Air & Waste Management Association
Lake Michigan States Section
May 2014 Newsletter®

Make sure to mark your calendars for these upcoming A&WMA Lake Michigan States Section Events:

May 15, 2014
Annual Waste Conference
Sustainable Waste Management
Hyatt Lodge at McDonald's Campus
Oak Brook

May 20, 2014
Monthly Breakfast Meeting
U.S. Army Corps of Engineers Regulatory Mission
Andrew Blackburn, Professional Wetlands Scientist and ***Mike Machalek, Sr.*** Enforcement Officer - Chicago District
Union League Club
Chicago

June 5, 2014
5-7 p.m.
Networking Reception
Pegasus Restaurant
Greek Town
Chicago

November 12, 2014
Annual Air Conference
Drury Lane Conference Center

Thursday, May 15, 2014

2014 Annual Waste Conference:

SUSTAINABLE WASTE MANAGEMENT

8:00 a.m. - 4:45 p.m.

Hyatt Lodge at McDonald's Campus

Our full day seminar looks at solutions to waste management challenges and how sustainable approaches help define waste minimization solutions. Attending the conference will provide attendees with the latest information concerning waste management issues, including presentations that will address:

- Regulatory updates from representatives of the Illinois, Indiana, Ohio and Wisconsin environmental protection agencies.
- Waste reduction strategies pursued by industry.
- The growing trend towards recycling/reuse and the avoidance of landfill disposal (sustainable waste management).
- Legal matters facing the waste management industry.

Additionally, the conference will include keynote addresses by ***Lisa Bonnett*** (Illinois Environmental Protection Agency), ***William Hoffman III Ph.D.*** (UL Environment, Inc.) and ***Deborah Stone*** (Cook County Department of Environmental Control).

A&WMA-LMSS's conference is designed for everyone in the waste industry with a special emphasis on regulatory matters and how to implement innovative solutions and proven methodologies for working with waste. Prominent leaders from government, industry, legal and consulting will provide attendees with information and insights on a wide range of waste topics while attendees will have an opportunity to network and meet with other professionals who share similar interests.

A networking reception for attendees, A&WMA members and guests will be held immediately following the conference.

Companies that supply products and services for environmental management will have exhibits on display at the conference. For information on exhibiting contact Mark Pawlicki at (630) 559-5342 or paws.99@hotmail.com

Full conference agenda and registration is available on our website at:
www.LMAWMA.org

Rulemaking Update - Illinois Hydraulic Fracturing Regulatory Act

By: ***Lawrence L. Fieber, PG***

Background

Conventional oil production has been an important part of Illinois' economy since 1906, when oil production first exceeded 4,000,000 barrels (BBL) per year. Before 1937, most oil wells were drilled vertically into shallow oil bearing horizons. By 1938, technological advances enabled drilling vertical wells to deeper horizons and Illinois oil production quickly peaked at 147,647,000 BBL per year in 1940. Oil production generally declined in Illinois until about 1954 when another technological advancement– hydraulic fracturing – increased production. Except for the price driven exploration in the early 1980s, Illinois oil production has steadily declined since 1956. Oil production in Illinois for the 12 month period ending August 2013 was 9,578,200 BBL from an estimated 15,307 "active" wells for an average of 1.7 BBL per day.

Important technological advancements occurred in the U.S. in the 1990s when exploration companies began to drill horizontal wells into oil source rocks in Texas (Barnett Shale) and used various hydraulic fracturing techniques to make these wells economical to produce. The approach of producing oil from source rocks using these new technological advancements is called "Unconventional" and since about 2000, the U.S. has experienced a sharp increase in oil (and gas) production from "shale" oil, which is a direct result of these unconventional methods of horizontal drilling and hydraulic fracturing of oil productive rocks. The U.S. Energy Information Administration's *Annual Energy Outlook 2014 - Early Release Overview* (AEO2014) summarizes the significant economic impacts of shale oil and gas, as follows:

> *"Growing domestic production of natural gas and crude oil continues to reshape the U.S. energy economy, with crude oil production approaching the historical high achieved in 1970 of 9.6 million barrels per day. Ongoing improvements in advanced technologies for crude oil and natural gas production continue to lift domestic supply and reshape the U.S. energy economy. Domestic production of crude oil (including lease condensate) increases sharply in the AEO2014 Reference case, with annual growth averaging 0.8 million barrels per day (MMbbl/d) through 2016…" and "Low natural gas prices boost natural gas-intensive industries."*

On one hand, shale oil and gas production enabled by horizontal drilling and hydraulic fracturing of source rocks has reduced oil imports, lowered natural gas prices, and boosted the U.S. economy. On the other hand, these new hydraulic fracturing methods are large scale operations and have received extensive environmental scrutiny. This scrutiny has spurred many studies of the environmental impacts of high volume hydraulic fracturing and new state and federal regulations governing hydraulic fracturing – including regulations currently being promulgated in Illinois.

Why Does Illinois Need Hydraulic Fracturing Regulations?

Oil production is important to the Illinois economy. Although hydraulic fracturing of conventional oil wells is an ordinary practice in Illinois and regulations exist to govern these operations, high volume horizontal hydraulic fracturing (HVHHF) is a much larger scale operation and presents new challenges and risks. Oil producers are spending lots of time and money leasing up land here and want to begin high volume horizontal hydraulic fracturing of several prospects in Illinois. If shale oil is successful in Illinois, it could add 45,000[1] well-paying

[1] Jobs information is from Rep. Jim Durkin, during his Chemical Industry Council of Illinois luncheon speech on December 12, 2013 in DesPlaines, Illinois.

Rulemaking Update - Illinois Hydraulic Fracturing Regulatory Act (con't.)

jobs to our economy. Legislators hope to enable shale oil development while addressing key concerns about HVHHF operations. The key concerns typically include:

1. Public safety,
2. Oil field worker safety,
3. Environmental impacts,
4. Stresses on natural and cultural resources, and,
5. Stresses on physical infrastructure.

Illinois Hydraulic Fracturing Regulatory Act and the recently Illinois Department of Natural Resources (Illinois DNR) proposed regulations aim to address each of these key concerns.

Hydraulic Fracturing Regulatory Act Rulemaking Update

The Hydraulic Fracturing Regulatory Act (the "Act") was signed into law on June 17, 2013 and was heralded by many politicians and hydraulic fracturing regulatory observers as one of the most stringent and comprehensive regulations governing hydraulic fracturing in the U.S. On November 15, 2013, the Illinois DNR proposed regulations to implement the Hydraulic Fracturing Regulatory Act and invited public comment on the proposed rules. The public submitted thousands of comments to Illinois DNR during the public comment period. Illinois DNR is reviewing the public comments and has not established a target date for publication of the final rules[2].

Summary of the Proposed Rules

Given the uncertainty concerning the timing and form of the final rules, this article only addresses the major themes of the Illinois DNR rulemaking as proposed.

The proposed regulation adds important definitions that are well known to the oil industry and others that relate to the new environmental provisions of the Hydraulic Fracturing Regulatory Act. The key definition guiding the applicability of the rule is presented below:

> ***High volume horizontal hydraulic fracturing operations*** - means all stages of a stimulation treatment of a horizontal well by the pressurized application of more than 80,000 gallons in any single stage or more than 300,000 gallons in total of hydraulic fracturing fluid to initiate or propagate fractures in a geologic formation to enhance extraction or production of oil or gas.

The bottom line - if your business involves high volume horizontal hydraulic fracturing operations, this rule will significantly impact your business.

Contact Lawrence L. Fieber at lfieber@burnsmcd.com

[2] Per Mitch Cohen of Illinois DNR during his March 7, 2014 comments at the Illinois Oil and Gas Association in Evansville, IN.

Rulemaking Update - Illinois Hydraulic Fracturing Regulatory Act (con't.)

Other important definitions in the Hydraulic Fracturing Regulatory Act are listed below, but are not discussed in this article.

Table 1
Abbreviated List of New Terms Defined in
Illinois Hydraulic Fracturing Regulatory Act

Aquatic life	Hydraulic fracturing additive	Produced water
Aquifer	Hydraulic fracturing flowback	Proppant
Base fluid	Hydraulic fracturing fluid	Recycled water
Flare	Hydraulic fracturing string	Release
Flowback period	Nature preserve	Surface water
Fresh water	Oil	Water pollution
Gas	Ordinary high water mark	Water source
Groundwater	Perennial stream	Wildlife
Horizontal well	Pollution or diminution	

The permitting, planning, and environmental provisions of the Hydraulic Fracturing Regulatory Act and proposed rule are summarized below.

Permit Application Requirements – the proposed rule would create a rigorous permitting standard for HVHHF operations and would allow stakeholder involvement.

Permit-Related Planning Requirements – the proposed rule would require permit applicants to present plans to conduct the operations at the HVHHF site. The list of planning documents is extensive and is shown below along with primary stakeholders:

Plan	Primary Stakeholders
Well Site Set Back Plan	Property owners, neighbors, and other permittees
Direction Drilling Plan	Property owners, other permittees, and Illinois DNR
High Volume Horizontal Hydraulic Fracturing Operations Plan	Property owners, other permittees, and Illinois DNR
Water Source Management Plan	Water providers and general public
Hydraulic Fracturing Fluids and Flowback Plan	Property owners, neighbors, and other permittees
Well Site Safety Plan	Well site workers and general public
Casing and Cementing Plan	Other permittees and Illinois DNR
Traffic Management Plan	Illinois Department of Transportation, county highway authority, and/or road district.
Plugging and Restoration Plan	Property owners, other permittees, and Illinois DNR
Topsoil Preservation Plan	Illinois DNR and property owners
Fugitive Dust Control Plan	Illinois EPA, property owners, neighbors, other permittees, and well site personnel
Water Quality Monitoring Plan	Illinois EPA, Illinois DNR, property owners and neighbors

Rulemaking Update - Illinois Hydraulic Fracturing Regulatory Act (con't.)

