

1 AN ACT in relation to environmental protection.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 ARTICLE I. Recommendations of the Illinois
5 Environmental Regulatory Review Commission.

6 Section 5. The Illinois Administrative Procedure Act is
7 amended by changing Section 5-75 as follows:

8 (5 ILCS 100/5-75) (from Ch. 127, par. 1005-75)

9 Sec. 5-75. Incorporation by reference.

10 (a) An agency may incorporate by reference, in its rules
11 adopted under Section 5-35, rules, regulations, standards,
12 and guidelines of an agency of the United States or a
13 nationally or state recognized organization or association
14 without publishing the incorporated material in full. The
15 reference in the agency rules must fully identify the
16 incorporated matter by publisher address and date in order to
17 specify how a copy of the material may be obtained and must
18 state that the rule, regulation, standard, or guideline does
19 not include any later amendments or editions. An agency may
20 incorporate by reference these matters in its rules only if
21 the agency, organization, or association originally issuing
22 the matter makes copies readily available to the public.
23 This Section does not apply to any agency internal manual.

24 For any law imposing taxes on or measured by income, the
25 Department of Revenue may promulgate rules that include
26 incorporations by reference of federal rules or regulations
27 without identifying the incorporated matter by date and
28 without including a statement that the incorporation does not
29 include later amendments.

30 (b) Use of the incorporation by reference procedure

1 under this Section shall be reviewed by the Joint Committee
2 on Administrative Rules during the rulemaking process as set
3 forth in this Act.

4 (c) The agency adopting a rule, regulation, standard, or
5 guideline under this Section shall maintain a copy of the
6 referenced rule, regulation, standard, or guideline in at
7 least one of its principal offices and shall make it
8 available to the public upon request for inspection and
9 copying at no more than cost. Requests for copies of
10 materials incorporated by reference shall not be deemed
11 Freedom of Information Act requests unless so labeled by the
12 requestor. The agency shall designate by rule the agency
13 location at which incorporated materials are maintained and
14 made available to the public for inspection and copying.
15 These rules may be adopted under the procedures in Section
16 5-15. In addition, the agency may include the designation of
17 the agency location of incorporated materials in a rulemaking
18 under Section 5-35, but emergency and peremptory rulemaking
19 procedures may not be used solely for this purpose.

20 (d) An incorporation by reference that is included in a
21 rule adopted by the Environmental Protection Agency or the
22 Pollution Control Board may be updated using the expedited
23 rulemaking procedure provided in Section 28.6 of the
24 Environmental Protection Act. Sections 5-35 through 5-50 of
25 this Act do not apply to those expedited rulemakings, except
26 as may be otherwise provided in that Section 28.6 or in Board
27 or Agency rules implementing that Section.

28 (Source: P.A. 90-155, eff. 7-23-97.)

29 Section 10. The Environmental Protection Act is amended
30 by changing Sections 4, 5, 22.2, 30, 31, 33, 35, 36, 37, 42,
31 and 45 and adding Section 28.6 as follows:

32 (415 ILCS 5/4) (from Ch. 111 1/2, par. 1004)

1 Sec. 4. Environmental Protection Agency; establishment;
2 duties.

3 (a) There is established in the Executive Branch of the
4 State Government an agency to be known as the Environmental
5 Protection Agency. This Agency shall be under the
6 supervision and direction of a Director who shall be
7 appointed by the Governor with the advice and consent of the
8 Senate. The term of office of the Director shall expire on
9 the third Monday of January in odd numbered years, provided
10 that he or she shall hold office until a successor is
11 appointed and has qualified. The Director shall receive an
12 annual salary as set by the Governor from time to time or as
13 set by the Compensation Review Board, whichever is greater.
14 If set by the Governor, the Director's annual salary may not
15 exceed 85% of the Governor's annual salary. The Director, in
16 accord with the Personnel Code, shall employ and direct such
17 personnel, and shall provide for such laboratory and other
18 facilities, as may be necessary to carry out the purposes of
19 this Act. In addition, the Director may by agreement secure
20 such services as he or she may deem necessary from any other
21 department, agency, or unit of the State Government, and may
22 employ and compensate such consultants and technical
23 assistants as may be required.

24 (b) The Agency shall have the duty to collect and
25 disseminate such information, acquire such technical data,
26 and conduct such experiments as may be required to carry out
27 the purposes of this Act, including ascertainment of the
28 quantity and nature of discharges from any contaminant source
29 and data on those sources, and to operate and arrange for the
30 operation of devices for the monitoring of environmental
31 quality.

32 (c) The Agency shall have authority to conduct a program
33 of continuing surveillance and of regular or periodic
34 inspection of actual or potential contaminant or noise

1 sources, of public water supplies, and of refuse disposal
2 sites.

3 (d) In accordance with constitutional limitations, the
4 Agency shall have authority to enter at all reasonable times
5 upon any private or public property for the purpose of:

6 (1) Inspecting and investigating to ascertain
7 possible violations of this Act, any rule or regulation
8 adopted under this Act, any permit or term or condition
9 of a permit, or any Board order; or the--Act--er--of
10 regulations---thereunder,--er--of--permits--er--terms--er
11 conditions--thereof;--er

12 (2) In accordance with the provisions of this Act,
13 taking whatever preventive or corrective action,
14 including but not limited to removal or remedial action,
15 that is necessary or appropriate whenever there is a
16 release or a substantial threat of a release of (A) a
17 hazardous substance or pesticide or (B) petroleum from an
18 underground storage tank.

19 (e) The Agency shall have the duty to investigate
20 violations of this Act, any rule or regulation adopted under
21 this Act, any permit or term or condition of a permit, or any
22 Board order; Act-er-of-regulations-adopted-thereunder,--er--of
23 permits---er---terms---er---conditions---thereof, to issue
24 administrative citations as provided in Section 31.1 of this
25 Act; and to take such summary enforcement action as is
26 provided for by Section 34 of this Act.

27 (f) The Agency shall appear before the Board in any
28 hearing upon a petition for variance, the denial of a permit,
29 or the validity or effect of a rule or regulation of the
30 Board, and shall have the authority to appear before the
31 Board in any hearing under the Act.

32 (g) The Agency shall have the duty to administer, in
33 accord with Title X of this Act, such permit and
34 certification systems as may be established by this Act or by

1 regulations adopted thereunder. The Agency may enter into
 2 written delegation agreements with any department, agency, or
 3 unit of State or local government under which all or portions
 4 of this duty may be delegated for public water supply storage
 5 and transport systems, sewage collection and transport
 6 systems, air pollution control sources with uncontrolled
 7 emissions of 100 tons per year or less and application of
 8 algicides to waters of the State. Such delegation agreements
 9 will require that the work to be performed thereunder will be
 10 in accordance with Agency criteria, subject to Agency review,
 11 and shall include such financial and program auditing by the
 12 Agency as may be required.

13 (h) The Agency shall have authority to require the
 14 submission of complete plans and specifications from any
 15 applicant for a permit required by this Act or by regulations
 16 thereunder, and to require the submission of such reports
 17 regarding actual or potential violations of this Act, any
 18 rule or regulation adopted under this Act, any permit or term
 19 or condition of a permit, or any Board order ~~the--Act--or--of~~
 20 ~~regulations--thereunder,--or--of--permits--or--terms--or--conditions~~
 21 ~~thereof~~, as may be necessary for the purposes of this Act.

22 (i) The Agency shall have authority to make
 23 recommendations to the Board for the adoption of regulations
 24 under Title VII of the Act.

25 (j) The Agency shall have the duty to represent the
 26 State of Illinois in any and all matters pertaining to plans,
 27 procedures, or negotiations for interstate compacts or other
 28 governmental arrangements relating to environmental
 29 protection.

30 (k) The Agency shall have the authority to accept,
 31 receive, and administer on behalf of the State any grants,
 32 gifts, loans, indirect cost reimbursements, or other funds
 33 made available to the State from any source for purposes of
 34 this Act or for air or water pollution control, public water

1 supply, solid waste disposal, noise abatement, or other
2 environmental protection activities, surveys, or programs.
3 Any federal funds received by the Agency pursuant to this
4 subsection shall be deposited in a trust fund with the State
5 Treasurer and held and disbursed by him in accordance with
6 Treasurer as Custodian of Funds Act, provided that such
7 monies shall be used only for the purposes for which they are
8 contributed and any balance remaining shall be returned to
9 the contributor.

10 The Agency is authorized to promulgate such regulations
11 and enter into such contracts as it may deem necessary for
12 carrying out the provisions of this subsection.

13 (1) The Agency is hereby designated as water pollution
14 agency for the state for all purposes of the Federal Water
15 Pollution Control Act, as amended; as implementing agency for
16 the State for all purposes of the Safe Drinking Water Act,
17 Public Law 93-523, as now or hereafter amended, except
18 Section 1425 of that Act; as air pollution agency for the
19 state for all purposes of the Clean Air Act of 1970, Public
20 Law 91-604, approved December 31, 1970, as amended; and as
21 solid waste agency for the state for all purposes of the
22 Solid Waste Disposal Act, Public Law 89-272, approved October
23 20, 1965, and amended by the Resource Recovery Act of 1970,
24 Public Law 91-512, approved October 26, 1970, as amended, and
25 amended by the Resource Conservation and Recovery Act of
26 1976, (P.L. 94-580) approved October 21, 1976, as amended; as
27 noise control agency for the state for all purposes of the
28 Noise Control Act of 1972, Public Law 92-574, approved
29 October 27, 1972, as amended; and as implementing agency for
30 the State for all purposes of the Comprehensive Environmental
31 Response, Compensation, and Liability Act of 1980 (P.L.
32 96-510), as amended; and otherwise as pollution control
33 agency for the State pursuant to federal laws integrated with
34 the foregoing laws, for financing purposes or otherwise. The

1 Agency is hereby authorized to take all action necessary or
2 appropriate to secure to the State the benefits of such
3 federal Acts, provided that the Agency shall transmit to the
4 United States without change any standards adopted by the
5 Pollution Control Board pursuant to Section 5(c) of this Act.
6 This subsection (l) of Section 4 shall not be construed to
7 bar or prohibit the Environmental Protection Trust Fund
8 Commission from accepting, receiving, and administering on
9 behalf of the State any grants, gifts, loans or other funds
10 for which the Commission is eligible pursuant to the
11 Environmental Protection Trust Fund Act. The Agency is
12 hereby designated as the State agency for all purposes of
13 administering the requirements of Section 313 of the federal
14 Emergency Planning and Community Right-to-Know Act of 1986.

15 Any municipality, sanitary district, or other political
16 subdivision, or any Agency of the State or interstate Agency,
17 which makes application for loans or grants under such
18 federal Acts shall notify the Agency of such application; the
19 Agency may participate in proceedings under such federal
20 Acts.

21 (m) The Agency shall have authority, consistent with
22 Section 5(c) and other provisions of this Act, and for
23 purposes of Section 303(e) of the Federal Water Pollution
24 Control Act, as now or hereafter amended, to engage in
25 planning processes and activities and to develop plans in
26 cooperation with units of local government, state agencies
27 and officers, and other appropriate persons in connection
28 with the jurisdiction or duties of each such unit, agency,
29 officer or person. Public hearings shall be held on the
30 planning process, at which any person shall be permitted to
31 appear and be heard, pursuant to procedural regulations
32 promulgated by the Agency.

33 (n) In accordance with the powers conferred upon the
34 Agency by Sections 10(g), 13(b), 19, 22(d) and 25 of this

1 Act, the Agency shall have authority to establish and enforce
2 minimum standards for the operation of laboratories relating
3 to analyses and laboratory tests for air pollution, water
4 pollution, noise emissions, contaminant discharges onto land
5 and sanitary, chemical, and mineral quality of water
6 distributed by a public water supply. The Agency may enter
7 into formal working agreements with other departments or
8 agencies of state government under which all or portions of
9 this authority may be delegated to the cooperating department
10 or agency.

11 (o) The Agency shall have the authority to issue
12 certificates of competency to persons and laboratories
13 meeting the minimum standards established by the Agency in
14 accordance with Section 4(n) of this Act and to promulgate
15 and enforce regulations relevant to the issuance and use of
16 such certificates. The Agency may enter into formal working
17 agreements with other departments or agencies of state
18 government under which all or portions of this authority may
19 be delegated to the cooperating department or agency.

