of rolling hills. In the foreground, there is a field of tall, green grass. A dirt path winds through the middle ground, leading towards a field of golden-brown crops. The background shows more rolling hills under a cloudy, overcast sky. The overall tone is somewhat somber due to the grey clouds.

# QUASI-LEGISLATIVE (RULEMAKING)



# WHAT IS A RULEMAKING?

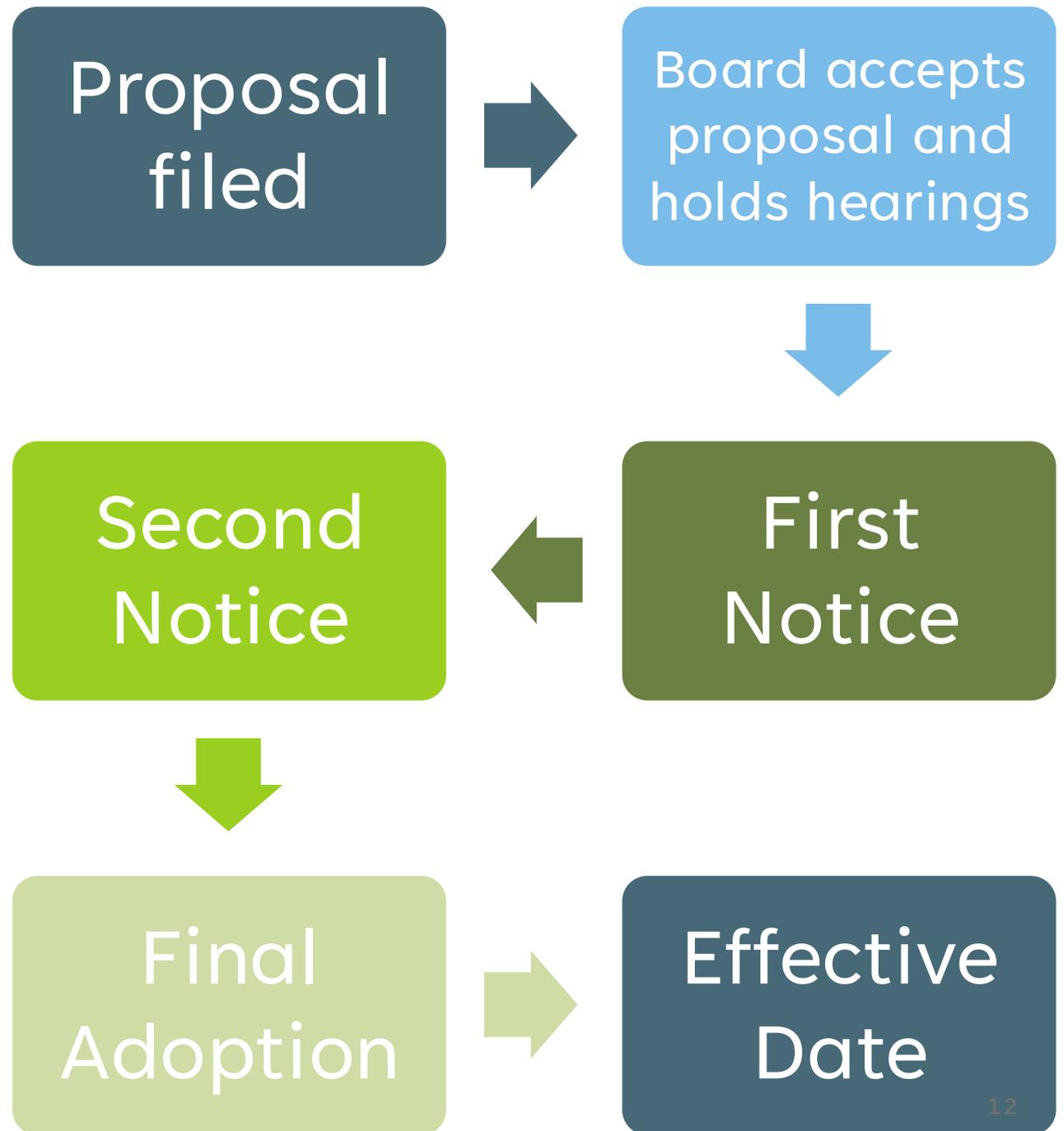
- How the Board adopts, amends, or repeals environmental regulations.
- The Illinois Environmental Protection Act (the “Act”) – 415 ILCS 5/26-29
- The Illinois Administrative Code (the “Rules”) – 35 Ill. Adm. Code Part 102
- The Illinois Administrative Procedure Act – 5 ILCS 100/5-5, et seq.