Permit-related Supporting Information Requirements – in addition to the planning obligations, the permit applicant must present scaled maps, cross-sections, contact information, self-disclosure of past violations or adjudications and compliance with the Water Use Act of 1983, and certification of permit application accuracy under penalty of perjury.

Water Quality Monitoring

Before a HVHHF operation can commence, the permittee must submit the results of a water quality monitoring baseline event of water resources within 1,500 feet of the well site. If the baseline water quality monitoring results show no detections of carcinogens (such as benzene) and no exceedences of 35-IAC-620 or 35-IAC-742 criteria, the baseline likely will be acceptable and will not alone prevent the HVHHF operation. Similar water quality monitoring is required at 6, 18, and 30 months after completion of the HVHHF operation.

Water Pollution Investigation and Rebuttable Presumption of Pollution or Diminution

Certain circumstances could trigger a pollution investigation by the Illinois EPA. It is presumed than any person conducting or has conducted HVHHF operations is liable for pollution of a water supply if, 1) the water source is within 1,500 feet of an HVHHF well site, 2) the baseline water quality data showed no pollution or diminution before HVHHF treatment, 3) pollution or diminution occurred during or no more than 30 months after HVHHF treatment operations, or 4) follow-up monitoring indicates pollution or diminution from at least one of the baseline analytical parameters.

Spills and Remediation

Any release of hydraulic fracturing fluid, hydraulic fracturing additive, hydraulic fracturing flowback, or produced water, used or generated during or after high volume horizontal hydraulic fracturing operation, shall be immediately cleaned up and remediated pursuant to requirements of the Illinois Oil and Gas Act and the administrative rules promulgated under the Act.

Air Emissions

Flowback

Permittees are required to control air emissions during HVHHF flowback periods so that those emissions are not released to the environment. In practice, flowback is commonly directed through tanks which will need to be equipped with emissions capture devices.

Production Phase

Permittees are also required to manage natural gas during the production phase.

Flares

Flares must have a reliable continuous ignition source over the duration of production and by July 1, 2015, all flares must operate with a combustion efficiency of at least 98% and be certified by the manufacturer of the device.

Storage Tanks

Uncontrolled emissions exceeding 6 tons per year from storage tanks containing natural gas or hydrocarbon fluids shall be recovered and routed to a flare.

Summary and Conclusion

Historically, oil production has been an important part of the economy of Illinois. The proposed rules provide a rigorous framework for oil producers to secure approval to implement the newest technologies in oil exploration – here in Illinois. Illinois DNR quickly drafted these proposed rules, however, based on extensive public comment, a date for final rule publication has not been established. Illinois Basin oil producers are eager to try these enhanced treatment methods in Illinois – once the rules are finalized. Initial success of shale oil production in Illinois may depend more on the permit application skill of oil producers than the availability of drillable prospects. This regulatory framework will significantly increase the cost, complexity, and time frame of oil well siting in Illinois.

FAIR WARNING OF FORBIDDEN CONDUCT OR REQUIREMENTS

A SUPREME COURT DIRECTIVE TO ADMINISTRATIVE BODIES

By: ***Kenneth Anspach***[1]

Industry subject to environmental regulation, whether from such agencies as the U.S. Environmental Protection Agency ("USEPA"), the Illinois Environmental Protection Agency ("IEPA") and other state and local agencies, boards and entities, often finds itself subject to ambiguous or superseded statutes, rules and regulations. As a result a company may find itself subject to enforcement actions for engaging in conduct it believed to be acceptable, but which the agency interprets as prohibited. Such enforcement may have a drastic impact on the company and the persons who manage its environmental affairs. Not only is an alleged wrongdoer potentially liable for civil penalties of $50,000 per violation and $10,000 per day of violation under, *e.g.,* the Illinois Environmental Protection Act, 415 ILCS 5/42, but the violator is also subject to criminal Class A misdemeanor prosecution pursuant to 415 ILCS 5/44 for any such violation. Given these potential civil and criminal penalties, the environmental director or engineer at that company and the environmental consultant it hires will need to know what activity is legal and what not. When that professional reads a proposed rule applicable to his or her industry, does that rule give him or her warning of the type of conduct that is prohibited? Is the rule fairly written? If not, can it be challenged? Does the government official charged with enforcing that rule fully understand the parameters of his or her authority?

The kind of clarity needed to answer these questions is now required as a result of the recent decision of the U.S. Supreme Court in *Christopher v. SmithKline Beecham Corporation ("Christopher")*, 132 S. Ct. 2156, 2167 (2012), which held that "agencies should provide regulated parties 'fair warning of the conduct [a regulation] prohibits or requires.'" This article examines the origin of this holding and how it applies to enforcement actions by the federal, state and local governments.

I. Deference to an Agency's Interpretation of its Own Ambiguous Regulations, Once a Hallmark of Administrative Law, is no Longer Allowed Where Such Interpretation is Unwarranted.

The notion that courts will defer to an agency's interpretation of its own ambiguous statutes, rules and regulations arose out of the case entitled *Auer v. Robbins ("Auer")*, 519 U.S. 452 (1997). There, police officers sought payment from the police commissioners' board for overtime. The issue before Court was whether the police officers were exempt from the overtime under the pertinent provisions of the Fair Labor Standards Act of 1938, 29 USCS § 201 *et seq.* (the "FLSA"). The Court held, *inter alia*, that the Secretary of Labor's salary basis test was not an unreasonable interpretation of the statutory exemption to the FLSA as it applied to public-sector employees. In so doing, it stated that, "Because Congress has not 'directly spoken to the precise question at issue,' we must sustain the Secretary's approach so long as it is 'based on a permissible construction of the statute.'" (Citations omitted.) *Auer*, 519 U.S. at 457.

This principle that courts would defer to the agency's approach to construction of its governing statute or its own regulations became known as "*Auer* deference." 132 S. Ct. at 2160. *Auer* deference has been applied in at least one environmental case, *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*, 129 S. Ct. 2458, 2469 (2009) where the Court deferred to USEPA's interpretation of whether mine slurry could be discharged into a lake as fill material under the Clean Water Act ("CWA"), § 404(a), 33 U.S.C. § 1344(a) and 40 CFR § 122.3). However, in *Christopher*, another FLSA case, *Auer* deference hit a major roadblock. There, plaintiff employees worked as pharmaceutical sales representatives for the employer, a

Continued on page 7

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prescription drug company. The employees' primary objective was to obtain a nonbinding commitment from physicians to prescribe particular drugs in appropriate cases. The Court determined that the employees were exempt from the FLSA's overtime compensation requirement because they qualified as outside salesmen under the Department of Labor's ("DOL") regulations, 29 U.S.C. §213(a)(1) . The Court found that the DOL's interpretation of the regulations, that a sale demanded a transfer of title, was not owed *Auer* deference, because the DOL never initiated any enforcement actions with respect to pharmaceutical detailers or otherwise suggested that it thought the industry was acting unlawfully.

In determining that the DOL's interpretation of its regulations was not entitled to *Auer* deference, the Court stated:

> Although *Auer* ordinarily calls for deference to an agency's interpretation of its own ambiguous regulation, even when that interpretation is advanced in a legal brief, *** this general rule does not apply in all cases. Deference is undoubtedly inappropriate, for example, when the agency's interpretation is "'plainly erroneous or inconsistent with the regulation.' "*** And deference is likewise unwarranted when there is reason to suspect that the agency's interpretation "does not reflect the agency's fair and considered judgment on the matter in question." *** This might occur when the agency's interpretation conflicts with a prior interpretation, *** or when it appears that the interpretation is nothing more than a "convenient litigating position," ***or a "'*post hoc* rationalizatio[n]' advanced by an agency seeking to defend past agency action against attack." *** (Citations omitted). *Christopher*, 132 S. Ct. at 2166-67.

After thusly distinguishing situations where *Auer* deference is inappropriate, the Court went on to set forth a legal principle that must govern administrative behavior in this context. Specifically, the Court stated:

> To defer to the agency's interpretation in this circumstance would seriously undermine *the principle that agencies should provide regulated parties "fair warning of the conduct [a regulation] prohibits or requires."* (Emphasis added.) *Gates & Fox Co. v. Occupational Safety and Health Review Comm'n*, 790 F.2d 154, 156, 252 U.S. App. D.C. 332 (CADC 1986) (Scalia, J.). *Christopher*, 132 S. Ct. at 2167.

Thus, the Court found that regulated parties are entitled to fair warning of the conduct a regulation prohibits or requires. Where, as here, the agency failed to provide "fair warning of the conduct a regulation prohibits or requires" the Court found the agency's "interpretation neither entitled to *Auer* deference nor persuasive in its own right" and simply refused to enforce it. *Christopher*, 132 S. Ct. at 2167.

II. The Requirement that Agencies Give Regulated Parties "Fair Warning of the Conduct a Regulation Prohibits or Requires" is Equally Applicable in both the Federal and State Administrative Context.

A. The Principle of "Fair Warning" is Grounded in the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution.

That agencies must provide "fair warning of the conduct a regulation prohibits or requires" is rooted in the due process clauses of the Fifth[2] and Fourteenth Amendments[3] to the U.S. Constitution. That was the

Continued on page 8

[2] USCS Const. Amend. 5: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation." (Emphasis added.)

[3] USCS Const. Amend. 14, § 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

finding in *Gates & Fox Co. v. Occupational Safety and Health Review Commission*, 790 F.2d 154, 156 (D.C. Cir. 1986), cited in *Christopher* at 132 S. Ct. at 2170, which stated, "Where the imposition of penal sanctions is at issue, however, *the due process clause* prevents that deference from validating the application of a regulation that fails to give fair warning of the conduct it prohibits or requires." (Emphasis added.)

Indeed, in the same term that the Court decided *Christopher*, it decided in *FCC v. Fox Television Stations, Inc. ("Fox")*, 132 S. Ct. 2307, 2317-18 (2012), that the due process clause of the Fifth Amendment precludes the Federal Communications Commission from punishing Fox for its broadcasting of "fleeting expletives," because the regulations did not give Fox "fair notice" that such conduct could subject it to punishment. *Fox*, 132 S. Ct. at 2317. The Court specified that:

> *A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required*. *** "[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law" ***…*This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment****** It requires the invalidation of laws that are impermissibly vague. A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *** (Citations omitted; emphasis added.) *Fox*, 132 S. Ct. at 2317.