20 (p) Except as provided in Section 17.7, the Agency shall
21 have the duty to analyze samples as required from each public
22 water supply to determine compliance with the contaminant
23 levels specified by the Pollution Control Board. The maximum
24 number of samples which the Agency shall be required to
25 analyze for microbiological quality shall be 6 per month, but
26 the Agency may, at its option, analyze a larger number each
27 month for any supply. Results of sample analyses for
28 additional required bacteriological testing, turbidity,
29 residual chlorine and radionuclides are to be provided to the
30 Agency in accordance with Section 19. Owners of water
31 supplies may enter into agreements with the Agency to provide
32 for reduced Agency participation in sample analyses.

33 (q) The Agency shall have the authority to provide
34 notice to any person who may be liable pursuant to Section

1 22.2(f) of this Act for a release or a substantial threat of
2 a release of a hazardous substance or pesticide. Such notice
3 shall include the identified response action and an
4 opportunity for such person to perform the response action.

5 (r) The Agency may enter into written delegation
6 agreements with any unit of local government under which it
7 may delegate all or portions of its inspecting, investigating
8 and enforcement functions. Such delegation agreements shall
9 require that work performed thereunder be in accordance with
10 Agency criteria and subject to Agency review.
11 Notwithstanding any other provision of law to the contrary,
12 no unit of local government shall be liable for any injury
13 resulting from the exercise of its authority pursuant to such
14 a delegation agreement unless the injury is proximately
15 caused by the willful and wanton negligence of an agent or
16 employee of the unit of local government, and any policy of
17 insurance coverage issued to a unit of local government may
18 provide for the denial of liability and the nonpayment of
19 claims based upon injuries for which the unit of local
20 government is not liable pursuant to this subsection (r).

21 (s) The Agency shall have authority to take whatever
22 preventive or corrective action is necessary or appropriate,
23 including but not limited to expenditure of monies
24 appropriated from the Build Illinois Bond Fund and the Build
25 Illinois Purposes Fund for removal or remedial action,
26 whenever any hazardous substance or pesticide is released or
27 there is a substantial threat of such a release into the
28 environment. The State, the Director, and any State employee
29 shall be indemnified for any damages or injury arising out of
30 or resulting from any action taken under this subsection.
31 The Director of the Agency is authorized to enter into such
32 contracts and agreements as are necessary to carry out the
33 Agency's duties under this subsection.

34 (t) The Agency shall have authority to distribute

1 grants, subject to appropriation by the General Assembly, for
2 financing and construction of municipal wastewater
3 facilities. With respect to all monies appropriated from the
4 Build Illinois Bond Fund and the Build Illinois Purposes Fund
5 for wastewater facility grants, the Agency shall make
6 distributions in conformity with the rules and regulations
7 established pursuant to the Anti-Pollution Bond Act, as now
8 or hereafter amended.

9 (u) Pursuant to the Illinois Administrative Procedure
10 Act, the Agency shall have the authority to adopt such rules
11 as are necessary or appropriate for the Agency to implement
12 Section 31.1 of this Act.

13 (v) (Blank.)

14 (w) Neither the State, nor the Director, nor the Board,
15 nor any State employee shall be liable for any damages or
16 injury arising out of or resulting from any action taken
17 under subsection (s).

18 (x)(1) The Agency shall have authority to distribute
19 grants, subject to appropriation by the General Assembly,
20 to units of local government for financing and
21 construction of public water supply facilities. With
22 respect to all monies appropriated from the Build
23 Illinois Bond Fund or the Build Illinois Purposes Fund
24 for public water supply grants, such grants shall be made
25 in accordance with rules promulgated by the Agency. Such
26 rules shall include a requirement for a local match of
27 30% of the total project cost for projects funded through
28 such grants.

29 (2) The Agency shall not terminate a grant to a
30 unit of local government for the financing and
31 construction of public water supply facilities unless and
32 until the Agency adopts rules that set forth precise and
33 complete standards, pursuant to Section 5-20 of the
34 Illinois Administrative Procedure Act, for the

1 termination of such grants. The Agency shall not make
2 determinations on whether specific grant conditions are
3 necessary to ensure the integrity of a project or on
4 whether subagreements shall be awarded, with respect to
5 grants for the financing and construction of public water
6 supply facilities, unless and until the Agency adopts
7 rules that set forth precise and complete standards,
8 pursuant to Section 5-20 of the Illinois Administrative
9 Procedure Act, for making such determinations. The
10 Agency shall not issue a stop-work order in relation to
11 such grants unless and until the Agency adopts precise
12 and complete standards, pursuant to Section 5-20 of the
13 Illinois Administrative Procedure Act, for determining
14 whether to issue a stop-work order.

15 (y) The Agency shall have authority to release any
16 person from further responsibility for preventive or
17 corrective action under this Act following successful
18 completion of preventive or corrective action undertaken by
19 such person upon written request by the person.

20 (Source: P.A. 91-25, eff. 6-9-99; 92-574, eff. 6-26-02.)

21 (415 ILCS 5/5) (from Ch. 111 1/2, par. 1005)

22 Sec. 5. Pollution Control Board.

23 (a) There is hereby created an independent board to be
24 known as the Pollution Control Board, consisting of 7
25 technically qualified members, no more than 4 of whom may be
26 of the same political party, to be appointed by the Governor
27 with the advice and consent of the Senate.

28 All members shall hold office for 3 years from the first
29 day of July in the year in which they were appointed, except
30 in case of an appointment to fill a vacancy. In case of a
31 vacancy in the office when the Senate is not in session, the
32 Governor may make a temporary appointment until the next
33 meeting of the Senate, when he or she shall nominate some

1 person to fill such office; and any person so nominated, who
2 is confirmed by the Senate, shall hold the office during the
3 remainder of the term.

4 Members of the Board shall hold office until their
5 respective successors have been appointed and qualified. Any
6 member may resign from office, such resignation to take
7 effect when a successor has been appointed and has qualified.

8 Board members shall be paid \$37,000 per year or an amount
9 set by the Compensation Review Board, whichever is greater,
10 and the Chairman shall be paid \$43,000 per year or an amount
11 set by the Compensation Review Board, whichever is greater.
12 Each member shall be reimbursed for expenses necessarily
13 incurred, shall devote full time to the performance of his or
14 her duties and shall make a financial disclosure upon
15 appointment. Each Board member may employ one secretary and
16 one assistant, and the Chairman one secretary and 2
17 assistants. The Board also may employ and compensate hearing
18 officers to preside at hearings under this Act, and such
19 other personnel as may be necessary. Hearing officers shall
20 be attorneys licensed to practice law in Illinois.

21 The Governor shall designate one Board member to be
22 Chairman, who shall serve at the pleasure of the Governor.

23 The Board shall hold at least one meeting each month and
24 such additional meetings as may be prescribed by Board rules.
25 In addition, special meetings may be called by the Chairman
26 or by any 2 Board members, upon delivery of 24 hours written
27 notice to the office of each member. All Board meetings
28 shall be open to the public, and public notice of all
29 meetings shall be given at least 24 hours in advance of each
30 meeting. In emergency situations in which a majority of the
31 Board certifies that exigencies of time require the
32 requirements of public notice and of 24 hour written notice
33 to members may be dispensed with, and Board members shall
34 receive such notice as is reasonable under the circumstances.

1 Four members of the Board shall constitute a quorum, and
2 4 votes shall be required for any final determination by the
3 Board, except in a proceeding to remove a seal under
4 paragraph (d) of Section 34 of this Act. The Board shall
5 keep a complete and accurate record of all its meetings.

6 (b) The Board shall determine, define and implement the
7 environmental control standards applicable in the State of
8 Illinois and may adopt rules and regulations in accordance
9 with Title VII of this Act.

10 (c) The Board shall have authority to act for the State
11 in regard to the adoption of standards for submission to the
12 United States under any federal law respecting environmental
13 protection. Such standards shall be adopted in accordance
14 with Title VII of the Act and upon adoption shall be
15 forwarded to the Environmental Protection Agency for
16 submission to the United States pursuant to subsections (l)
17 and (m) of Section 4 of this Act. Nothing in this paragraph
18 shall limit the discretion of the Governor to delegate
19 authority granted to the Governor under any federal law.

20 (d) The Board shall have authority to conduct
21 proceedings upon complaints charging violations of this Act,
22 any rule or regulation adopted under this Act, ~~or~~ any permit
23 or term or condition of a permit, or any Board order; upon
24 administrative citations; upon petitions for variances or
25 adjusted standards; upon petitions for review of the Agency's
26 final determinations on permit applications in accordance
27 with Title X of this Act; upon petitions to remove seals
28 under Section 34 of this Act; and upon other petitions for
29 review of final determinations which are made pursuant to
30 this Act or Board rule and which involve a subject which the
31 Board is authorized to regulate. The Board may also conduct
32 other proceedings as may be provided by this Act or any other
33 statute or rule.

34 (e) In connection with any proceeding pursuant to

1 subsection (b) or (d) of this Section, the Board may subpoena
2 and compel the attendance of witnesses and the production of
3 evidence reasonably necessary to resolution of the matter
4 under consideration. The Board shall issue such subpoenas
5 upon the request of any party to a proceeding under
6 subsection (d) of this Section or upon its own motion.

7 (f) The Board may prescribe reasonable fees for permits
8 required pursuant to this Act. Such fees in the aggregate
9 may not exceed the total cost to the Agency for its
10 inspection and permit systems. The Board may not prescribe
11 any permit fees which are different in amount from those
12 established by this Act.

13 (Source: P.A. 92-574, eff. 6-26-02.)

14 (415 ILCS 5/22.2) (from Ch. 111 1/2, par. 1022.2)

15 Sec. 22.2. Hazardous waste; fees; liability.

16 (a) There are hereby created within the State Treasury 2
17 special funds to be known respectively as the "Hazardous
18 Waste Fund" and the "Hazardous Waste Research Fund",
19 constituted from the fees collected pursuant to this Section.
20 In addition to the fees collected under this Section, the
21 Hazardous Waste Fund shall include other moneys made
22 available from any source for deposit into the Fund.

23 (b) (1) On and after January 1, 1989, the Agency shall
24 collect from the owner or operator of each of the
25 following sites a fee in the amount of:

26 (A) 9 cents per gallon or \$18.18 per cubic
27 yard, if the hazardous waste disposal site is
28 located off the site where such waste was produced.
29 The maximum amount payable under this subdivision
30 (A) with respect to the hazardous waste generated by
31 a single generator and deposited in monofills is
32 \$30,000 per year. If, as a result of the use of
33 multiple monofills, waste fees in excess of the

1 maximum are assessed with respect to a single waste
2 generator, the generator may apply to the Agency for
3 a credit.

4 (B) 9 cents or \$18.18 per cubic yard, if the
5 hazardous waste disposal site is located on the site
6 where such waste was produced, provided however the
7 maximum amount of fees payable under this paragraph
8 (B) is \$30,000 per year for each such hazardous
9 waste disposal site.

10 (C) If the hazardous waste disposal site is an
11 underground injection well, \$6,000 per year if not
12 more than 10,000,000 gallons per year are injected,
13 \$15,000 per year if more than 10,000,000 gallons but
14 not more than 50,000,000 gallons per year are
15 injected, and \$27,000 per year if more than
16 50,000,000 gallons per year are injected.

17 (D) 3 cents per gallon or \$6.06 per cubic yard
18 of hazardous waste received for treatment at a
19 hazardous waste treatment site, if the hazardous
20 waste treatment site is located off the site where
21 such waste was produced and if such hazardous waste
22 treatment site is owned, controlled and operated by
23 a person other than the generator of such waste.
24 After treatment at such hazardous waste treatment
25 site, the waste shall not be subject to any other
26 fee imposed by this subsection (b). For purposes of
27 this subsection (b), the term "treatment" is defined
28 as in Section 3.505 but shall not include recycling,
29 reclamation or reuse.

30 (2) The General Assembly shall annually appropriate
31 to the Fund such amounts as it deems necessary to fulfill
32 the purposes of this Act.

33 (3) The Agency shall have the authority to accept,
34 receive, and administer on behalf of the State any moneys

1 made available to the State from any source for the
2 purposes of the Hazardous Waste Fund set forth in
3 subsection (d) of this Section.