## WHO CAN PROPOSE RULES?

- The Board: in reaction to State or federal laws
- The Illinois Environmental Protection Agency: may be directed by legislation
- Individuals, associations, citizen groups, units of local government, and companies



# PROCESS FOR A GENERAL RULEMAKING





# HEARINGS

A rulemaking of state-wide applicability must receive two hearings, to be held in different parts of the State.

- 415 ILCS 5/28(a)
- 35 Ill. Adm. Code 102.416(a)(2)

# FIRST NOTICE



- Board can make revisions, then issue opinion and order adopting the regulation
- Publication in the *Illinois Register*
- Publication begins 45-day-minimum public comment period
  - 35 Ill. Adm. Code 102.604
  - 5 ILCS 100/5-40

## SECOND NOTICE



- Board can make revisions, then issue opinion and order adopting the regulation
- The second-notice period lasts 45 days
- During this time, the Joint Committee on Administrative Rules (JCAR) reviews the rules
- No further substantive changes may be made
  - 35 Ill. Adm. Code 102.606
  - 5 ILCS 100/5-40

# POSSIBLE ACTIONS BY JCAR

- **Certificate of No Objection**
  - the Agency can adopt with no changes
- **Objection**
  - Requires Agency response within 90 days
  - An Agency can modify, withdraw, or adopt rules (even over objection)
- **Recommendation**
  - Requires Agency response within 30 days
  - An Agency can modify or withdraw, refuse, or follow recommendation
- **Filing Prohibition**
  - JCAR determines that rule constitutes a threat to the public interest, safety or welfare
  - Rule cannot be accepted by the SOS unless modified

# POSSIBLE ACTIONS BY JCAR

## Certificate of No Objection

- Agency can adopt with no changes

## Objection

- Requires Agency response within 90 days
- An Agency can modify, withdraw, or adopt rules (even over objection)

## Recommendation

- Requires Agency response within 30 days
- An Agency can modify or withdraw, refuse, or follow recommendation

## Filing Prohibition

- JCAR determines that rule constitutes a threat to the public interest, safety or welfare
- Rule cannot be accepted by the SOS unless modified

# FINAL ADOPTION

- Board can issue an opinion and order
- Board files the regulation with the Secretary of State
- **Regulation is effective upon filing unless specified otherwise**
- Publication in the *Illinois Register*
  - 35 Ill. Adm. Code 102.608
  - 5 ILCS 100/5-40



IS THIS HOW ALL RULES  
ARE ADOPTED?

**NO**

○ **IDENTICAL-IN-SUBSTANCE**

- 415 ILCS 5/7.2, 13.3, 28.2, 28.4
- No hearings are held

○ **FEDERALLY REQUIRED**

- 415 ILCS 5/28.2
- Any objections must be filed within 21 days after accepts for hearing order

○ **CLEAN AIR ACT FAST-TRACK**

- 415 ILCS 5/28.5; 35 Ill. Adm. Code 102.300 *et seq.*
- Generally, must be completed within 180 days

## STATUTORY DEADLINE RULES

- The IEPA may file rules that have a deadline mandated by statute
- Deadline may be a date certain
  - Clean construction or demolition debris (R06-19)
  - Public Act 94-272 requires the Board to adopt rules no later than September 1, 2006.
- Deadline may also be a certain number of days
  - Community right-to-know (R06-23)
  - Public Act 94-314 requires the Board to adopt rules within 240 days of the effective date of P.A. 94-314, or no later than September 17, 2006.