That "fair warning" or "fair notice" is rooted in the principles of the U.S. Constitution, Fifth and Fourteenth Amendments renders the principle equally applicable to state and local agencies interpreting their own governing statutes, and their own rules and regulations.

B. Illinois is Inconsistent in its Application of "Fair Warning" and "Fair Notice" Principles.

The principle that government action must be preceded by "fair warning or "fair notice" is well-known at the state level. Thus, in Illinois, it is well settled that a statute is unconstitutionally vague and violates due process if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute or if there is an absence of standards restricting the discretion of governmental authorities who apply the law. *East St. Louis Federation Of Teachers, Local 1220, American Federation Of Teachers, AFL-CIO v. East St. Louis School District No. 189 Financial Oversight Panel*, 178 Ill. 2d 399, 425 (1997). The terms of a statute cannot be so ill defined that their meaning may be determined at whim rather than by objective criteria. *Id.* A statute's terms must serve as a guide to those who must comply with the statute. *Id.*

The Illinois Pollution Control Board (the "Board") is no stranger to the concept of "fair notice." In *EPA v. Rosenbalm*, PCB No. 71-299, 1973 Ill. ENV LEXIS 2 (January 16, 1973), in addressing pleadings that had been amended subsequent to the filing of the initial complaint to add new violations that allegedly occurred post-complaint, the Board stated:

> …[W]e caution the Agency and its representatives to avoid unfair, omnibus pleadings which either intend to sweep within its purview prospective violations which may occur subsequent to the filing of the complaint, or are so vague and indefinite as to fail to give the Respondent fair notice of the specific dates of alleged infractions of the law so as to enable him to properly prepare a defense.

On the other hand, the Board declined to apply the concept of "fair notice" in *People of the State of Illinois v. Sheridan-Joliet Land Development, LLC et al.*, PCB No. 13-19 and PCB No. 13-20.[4] There the State has

Continued on page 9

[4] The author of this article and presentation is counsel for respondents in each of these cases. Complete copies of the motions and briefs discussing the issues raised in these cases, including the positions taken by the State of Illinois with respect thereto, as well as the Board's August 8, 2013 Order denying respondents' Motion to Strike and Dismiss, can be found at www.ipcb.state.il.us.

sought to enforce amended and superseded regulations against the respondents, which respondents argued was being done without the type of "fair notice" that was the subject of *Christopher* and *Fox*. The State brought a Complaint against respondents that alleged violations of various purported provisions of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/1 *et seq*. and, specifically, 415 ILCS 5/22.51, entitled Clean Construction or Demolition Debris Fill Operations ("CCDD"). The Complaint alleged that these purported violations, in turn, stemmed from alleged violations of purported "Section 1100.205(a)(b)(c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(b)(c), [and (h)]." However, respondents asserted in a Motion to Strike and Dismiss that there was no "Section 1100.205(a)(b)(c) [and (h)] of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(b)(c) [and (h)]." That was so because, as the respondents argued, the Board CCDD Regulations had been amended as of August 27, 2012 and once the new rules became effective they supplanted and superseded the previous rules, including those under which these allegations of the Complaint were brought, purported §§ 1100.205(a)(b)(c) and (h) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(b)(c) and (h). Thus, when the Complaint, which was filed subsequent to August 27, 2012, sought to charge respondents with purported violations of Board CCDD Regulations, such Complaint, according to respondents, could only allege violations of regulations that actually appear "on the books." Yet, as respondents pointed out, it patently did not do so.

In its Order dated August 8, 2013 denying the Motion to Strike and Dismiss on this basis, at page 23, the Board disagreed with respondents' argument, stating:

> The Board also disagrees with respondents that the Agency and the Board had to give prior notice to the regulated community that the pre-amendment CCDD regulations would be enforceable. Reply Dis. (19) at 5; Reply Dis. (20) at 5. The relevant period is when the alleged violations occurred, not when respondents were sued for enforcement. At that time, the pre-amendment CCDD regulations were still in effect and "on the books."7 Respondents do not contend that the pre-amendment version of Section 1100.205 of the Board's CCDD regulations was ambiguous or that they did not understand it to apply to them at the time of the alleged violations. Moreover, respondents, like any citizen, are "presumptively charged with knowledge of the law." Atkins v. Parker, 472 U.S. 115, 130 (1985). Thus, at the relevant time, respondents, like any other entity regulated under the CCDD regulations, had "fair warning of the conduct" the CCDD rules then in effect required. Christopher v. SmithKline Beecham Corp., 132 S. Ct. 2156, 2167 (2012) (internal quotation marks omitted).

Thus, the Board ruled that the State was not precluded from enforcing regulations that had been subsequently amended and superseded, because, at the time of the alleged violation, respondents "had 'fair warning of the conduct' the CCDD rules then in effect required."

C. Michigan Recognizes the "Fair Warning" and "Fair Notice" Principles.

The State of Michigan views agency interpretation of statutes and regulations through the lens of "fair warning" and "fair notice." In *People v. Kircher*, 2008 Mich. App. LEXIS 1627, an unpublished opinion, the Court of Appeals of Michigan considered a constitutional challenge to defendant's conviction for a discharge of a substance into the waters of the state that endangered the public health, safety, and welfare contrary to the provisions of MCL 324.3109 in violation of MCL 324.3115(2) and MCL 324.3115(4). Defendant's convictions arose from the discharge of raw sewage into a catch basin or storm drain.

The court considered defendant's challenge to MCL 324.3109 on the grounds that it was "constitutionally void for vagueness." The court noted that "A statute may be unconstitutionally vague on any of three grounds" including whether "it fails to provide *fair notice* of the conduct proscribed." (Emphasis added.) In denying the constitutional challenge the court found as follows:

> [D]efendant's actions in discharging raw sewage into a state water body constituted a

Continued on page 10

> discharge of a substance that was or could be injurious to human health. The statute at issue is not void for vagueness when the meaning of the statute's terms as defined by the dictionary demonstrates that defendant's conduct fell within the statutory prohibitions.

Thus, the court considered, but rejected, the constitutional challenge to the statute.

The Court of Appeals of Michigan similarly rebuffed a "fair notice" challenge to Yankee Springs Township's so-called anti-funneling ordinance and riparian-lot-use regulations barring defendant's access from his waterfront lot to a local lake in *Township of Yankee Springs v. Fox*, 264 Mich. App. 604 (2004). Defendant contended that the riparian-lot-use regulations were void for vagueness because the regulations did not provide fair notice of the conduct proscribed. The pertinent regulation provided that each "parcel of land shall contain at least 70 lineal feet of water frontage…for each dwelling unit or each single-family unit." 264 Mich. App. At 608. Because at least eight families with nonwaterfront dwellings owned one-eighth interests in defendant's lot, and because the lot had only 103 feet of water frontage, the court found that the riparian-lot-use regulations validly prohibited the use of the lot as access property and that the ordinance was not void for vagueness.

On the other hand, in *West Bloomfield Charter Township v. Karchon*, 209 Mich. App. 43 (1995), the court upheld a constitutional challenge to woodlands ordinances the township sought to enforce against the defendants. The court found that an ordinance does not provide fair notice of proscribed conduct if it either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. That is, an ordinance must be sufficiently clear and definite as to give those reading it fair notice of prohibited conduct. On that basis, the court held that the ordinances' definition of the terms "woodland" and "woodland edge" were unconstitutionally vague.

D. Wisconsin Recognizes the "Fair Warning" and "Fair Notice" Principles.

The State of Wisconsin also applies the principle of "fair warning" and "fair notice" when considering agency interpretation of statutes and regulations. In *State of Wisconsin v. Perry Printing Corporation*, 128 Wis. 2d 554 (1985), an unpublished opinion, the State challenged a judgment of the Circuit Court for Jefferson County, Wisconsin that dismissed its claims that defendant corporation violated Wis. Admin. Code § 154.11(6) by emitting solvent emission from its plant presses, and that denied injunctive relief against future violations. The corporation cross-appealed challenging the constitutionality of § 154.11(6). In finding a violation of Wis. Admin. Code § 154.11(6), the Court found that:

> Wisconsin Adm. Code sec. 154.11(6) gives *fair notice* of what is prohibited and includes fair standards for enforcement. The opacity limits are specific. … (Emphasis added.)

On that basis the court reversed the dismissal entered by the Circuit Court, although it refused to reverse the denial of injunctive relief against future violations.

III. Conclusion.

As a result of the recent decision of the U.S. Supreme Court in *Christopher v. SmithKline Beecham Corporation ("Christopher")*, 132 S. Ct. 2156, 2167 (2012), administrative interpretations of statutes, rules and regulations must be tempered by the Court's holding that "agencies should provide regulated parties 'fair warning of the conduct [a regulation] prohibits or requires.'" That "fair warning" or "fair notice" is rooted in the principles of the U.S. Constitution, Fifth and Fourteenth Amendments renders the principle equally applicable to state and local agencies interpreting their own governing statutes, and their own rules and regulations. Yet, one still finds that administrative bodies, at least in Illinois, can be inconsistent in their application of the principle of "fair warning" or "fair notice" when considering agency interpretation and enforcement of statutes and regulations. Accordingly, government officials, environmental directors, engineers and consultants must continue to be vigilant to understand what activity is legal and what not.

MEMBERS NEWS

Welcome to the newest members of A&WMA Lake Michigan States Section

Susan Anders
Morton Salt, Inc.

Kevin Dougherty
Fuel Tech, Inc.