4 (4) Of the amount collected as fees provided for in
5 this Section, the Agency shall manage the use of such
6 funds to assure that sufficient funds are available for
7 match towards federal expenditures for response action at
8 sites which are listed on the National Priorities List;
9 provided, however, that this shall not apply to
10 additional monies appropriated to the Fund by the General
11 Assembly, nor shall it apply in the event that the
12 Director finds that revenues in the Hazardous Waste Fund
13 must be used to address conditions which create or may
14 create an immediate danger to the environment or public
15 health or to the welfare of the people of the State of
16 Illinois.

17 (5) Notwithstanding the other provisions of this
18 subsection (b), sludge from a publicly-owned sewage works
19 generated in Illinois, coal mining wastes and refuse
20 generated in Illinois, bottom boiler ash, flyash and flue
21 gas desulphurization sludge from public utility electric
22 generating facilities located in Illinois, and bottom
23 boiler ash and flyash from all incinerators which process
24 solely municipal waste shall not be subject to the fee.

25 (6) For the purposes of this subsection (b),
26 "monofill" means a facility, or a unit at a facility,
27 that accepts only wastes bearing the same USEPA hazardous
28 waste identification number, or compatible wastes as
29 determined by the Agency.

30 (c) The Agency shall establish procedures, not later
31 than January 1, 1984, relating to the collection of the fees
32 authorized by this Section. Such procedures shall include,
33 but not be limited to: (1) necessary records identifying the
34 quantities of hazardous waste received or disposed; (2) the

1 form and submission of reports to accompany the payment of
2 fees to the Agency; and (3) the time and manner of payment of
3 fees to the Agency, which payments shall be not more often
4 than quarterly.

5 (d) Beginning July 1, 1996, the Agency shall deposit all
6 such receipts in the State Treasury to the credit of the
7 Hazardous Waste Fund, except as provided in subsection (e) of
8 this Section. All monies in the Hazardous Waste Fund shall be
9 used by the Agency for the following purposes:

10 (1) Taking whatever preventive or corrective action
11 is necessary or appropriate, in circumstances certified
12 by the Director, including but not limited to removal or
13 remedial action whenever there is a release or
14 substantial threat of a release of a hazardous substance
15 or pesticide; provided, the Agency shall expend no more
16 than \$1,000,000 on any single incident without
17 appropriation by the General Assembly.

18 (2) To meet any requirements which must be met by
19 the State in order to obtain federal funds pursuant to
20 the Comprehensive Environmental Response, Compensation
21 and Liability Act of 1980, (P.L. 96-510).

22 (3) In an amount up to 30% of the amount collected
23 as fees provided for in this Section, for use by the
24 Agency to conduct groundwater protection activities,
25 including providing grants to appropriate units of local
26 government which are addressing protection of underground
27 waters pursuant to the provisions of this Act.

28 (4) To fund the development and implementation of
29 the model pesticide collection program under Section 19.1
30 of the Illinois Pesticide Act.

31 (5) To the extent the Agency has received and
32 deposited monies in the Fund other than fees collected
33 under subsection (b) of this Section, to pay for the cost
34 of Agency employees for services provided in reviewing

1 the performance of response actions pursuant to Title
2 XVII of this Act.

3 (6) In an amount up to 15% of the fees collected
4 annually under subsection (b) of this Section, for use by
5 the Agency for administration of the provisions of this
6 Section.

7 (e) The Agency shall deposit 10% of all receipts
8 collected under subsection (b) of this Section, but not to
9 exceed \$200,000 per year, in the State Treasury to the credit
10 of the Hazardous Waste Research Fund established by this Act.
11 Pursuant to appropriation, all monies in such Fund shall be
12 used by the Department of Natural Resources for the purposes
13 set forth in this subsection.

14 The Department of Natural Resources may enter into
15 contracts with business, industrial, university, governmental
16 or other qualified individuals or organizations to assist in
17 the research and development intended to recycle, reduce the
18 volume of, separate, detoxify or reduce the hazardous
19 properties of hazardous wastes in Illinois. Monies in the
20 Fund may also be used by the Department of Natural Resources
21 for technical studies, monitoring activities, and educational
22 and research activities which are related to the protection
23 of underground waters. Monies in the Hazardous Waste
24 Research Fund may be used to administer the Illinois Health
25 and Hazardous Substances Registry Act. Monies in the
26 Hazardous Waste Research Fund shall not be used for any
27 sanitary landfill or the acquisition or construction of any
28 facility. This does not preclude the purchase of equipment
29 for the purpose of public demonstration projects. The
30 Department of Natural Resources shall adopt guidelines for
31 cost sharing, selecting, and administering projects under
32 this subsection.

33 (f) Notwithstanding any other provision or rule of law,
34 and subject only to the defenses set forth in subsection (j)

1 of this Section, the following persons shall be liable for
2 all costs of removal or remedial action incurred by the State
3 of Illinois or any unit of local government as a result of a
4 release or substantial threat of a release of a hazardous
5 substance or pesticide:

6 (1) the owner and operator of a facility or vessel
7 from which there is a release or substantial threat of
8 release of a hazardous substance or pesticide;

9 (2) any person who at the time of disposal,
10 transport, storage or treatment of a hazardous substance
11 or pesticide owned or operated the facility or vessel
12 used for such disposal, transport, treatment or storage
13 from which there was a release or substantial threat of a
14 release of any such hazardous substance or pesticide;

15 (3) any person who by contract, agreement, or
16 otherwise has arranged with another party or entity for
17 transport, storage, disposal or treatment of hazardous
18 substances or pesticides owned, controlled or possessed
19 by such person at a facility owned or operated by another
20 party or entity from which facility there is a release or
21 substantial threat of a release of such hazardous
22 substances or pesticides; and

23 (4) any person who accepts or accepted any
24 hazardous substances or pesticides for transport to
25 disposal, storage or treatment facilities or sites from
26 which there is a release or a substantial threat of a
27 release of a hazardous substance or pesticide.

28 Any monies received by the State of Illinois pursuant to
29 this subsection (f) shall be deposited in the State Treasury
30 to the credit of the Hazardous Waste Fund.

31 In accordance with the other provisions of this Section,
32 costs of removal or remedial action incurred by a unit of
33 local government may be recovered in an action before the
34 Board brought by the unit of local government under

1 subsection (i) of this Section. Any monies so recovered
2 shall be paid to the unit of local government.

3 (g)(1) No indemnification, hold harmless, or similar
4 agreement or conveyance shall be effective to transfer
5 from the owner or operator of any vessel or facility or
6 from any person who may be liable for a release or
7 substantial threat of a release under this Section, to
8 any other person the liability imposed under this
9 Section. Nothing in this Section shall bar any agreement
10 to insure, hold harmless or indemnify a party to such
11 agreements for any liability under this Section.

12 (2) Nothing in this Section, including the
13 provisions of paragraph (g)(1) of this Section, shall bar
14 a cause of action that an owner or operator or any other
15 person subject to liability under this Section, or a
16 guarantor, has or would have, by reason of subrogation or
17 otherwise against any person.

18 (h) For purposes of this Section:

19 (1) The term "facility" means:

20 (A) any building, structure, installation,
21 equipment, pipe or pipeline including but not
22 limited to any pipe into a sewer or publicly owned
23 treatment works, well, pit, pond, lagoon,
24 impoundment, ditch, landfill, storage container,
25 motor vehicle, rolling stock, or aircraft; or

26 (B) any site or area where a hazardous
27 substance has been deposited, stored, disposed of,
28 placed, or otherwise come to be located.

29 (2) The term "owner or operator" means:

30 (A) any person owning or operating a vessel or
31 facility;

32 (B) in the case of an abandoned facility, any
33 person owning or operating the abandoned facility or
34 any person who owned, operated, or otherwise

1 controlled activities at the abandoned facility
2 immediately prior to such abandonment;

3 (C) in the case of a land trust as defined in
4 Section 2 of the Land Trustee as Creditor Act, the
5 person owning the beneficial interest in the land
6 trust;

7 (D) in the case of a fiduciary (other than a
8 land trustee), the estate, trust estate, or other
9 interest in property held in a fiduciary capacity,
10 and not the fiduciary. For the purposes of this
11 Section, "fiduciary" means a trustee, executor,
12 administrator, guardian, receiver, conservator or
13 other person holding a facility or vessel in a
14 fiduciary capacity;

15 (E) in the case of a "financial institution",
16 meaning the Illinois Housing Development Authority
17 and that term as defined in Section 2 of the
18 Illinois Banking Act, that has acquired ownership,
19 operation, management, or control of a vessel or
20 facility through foreclosure or under the terms of a
21 security interest held by the financial institution
22 or under the terms of an extension of credit made by
23 the financial institution, the financial institution
24 only if the financial institution takes possession
25 of the vessel or facility and the financial
26 institution exercises actual, direct, and continual
27 or recurrent managerial control in the operation of
28 the vessel or facility that causes a release or
29 substantial threat of a release of a hazardous
30 substance or pesticide resulting in removal or
31 remedial action;

32 (F) In the case of an owner of residential
33 property, the owner if the owner is a person other
34 than an individual, or if the owner is an individual

1 who owns more than 10 dwelling units in Illinois, or
2 if the owner, or an agent, representative,
3 contractor, or employee of the owner, has caused,
4 contributed to, or allowed the release or threatened
5 release of a hazardous substance or pesticide. The
6 term "residential property" means single family
7 residences of one to 4 dwelling units, including
8 accessory land, buildings, or improvements
9 incidental to those dwellings that are exclusively
10 used for the residential use. For purposes of this
11 subparagraph (F), the term "individual" means a
12 natural person, and shall not include corporations,
13 partnerships, trusts, or other non-natural persons.

14 (G) In the case of any facility, title or
15 control of which was conveyed due to bankruptcy,
16 foreclosure, tax delinquency, abandonment, or
17 similar means to a unit of State or local
18 government, any person who owned, operated, or
19 otherwise controlled activities at the facility
20 immediately beforehand.

21 (H) The term "owner or operator" does not
22 include a unit of State or local government which
23 acquired ownership or control through bankruptcy,
24 tax delinquency, abandonment, or other circumstances
25 in which the government acquires title by virtue of
26 its function as sovereign. The exclusion provided
27 under this paragraph shall not apply to any State or
28 local government which has caused or contributed to
29 the release or threatened release of a hazardous
30 substance from the facility, and such a State or
31 local government shall be subject to the provisions
32 of this Act in the same manner and to the same
33 extent, both procedurally and substantively, as any
34 nongovernmental entity, including liability under

1 Section 22.2(f).

2 (i) The costs and damages provided for in this Section
3 may be imposed by the Board in an action brought before the
4 Board in accordance with Title VIII of this Act, except that
5 Section 33(c) of this Act shall not apply to any such action.

6 (j) (1) There shall be no liability under this Section
7 for a person otherwise liable who can establish by a
8 preponderance of the evidence that the release or substantial
9 threat of release of a hazardous substance and the damages
10 resulting therefrom were caused solely by:

11 (A) an act of God;

12 (B) an act of war;

13 (C) an act or omission of a third party other than
14 an employee or agent of the defendant, or other than one
15 whose act or omission occurs in connection with a
16 contractual relationship, existing directly or
17 indirectly, with the defendant (except where the sole
18 contractual arrangement arises from a published tariff
19 and acceptance for carriage by a common carrier by rail),
20 if the defendant establishes by a preponderance of the
21 evidence that (i) he exercised due care with respect to
22 the hazardous substance concerned, taking into
23 consideration the characteristics of such hazardous
24 substance, in light of all relevant facts and
25 circumstances, and (ii) he took precautions against
26 foreseeable acts or omissions of any such third party and
27 the consequences that could foreseeably result from such
28 acts or omissions; or

29 (D) any combination of the foregoing paragraphs.

30 (2) There shall be no liability under this Section for
31 any release permitted by State or federal law.

32 (3) There shall be no liability under this Section for
33 damages as a result of actions taken or omitted in the course
34 of rendering care, assistance, or advice in accordance with

1 this Section or the National Contingency Plan pursuant to the
2 Comprehensive Environmental Response, Compensation and
3 Liability Act of 1980 (P.L. 96-510) or at the direction of an
4 on-scene coordinator appointed under such plan, with respect
5 to an incident creating a danger to public health or welfare
6 or the environment as a result of any release of a hazardous
7 substance or a substantial threat thereof. This subsection
8 shall not preclude liability for damages as the result of
9 gross negligence or intentional misconduct on the part of
10 such person. For the purposes of the preceding sentence,
11 reckless, willful, or wanton misconduct shall constitute
12 gross negligence.