# PARTICIPATION IN FAST-TRACK RULES

- The Board must file the rule for first notice within 14 days of filing
- First hearing must be within 55 days of filing and confined to the IEPA and its witnesses
- Within 7 days after the first hearing, any person may request a second hearing
- A second hearing must begin within 30 days of the first hearing
- A third hearing must begin within 14 days of the second hearing
- Recent fast-track rulemaking – R 23-18 (rulemaking involving startup, shutdown and malfunction or “SSM” events)



# ***EX PARTE COMMUNICATIONS***

- This is where the Board rulemaking process differs from the General Assembly legislative process
- Board Members MAY NOT BE LOBBIED
- **ANY *EX PARTE* COMMUNICATIONS MUST BE MADE PART OF THE RECORD**
  - 35 Ill. Adm. Code 101.202
  - 35 Ill. Adm. Code 101.114(c)

**PUBLIC PARTICIPATION**

**HOW TO INFLUENCE A  
RULEMAKING**

**WHAT CAN  
YOU  
INFLUENCE?**

- Minimum Time to Complete
- Record of Proceeding
- Board's Decision



## LEVELS OF PARTICIPATION

- Monitor
- Notice List
- Service List
- Proponent



# TIPS FOR SUCCESSFUL ADVOCACY

1. Get involved early
2. File public comment and provide support for position
  - a. Serve everyone on the service list
3. Appear at hearing and be available for questioning
  - a. Prefile testimony
4. Suggest rule language
5. Don't forget to consider economic impact and technical feasibility<sup>26</sup>



**NEW SOURCE REVIEW  
PART 203 RULEMAKING  
R 22-17**

## BACKGROUND OF PART 203 RULEMAKING (R 22-17)

- On April 17, 2025, the Board adopted amendments to its air pollution regulations under Parts 203, 204, and 232 that address Major Stationary Sources Construction and Modification, Prevention of Significant Deterioration (PSD), and Toxic Air Contaminants.
- The amendments, which generally address the Board's Non-Attainment New Source Review (NA NSR) regulations, are intended to make the rules consistent and current with the Clean Air Act (CAA) and the underlying NA NSR program.
- **IERG initially proposed the amendments in 2021.**

## BACKGROUND OF PART 203 RULEMAKING (R 22-17)

- The NA NSR program authorizes construction or modification of air pollution-emitting facilities located in nonattainment areas. A nonattainment area is designated by the United States Environmental Protection Agency (USEPA) when the air quality fails to meet federal National Ambient Air Quality Standards (NAAQS). IEPA implements the NA NSR program in Illinois under 35 Ill. Adm. Code Part 203. **NA NSR requirements only apply to the pollutants for which the area had been designated as non-attainment.**
- The requirements for major stationary sources in nonattainment areas authorize the proposed construction or modification if it complies with the control technology requirements, reduces emissions from existing sources to protect air quality in the area, is constructed or modified in a manner consistent with existing regulations, and provides the public opportunity to comment before the issuance of the final permit. For facilities not located in non-attainment areas, the NA NSR program regulates construction or modification of the facility that would contribute to a NAAQS violation.

A landscape photograph showing rolling hills. In the foreground, there is a field of tall, green grass. A path or road winds through the middle ground, leading towards a golden field. The sky is overcast with grey clouds. The text "CHANGES TO PART 203" is overlaid in the center of the image.

# CHANGES TO PART 203

## ***PART 203***

- The bulk of amendments are in Part 203 to ensure it is consistent with the CAA and related federal regulations. Significantly, Part 203 had not been amended since 1998.
- **With the amendments, sources and enforcing authorities will transition from using Subparts A through H to using Subparts I through R. [This transition is effective as of the date the Board adopted the rules, but it will not actually apply until IEPA receives full approval from USEPA for the amendments as a revision to the Illinois SIP.](#)**
- **Any sources that are subject to Subparts A through H before Subparts I through R apply (i.e. begin or may begin construction before SIP approval) will continue to be subject Subparts A through H.**

MAJOR  
CHANGES TO  
PART 203  
INCLUDE:  
  
PLANTWIDE  
APPLICABILITY  
LIMITATIONS  
(PAL)

**PAL** - From a 2002 USEPA rule.  
67 FR 80186.

A PAL restricts all emissions of a particular regulated NSR pollutant from a subject source. If the source's actual emissions of the pollutant after a proposed project will remain below the applicable PAL, the project is not a major modification.

# PROJECT EMISSIONS ACCOUNTING (PEA RULE)

**PEA Rule** (also in Part 204), from a 2020 USEPA amendment.  
85 FR 74890.

This rule clarifies that both increases and decreases in emissions resulting from a proposed project are considered in determining whether the proposed project would result in a significant emissions increase. The significant emissions increase is “Step 1” of the major modification applicability test. Therefore, the PEA Rule affects when sources and their projects will be subject to NSR review.