Jake Hartsock
AMEC Environment & Infrastructure

Ann Marie Johnson
Civil & Environmental Consultants

Eric Monsu Lee
Illinois Institute of Technology

Nick Ponstein
Lacks Enterprises, Inc

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ERM

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Wenjuan Zhai

New Book on Sustainability

As many of you know, a past chairman of our section, George P. Nassos, was director of the MS in Environmental Management & Sustainability program at IIT-Stuart School of Business for 14 years until 2011. Besides running the program, he also taught the capstone course "Business Strategy: The Sustainable Enterprise". He conducted considerable research to develop this course which consisted of over ten different strategies that companies could use to develop, maintain or extend a competitive advantage without having a negative impact on the environment. After leaving the school, he decided to make this information available to more people so he wrote a book which was just published by John Wiley & Sons. Its title is "Practical Sustainability Strategies: How to Gain a Competitive Advantage" and just became available. It is available on Amazon at http://www.amazon.com/Practical-Sustainability-Strategies-Competitive-Advantage/dp/1118250443/ref=sr_1_1?s=books&ie=UTF8&qid=1388087530&sr=1-1&keywords=practical+sustainability+strategies where you can "look inside" to get an idea of the contents and structure. Wiley intends to market it to graduate business schools as a text book and to corporations as a reference book.

Illinois Sustainable Technology Center is excited to announce the launch of their Zero Waste Program, an initiative that brings together our research and technical assistance expertise to tackle waste management issues in Illinois and beyond. Achieving Zero Waste is no simple task. It requires measurement, planning, stakeholder engagement, and often operational or behavioral changes. They recently completed a waste characterization and comprehensive update of waste practices at their own headquarters (On the Path to Zero Waste at ISTC) and are now engaged in a similar effort across the University of Illinois campus.

We'd like to partner with you and your organization in advancing the journey toward Zero Waste. Please read more about our program and get in touch with us!

MEMBERS NEWS

A round of applause is extended to our long-standing members for their continuous support. The Association appreciates every member for choosing us as the association you desire to affiliate with especially with many organizations vying for your membership. The A&WMA-LMSS continues to make every effort to offer member services which will benefit your professional life.

We are recognizing long-standing members of the A&WMA Lake Michigan States Section (A&WMA-LMSS) on an annual basis according to their anniversary year. **The anniversaries are recognized in increments of five years.** You may recognize your fellow peers in the list of Long Standing Members and we encourage you to extend your congratulations to them. Please note this list is for the time frame from January 1, 2014 to December 31, 2014.

5 Year Anniversary

Gregory Kinser
United States Gypsum Company

Eric Melvin
ENVIRON International Corporation

William Sims
ExxonMobil Refining & Supply Co.

Mark Roach
Clean Air Engineering

Fred Gordon
Herman Miller, Incorporated

Deb Jacobson
Illinois Sustainable Technology Ctr. CenterUniversity Of Illinois

10 Year Anniversary

John Iwanski
Trinity Consultants

Kenneth Brown
Illinois Tool Works Inc.

Patrick Becker
CWLP

Dan Kuhn
AECOM

15 Year Anniversary

Sotiria Koloutsou
Univ of IL at Urbana-Champaign

Richard Cleaves
Archer Daniels Midland Company

20 Year Anniversary

Dale Kalina
Environmental Partners, Inc.

Theodore Slavik
General Mills Operations, Inc.

William O'Shea
O'Shea Environmental Assoc., Inc.

Jim Dykhuis
Veolia Environmental Services

25 Year Anniversary

Glenn Mayer
E2 ManageTech, Inc.

Sean Gribbon
Met-Pro Environmental Air Solutions

Young-Soo Chang
Argonne National Laboratory

Mark Horne
Environmental Partners Inc.

David Holmberg
Calumet Area Industrial Commission

Timothy Kinsley
Mostardi Platt Environmental

30 Year Anniversary

Joanna Livengood
US DOE

C. David Livengood

35 Year Anniversary

Gregory Vanderlaan
ARCADIS US, Inc.

Judy Freitag
JF Consulting Inc.

Robert Wells
Abbvie Inc.

Herbert Weidemann
ERM

John Ross
NiSource

40 Year Anniversary

William Walker
Clean Air Engineering

Paul Farber
P. Farber & Associates, LLC

45 Year Anniversary

Thomas Young
R.M. Young Company

Condolences to the family of ***Tom Wallin***. Tom passed away on February 2, 2014 after a courageous battle with lung cancer. Tom was a veteran IEPA employee (among the first hired when the agency was established back in 1969). Tom served as an environmental engineer and supervisor within the Environmental Protection Agency where he impacted change and supported others. Procurement of grants, approving permits, writing policy, improving efficiency, pollution prevention, and helping businesses reduce their waste while often finding other businesses which needed the products. In all these ways and more, Tom served to improve the lives of others. After 36 years of service, in September 2001, Tom announced his retirement decision so that he could enjoy spending more time with his Judy, help his family in whatever area was needed, and explore the country.

Donations can be sent to Memorial Medical Center Regional Cancer Center to establish a cancer patient library or donations may be made to the Make-a-Wish Foundation in Tom Wallin's name, 640 N. LaSalle, Ste. 280, Chicago, IL 60610.

New Staff Members Join FTCH's Grand Rapids Office

Fishbeck, Thompson, Carr & Huber, Inc. Engineers • Scientists • Architects • Constructors is pleased to announce the following people have joined our Grand Rapids team:

Timothy R. Smith is a Staff Engineer in FTCH's Structural Department. He received a Bachelor of Architectural Engineering and a Master's degree in Structural Engineering from the Milwaukee School of Engineering. Tim has design experience in steel, cold formed steel, concrete, masonry, and wood structures; and has gained exposure to projects within the healthcare and retail industries.

Timothy J. Swainston is a Chemical Engineer in FTCH's Environmental Services Department. Prior to joining FTCH, Tim worked as a sales and technical specialist for steam equipment packages. He is a graduate of Western Michigan University where he earned his Bachelor of Science degree in Chemical Engineering with minors in Paper Engineering, Mathematics, and Chemistry.

Mark C. Bottorff joined FTCH's Environmental Services Division as an Occupational Safety & Health Services Technician. He brings 10 years of experience in lead remediation, asbestos, and lead abatement projects. Mark has completed a number of courses and certifications, such as OSHA 30-Hour, NIOSH 582, HAZWOPER, Asbestos Supervisor, Aerial Platform, and Lock-out/Tag-out training.

Joshua J. Schroedter joined FTCH's Environmental Services Division as an Occupational Safety & Health Services Technician. Josh is a graduate of Grand Valley State University where he earned his Bachelor of Science degree in Occupational Safety and Health Management with a minor in Business Management. During his education, Josh served as president for the American Society of Safety Engineers/Student Chapter. As a part of his program at GVSU, Josh completed a year-long internship with the university as a safety technician.

Robert W. Skipper joined FTCH as a Mechanical Engineering Specialist. He earned his Associate degree in Applied Science from Grand Rapids Community College and is a licensed mechanical contractor and boiler installer. Bob brings over 18 years of experience with startup, maintenance, and repair of boilers, chillers, pumps, and multiple BAS systems. He also has commissioning experience and is familiar with working directly with contractors to coordinate proper installation and operation of mechanical systems.

ANNUAL CONFERENCE

Save the Date
A&WMA's 107th Annual Conference & Exhibition
June 24-27th, 2014
Long Beach Convention Center

Seeking Editor(s)-In-Chief for Air Pollution Engineering Manual

The Air & Waste Management Association (A&WMA), in cooperation with Wiley Publishers (Wiley), is seeking a member or members in good standing to serve as Editor(s)-in-Chief (EIC) to update the Air Pollution Engineering Manual. The proposed title for this third edition is the Air and Waste Science Encyclopedia.

The EIC's main responsibilities will be as follows:

- Create an editorial board to assist in the development
- Develop a proposal
- Contact potential contributors
- Coordinate reviews of the contributions
- Oversee revisions if they are needed
- Approve the final contributions
- Obtain agreements from the contributors giving A&WMA and Wiley the right to publish the contributor's material
- Ensure that all contributors have obtained permissions for copyrighted material
- Assist in reviewing page proofs

Compensation:

The EIC will be paid on royalty basis as is typical for a book publication. Advance royalty payments will be available as the Encyclopedia is developed. In addition, some monies will be made available to offset costs incurred in developing the Encyclopedia.

Please contact Nancy Bernheisel at A&WMA (nbernheisel@awma.org) for further details or to express interest. The deadline to respond is June 30, 2014.

2014 LMSS BOARD OF DIRECTORS

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HELP WANTED

UL Laboratories

Utilize your project management skills! Provide editing and research support for **Sustainable Product Certification (SPC) Standards**, **UL White Papers**, **Advisory Services projects, and Environmental Claims Validation (ECV) documents**.

http://www.ul.com/global/eng/pages/aboutul/careers/ . Candidates should search for IRC8551 and apply online.

Mostardi Platt

If you have interest in any of the following career opportunities at our corporate office in Elmhurst, IL, please email us at HR@mp-mail.com.

Air Emissions Testing
Experienced and Entry Level Personnel

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Acoustical Modeling and Testing
Noise Complaint Investigations
Occupational Noise Exposure Testing
Hearing Conservation Programs

VISITING TECHNICAL ASSISTANCE ENGINEER ILLINOIS SUSTAINABLE TECHNOLOGY CENTER, PRAIRIE RESEARCH INSTITUTE, UNIVERSITY OF ILLINOIS

The Illinois Sustainable Technology Center, a division of the Prairie Research Institute at the University of Illinois, is seeking a Visiting Technical Assistance Engineer for our Technical Assistance Program. This position will be based at our Champaign, Illinois, offices and will work with Illinois companies, communities, and the manufacturing industry to identify and document their sustainability efforts, and to identify trends and drivers of sustainability within a corporate/community environment and gaps in resources, tools and technologies creating barriers and challenges to actual implementation of sustainability, waste minimization and recycling opportunities. This is a full-time, academic professional position offering a salary of $60,000 to $65,000, commensurate with experience. Generous vacation and sick leave. State Universities Retirement System. Group health, dental, vision and life insurance.