13 (4) There shall be no liability under this Section for
14 any person (including, but not limited to, an owner of
15 residential property who applies a pesticide to the
16 residential property or who has another person apply a
17 pesticide to the residential property) for response costs or
18 damages as the result of the storage, handling and use, or
19 recommendation for storage, handling and use, of a pesticide
20 consistent with:

21 (A) its directions for storage, handling and use as
22 stated in its label or labeling;

23 (B) its warnings and cautions as stated in its
24 label or labeling; and

25 (C) the uses for which it is registered under the
26 Federal Insecticide, Fungicide and Rodenticide Act and
27 the Illinois Pesticide Act.

28 (4.5) There shall be no liability under subdivision
29 (f)(1) of this Section for response costs or damages as the
30 result of a release of a pesticide from an agrichemical
31 facility site if the Agency has received notice from the
32 Department of Agriculture pursuant to Section 19.3 of the
33 Illinois Pesticide Act, the owner or operator of the
34 agrichemical facility is proceeding with a corrective action

1 plan under the Agrichemical Facility Response Action Program
2 implemented under that Section, and the Agency has provided a
3 written endorsement of a corrective action plan.

4 (4.6) There shall be no liability under subdivision
5 (f)(1) of this Section for response costs or damages as the
6 result of a substantial threat of a release of a pesticide
7 from an agrichemical facility site if the Agency has received
8 notice from the Department of Agriculture pursuant to Section
9 19.3 of the Illinois Pesticide Act and the owner or operator
10 of the agrichemical facility is proceeding with a corrective
11 action plan under the Agrichemical Facility Response Action
12 Program implemented under that Section.

13 (5) Nothing in this subsection (j) shall affect or
14 modify in any way the obligations or liability of any person
15 under any other provision of this Act or State or federal
16 law, including common law, for damages, injury, or loss
17 resulting from a release or substantial threat of a release
18 of any hazardous substance or for removal or remedial action
19 or the costs of removal or remedial action of such hazardous
20 substance.

21 (6)(A) The term "contractual relationship", for the
22 purpose of this subsection includes, but is not limited to,
23 land contracts, deeds or other instruments transferring title
24 or possession, unless the real property on which the facility
25 concerned is located was acquired by the defendant after the
26 disposal or placement of the hazardous substance on, in, or
27 at the facility, and one or more of the circumstances
28 described in clause (i), (ii), or (iii) of this paragraph is
29 also established by the defendant by a preponderance of the
30 evidence:

31 (i) At the time the defendant acquired the facility
32 the defendant did not know and had no reason to know that
33 any hazardous substance which is the subject of the
34 release or threatened release was disposed of on, in or

1 at the facility.

2 (ii) The defendant is a government entity which
3 acquired the facility by escheat, or through any other
4 involuntary transfer or acquisition, or through the
5 exercise of eminent domain authority by purchase or
6 condemnation.

7 (iii) The defendant acquired the facility by
8 inheritance or bequest.

9 In addition to establishing the foregoing, the defendant
10 must establish that he has satisfied the requirements of
11 subparagraph (C) of paragraph (1) of this subsection (j).

12 (B) To establish the defendant had no reason to know, as
13 provided in clause (i) of subparagraph (A) of this paragraph,
14 the defendant must have undertaken, at the time of
15 acquisition, all appropriate inquiry into the previous
16 ownership and uses of the property consistent with good
17 commercial or customary practice in an effort to minimize
18 liability. For purposes of the preceding sentence, the court
19 shall take into account any specialized knowledge or
20 experience on the part of the defendant, the relationship of
21 the purchase price to the value of the property if
22 uncontaminated, commonly known or reasonably ascertainable
23 information about the property, the obviousness of the
24 presence or likely presence of contamination at the property,
25 and the ability to detect such contamination by appropriate
26 inspection.

27 (C) Nothing in this paragraph (6) or in subparagraph (C)
28 of paragraph (1) of this subsection shall diminish the
29 liability of any previous owner or operator of such facility
30 who would otherwise be liable under this Act. Notwithstanding
31 this paragraph (6), if the defendant obtained actual
32 knowledge of the release or threatened release of a hazardous
33 substance at such facility when the defendant owned the real
34 property and then subsequently transferred ownership of the

1 property to another person without disclosing such knowledge,
2 such defendant shall be treated as liable under subsection
3 (f) of this Section and no defense under subparagraph (C) of
4 paragraph (1) of this subsection shall be available to such
5 defendant.

6 (D) Nothing in this paragraph (6) shall affect the
7 liability under this Act of a defendant who, by any act or
8 omission, caused or contributed to the release or threatened
9 release of a hazardous substance which is the subject of the
10 action relating to the facility.

11 (E) (i) Except as provided in clause (ii) of this
12 subparagraph (E), a defendant who has acquired real property
13 shall have established a rebuttable presumption against all
14 State claims and a conclusive presumption against all private
15 party claims that the defendant has made all appropriate
16 inquiry within the meaning of subdivision (6)(B) of this
17 subsection (j) if the defendant proves that immediately prior
18 to or at the time of the acquisition:

19 (I) the defendant obtained a Phase I Environmental
20 Audit of the real property that meets or exceeds the
21 requirements of this subparagraph (E), and the Phase I
22 Environmental Audit did not disclose the presence or
23 likely presence of a release or a substantial threat of a
24 release of a hazardous substance or pesticide at, on, to,
25 or from the real property; or

26 (II) the defendant obtained a Phase II
27 Environmental Audit of the real property that meets or
28 exceeds the requirements of this subparagraph (E), and
29 the Phase II Environmental Audit did not disclose the
30 presence or likely presence of a release or a substantial
31 threat of a release of a hazardous substance or pesticide
32 at, on, to, or from the real property.

33 (ii) No presumption shall be created under clause (i) of
34 this subparagraph (E), and a defendant shall be precluded

1 from demonstrating that the defendant has made all
2 appropriate inquiry within the meaning of subdivision (6)(B)
3 of this subsection (j), if:

4 (I) the defendant fails to obtain all Environmental
5 Audits required under this subparagraph (E) or any such
6 Environmental Audit fails to meet or exceed the
7 requirements of this subparagraph (E);

8 (II) a Phase I Environmental Audit discloses the
9 presence or likely presence of a release or a substantial
10 threat of a release of a hazardous substance or pesticide
11 at, on, to, or from real property, and the defendant
12 fails to obtain a Phase II Environmental Audit;

13 (III) a Phase II Environmental Audit discloses the
14 presence or likely presence of a release or a substantial
15 threat of a release of a hazardous substance or pesticide
16 at, on, to, or from the real property;

17 (IV) the defendant fails to maintain a written
18 compilation and explanatory summary report of the
19 information reviewed in the course of each Environmental
20 Audit under this subparagraph (E); or

21 (V) there is any evidence of fraud, material
22 concealment, or material misrepresentation by the
23 defendant of environmental conditions or of related
24 information discovered during the course of an
25 Environmental Audit.

26 (iii) For purposes of this subparagraph (E), the term
27 "environmental professional" means an individual (other than
28 a practicing attorney) who, through academic training,
29 occupational experience, and reputation (such as engineers,
30 industrial hygienists, or geologists) can objectively conduct
31 one or more aspects of an Environmental Audit and who either:

32 (I) maintains at the time of the Environmental
33 Audit and for at least one year thereafter at least
34 \$500,000 of environmental consultants' professional

1 liability insurance coverage issued by an insurance
2 company licensed to do business in Illinois; or

3 (II) is an Illinois licensed professional engineer
4 or an Illinois licensed industrial hygienist.

5 An environmental professional may employ persons who are
6 not environmental professionals to assist in the preparation
7 of an Environmental Audit if such persons are under the
8 direct supervision and control of the environmental
9 professional.

10 (iv) For purposes of this subparagraph (E), the term
11 "real property" means any interest in any parcel of land, and
12 includes, but is not limited to, buildings, fixtures, and
13 improvements.

14 (v) For purposes of this subparagraph (E), the term
15 "Phase I Environmental Audit" means an investigation of real
16 property, conducted by environmental professionals, to
17 discover the presence or likely presence of a release or a
18 substantial threat of a release of a hazardous substance or
19 pesticide at, on, to, or from real property, and whether a
20 release or a substantial threat of a release of a hazardous
21 substance or pesticide has occurred or may occur at, on, to,
22 or from the real property. Until such time as the United
23 States Environmental Protection Agency establishes standards
24 for making appropriate inquiry into the previous ownership
25 and uses of the facility pursuant to 42 U.S.C. Sec.
26 9601(35)(B)(ii), the investigation shall comply with the
27 procedures of the American Society for Testing and Materials,
28 including the document known as Standard E1527-97, entitled
29 "Standard Procedures for Environmental Site Assessment: Phase
30 1 Environmental Site Assessment Process". Upon their
31 adoption, the standards promulgated by USEPA pursuant to 42
32 U.S.C. Sec. 9601(35)(B)(ii) shall govern the performance of
33 Phase I Environmental Audits. In addition to the above
34 requirements, the Phase I Environmental Audit shall include a

1 review of recorded land title records for the purpose of
 2 determining whether the real property is subject to an
 3 environmental land use restriction such as a No Further
 4 Remediation Letter, Environmental Land Use Control, or
 5 Highway Authority Agreement. The investigation shall include
 6 a review of--at--least--each--of--the--following--sources--of
 7 information--concerning--the--current--and--previous--ownership--and
 8 use--of--the--real--property:

9 (I)--Recorded--chain--of--title--documents--regarding--the
 10 real--property,--including--all--deeds,--easements,--leases,
 11 restrictions,--and--covenants--for--a--period--of--50--years.

12 (II)--Aerial--photographs--that--may--reflect--prior--uses
 13 of--the--real--property--and--that--are--reasonably--obtainable
 14 through--State,--federal,--or--local--government--agencies--or
 15 bodies.

16 (III)--Recorded--environmental--cleanup--liens,--if--any,
 17 against--the--real--property--that--have--arisen--pursuant--to
 18 this--Act--or--federal--statutes.

19 (IV)--Reasonably--obtainable--State,--federal,--and
 20 local--government--records--of--sites--or--facilities--at,--on,
 21 or--near--the--real--property--to--discover--the--presence--or
 22 likely--presence--of--a--hazardous--substance--or--pesticide,
 23 and--whether--a--release--or--a--substantial--threat--of--a
 24 release--of--a--hazardous--substance--or--pesticide--has
 25 occurred--or--may--occur--at,--on,--to,--or--from--the--real
 26 property.--Such--government--records--shall--include,--but--not
 27 be--limited--to:--reasonably--obtainable--State,--federal,--and
 28 local--government--investigation--reports--for--those--sites--or
 29 facilities;--reasonably--obtainable--State,--federal,--and
 30 local--government--records--of--activities--likely--to--cause--or
 31 contribute--to--a--release--or--a--threatened--release--of--a
 32 hazardous--substance--or--pesticide--at,--on,--to,--or--from--the
 33 real--property,--including--landfill--and--other--treatment,
 34 storage,--and--disposal--location--records,--underground

1 storage--tank--records,--hazardous--waste-transporter-and
2 generator-records,--and-spill-reporting-records;--and-other
3 reasonably---obtainable---State,---federal,---and---local
4 government-environmental-records-that-report-incidents-or
5 activities-that-are-likely-to-cause-or--contribute--to--a
6 release--or-a-threatened-release-of-a-hazardous-substance
7 or-pesticide-at,--on,--to,--or-from-the-real--property.---In
8 order--to--be--deemed-"reasonably-obtainable"-as-required
9 herein,--a-copy-or-reasonable-facsimile-of-the-record-must
10 be-obtainable-from-the-government-agency-by--request--and
11 upon--payment-of-a-processing-fee,--if-any,--established-by
12 the-government--agency.---The--Agency--is--authorized--to
13 establish---a--reasonable--fee--for--processing--requests
14 received-under-this-subparagraph-(E)--for--records.---All
15 fees--collected--by--the-Agency-under-this-clause-(v)-(IV)
16 shall-be--deposited--into--the--Environmental--Protection
17 Permit--and--Inspection--Fund--in-accordance-with-Section
18 22-8.