# PROJECT EMISSIONS ACCOUNTING (PEA RULE)

## PEA Rule

USEPA under the first Trump administration finalized the PEA Rule. Under the Biden administration, it issued a proposed rule to “improve implementation and strengthen enforceability of the NSR program provisions” in the PEA Rule. Biden wanted a review of environmental actions and policies implemented under Trump, so this proposal was meant to address concerns raised by the PEA Rule. (i.e. to correct what he believed were bad/harmful decisions by Trump).

The proposed rule was pending during R22-17, and AGO asked for a stay while the federal process played out. The Board denied the stay. By the time R22-17 went to second notice, the second Trump administration was in office, so it seemed likely that Biden’s proposed rule wouldn’t go anywhere.

**That assumption was correct – Zeldin withdrew the proposal on 7/21/25.** The FR (FR Doc. 2025-13598) provides a solid summary of the PEA Rule, the proposed Biden revisions, and reasons for withdrawal, if you wanted more details.



# OTHER AMENDED PARTS

- **Added PM2.5 and its precursors to the definition of “major stationary source.”**
  - Sets applicability thresholds for each level of nonattainment.
  - Incorporates revisions to the federal rules from 2008 (73 Fed. Reg. 2831) and later.
- **In 2024, USEPA also revised the PM2.5 primary annual NAAQS (89 Fed. Reg. 16202), reducing it from 12 µg/m<sup>3</sup> to 9 µg/m<sup>3</sup>.** This change may result in PM2.5 nonattainment designations in Illinois, particularly for the Chicago and Metro East areas.



**OTHER  
AMENDED  
PARTS**

Amendments to Parts 201, 202, 204, and 232 mainly ensure consistency and proper cross-references with Part 203 revisions.



## CURRENT STATUS

- IEPA has submitted the State Implementation Plan (SIP) revisions to USEPA for approval. Federal review is pending.
- USEPA Director Zeldin has stated repeatedly that he intends to reduce the SIP approval backlog.

# NAVIGATING THE CHANGING FEDERAL ENVIRONMENTAL LANDSCAPE



- Federal statutes and regulations set floor for environmental compliance. States can do more.
- Identical-in-substance regulations
- Attorney General and Illinois EPA are front lines in responding to direct federal actions aimed at environmental rollbacks, along with the General Assembly.
- Board has authority to initiate rulemaking on its own but rarely used.

# NAVIGATING THE CHANGING FEDERAL ENVIRONMENTAL LANDSCAPE



## TWO ADDITIONAL TAKEAWAYS FROM WHAT IS GOING ON WITH THE PEA RULE:

- (1) The impact on affected sources.** What rules are they supposed to follow? Certain categories of federal rules seem to change based on the political party in power, which means the state rules could suddenly change as well. Do sources truly have any predictability or consistency? Has this always been an issue, or is it more pronounced in recent years?
- (2) The Board's role on this rollercoaster.** How does the Board approach stay requests (R22-17), motions to dismiss (R24-17), and similar requests? At the federal level, there could be ongoing litigation (Clean Cars and Trucks Proposal), abeyances, proposed rules, ominous statements but no action yet (coal ash rules) – all while the Board needs to ensure Illinois rules are consistent with federal rules. In the case of NSR, IEPA pushes for state rules to follow the federal blueprint almost verbatim to ensure SIP approval (terrible grammar and all).

# OTHER AIR REGULATORY UPDATES

Name	Docket No.	Status	Board Member(s)
Amendments to 35 IAC Subtitle B	R 18-25	Order expected	Mankowski
Proposed Clean Car and Truck Standards	PCB 24-17	Post-hearing comments	Chair Currie, Van Wie
NAAQS, USEPA Regs (July 1, 2024 thru Dec. 31, 2024)	R 25-15	IIS	Currie
Amendments to 35 IAC 219, Organic Material Emission Standards for the Metro East Area	R 25-25	Two hearings scheduled and pre-hearing testimony expected to be filed.	Mankowski

**THANK YOU**

Jennifer Van Wie

Board Member, IPCB

[Pcb.Illinois.gov](http://Pcb.Illinois.gov)