Major Duties & Responsibilities along with full position requirements can be found at:

https://jobs.illinois.edu/search-jobs/job-details?jobID=40413&job=visiting-technical-assistance-engineer-division-of-illinois-sustainable-technology-center-a1400216

TO APPLY: Applications must be received by **May 31, 2014**. Applications may be reviewed prior to closing date, but all candidates will be reviewed. To apply, all candidates must submit an online profile by visiting https://jobs.illinois.edu and submitting requested information. Qualified candidates must submit a cover letter detailing qualifications, curriculum vitae or resume', working e-mail address, and the names, phone numbers, and e-mail addresses of three professional references. All requested information must be submitted for your application to be considered. Incomplete information will not be reviewed.

For further information on hiring process, please contact Erica Hanson, Human Resources, Illinois Sustainable Technology Center, 217-333-6897 [Call: 217-333-6897] , elhanson@illinois.edu. For technical questions regarding job duties, please contact: Deb Jacobson, Search Committee, djacobso@illinois.edu.

Rulemaking Update - Illinois Hydraulic Fracturing Regulatory Act

By: ***Lawrence L. Fieber, PG***

Background

Conventional oil production has been an important part of Illinois' economy since 1906, when oil production first exceeded 4,000,000 barrels (BBL) per year. Before 1937, most oil wells were drilled vertically into shallow oil bearing horizons. By 1938, technological advances enabled drilling vertical wells to deeper horizons and Illinois oil production quickly peaked at 147,647,000 BBL per year in 1940. Oil production generally declined in Illinois until about 1954 when another technological advancement– hydraulic fracturing – increased production. Except for the price driven exploration in the early 1980s, Illinois oil production has steadily declined since 1956. Oil production in Illinois for the 12 month period ending August 2013 was 9,578,200 BBL from an estimated 15,307 "active" wells for an average of 1.7 BBL per day.

Important technological advancements occurred in the U.S. in the 1990s when exploration companies began to drill horizontal wells into oil source rocks in Texas (Barnett Shale) and used various hydraulic fracturing techniques to make these wells economical to produce. The approach of producing oil from source rocks using these new technological advancements is called "Unconventional" and since about 2000, the U.S. has experienced a sharp increase in oil (and gas) production from "shale" oil, which is a direct result of these unconventional methods of horizontal drilling and hydraulic fracturing of oil productive rocks. The U.S. Energy Information Administration's *Annual Energy Outlook 2014 - Early Release Overview* (AEO2014) summarizes the significant economic impacts of shale oil and gas, as follows:

> *"Growing domestic production of natural gas and crude oil continues to reshape the U.S. energy economy, with crude oil production approaching the historical high achieved in 1970 of 9.6 million barrels per day. Ongoing improvements in advanced technologies for crude oil and natural gas production continue to lift domestic supply and reshape the U.S. energy economy. Domestic production of crude oil (including lease condensate) increases sharply in the AEO2014 Reference case, with annual growth averaging 0.8 million barrels per day (MMbbl/d) through 2016…" and "Low natural gas prices boost natural gas-intensive industries."*

On one hand, shale oil and gas production enabled by horizontal drilling and hydraulic fracturing of source rocks has reduced oil imports, lowered natural gas prices, and boosted the U.S. economy. On the other hand, these new hydraulic fracturing methods are large scale operations and have received extensive environmental scrutiny. This scrutiny has spurred many studies of the environmental impacts of high volume hydraulic fracturing and new state and federal regulations governing hydraulic fracturing – including regulations currently being promulgated in Illinois.

Why Does Illinois Need Hydraulic Fracturing Regulations?

Oil production is important to the Illinois economy. Although hydraulic fracturing of conventional oil wells is an ordinary practice in Illinois and regulations exist to govern these operations, high volume horizontal hydraulic fracturing (HVHHF) is a much larger scale operation and presents new challenges and risks. Oil producers are spending lots of time and money leasing up land here and want to begin high volume horizontal hydraulic fracturing of several prospects in Illinois. If shale oil is successful in Illinois, it could add 45,000[1] well-paying

[1] Jobs information is from Rep. Jim Durkin, during his Chemical Industry Council of Illinois luncheon speech on December 12, 2013 in DesPlaines, Illinois.

Rulemaking Update - Illinois Hydraulic Fracturing Regulatory Act (con't.)

jobs to our economy. Legislators hope to enable shale oil development while addressing key concerns about HVHHF operations. The key concerns typically include:

1. Public safety,
2. Oil field worker safety,
3. Environmental impacts,
4. Stresses on natural and cultural resources, and,
5. Stresses on physical infrastructure.

Illinois Hydraulic Fracturing Regulatory Act and the recently Illinois Department of Natural Resources (Illinois DNR) proposed regulations aim to address each of these key concerns.

Hydraulic Fracturing Regulatory Act Rulemaking Update

The Hydraulic Fracturing Regulatory Act (the "Act") was signed into law on June 17, 2013 and was heralded by many politicians and hydraulic fracturing regulatory observers as one of the most stringent and comprehensive regulations governing hydraulic fracturing in the U.S. On November 15, 2013, the Illinois DNR proposed regulations to implement the Hydraulic Fracturing Regulatory Act and invited public comment on the proposed rules. The public submitted thousands of comments to Illinois DNR during the public comment period. Illinois DNR is reviewing the public comments and has not established a target date for publication of the final rules[2].

Summary of the Proposed Rules

Given the uncertainty concerning the timing and form of the final rules, this article only addresses the major themes of the Illinois DNR rulemaking as proposed.

The proposed regulation adds important definitions that are well known to the oil industry and others that relate to the new environmental provisions of the Hydraulic Fracturing Regulatory Act. The key definition guiding the applicability of the rule is presented below:

> ***High volume horizontal hydraulic fracturing operations*** - means all stages of a stimulation treatment of a horizontal well by the pressurized application of more than 80,000 gallons in any single stage or more than 300,000 gallons in total of hydraulic fracturing fluid to initiate or propagate fractures in a geologic formation to enhance extraction or production of oil or gas.

The bottom line - if your business involves high volume horizontal hydraulic fracturing operations, this rule will significantly impact your business.

Contact Lawrence L. Fieber at lfieber@burnsmcd.com

[2] Per Mitch Cohen of Illinois DNR during his March 7, 2014 comments at the Illinois Oil and Gas Association in Evansville, IN.

Rulemaking Update - Illinois Hydraulic Fracturing Regulatory Act (con't.)

Other important definitions in the Hydraulic Fracturing Regulatory Act are listed below, but are not discussed in this article.

Table 1
Abbreviated List of New Terms Defined in
Illinois Hydraulic Fracturing Regulatory Act

Aquatic life	Hydraulic fracturing additive	Produced water
Aquifer	Hydraulic fracturing flowback	Proppant
Base fluid	Hydraulic fracturing fluid	Recycled water
Flare	Hydraulic fracturing string	Release
Flowback period	Nature preserve	Surface water
Fresh water	Oil	Water pollution
Gas	Ordinary high water mark	Water source
Groundwater	Perennial stream	Wildlife
Horizontal well	Pollution or diminution	

The permitting, planning, and environmental provisions of the Hydraulic Fracturing Regulatory Act and proposed rule are summarized below.

Permit Application Requirements – the proposed rule would create a rigorous permitting standard for HVHHF operations and would allow stakeholder involvement.

Permit-Related Planning Requirements – the proposed rule would require permit applicants to present plans to conduct the operations at the HVHHF site. The list of planning documents is extensive and is shown below along with primary stakeholders:

Plan	Primary Stakeholders
Well Site Set Back Plan	Property owners, neighbors, and other permittees
Direction Drilling Plan	Property owners, other permittees, and Illinois DNR
High Volume Horizontal Hydraulic Fracturing Operations Plan	Property owners, other permittees, and Illinois DNR
Water Source Management Plan	Water providers and general public
Hydraulic Fracturing Fluids and Flowback Plan	Property owners, neighbors, and other permittees
Well Site Safety Plan	Well site workers and general public
Casing and Cementing Plan	Other permittees and Illinois DNR
Traffic Management Plan	Illinois Department of Transportation, county highway authority, and/or road district.
Plugging and Restoration Plan	Property owners, other permittees, and Illinois DNR
Topsoil Preservation Plan	Illinois DNR and property owners
Fugitive Dust Control Plan	Illinois EPA, property owners, neighbors, other permittees, and well site personnel
Water Quality Monitoring Plan	Illinois EPA, Illinois DNR, property owners and neighbors

Rulemaking Update - Illinois Hydraulic Fracturing Regulatory Act (con't.)

Permit-related Supporting Information Requirements – in addition to the planning obligations, the permit applicant must present scaled maps, cross-sections, contact information, self-disclosure of past violations or adjudications and compliance with the Water Use Act of 1983, and certification of permit application accuracy under penalty of perjury.

Water Quality Monitoring

Before a HVHHF operation can commence, the permittee must submit the results of a water quality monitoring baseline event of water resources within 1,500 feet of the well site. If the baseline water quality monitoring results show no detections of carcinogens (such as benzene) and no exceedences of 35-IAC-620 or 35-IAC-742 criteria, the baseline likely will be acceptable and will not alone prevent the HVHHF operation. Similar water quality monitoring is required at 6, 18, and 30 months after completion of the HVHHF operation.

Water Pollution Investigation and Rebuttable Presumption of Pollution or Diminution

Certain circumstances could trigger a pollution investigation by the Illinois EPA. It is presumed than any person conducting or has conducted HVHHF operations is liable for pollution of a water supply if, 1) the water source is within 1,500 feet of an HVHHF well site, 2) the baseline water quality data showed no pollution or diminution before HVHHF treatment, 3) pollution or diminution occurred during or no more than 30 months after HVHHF treatment operations, or 4) follow-up monitoring indicates pollution or diminution from at least one of the baseline analytical parameters.

Spills and Remediation

Any release of hydraulic fracturing fluid, hydraulic fracturing additive, hydraulic fracturing flowback, or produced water, used or generated during or after high volume horizontal hydraulic fracturing operation, shall be immediately cleaned up and remediated pursuant to requirements of the Illinois Oil and Gas Act and the administrative rules promulgated under the Act.