19 Notwithstanding-any-other-law,--if-the-fee--is--paid,
20 the--Agency--shall--process-a-request-received-under-this
21 subparagraph-(E)--for--records--within--30--days--of--the
22 receipt-of-such-request.

23 (V)--A--visual--site-inspection-of-the-real-property
24 and-all-facilities-and-improvements-on-the-real--property
25 and---a---visual--inspection--of--properties--immediately
26 adjacent-to-the-real-property,--including-an-investigation
27 of-any-use,--storage,--treatment,--spills--from--use,--or
28 disposal-of-hazardous-substances,--hazardous-wastes,--solid
29 wastes,--or--pesticides.---If--the--person-conducting-the
30 investigation-is-denied-access-to-any--property--adjacent
31 to--the--real-property,--the-person-shall-conduct-a-visual
32 inspection-of-that-adjacent-property-from-the-property-to
33 which--the--person--does--have--access--and--from--public
34 rights-of-way.

1 ~~(VI)--A-review-of-business-records-for-activities-at~~
2 ~~or-on-the-real-property-for-a-period-of-50-years.~~

3 (vi) For purposes of subparagraph (E), the term "Phase
4 II Environmental Audit" means an investigation of real
5 property, conducted by environmental professionals,
6 subsequent to a Phase I Environmental Audit. If the Phase I
7 Environmental Audit discloses the presence or likely presence
8 of a hazardous substance or a pesticide or a release or a
9 substantial threat of a release of a hazardous substance or
10 pesticide:

11 (I) In or to soil, the defendant, as part of the
12 Phase II Environmental Audit, shall perform a series of
13 soil borings sufficient to determine whether there is a
14 presence or likely presence of a hazardous substance or
15 pesticide and whether there is or has been a release or a
16 substantial threat of a release of a hazardous substance
17 or pesticide at, on, to, or from the real property.

18 (II) In or to groundwater, the defendant, as part
19 of the Phase II Environmental Audit, shall: review
20 information regarding local geology, water well
21 locations, and locations of waters of the State as may be
22 obtained from State, federal, and local government
23 records, including but not limited to the United States
24 Geological Service, the State Geological Survey Division
25 of the Department of Natural Resources, and the State
26 Water Survey Division of the Department of Natural
27 Resources; and perform groundwater monitoring sufficient
28 to determine whether there is a presence or likely
29 presence of a hazardous substance or pesticide, and
30 whether there is or has been a release or a substantial
31 threat of a release of a hazardous substance or pesticide
32 at, on, to, or from the real property.

33 (III) On or to media other than soil or
34 groundwater, the defendant, as part of the Phase II

1 Environmental Audit, shall perform an investigation
2 sufficient to determine whether there is a presence or
3 likely presence of a hazardous substance or pesticide,
4 and whether there is or has been a release or a
5 substantial threat of a release of a hazardous substance
6 or pesticide at, on, to, or from the real property.

7 (vii) The findings of each Environmental Audit prepared
8 under this subparagraph (E) shall be set forth in a written
9 audit report. Each audit report shall contain an affirmation
10 by the defendant and by each environmental professional who
11 prepared the Environmental Audit that the facts stated in the
12 report are true and are made under a penalty of perjury as
13 defined in Section 32-2 of the Criminal Code of 1961. It is
14 perjury for any person to sign an audit report that contains
15 a false material statement that the person does not believe
16 to be true.

17 (viii) The Agency is not required to review, approve, or
18 certify the results of any Environmental Audit. The
19 performance of an Environmental Audit shall in no way entitle
20 a defendant to a presumption of Agency approval or
21 certification of the results of the Environmental Audit.

22 The presence or absence of a disclosure document prepared
23 under the Responsible Property Transfer Act of 1988 shall not
24 be a defense under this Act and shall not satisfy the
25 requirements of subdivision (6)(A) of this subsection (j).

26 (7) No person shall be liable under this Section for
27 response costs or damages as the result of a pesticide
28 release if the Agency has found that a pesticide release
29 occurred based on a Health Advisory issued by the U.S.
30 Environmental Protection Agency or an action level developed
31 by the Agency, unless the Agency notified the manufacturer of
32 the pesticide and provided an opportunity of not less than 30
33 days for the manufacturer to comment on the technical and
34 scientific justification supporting the Health Advisory or

1 action level.

2 (8) No person shall be liable under this Section for
3 response costs or damages as the result of a pesticide
4 release that occurs in the course of a farm pesticide
5 collection program operated under Section 19.1 of the
6 Illinois Pesticide Act, unless the release results from gross
7 negligence or intentional misconduct.

8 (k) If any person who is liable for a release or
9 substantial threat of release of a hazardous substance or
10 pesticide fails without sufficient cause to provide removal
11 or remedial action upon or in accordance with a notice and
12 request by the Agency or upon or in accordance with any order
13 of the Board or any court, such person may be liable to the
14 State for punitive damages in an amount at least equal to,
15 and not more than 3 times, the amount of any costs incurred
16 by the State of Illinois as a result of such failure to take
17 such removal or remedial action. The punitive damages
18 imposed by the Board shall be in addition to any costs
19 recovered from such person pursuant to this Section and in
20 addition to any other penalty or relief provided by this Act
21 or any other law.

22 Any monies received by the State pursuant to this
23 subsection (k) shall be deposited in the Hazardous Waste
24 Fund.

25 (l) Beginning January 1, 1988, the Agency shall annually
26 collect a \$250 fee for each Special Waste Hauling Permit
27 Application and, in addition, shall collect a fee of \$20 for
28 each waste hauling vehicle identified in the annual permit
29 application and for each vehicle which is added to the permit
30 during the annual period. The Agency shall deposit 85% of
31 such fees collected under this subsection in the State
32 Treasury to the credit of the Hazardous Waste Research Fund;
33 and shall deposit the remaining 15% of such fees collected in
34 the State Treasury to the credit of the Environmental

1 Protection Permit and Inspection Fund. The majority of such
2 receipts which are deposited in the Hazardous Waste Research
3 Fund pursuant to this subsection shall be used by the
4 Department of Natural Resources for activities which relate
5 to the protection of underground waters. Persons engaged in
6 the offsite transportation of hazardous waste by highway and
7 participating in the Uniform Program under subsection (1-5)
8 are not required to file a Special Waste Hauling Permit
9 Application.

10 (1-5) (1) As used in this subsection:

11 "Base state" means the state selected by a
12 transporter according to the procedures established under
13 the Uniform Program.

14 "Base state agreement" means an agreement between
15 participating states electing to register or permit
16 transporters.

17 "Participating state" means a state electing to
18 participate in the Uniform Program by entering into a
19 base state agreement.

20 "Transporter" means a person engaged in the offsite
21 transportation of hazardous waste by highway.

22 "Uniform application" means the uniform registration
23 and permit application form prescribed under the Uniform
24 Program.

25 "Uniform Program" means the Uniform State Hazardous
26 Materials Transportation Registration and Permit Program
27 established in the report submitted and amended pursuant
28 to 49 U.S.C. Section 5119(b), as implemented by the
29 Agency under this subsection.

30 "Vehicle" means any self-propelled motor vehicle,
31 except a truck tractor without a trailer, designed or
32 used for the transportation of hazardous waste subject to
33 the hazardous waste manifesting requirements of 40 U.S.C.
34 Section 6923(a)(3).

1 (2) Beginning July 1, 1998, the Agency shall
2 implement the Uniform State Hazardous Materials
3 Transportation Registration and Permit Program. On and
4 after that date, no person shall engage in the offsite
5 transportation of hazardous waste by highway without
6 registering and obtaining a permit under the Uniform
7 Program. A transporter with its principal place of
8 business in Illinois shall register with and obtain a
9 permit from the Agency. A transporter that designates
10 another participating state in the Uniform Program as its
11 base state shall likewise register with and obtain a
12 permit from that state before transporting hazardous
13 waste in Illinois.

14 (3) Beginning July 1, 1998, the Agency shall
15 annually collect no more than a \$250 processing and audit
16 fee from each transporter of hazardous waste who has
17 filed a uniform application and, in addition, the Agency
18 shall annually collect an apportioned vehicle
19 registration fee of \$20. The amount of the apportioned
20 vehicle registration fee shall be calculated consistent
21 with the procedures established under the Uniform
22 Program.

23 All moneys received by the Agency from the
24 collection of fees pursuant to the Uniform Program shall
25 be deposited into the Hazardous Waste Transporter account
26 hereby created within the Environmental Protection Permit
27 and Inspection Fund. Moneys remaining in the account at
28 the close of the fiscal year shall not lapse to the
29 General Revenue Fund. The State Treasurer may receive
30 money or other assets from any source for deposit into
31 the account. The Agency may expend moneys from the
32 account, upon appropriation, for the implementation of
33 the Uniform Program, including the costs to the Agency of
34 fee collection and administration. In addition, funds

1 not expended for the implementation of the Uniform
2 Program may be utilized for emergency response and
3 cleanup activities related to hazardous waste
4 transportation that are initiated by the Agency.

5 Whenever the amount of the Hazardous Waste
6 Transporter account exceeds by 115% the amount annually
7 appropriated by the General Assembly, the Agency shall credit
8 participating transporters an amount, proportionately based
9 on the amount of the vehicle fee paid, equal to the excess in
10 the account, and shall determine the need to reduce the
11 amount of the fee charged transporters in the subsequent
12 fiscal year by the amount of the credit.

13 (4) (A) The Agency may propose and the Board shall
14 adopt rules as necessary to implement and enforce the
15 Uniform Program. The Agency is authorized to enter into
16 agreements with other agencies of this State as necessary
17 to carry out administrative functions or enforcement of
18 the Uniform Program.

19 (B) The Agency shall recognize a Uniform Program
20 registration as valid for one year from the date a notice
21 of registration form is issued and a permit as valid for
22 3 years from the date issued or until a transporter fails
23 to renew its registration, whichever occurs first.

24 (C) The Agency may inspect or examine any motor
25 vehicle or facility operated by a transporter, including
26 papers, books, records, documents, or other materials to
27 determine if a transporter is complying with the Uniform
28 Program. The Agency may also conduct investigations and
29 audits as necessary to determine if a transporter is
30 entitled to a permit or to make suspension or revocation
31 determinations consistent with the standards of the
32 Uniform Program.

33 (5) The Agency may enter into agreements with
34 federal agencies, national repositories, or other

1 participating states as necessary to allow for the
2 reciprocal registration and permitting of transporters
3 pursuant to the Uniform Program. The agreements may
4 include procedures for determining a base state, the
5 collection and distribution of registration fees, dispute
6 resolution, the exchange of information for reporting and
7 enforcement purposes, and other provisions necessary to
8 fully implement, administer, and enforce the Uniform
9 Program.

10 (m) (Blank).

11 (n) (Blank).

12 (Source: P.A. 91-36, eff. 6-15-99; 92-574, eff. 6-26-02.)

13 (415 ILCS 5/28.6 new)

14 Sec. 28.6. Expedited rulemaking to update incorporation
15 by reference.

16 (a) Any person may file a proposal with the Board or the
17 Agency, whichever is appropriate, to update an incorporation
18 by reference included in a Board or Agency rule. The Board
19 or the Agency may also make such a proposal on its own
20 initiative.

21 (b) An expedited rulemaking to update an incorporation
22 by reference under this Section shall be for the sole purpose
23 of replacing a reference to an older or obsolete version of a
24 document with a reference to the current version of that
25 document or its successor document.

26 (c) An expedited rulemaking to update an incorporation
27 by reference under this Section shall comply with subsections
28 (a) and (c) of Section 5-75 of the Illinois Administrative
29 Procedure Act. Except as otherwise provided in this Section
30 or the rules implementing this Section, Sections 5-35 through
31 5-50 of the Illinois Administrative Procedure Act and
32 Sections 27 and 28 of this Act do not apply to rulemaking
33 under this Section.

1 (d) Within 30 days after receiving a proposal under this
 2 Section, the Board or the Agency shall cause notice of the
 3 proposal to be filed with the Secretary of State for
 4 publication in the Illinois Register. The date upon which
 5 the notice appears in the Illinois Register commences a
 6 public comment period of 45 days, during which any person may
 7 file comments on the proposal with the Board or the Agency,
 8 whichever is applicable.

9 (e) If no objection to the proposed amendment is filed
 10 during the public comment period, then the proposed amendment
 11 may be adopted and filed with the Secretary of State for
 12 publication in the Illinois Register as a final rule. The
 13 amendment becomes effective immediately upon filing with the
 14 Secretary of State, unless a later effective date is required
 15 by statute or is specified in the rulemaking.

16 (f) If an objection to the proposed amendment is filed
 17 during the public comment period, then the proposed amendment
 18 shall not be adopted pursuant to this Section. Nothing in
 19 this Section precludes the adoption of a change to an
 20 incorporation by reference through other lawful rulemaking
 21 procedures.

22 (g) The Board and the Agency may each adopt procedural
 23 rules to implement this Section.

24 (415 ILCS 5/30) (from Ch. 111 1/2, par. 1030)

25 Sec. 30. Investigations. The Agency shall cause
 26 investigations to be made upon the request of the Board or
 27 upon receipt of information concerning an alleged violation
 28 of this Act, ~~or of~~ any rule or regulation adopted under this
 29 Act, promulgated thereunder, ~~or of~~ any permit ~~granted by the~~
 30 Agency or any term or condition of a any such permit, or any
 31 Board order, and may cause to be made such other
 32 investigations as it shall deem advisable.

33 (Source: P.A. 92-574, eff. 6-26-02.)

1 (415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)
2 Sec. 31. Notice; complaint; hearing.

3 (a)(1) Within 180 days of becoming aware of an alleged
4 violation of the Act or any rule adopted under the Act or
5 of a permit granted by the Agency or condition of the
6 permit, the Agency shall issue and serve, by certified
7 mail, upon the person complained against a written notice
8 informing that person that the Agency has evidence of the
9 alleged violation. At a minimum, the written notice
10 shall contain:

11 (A) notification to the person complained
12 against of the requirement to submit a written
13 response addressing the violations alleged and the
14 option to meet with appropriate agency personnel to
15 resolve any alleged violations that could lead to
16 the filing of a formal complaint;

17 (B) a detailed explanation by the Agency of
18 the violations alleged;

19 (C) an explanation by the Agency of the
20 actions that the Agency believes may resolve the
21 alleged violations, including an estimate of a
22 reasonable time period for the person complained
23 against to complete the suggested resolution; and

24 (D) an explanation of any alleged violation
25 that the Agency believes cannot be resolved without
26 the involvement of the Office of the Illinois
27 Attorney General or the State's Attorney of the
28 county in which the alleged violation occurred and
29 the basis for the Agency's belief.

30 (2) A written response to the violations alleged
31 shall be submitted to the Agency, by certified mail,
32 within 45 days of receipt of notice by the person
33 complained against, unless the Agency agrees to an
34 extension. The written response shall include:

1 (A) information in rebuttal, explanation or
2 justification of each alleged violation;

3 (B) a proposed Compliance Commitment Agreement
4 that includes specified times for achieving each
5 commitment and which may consist of a statement
6 indicating that the person complained against
7 believes that compliance has been achieved; and

8 (C) a request for a meeting with appropriate
9 Agency personnel if a meeting is desired by the
10 person complained against.

11 (3) If the person complained against fails to
12 respond in accordance with the requirements of
13 subdivision (2) of this subsection (a), the failure to
14 respond shall be considered a waiver of the requirements
15 of this subsection (a) and nothing in this Section shall
16 preclude the Agency from proceeding pursuant to
17 subsection (b) of this Section.

18 (4) A meeting requested pursuant to subdivision (2)
19 of this subsection (a) shall be held without a
20 representative of the Office of the Illinois Attorney
21 General or the State's Attorney of the county in which
22 the alleged violation occurred, within 60 days of receipt
23 of notice by the person complained against, unless the
24 Agency agrees to a postponement. At the meeting, the
25 Agency shall provide an opportunity for the person
26 complained against to respond to each alleged violation,
27 suggested resolution, and suggested implementation time
28 frame, and to suggest alternate resolutions.

29 (5) If a meeting requested pursuant to subdivision
30 (2) of this subsection (a) is held, the person complained
31 against shall, within 21 days following the meeting or
32 within an extended time period as agreed to by the
33 Agency, submit by certified mail to the Agency a written
34 response to the alleged violations. The written response

1 shall include:

2 (A) additional information in rebuttal,
3 explanation or justification of each alleged
4 violation;

5 (B) a proposed Compliance Commitment Agreement
6 that includes specified times for achieving each
7 commitment and which may consist of a statement
8 indicating that the person complained against
9 believes that compliance has been achieved; and

10 (C) a statement indicating that, should the
11 person complained against so wish, the person
12 complained against chooses to rely upon the initial
13 written response submitted pursuant to subdivision
14 (2) of this subsection (a).

15 (6) If the person complained against fails to
16 respond in accordance with the requirements of
17 subdivision (5) of this subsection (a), the failure to
18 respond shall be considered a waiver of the requirements
19 of this subsection (a) and nothing in this Section shall
20 preclude the Agency from proceeding pursuant to
21 subsection (b) of this Section.

22 (7) Within 30 days of the Agency's receipt of a
23 written response submitted by the person complained
24 against pursuant to subdivision (2) of this subsection
25 (a), if a meeting is not requested, or subdivision (5) of
26 this subsection (a), if a meeting is held, or within a
27 later time period as agreed to by the Agency and the
28 person complained against, the Agency shall issue and
29 serve, by certified mail, upon the person complained
30 against a written notice informing the person of its
31 acceptance, rejection, or proposed modification to the
32 proposed Compliance Commitment Agreement as contained
33 within the written response.

34 (8) Nothing in this subsection (a) is intended to

1 require the Agency to enter into Compliance Commitment
2 Agreements for any alleged violation that the Agency
3 believes cannot be resolved without the involvement of
4 the Office of the Attorney General or the State's
5 Attorney of the county in which the alleged violation
6 occurred, for, among other purposes, the imposition of
7 statutory penalties.

8 (9) The Agency's failure to respond to a written
9 response submitted pursuant to subdivision (2) of this
10 subsection (a), if a meeting is not requested, or
11 subdivision (5) of this subsection (a), if a meeting is
12 held, within 30 days, or within the time period otherwise
13 agreed to in writing by the Agency and the person
14 complained against, shall be deemed an acceptance by the
15 Agency of the proposed Compliance Commitment Agreement
16 for the violations alleged in the written notice issued
17 under subdivision (1) of this subsection (a) as contained
18 within the written response.

19 (10) If the person complained against complies with
20 the terms of a Compliance Commitment Agreement accepted
21 pursuant to this subsection (a), the Agency shall not
22 refer the alleged violations which are the subject of the
23 Compliance Commitment Agreement to the Office of the
24 Illinois Attorney General or the State's Attorney of the
25 county in which the alleged violation occurred. However,
26 nothing in this subsection is intended to preclude the
27 Agency from continuing negotiations with the person
28 complained against or from proceeding pursuant to the
29 provisions of subsection (b) of this Section for alleged
30 violations which remain the subject of disagreement
31 between the Agency and the person complained against
32 following fulfillment of the requirements of this
33 subsection (a).

34 (11) Nothing in this subsection (a) is intended to

1 preclude the person complained against from submitting to
2 the Agency, by certified mail, at any time, notification
3 that the person complained against consents to waiver of
4 the requirements of subsections (a) and (b) of this
5 Section.

6 (b) For alleged violations that remain the subject of
7 disagreement between the Agency and the person complained
8 against following fulfillment of the requirements of
9 subsection (a) of this Section, and as a precondition to the
10 Agency's referral or request to the Office of the Illinois
11 Attorney General or the State's Attorney of the county in
12 which the alleged violation occurred for legal representation
13 regarding an alleged violation that may be addressed pursuant
14 to subsection (c) or (d) of this Section or pursuant to
15 Section 42 of this Act, the Agency shall issue and serve, by
16 certified mail, upon the person complained against a written
17 notice informing that person that the Agency intends to
18 pursue legal action. Such notice shall notify the person
19 complained against of the violations to be alleged and offer
20 the person an opportunity to meet with appropriate Agency
21 personnel in an effort to resolve any alleged violations that
22 could lead to the filing of a formal complaint. The meeting
23 with Agency personnel shall be held within 30 days of receipt
24 of notice served pursuant to this subsection upon the person
25 complained against, unless the Agency agrees to a
26 postponement or the person notifies the Agency that he or she
27 will not appear at a meeting within the 30 day time period.
28 Nothing in this subsection is intended to preclude the Agency
29 from following the provisions of subsection (c) or (d) of
30 this Section or from requesting the legal representation of
31 the Office of the Illinois Attorney General or the State's
32 Attorney of the county in which the alleged violations
33 occurred for alleged violations which remain the subject of
34 disagreement between the Agency and the person complained

1 against after the provisions of this subsection are
2 fulfilled.

3 (c)(1) For alleged violations which remain the subject
4 of disagreement between the Agency and the person
5 complained against following waiver, pursuant to
6 subdivision (10) of subsection (a) of this Section, or
7 fulfillment of the requirements of subsections (a) and
8 (b) of this Section, the Office of the Illinois Attorney
9 General or the State's Attorney of the county in which
10 the alleged violation occurred shall issue and serve upon
11 the person complained against a written notice, together
12 with a formal complaint, which shall specify the
13 provision of the Act or the rule or regulation or permit
14 or term or condition thereof under which such person is
15 said to be in violation, and a statement of the manner
16 in, and the extent to which such person is said to
17 violate the Act or such rule or regulation or permit or
18 term or condition thereof and shall require the person so
19 complained against to answer the charges of such formal
20 complaint at a hearing before the Board at a time not
21 less than 21 days after the date of notice by the Board,
22 except as provided in Section 34 of this Act. Such
23 complaint shall be accompanied by a notification to the
24 defendant that financing may be available, through the
25 Illinois Environmental Facilities Financing Act, to
26 correct such violation. A copy of such notice of such
27 hearings shall also be sent to any person that has
28 complained to the Agency respecting the respondent within
29 the six months preceding the date of the complaint, and
30 to any person in the county in which the offending
31 activity occurred that has requested notice of
32 enforcement proceedings; 21 days notice of such hearings
33 shall also be published in a newspaper of general
34 circulation in such county. The respondent may file a

1 written answer, and at such hearing the rules prescribed
2 in Sections 32 and 33 of this Act shall apply. In the
3 case of actual or threatened acts outside Illinois
4 contributing to environmental damage in Illinois, the
5 extraterritorial service-of-process provisions of
6 Sections 2-208 and 2-209 of the Code of Civil Procedure
7 shall apply.

8 With respect to notices served pursuant to this
9 subsection (c)(1) which involve hazardous material or
10 wastes in any manner, the Agency shall annually publish a
11 list of all such notices served. The list shall include
12 the date the investigation commenced, the date notice was
13 sent, the date the matter was referred to the Attorney
14 General, if applicable, and the current status of the
15 matter.

16 (2) Notwithstanding the provisions of subdivision
17 (1) of this subsection (c), whenever a complaint has been
18 filed on behalf of the Agency or by the People of the
19 State of Illinois, the parties may file with the Board a
20 stipulation and proposal for settlement accompanied by a
21 request for relief from the requirement of a hearing
22 pursuant to subdivision (1). Unless the Board, in its
23 discretion, concludes that a hearing will be held, the
24 Board shall cause notice of the stipulation, proposal and
25 request for relief to be published and sent in the same
26 manner as is required for hearing pursuant to subdivision
27 (1) of this subsection. The notice shall include a
28 statement that any person may file a written demand for
29 hearing within 21 days after receiving the notice. If any
30 person files a timely written demand for hearing, the
31 Board shall deny the request for relief from a hearing
32 and shall hold a hearing in accordance with the
33 provisions of subdivision (1).

34 (3) Notwithstanding the provisions of subdivision

1 (1) of this subsection (c), if the Agency becomes aware
2 of a violation of this Act arising from, or as a result
3 of, voluntary pollution prevention activities, the Agency
4 shall not proceed with the written notice required by
5 subsection (a) of this Section unless:

6 (A) the person fails to take corrective action
7 or eliminate the reported violation within a
8 reasonable time; or

9 (B) the Agency believes that the violation
10 poses a substantial and imminent danger to the
11 public health or welfare or the environment. For
12 the purposes of this item (B), "substantial and
13 imminent danger" means a danger with a likelihood of
14 serious or irreversible harm.