Air Emissions

Flowback

Permittees are required to control air emissions during HVHHF flowback periods so that those emissions are not released to the environment. In practice, flowback is commonly directed through tanks which will need to be equipped with emissions capture devices.

Production Phase

Permittees are also required to manage natural gas during the production phase.

Flares

Flares must have a reliable continuous ignition source over the duration of production and by July 1, 2015, all flares must operate with a combustion efficiency of at least 98% and be certified by the manufacturer of the device.

Storage Tanks

Uncontrolled emissions exceeding 6 tons per year from storage tanks containing natural gas or hydrocarbon fluids shall be recovered and routed to a flare.

Summary and Conclusion

Historically, oil production has been an important part of the economy of Illinois. The proposed rules provide a rigorous framework for oil producers to secure approval to implement the newest technologies in oil exploration – here in Illinois. Illinois DNR quickly drafted these proposed rules, however, based on extensive public comment, a date for final rule publication has not been established. Illinois Basin oil producers are eager to try these enhanced treatment methods in Illinois – once the rules are finalized. Initial success of shale oil production in Illinois may depend more on the permit application skill of oil producers than the availability of drillable prospects. This regulatory framework will significantly increase the cost, complexity, and time frame of oil well siting in Illinois.

FAIR WARNING OF FORBIDDEN CONDUCT OR REQUIREMENTS

A SUPREME COURT DIRECTIVE TO ADMINISTRATIVE BODIES

By: ***Kenneth Anspach***[1]

Industry subject to environmental regulation, whether from such agencies as the U.S. Environmental Protection Agency ("USEPA"), the Illinois Environmental Protection Agency ("IEPA") and other state and local agencies, boards and entities, often finds itself subject to ambiguous or superseded statutes, rules and regulations. As a result a company may find itself subject to enforcement actions for engaging in conduct it believed to be acceptable, but which the agency interprets as prohibited. Such enforcement may have a drastic impact on the company and the persons who manage its environmental affairs. Not only is an alleged wrongdoer potentially liable for civil penalties of $50,000 per violation and $10,000 per day of violation under, *e.g.,* the Illinois Environmental Protection Act, 415 ILCS 5/42, but the violator is also subject to criminal Class A misdemeanor prosecution pursuant to 415 ILCS 5/44 for any such violation. Given these potential civil and criminal penalties, the environmental director or engineer at that company and the environmental consultant it hires will need to know what activity is legal and what not. When that professional reads a proposed rule applicable to his or her industry, does that rule give him or her warning of the type of conduct that is prohibited? Is the rule fairly written? If not, can it be challenged? Does the government official charged with enforcing that rule fully understand the parameters of his or her authority?

The kind of clarity needed to answer these questions is now required as a result of the recent decision of the U.S. Supreme Court in *Christopher v. SmithKline Beecham Corporation ("Christopher")*, 132 S. Ct. 2156, 2167 (2012), which held that "agencies should provide regulated parties 'fair warning of the conduct [a regulation] prohibits or requires.'" This article examines the origin of this holding and how it applies to enforcement actions by the federal, state and local governments.

I. Deference to an Agency's Interpretation of its Own Ambiguous Regulations, Once a Hallmark of Administrative Law, is no Longer Allowed Where Such Interpretation is Unwarranted.

The notion that courts will defer to an agency's interpretation of its own ambiguous statutes, rules and regulations arose out of the case entitled *Auer v. Robbins ("Auer")*, 519 U.S. 452 (1997). There, police officers sought payment from the police commissioners' board for overtime. The issue before Court was whether the police officers were exempt from the overtime under the pertinent provisions of the Fair Labor Standards Act of 1938, 29 USCS § 201 *et seq.* (the "FLSA"). The Court held, *inter alia*, that the Secretary of Labor's salary basis test was not an unreasonable interpretation of the statutory exemption to the FLSA as it applied to public-sector employees. In so doing, it stated that, "Because Congress has not 'directly spoken to the precise question at issue,' we must sustain the Secretary's approach so long as it is 'based on a permissible construction of the statute.'" (Citations omitted.) *Auer*, 519 U.S. at 457.

This principle that courts would defer to the agency's approach to construction of its governing statute or its own regulations became known as "*Auer* deference." 132 S. Ct. at 2160. *Auer* deference has been applied in at least one environmental case, *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*, 129 S. Ct. 2458, 2469 (2009) where the Court deferred to USEPA's interpretation of whether mine slurry could be discharged into a lake as fill material under the Clean Water Act ("CWA"), § 404(a), 33 U.S.C. § 1344(a) and 40 CFR § 122.3). However, in *Christopher*, another FLSA case, *Auer* deference hit a major roadblock. There, plaintiff employees worked as pharmaceutical sales representatives for the employer, a

Continued on page 7

[1] Kenneth Anspach is an attorney in Chicago, Illinois where he concentrates in environmental law and insurance coverage on behalf of policyholders . He is the author of numerous articles on the subject of environmental law and insurance coverage, including the treatise, *Environmental Law and Insurance Handbook*, published by West Group in 1997. He is Co-Chair of the Insurance Subcommittee of the Environmental Litigation Committee of the Section on Litigation of the American Bar Association and Co-Chair of the Environmental Subcommittee of the Insurance Coverage Litigation Committee of the Section on Litigation of the American Bar Association. He is also a mediator for the Chancery Division of the Circuit Court of Cook County and past Chair of the Civil Practice Committee of the Chicago Bar Association. He may be contacted at (312) 407-7888 or ken@anspachlawoffice.com.

prescription drug company. The employees' primary objective was to obtain a nonbinding commitment from physicians to prescribe particular drugs in appropriate cases. The Court determined that the employees were exempt from the FLSA's overtime compensation requirement because they qualified as outside salesmen under the Department of Labor's ("DOL") regulations, 29 U.S.C. §213(a)(1) . The Court found that the DOL's interpretation of the regulations, that a sale demanded a transfer of title, was not owed *Auer* deference, because the DOL never initiated any enforcement actions with respect to pharmaceutical detailers or otherwise suggested that it thought the industry was acting unlawfully.

In determining that the DOL's interpretation of its regulations was not entitled to *Auer* deference, the Court stated:

> Although *Auer* ordinarily calls for deference to an agency's interpretation of its own ambiguous regulation, even when that interpretation is advanced in a legal brief, *** this general rule does not apply in all cases. Deference is undoubtedly inappropriate, for example, when the agency's interpretation is "'plainly erroneous or inconsistent with the regulation.' "*** And deference is likewise unwarranted when there is reason to suspect that the agency's interpretation "does not reflect the agency's fair and considered judgment on the matter in question." *** This might occur when the agency's interpretation conflicts with a prior interpretation, *** or when it appears that the interpretation is nothing more than a "convenient litigating position," ***or a "'*post hoc* rationalizatio[n]' advanced by an agency seeking to defend past agency action against attack." *** (Citations omitted). *Christopher*, 132 S. Ct. at 2166-67.

After thusly distinguishing situations where *Auer* deference is inappropriate, the Court went on to set forth a legal principle that must govern administrative behavior in this context. Specifically, the Court stated:

> To defer to the agency's interpretation in this circumstance would seriously undermine *the principle that agencies should provide regulated parties "fair warning of the conduct [a regulation] prohibits or requires."* (Emphasis added.) *Gates & Fox Co. v. Occupational Safety and Health Review Comm'n*, 790 F.2d 154, 156, 252 U.S. App. D.C. 332 (CADC 1986) (Scalia, J.). *Christopher*, 132 S. Ct. at 2167.

Thus, the Court found that regulated parties are entitled to fair warning of the conduct a regulation prohibits or requires. Where, as here, the agency failed to provide "fair warning of the conduct a regulation prohibits or requires" the Court found the agency's "interpretation neither entitled to *Auer* deference nor persuasive in its own right" and simply refused to enforce it. *Christopher*, 132 S. Ct. at 2167.

II. The Requirement that Agencies Give Regulated Parties "Fair Warning of the Conduct a Regulation Prohibits or Requires" is Equally Applicable in both the Federal and State Administrative Context.

A. The Principle of "Fair Warning" is Grounded in the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution.

That agencies must provide "fair warning of the conduct a regulation prohibits or requires" is rooted in the due process clauses of the Fifth[2] and Fourteenth Amendments[3] to the U.S. Constitution. That was the

Continued on page 8

[2] USCS Const. Amend. 5: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation." (Emphasis added.)

[3] USCS Const. Amend. 14, § 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

finding in *Gates & Fox Co. v. Occupational Safety and Health Review Commission*, 790 F.2d 154, 156 (D.C. Cir. 1986), cited in *Christopher* at 132 S. Ct. at 2170, which stated, "Where the imposition of penal sanctions is at issue, however, *the due process clause* prevents that deference from validating the application of a regulation that fails to give fair warning of the conduct it prohibits or requires." (Emphasis added.)

Indeed, in the same term that the Court decided *Christopher*, it decided in *FCC v. Fox Television Stations, Inc. ("Fox")*, 132 S. Ct. 2307, 2317-18 (2012), that the due process clause of the Fifth Amendment precludes the Federal Communications Commission from punishing Fox for its broadcasting of "fleeting expletives," because the regulations did not give Fox "fair notice" that such conduct could subject it to punishment. *Fox*, 132 S. Ct. at 2317. The Court specified that:

> *A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required*. *** "[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law" ***…*This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment****** It requires the invalidation of laws that are impermissibly vague. A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *** (Citations omitted; emphasis added.) *Fox*, 132 S. Ct. at 2317.

That "fair warning" or "fair notice" is rooted in the principles of the U.S. Constitution, Fifth and Fourteenth Amendments renders the principle equally applicable to state and local agencies interpreting their own governing statutes, and their own rules and regulations.