15 (d)(1) Any person may file with the Board a
16 complaint, meeting the requirements of subsection (c) of
17 this Section, against any person allegedly violating this
18 Act, any rule or regulation adopted under this Act, any
19 permit or term or condition of a permit, or any Board
20 order. ~~or-any-rule-or-regulation-thereunder-or-any-permit~~
21 ~~or--term--or--condition--thereof.~~ The complainant shall
22 immediately serve a copy of such complaint upon the
23 person or persons named therein. Unless the Board
24 determines that such complaint is duplicative or
25 frivolous, it shall schedule a hearing and serve written
26 notice thereof upon the person or persons named therein,
27 in accord with subsection (c) of this Section.

28 (2) Whenever a complaint has been filed by a person
29 other than the Attorney General or the State's Attorney,
30 the parties may file with the Board a stipulation and
31 proposal for settlement accompanied by a request for
32 relief from the hearing requirement of subdivision (c)(1)
33 of this Section. Unless the Board, in its discretion,
34 concludes that a hearing should be held, no hearing on

1 the stipulation and proposal for settlement is required.

2 (e) In hearings before the Board under this Title the
3 burden shall be on the Agency or other complainant to show
4 either that the respondent has caused or threatened to cause
5 air or water pollution or that the respondent has violated or
6 threatens to violate any provision of this Act or any rule or
7 regulation of the Board or permit or term or condition
8 thereof. If such proof has been made, the burden shall be on
9 the respondent to show that compliance with the Board's
10 regulations would impose an arbitrary or unreasonable
11 hardship.

12 (f) The provisions of this Section shall not apply to
13 administrative citation actions commenced under Section 31.1
14 of this Act.

15 (Source: P.A. 92-574, eff. 6-26-02.)

16 (415 ILCS 5/33) (from Ch. 111 1/2, par. 1033)

17 Sec. 33. Board orders.

18 (a) After due consideration of the written and oral
19 statements, the testimony and arguments that shall be
20 submitted at the hearing, or upon default in appearance of
21 the respondent on return day specified in the notice, the
22 Board shall issue and enter such final order, or make such
23 final determination, as it shall deem appropriate under the
24 circumstances. It shall not be a defense to findings of
25 violations of the provisions of this Act, any rule or
26 regulation adopted under this Act, any permit or term or
27 condition of a permit, or any Board order, the-Act--or--Board
28 regulations or a bar to the assessment of civil penalties
29 that the person has come into compliance subsequent to the
30 violation, except where such action is barred by any
31 applicable State or federal statute of limitation. In all
32 such matters the Board shall file and publish a written
33 opinion stating the facts and reasons leading to its

1 decision. The Board shall immediately notify the respondent
2 of such order in writing by registered mail.

3 (b) Such order may include a direction to cease and
4 desist from violations of this Act, any rule or regulation
5 adopted under this Act, any permit or term or condition of a
6 permit, or any Board order ~~the Act or of the Board's rules~~
7 ~~and regulations any permit or term or condition thereof,~~
8 and/or the imposition by the Board of civil penalties in
9 accord with Section 42 of this Act. The Board may also
10 revoke the permit as a penalty for violation. If such order
11 includes a reasonable delay during which to correct a
12 violation, the Board may require the posting of sufficient
13 performance bond or other security to assure the correction
14 of such violation within the time prescribed.

15 (c) In making its orders and determinations, the Board
16 shall take into consideration all the facts and circumstances
17 bearing upon the reasonableness of the emissions, discharges
18 or deposits involved including, but not limited to:

19 (i) the character and degree of injury to, or
20 interference with the protection of the health, general
21 welfare and physical property of the people;

22 (ii) the social and economic value of the pollution
23 source;

24 (iii) the suitability or unsuitability of the
25 pollution source to the area in which it is located,
26 including the question of priority of location in the
27 area involved;

28 (iv) the technical practicability and economic
29 reasonableness of reducing or eliminating the emissions,
30 discharges or deposits resulting from such pollution
31 source; and

32 (v) any subsequent compliance.

33 Whenever a proceeding before the Board may affect the
34 right of the public individually or collectively to the use

1 of community sewer or water facilities provided by a
2 municipally owned or publicly regulated company, the Board
3 shall at least 30 days prior to the scheduled date of the
4 first hearing in such proceeding, give notice of the date,
5 time, place, and purpose of such hearing by public
6 advertisement in a newspaper of general circulation in the
7 area of the State concerned. The Board shall conduct a full
8 and complete hearing into the social and economic impact
9 which would result from restriction or denial of the right to
10 use such facilities and allow all persons claiming an
11 interest to intervene as parties and present evidence of such
12 social and economic impact.

13 (d) All orders issued and entered by the Board pursuant
14 to this Section shall be enforceable by injunction, mandamus,
15 or other appropriate remedy, in accordance with Section 42 of
16 this Act.

17 (Source: P.A. 85-1041; 86-1363.)

18 (415 ILCS 5/35) (from Ch. 111 1/2, par. 1035)

19 Sec. 35. Variances; general provisions. To the extent
20 consistent with applicable provisions of the Federal Water
21 Pollution Control Act, as now or hereafter amended, the
22 Federal Safe Drinking Water Act (P.L. 93-523), as now or
23 hereafter amended, the Clean Air Act as amended in 1977 (P.L.
24 95-95), and regulations pursuant thereto, and to the extent
25 consistent with applicable provisions of the Federal Resource
26 Conservation and Recovery Act of 1976 (P.L. 94-580), and
27 regulations pursuant thereto:7

28 (a) The Board may grant individual variances beyond the
29 limitations prescribed in this Act, whenever it is found,
30 upon presentation of adequate proof, that compliance with any
31 rule or regulation, requirement or order of the Board would
32 impose an arbitrary or unreasonable hardship. However, the
33 Board is not required to find that an arbitrary or

1 unreasonable hardship exists exclusively because the
2 regulatory standard is under review and the costs of
3 compliance are substantial and certain. In granting or
4 denying a variance the Board shall file and publish a written
5 opinion stating the facts and reasons leading to its
6 decision.

7 (b) The Agency Board shall grant provisional variances
8 whenever it is found, upon presentation of adequate proof,
9 ~~only-upon-notification-from-the-Agency~~ that compliance on a
10 short term basis with any rule or regulation, requirement or
11 order of the Board, or with any permit requirement, would
12 impose an arbitrary or unreasonable hardship. Such
13 ~~provisional-variances-shall-be-issued-within-2--working--days~~
14 ~~of-notification-from-the-Agency.~~

15 (Source: P.A. 86-671.)

16 (415 ILCS 5/36) (from Ch. 111 1/2, par. 1036)

17 Sec. 36. Variances and provisional variances.

18 (a) In granting a variance the Board may impose such
19 conditions as the policies of this Act may require. If the
20 hardship complained of consists solely of the need for a
21 reasonable delay in which to correct a violation of this Act
22 or of the Board regulations, the Board shall condition the
23 grant of such variance upon the posting of sufficient
24 performance bond or other security to assure the completion
25 of the work covered by the variance. The Board shall have no
26 authority to delegate to the Agency its powers to require
27 such performance bond. The original amount of such
28 performance bond shall not exceed the reasonable cost of the
29 work to be completed pursuant to the variance. The obligation
30 under such bond shall at no time exceed the reasonable cost
31 of work remaining pursuant to the variance.

32 (b) Except as provided by Section 38 of this Act, any
33 variance granted pursuant to the provisions of this Section

1 shall be granted for such period of time, not exceeding five
2 years, as shall be specified by the Board at the time of the
3 grant of such variance, and upon the condition that the
4 person who receives such variance shall make such periodic
5 progress reports as the Board shall specify. Such variance
6 may be extended from year to year by affirmative action of
7 the Board, but only if satisfactory progress has been shown.

8 (c) Any provisional variance granted by the Agency Board
9 pursuant to subsection (b) of Section 35 shall be for a
10 period of time not to exceed 45 days. A provisional variance
11 may be extended ~~Upon receipt of a recommendation from the~~
12 ~~Agency to extend this time period, the Board shall grant~~ up
13 to an additional 45 days by written decision of the Agency.
14 The provisional variances granted to any one person shall not
15 exceed a total of 90 days during any calendar year.

16 (Source: P.A. 81-1442.)

17 (415 ILCS 5/37) (from Ch. 111 1/2, par. 1037)

18 Sec. 37. Variances; procedures.

19 (a) Any person seeking a variance pursuant to subsection
20 (a) of Section 35 shall do so by filing a petition for
21 variance with the Board and the Agency. Any person filing
22 such a petition shall pay a filing fee. The Agency shall
23 promptly give written notice of such petition to any person
24 in the county in which the installation or property for which
25 variance is sought is located who has in writing requested
26 notice of variance petitions, the State's attorney of such
27 county, the Chairman of the County Board of such county, and
28 to each member of the General Assembly from the legislative
29 district in which that installation or property is located,
30 and shall publish a single notice of such petition in a
31 newspaper of general circulation in such county. The notices
32 required by this Section shall include the street address,
33 and if there is no street address then the legal description

1 or the location with reference to any well known landmark,
2 highway, road, thoroughfare or intersection.

3 The Agency shall promptly investigate such petition and
4 consider the views of persons who might be adversely affected
5 by the grant of a variance. The Agency shall make a
6 recommendation to the Board as to the disposition of the
7 petition. If the Board, in its discretion, concludes that a
8 hearing would be advisable, or if the Agency or any other
9 person files a written objection to the grant of such
10 variance within 21 days, together with a written request for
11 hearing, then a hearing shall be held, under the rules
12 prescribed in Sections 32 and 33 (a) of this Act, and the
13 burden of proof shall be on the petitioner.

14 (b) Any person seeking a provisional variance pursuant
15 to subsection (b) of Section 35 shall make a request to the
16 Agency. The Agency shall promptly investigate and consider
17 the merits of the request. ~~The Agency may notify the Board~~
18 ~~of its recommendation.~~ If the Agency fails to take final
19 action within 30 days after receipt of the request for a
20 provisional variance, or if the Agency denies the request,
21 the person may initiate a proceeding with the Board under
22 subsection (a) of Section 35.

23 If the Agency grants a provisional variance, the Agency
24 must promptly file a copy of its written decision with the
25 Board, and ~~the Board~~ shall give prompt notice of its action
26 to the public by issuing a press release for distribution to
27 newspapers of general circulation in the county. The Board
28 must maintain for public inspection copies of all provisional
29 variances filed with it by the Agency.

30 (Source: P.A. 87-914; 88-474.)

31 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

32 Sec. 42. Civil penalties.

33 (a) Except as provided in this Section, any person that

1 violates any provision of this Act or any regulation adopted
2 by the Board, or any permit or term or condition thereof, or
3 that violates any ~~determination--or~~ order of the Board
4 pursuant to this Act, shall be liable for ~~to~~ a civil penalty
5 of not to exceed \$50,000 for the violation and an additional
6 civil penalty of not to exceed \$10,000 for each day during
7 which the violation continues; such penalties may, upon order
8 of the Board or a court of competent jurisdiction, be made
9 payable to the Environmental Protection Trust Fund, to be
10 used in accordance with the provisions of the Environmental
11 Protection Trust Fund Act.

12 (b) Notwithstanding the provisions of subsection (a) of
13 this Section:

14 (1) Any person that violates Section 12(f) of this
15 Act or any NPDES permit or term or condition thereof, or
16 any filing requirement, regulation or order relating to
17 the NPDES permit program, shall be liable to a civil
18 penalty of not to exceed \$10,000 per day of violation.

19 (2) Any person that violates Section 12(g) of this
20 Act or any UIC permit or term or condition thereof, or
21 any filing requirement, regulation or order relating to
22 the State UIC program for all wells, except Class II
23 wells as defined by the Board under this Act, shall be
24 liable to a civil penalty not to exceed \$2,500 per day of
25 violation; provided, however, that any person who commits
26 such violations relating to the State UIC program for
27 Class II wells, as defined by the Board under this Act,
28 shall be liable to a civil penalty of not to exceed
29 \$10,000 for the violation and an additional civil penalty
30 of not to exceed \$1,000 for each day during which the
31 violation continues.

32 (3) Any person that violates Sections 21(f), 21(g),
33 21(h) or 21(i) of this Act, or any RCRA permit or term or
34 condition thereof, or any filing requirement, regulation

1 or order relating to the State RCRA program, shall be
2 liable to a civil penalty of not to exceed \$25,000 per
3 day of violation.