B. Illinois is Inconsistent in its Application of "Fair Warning" and "Fair Notice" Principles.

The principle that government action must be preceded by "fair warning or "fair notice" is well-known at the state level. Thus, in Illinois, it is well settled that a statute is unconstitutionally vague and violates due process if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute or if there is an absence of standards restricting the discretion of governmental authorities who apply the law. *East St. Louis Federation Of Teachers, Local 1220, American Federation Of Teachers, AFL-CIO v. East St. Louis School District No. 189 Financial Oversight Panel*, 178 Ill. 2d 399, 425 (1997). The terms of a statute cannot be so ill defined that their meaning may be determined at whim rather than by objective criteria. *Id.* A statute's terms must serve as a guide to those who must comply with the statute. *Id.*

The Illinois Pollution Control Board (the "Board") is no stranger to the concept of "fair notice." In *EPA v. Rosenbalm*, PCB No. 71-299, 1973 Ill. ENV LEXIS 2 (January 16, 1973), in addressing pleadings that had been amended subsequent to the filing of the initial complaint to add new violations that allegedly occurred post-complaint, the Board stated:

> …[W]e caution the Agency and its representatives to avoid unfair, omnibus pleadings which either intend to sweep within its purview prospective violations which may occur subsequent to the filing of the complaint, or are so vague and indefinite as to fail to give the Respondent fair notice of the specific dates of alleged infractions of the law so as to enable him to properly prepare a defense.

On the other hand, the Board declined to apply the concept of "fair notice" in *People of the State of Illinois v. Sheridan-Joliet Land Development, LLC et al.*, PCB No. 13-19 and PCB No. 13-20.[4] There the State has

Continued on page 9

[4] The author of this article and presentation is counsel for respondents in each of these cases. Complete copies of the motions and briefs discussing the issues raised in these cases, including the positions taken by the State of Illinois with respect thereto, as well as the Board's August 8, 2013 Order denying respondents' Motion to Strike and Dismiss, can be found at www.ipcb.state.il.us.

sought to enforce amended and superseded regulations against the respondents, which respondents argued was being done without the type of "fair notice" that was the subject of *Christopher* and *Fox*. The State brought a Complaint against respondents that alleged violations of various purported provisions of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/1 *et seq*. and, specifically, 415 ILCS 5/22.51, entitled Clean Construction or Demolition Debris Fill Operations ("CCDD"). The Complaint alleged that these purported violations, in turn, stemmed from alleged violations of purported "Section 1100.205(a)(b)(c) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(b)(c), [and (h)]." However, respondents asserted in a Motion to Strike and Dismiss that there was no "Section 1100.205(a)(b)(c) [and (h)] of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(b)(c) [and (h)]." That was so because, as the respondents argued, the Board CCDD Regulations had been amended as of August 27, 2012 and once the new rules became effective they supplanted and superseded the previous rules, including those under which these allegations of the Complaint were brought, purported §§ 1100.205(a)(b)(c) and (h) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.205(a)(b)(c) and (h). Thus, when the Complaint, which was filed subsequent to August 27, 2012, sought to charge respondents with purported violations of Board CCDD Regulations, such Complaint, according to respondents, could only allege violations of regulations that actually appear "on the books." Yet, as respondents pointed out, it patently did not do so.

In its Order dated August 8, 2013 denying the Motion to Strike and Dismiss on this basis, at page 23, the Board disagreed with respondents' argument, stating:

> The Board also disagrees with respondents that the Agency and the Board had to give prior notice to the regulated community that the pre-amendment CCDD regulations would be enforceable. Reply Dis. (19) at 5; Reply Dis. (20) at 5. The relevant period is when the alleged violations occurred, not when respondents were sued for enforcement. At that time, the pre-amendment CCDD regulations were still in effect and "on the books."7 Respondents do not contend that the pre-amendment version of Section 1100.205 of the Board's CCDD regulations was ambiguous or that they did not understand it to apply to them at the time of the alleged violations. Moreover, respondents, like any citizen, are "presumptively charged with knowledge of the law." Atkins v. Parker, 472 U.S. 115, 130 (1985). Thus, at the relevant time, respondents, like any other entity regulated under the CCDD regulations, had "fair warning of the conduct" the CCDD rules then in effect required. Christopher v. SmithKline Beecham Corp., 132 S. Ct. 2156, 2167 (2012) (internal quotation marks omitted).

Thus, the Board ruled that the State was not precluded from enforcing regulations that had been subsequently amended and superseded, because, at the time of the alleged violation, respondents "had 'fair warning of the conduct' the CCDD rules then in effect required."

C. Michigan Recognizes the "Fair Warning" and "Fair Notice" Principles.

The State of Michigan views agency interpretation of statutes and regulations through the lens of "fair warning" and "fair notice." In *People v. Kircher*, 2008 Mich. App. LEXIS 1627, an unpublished opinion, the Court of Appeals of Michigan considered a constitutional challenge to defendant's conviction for a discharge of a substance into the waters of the state that endangered the public health, safety, and welfare contrary to the provisions of MCL 324.3109 in violation of MCL 324.3115(2) and MCL 324.3115(4). Defendant's convictions arose from the discharge of raw sewage into a catch basin or storm drain.

The court considered defendant's challenge to MCL 324.3109 on the grounds that it was "constitutionally void for vagueness." The court noted that "A statute may be unconstitutionally vague on any of three grounds" including whether "it fails to provide *fair notice* of the conduct proscribed." (Emphasis added.) In denying the constitutional challenge the court found as follows:

> [D]efendant's actions in discharging raw sewage into a state water body constituted a

Continued on page 10

> discharge of a substance that was or could be injurious to human health. The statute at issue is not void for vagueness when the meaning of the statute's terms as defined by the dictionary demonstrates that defendant's conduct fell within the statutory prohibitions.

Thus, the court considered, but rejected, the constitutional challenge to the statute.

The Court of Appeals of Michigan similarly rebuffed a "fair notice" challenge to Yankee Springs Township's so-called anti-funneling ordinance and riparian-lot-use regulations barring defendant's access from his waterfront lot to a local lake in *Township of Yankee Springs v. Fox*, 264 Mich. App. 604 (2004). Defendant contended that the riparian-lot-use regulations were void for vagueness because the regulations did not provide fair notice of the conduct proscribed. The pertinent regulation provided that each "parcel of land shall contain at least 70 lineal feet of water frontage…for each dwelling unit or each single-family unit." 264 Mich. App. At 608. Because at least eight families with nonwaterfront dwellings owned one-eighth interests in defendant's lot, and because the lot had only 103 feet of water frontage, the court found that the riparian-lot-use regulations validly prohibited the use of the lot as access property and that the ordinance was not void for vagueness.

On the other hand, in *West Bloomfield Charter Township v. Karchon*, 209 Mich. App. 43 (1995), the court upheld a constitutional challenge to woodlands ordinances the township sought to enforce against the defendants. The court found that an ordinance does not provide fair notice of proscribed conduct if it either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. That is, an ordinance must be sufficiently clear and definite as to give those reading it fair notice of prohibited conduct. On that basis, the court held that the ordinances' definition of the terms "woodland" and "woodland edge" were unconstitutionally vague.

D. Wisconsin Recognizes the "Fair Warning" and "Fair Notice" Principles.

The State of Wisconsin also applies the principle of "fair warning" and "fair notice" when considering agency interpretation of statutes and regulations. In *State of Wisconsin v. Perry Printing Corporation*, 128 Wis. 2d 554 (1985), an unpublished opinion, the State challenged a judgment of the Circuit Court for Jefferson County, Wisconsin that dismissed its claims that defendant corporation violated Wis. Admin. Code § 154.11(6) by emitting solvent emission from its plant presses, and that denied injunctive relief against future violations. The corporation cross-appealed challenging the constitutionality of § 154.11(6). In finding a violation of Wis. Admin. Code § 154.11(6), the Court found that:

> Wisconsin Adm. Code sec. 154.11(6) gives *fair notice* of what is prohibited and includes fair standards for enforcement. The opacity limits are specific. … (Emphasis added.)

On that basis the court reversed the dismissal entered by the Circuit Court, although it refused to reverse the denial of injunctive relief against future violations.

III. Conclusion.

As a result of the recent decision of the U.S. Supreme Court in *Christopher v. SmithKline Beecham Corporation ("Christopher")*, 132 S. Ct. 2156, 2167 (2012), administrative interpretations of statutes, rules and regulations must be tempered by the Court's holding that "agencies should provide regulated parties 'fair warning of the conduct [a regulation] prohibits or requires.'" That "fair warning" or "fair notice" is rooted in the principles of the U.S. Constitution, Fifth and Fourteenth Amendments renders the principle equally applicable to state and local agencies interpreting their own governing statutes, and their own rules and regulations. Yet, one still finds that administrative bodies, at least in Illinois, can be inconsistent in their application of the principle of "fair warning" or "fair notice" when considering agency interpretation and enforcement of statutes and regulations. Accordingly, government officials, environmental directors, engineers and consultants must continue to be vigilant to understand what activity is legal and what not.

MEMBERS NEWS

Welcome to the newest members of A&WMA Lake Michigan States Section

Susan Anders
Morton Salt, Inc.

Kevin Dougherty
Fuel Tech, Inc.

Jake Hartsock
AMEC Environment & Infrastructure

Ann Marie Johnson
Civil & Environmental Consultants

Eric Monsu Lee
Illinois Institute of Technology

Nick Ponstein
Lacks Enterprises, Inc

Scott Quartier
Flex-N-Gate

Sriraam Ramanathan Chandrasekaran
Illinois Sustainable Technology Center,
Prairie Research Institute, University of Illinois

Rachel Roszina
ERM

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Veolia North America

Brian Sexton
University of Pennsylvania

David South
West Monroe Partners

Ken Vermeulen
Barnes & Thornburg LLP

Marla Westerhold
Stuart Graduate School

Wenjuan Zhai

New Book on Sustainability

As many of you know, a past chairman of our section, George P. Nassos, was director of the MS in Environmental Management & Sustainability program at IIT-Stuart School of Business for 14 years until 2011. Besides running the program, he also taught the capstone course "Business Strategy: The Sustainable Enterprise". He conducted considerable research to develop this course which consisted of over ten different strategies that companies could use to develop, maintain or extend a competitive advantage without having a negative impact on the environment. After leaving the school, he decided to make this information available to more people so he wrote a book which was just published by John Wiley & Sons. Its title is "Practical Sustainability Strategies: How to Gain a Competitive Advantage" and just became available. It is available on Amazon at http://www.amazon.com/Practical-Sustainability-Strategies-Competitive-Advantage/dp/1118250443/ref=sr_1_1?s=books&ie=UTF8&qid=1388087530&sr=1-1&keywords=practical+sustainability+strategies where you can "look inside" to get an idea of the contents and structure. Wiley intends to market it to graduate business schools as a text book and to corporations as a reference book.

Illinois Sustainable Technology Center is excited to announce the launch of their Zero Waste Program, an initiative that brings together our research and technical assistance expertise to tackle waste management issues in Illinois and beyond. Achieving Zero Waste is no simple task. It requires measurement, planning, stakeholder engagement, and often operational or behavioral changes. They recently completed a waste characterization and comprehensive update of waste practices at their own headquarters (On the Path to Zero Waste at ISTC) and are now engaged in a similar effort across the University of Illinois campus.

We'd like to partner with you and your organization in advancing the journey toward Zero Waste. Please read more about our program and get in touch with us!

MEMBERS NEWS

A round of applause is extended to our long-standing members for their continuous support. The Association appreciates every member for choosing us as the association you desire to affiliate with especially with many organizations vying for your membership. The A&WMA-LMSS continues to make every effort to offer member services which will benefit your professional life.

We are recognizing long-standing members of the A&WMA Lake Michigan States Section (A&WMA-LMSS) on an annual basis according to their anniversary year. **The anniversaries are recognized in increments of five years.** You may recognize your fellow peers in the list of Long Standing Members and we encourage you to extend your congratulations to them. Please note this list is for the time frame from January 1, 2014 to December 31, 2014.

5 Year Anniversary

Gregory Kinser
United States Gypsum Company

Eric Melvin
ENVIRON International Corporation

William Sims
ExxonMobil Refining & Supply Co.

Mark Roach
Clean Air Engineering

Fred Gordon
Herman Miller, Incorporated

Deb Jacobson
Illinois Sustainable Technology Ctr. CenterUniversity Of Illinois

10 Year Anniversary

John Iwanski
Trinity Consultants

Kenneth Brown
Illinois Tool Works Inc.

Patrick Becker
CWLP

Dan Kuhn
AECOM

15 Year Anniversary

Sotiria Koloutsou
Univ of IL at Urbana-Champaign

Richard Cleaves
Archer Daniels Midland Company

20 Year Anniversary

Dale Kalina
Environmental Partners, Inc.

Theodore Slavik
General Mills Operations, Inc.

William O'Shea
O'Shea Environmental Assoc., Inc.

Jim Dykhuis
Veolia Environmental Services

25 Year Anniversary

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E2 ManageTech, Inc.

Sean Gribbon
Met-Pro Environmental Air Solutions

Young-Soo Chang
Argonne National Laboratory

Mark Horne
Environmental Partners Inc.

David Holmberg
Calumet Area Industrial Commission

Timothy Kinsley
Mostardi Platt Environmental

30 Year Anniversary

Joanna Livengood
US DOE

C. David Livengood

35 Year Anniversary

Gregory Vanderlaan
ARCADIS US, Inc.

Judy Freitag
JF Consulting Inc.

Robert Wells
Abbvie Inc.

Herbert Weidemann
ERM

John Ross
NiSource

40 Year Anniversary

William Walker
Clean Air Engineering

Paul Farber
P. Farber & Associates, LLC

45 Year Anniversary

Thomas Young
R.M. Young Company

Condolences to the family of ***Tom Wallin***. Tom passed away on February 2, 2014 after a courageous battle with lung cancer. Tom was a veteran IEPA employee (among the first hired when the agency was established back in 1969). Tom served as an environmental engineer and supervisor within the Environmental Protection Agency where he impacted change and supported others. Procurement of grants, approving permits, writing policy, improving efficiency, pollution prevention, and helping businesses reduce their waste while often finding other businesses which needed the products. In all these ways and more, Tom served to improve the lives of others. After 36 years of service, in September 2001, Tom announced his retirement decision so that he could enjoy spending more time with his Judy, help his family in whatever area was needed, and explore the country.

Donations can be sent to Memorial Medical Center Regional Cancer Center to establish a cancer patient library or donations may be made to the Make-a-Wish Foundation in Tom Wallin's name, 640 N. LaSalle, Ste. 280, Chicago, IL 60610.

New Staff Members Join FTCH's Grand Rapids Office

Fishbeck, Thompson, Carr & Huber, Inc. Engineers • Scientists • Architects • Constructors is pleased to announce the following people have joined our Grand Rapids team:

Timothy R. Smith is a Staff Engineer in FTCH's Structural Department. He received a Bachelor of Architectural Engineering and a Master's degree in Structural Engineering from the Milwaukee School of Engineering. Tim has design experience in steel, cold formed steel, concrete, masonry, and wood structures; and has gained exposure to projects within the healthcare and retail industries.

Timothy J. Swainston is a Chemical Engineer in FTCH's Environmental Services Department. Prior to joining FTCH, Tim worked as a sales and technical specialist for steam equipment packages. He is a graduate of Western Michigan University where he earned his Bachelor of Science degree in Chemical Engineering with minors in Paper Engineering, Mathematics, and Chemistry.

Mark C. Bottorff joined FTCH's Environmental Services Division as an Occupational Safety & Health Services Technician. He brings 10 years of experience in lead remediation, asbestos, and lead abatement projects. Mark has completed a number of courses and certifications, such as OSHA 30-Hour, NIOSH 582, HAZWOPER, Asbestos Supervisor, Aerial Platform, and Lock-out/Tag-out training.

Joshua J. Schroedter joined FTCH's Environmental Services Division as an Occupational Safety & Health Services Technician. Josh is a graduate of Grand Valley State University where he earned his Bachelor of Science degree in Occupational Safety and Health Management with a minor in Business Management. During his education, Josh served as president for the American Society of Safety Engineers/Student Chapter. As a part of his program at GVSU, Josh completed a year-long internship with the university as a safety technician.

Robert W. Skipper joined FTCH as a Mechanical Engineering Specialist. He earned his Associate degree in Applied Science from Grand Rapids Community College and is a licensed mechanical contractor and boiler installer. Bob brings over 18 years of experience with startup, maintenance, and repair of boilers, chillers, pumps, and multiple BAS systems. He also has commissioning experience and is familiar with working directly with contractors to coordinate proper installation and operation of mechanical systems.

ANNUAL CONFERENCE

Save the Date
A&WMA's 107th Annual Conference & Exhibition
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Long Beach Convention Center

Seeking Editor(s)-In-Chief for Air Pollution Engineering Manual

The Air & Waste Management Association (A&WMA), in cooperation with Wiley Publishers (Wiley), is seeking a member or members in good standing to serve as Editor(s)-in-Chief (EIC) to update the Air Pollution Engineering Manual. The proposed title for this third edition is the Air and Waste Science Encyclopedia.

The EIC's main responsibilities will be as follows:

- Create an editorial board to assist in the development
- Develop a proposal
- Contact potential contributors
- Coordinate reviews of the contributions
- Oversee revisions if they are needed
- Approve the final contributions
- Obtain agreements from the contributors giving A&WMA and Wiley the right to publish the contributor's material
- Ensure that all contributors have obtained permissions for copyrighted material
- Assist in reviewing page proofs

Compensation:

The EIC will be paid on royalty basis as is typical for a book publication. Advance royalty payments will be available as the Encyclopedia is developed. In addition, some monies will be made available to offset costs incurred in developing the Encyclopedia.

Please contact Nancy Bernheisel at A&WMA (nbernheisel@awma.org) for further details or to express interest. The deadline to respond is June 30, 2014.

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http://www.ul.com/global/eng/pages/aboutul/careers/ . Candidates should search for IRC8551 and apply online.

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If you have interest in any of the following career opportunities at our corporate office in Elmhurst, IL, please email us at HR@mp-mail.com.

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VISITING TECHNICAL ASSISTANCE ENGINEER ILLINOIS SUSTAINABLE TECHNOLOGY CENTER, PRAIRIE RESEARCH INSTITUTE, UNIVERSITY OF ILLINOIS

The Illinois Sustainable Technology Center, a division of the Prairie Research Institute at the University of Illinois, is seeking a Visiting Technical Assistance Engineer for our Technical Assistance Program. This position will be based at our Champaign, Illinois, offices and will work with Illinois companies, communities, and the manufacturing industry to identify and document their sustainability efforts, and to identify trends and drivers of sustainability within a corporate/community environment and gaps in resources, tools and technologies creating barriers and challenges to actual implementation of sustainability, waste minimization and recycling opportunities. This is a full-time, academic professional position offering a salary of $60,000 to $65,000, commensurate with experience. Generous vacation and sick leave. State Universities Retirement System. Group health, dental, vision and life insurance.

Major Duties & Responsibilities along with full position requirements can be found at:

https://jobs.illinois.edu/search-jobs/job-details?jobID=40413&job=visiting-technical-assistance-engineer-division-of-illinois-sustainable-technology-center-a1400216

TO APPLY: Applications must be received by **May 31, 2014**. Applications may be reviewed prior to closing date, but all candidates will be reviewed. To apply, all candidates must submit an online profile by visiting https://jobs.illinois.edu and submitting requested information. Qualified candidates must submit a cover letter detailing qualifications, curriculum vitae or resume', working e-mail address, and the names, phone numbers, and e-mail addresses of three professional references. All requested information must be submitted for your application to be considered. Incomplete information will not be reviewed.

For further information on hiring process, please contact Erica Hanson, Human Resources, Illinois Sustainable Technology Center, 217-333-6897 [Call: 217-333-6897] , elhanson@illinois.edu. For technical questions regarding job duties, please contact: Deb Jacobson, Search Committee, djacobso@illinois.edu.