4 (4) In an administrative citation action under
5 Section 31.1 of this Act, any person found to have
6 violated any provision of subsection (o) of Section 21 of
7 this Act shall pay a civil penalty of \$500 for each
8 violation of each such provision, plus any hearing costs
9 incurred by the Board and the Agency. Such penalties
10 shall be made payable to the Environmental Protection
11 Trust Fund, to be used in accordance with the provisions
12 of the Environmental Protection Trust Fund Act; except
13 that if a unit of local government issued the
14 administrative citation, 50% of the civil penalty shall
15 be payable to the unit of local government.

16 (4-5) In an administrative citation action under
17 Section 31.1 of this Act, any person found to have
18 violated any provision of subsection (p) of Section 21 of
19 this Act shall pay a civil penalty of \$1,500 for each
20 violation of each such provision, plus any hearing costs
21 incurred by the Board and the Agency, except that the
22 civil penalty amount shall be a-first-offense-and \$3,000
23 for each violation of any provision of subsection (p) of
24 Section 21 that is the person's a second or subsequent
25 adjudicated violation of that provision ~~offense, plus any~~
26 ~~hearing--costs--incurred--by--the--Board--and--the--Agency.~~ The
27 penalties shall be deposited into the Environmental
28 Protection Trust Fund, to be used in accordance with the
29 provisions of the Environmental Protection Trust Fund
30 Act; except that if a unit of local government issued the
31 administrative citation, 50% of the civil penalty shall
32 be payable to the unit of local government.

33 (5) Any person who violates subsection 6 of Section
34 39.5 of this Act or any CAAPP permit, or term or

1 condition thereof, or any fee or filing requirement, or
 2 any duty to allow or carry out inspection, entry or
 3 monitoring activities, or any regulation or order
 4 relating to the CAAPP shall be liable for a civil penalty
 5 not to exceed \$10,000 per day of violation.

6 (b.5) In lieu of the penalties set forth in subsections
 7 (a) and (b) of this Section, any person who fails to file, in
 8 a timely manner, toxic chemical release forms with the Agency
 9 pursuant to Section 25b-2 of this Act shall be liable for a
 10 civil penalty of \$100 per day for each day the forms are
 11 late, not to exceed a maximum total penalty of \$6,000. This
 12 daily penalty shall begin accruing on the thirty-first day
 13 after the date that the person receives the warning notice
 14 issued by the Agency pursuant to Section 25b-6 of this Act;
 15 and the penalty shall be paid to the Agency. The daily
 16 accrual of penalties shall cease as of January 1 of the
 17 following year. All penalties collected by the Agency
 18 pursuant to this subsection shall be deposited into the
 19 Environmental Protection Permit and Inspection Fund.

20 (c) Any person that violates this Act, any rule or
 21 regulation adopted under this Act, any permit or term or
 22 condition of a permit, or any Board order ~~or--an--order--or~~
 23 ~~either--determination--of--the--Board--under--this--Act~~ and causes
 24 the death of fish or aquatic life shall, in addition to the
 25 other penalties provided by this Act, be liable to pay to the
 26 State an additional sum for the reasonable value of the fish
 27 or aquatic life destroyed. Any money so recovered shall be
 28 placed in the Wildlife and Fish Fund in the State Treasury.

29 (d) The penalties provided for in this Section may be
 30 recovered in a civil action.

31 (e) The State's Attorney of the county in which the
 32 violation occurred, or the Attorney General, may, at the
 33 request of the Agency or on his own motion, institute a civil
 34 action for an injunction to restrain violations of this Act,

1 any rule or regulation adopted under this Act, any permit or
2 term or condition of a permit, or any Board order.

3 (f) The State's Attorney of the county in which the
4 violation occurred, or the Attorney General, shall bring such
5 actions in the name of the people of the State of Illinois.
6 Without limiting any other authority which may exist for the
7 awarding of attorney's fees and costs, the Board or a court
8 of competent jurisdiction may award costs and reasonable
9 attorney's fees, including the reasonable costs of expert
10 witnesses and consultants, to the State's Attorney or the
11 Attorney General in a case where he has prevailed against a
12 person who has committed a wilful, knowing or repeated
13 violation of this Act, any rule or regulation adopted under
14 this Act, any permit or term or condition of a permit, or any
15 Board order the-Aet.

16 Any funds collected under this subsection (f) in which
17 the Attorney General has prevailed shall be deposited in the
18 Hazardous Waste Fund created in Section 22.2 of this Act.
19 Any funds collected under this subsection (f) in which a
20 State's Attorney has prevailed shall be retained by the
21 county in which he serves.

22 (g) All final orders imposing civil penalties pursuant
23 to this Section shall prescribe the time for payment of such
24 penalties. If any such penalty is not paid within the time
25 prescribed, interest on such penalty at the rate set forth in
26 subsection (a) of Section 1003 of the Illinois Income Tax
27 Act, shall be paid for the period from the date payment is
28 due until the date payment is received. However, if the time
29 for payment is stayed during the pendency of an appeal,
30 interest shall not accrue during such stay.

31 (h) In determining the appropriate civil penalty to be
32 imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or
33 (b)(5) of this Section, the Board is authorized to consider
34 any matters of record in mitigation or aggravation of

1 penalty, including but not limited to the following factors:

2 (1) the duration and gravity of the violation;

3 (2) the presence or absence of due diligence on the
4 part of the violator in attempting to comply with
5 requirements of this Act and regulations thereunder or to
6 secure relief therefrom as provided by this Act;

7 (3) any economic benefits accrued by the violator
8 because of delay in compliance with requirements;

9 (4) the amount of monetary penalty which will serve
10 to deter further violations by the violator and to
11 otherwise aid in enhancing voluntary compliance with this
12 Act by the violator and other persons similarly subject
13 to the Act; and

14 (5) the number, proximity in time, and gravity of
15 previously adjudicated violations of this Act by the
16 violator.

17 (Source: P.A. 90-773, eff. 8-14-98; 91-82, eff. 1-1-00.)

18 (415 ILCS 5/45) (from Ch. 111 1/2, par. 1045)

19 Sec. 45. Injunctive and other relief.

20 (a) No existing civil or criminal remedy for any
21 wrongful action shall be excluded or impaired by this Act.
22 Nothing in this Act shall be construed to limit or supersede
23 the provisions of the Illinois Oil and Gas Act and the powers
24 therein granted to prevent the intrusion of water into oil,
25 gas or coal strata and to prevent the pollution of fresh
26 water supplies by oil, gas or salt water or oil field wastes,
27 except that water quality standards as set forth by the
28 Pollution Control Board apply to and are effective within the
29 areas covered by and affected by permits issued by the
30 Department of Natural Resources. However, if the Department
31 of Natural Resources fails to act upon any complaint within a
32 period of 10 working days following the receipt of a
33 complaint by the Department, the Environmental Protection

1 Agency may proceed under the provisions of this Act.

2 (b) Any person adversely affected in fact by a violation
3 of this Act, any rule or regulation adopted under this Act,
4 ~~or~~ any permit or term or condition of a permit, or any Board
5 order may sue for injunctive relief against such violation.
6 However, except as provided in subsections ~~subsecti~~on (d) and
7 (e), no action shall be brought under this Section until 30
8 days after the plaintiff has been denied relief by the Board
9 in a proceeding brought under subdivision (d)(1) ~~subsecti~~on
10 ~~(d)~~ of Section 31 of this Act. The prevailing party shall be
11 awarded costs and reasonable attorneys' fees.

12 (c) Nothing in Section 39.4 of this Act shall limit the
13 authority of the Agency to proceed with enforcement under the
14 provisions of this Act for violations of terms and conditions
15 of an endorsed agrichemical facility permit, an endorsed
16 lawncare containment permit, or this Act or regulations
17 hereunder caused or threatened by an agrichemical facility or
18 a lawncare wash water containment area, provided that prior
19 notice is given to the Department of Agriculture which
20 provides that Department an opportunity to respond as
21 appropriate.

22 (d) If the State brings an action under this Act against
23 a person with an interest in real property upon which the
24 person is alleged to have allowed open dumping or open
25 burning by a third party in violation of this Act, which
26 action seeks to compel the defendant to remove the waste or
27 otherwise clean up the site, the defendant may, in the manner
28 provided by law for third-party complaints, bring in as a
29 third-party defendant a person who with actual knowledge
30 caused or contributed to the illegal open dumping or open
31 burning, or who is or may be liable for all or part of the
32 removal and cleanup costs. The court may include any of the
33 parties which it determines to have, with actual knowledge,
34 allowed, caused or contributed to the illegal open dumping or

1 open burning in any order that it may issue to compel removal
2 of the waste and cleanup of the site, and may apportion the
3 removal and cleanup costs among such parties, as it deems
4 appropriate. However, a person may not seek to recover any
5 fines or civil penalties imposed upon him under this Act from
6 a third-party defendant in an action brought under this
7 subsection.

8 (e) A final order issued by the Board pursuant to
9 Section 33 of this Act may be enforced through a civil action
10 for injunctive or other relief instituted by a person who was
11 a party to the Board enforcement proceeding in which the
12 Board issued the final order.

13 (Source: P.A. 91-357, eff. 7-29-99; 92-574, eff. 6-26-02.)

14 ARTICLE II. Non-IERRC provisions.

15 Section 25. The State Finance Act is amended by adding
16 Section 5.595 as follows:

17 (30 ILCS 105/5.595 new)
18 Sec. 5.595. The Oil Spill Response Fund.

19 Section 30. The Environmental Protection Act is amended
20 by adding Title VI-C as follows:

21 (415 ILCS 5/Tit. VI-C heading new)
22 TITLE VI-C: OIL SPILL RESPONSE

23 (415 ILCS 5/25c-1 new)
24 Sec. 25c-1. Oil Spill Response Fund.

25 (a) There is hereby created within the State treasury an
26 interest-bearing special fund to be known as the Oil Spill
27 Response Fund. There shall be deposited into the Fund all
28 monies recovered as reimbursement for response costs incurred

1 by the Agency from parties responsible for releases or
2 threats of release of petroleum, monies provided to the State
3 from the federal Oil Spill Liability Trust Fund, and such
4 other monies as may be received for this purpose through
5 contributions, gifts, or supplemental environmental projects,
6 pursuant to court orders or decrees, or from any other
7 source.

8 (b) Pursuant to appropriation, all monies in the Oil
9 Spill Response Fund may be used by the Agency for all of the
10 following purposes:

11 (1) Responding to releases or threats of release of
12 petroleum that may constitute a substantial danger to the
13 environment or human health or welfare.

14 (2) Contractual expenses and purchases of equipment
15 or supplies necessary to enable prompt response to
16 releases or threats of release of petroleum and to
17 provide effective mitigation of such releases or threats
18 of release.

19 (3) Costs of investigation and assessment of the
20 source, nature, and extent of a release or threatened
21 release of petroleum and any resulting injuries or
22 damages.

23 (4) Costs associated with planning and training for
24 response to releases and threats of release of petroleum.

25 (5) Costs associated with preparing and submitting
26 claims of the Agency to the federal Oil Spill Liability
27 Trust Fund.

28 (c) For the purposes of implementing this Section,
29 "petroleum" means crude oil, refined petroleum,
30 intermediates, fractions or constituents of petroleum, brine
31 or salt water from oil production, oil sheens, hydrocarbon
32 vapors, and any other form of oil or petroleum.

33 (d) In addition to any other authority provided by State
34 or federal law, the Agency shall be entitled to recovery of

1 costs incurred by it in response to releases and threats of
2 release of petroleum from any persons who are responsible for
3 causing, allowing, or threatening such releases.

4 Section 35. The Response Action Contractor
5 Indemnification Act is amended by changing Sections 4 and 5
6 as follows:

7 (415 ILCS 100/4) (from Ch. 111 1/2, par. 7204)

8 Sec. 4. (a) In the event that any civil proceeding
9 arising out of a State response action contract is commenced
10 against any response action contractor, the Attorney General
11 shall, upon timely and appropriate notice to him by such
12 contractor, appear on behalf of such contractor and defend
13 the action. Any such notice shall be in writing, shall be
14 mailed within 15 days after the date of receipt by the
15 contractor of service of process, and shall authorize the
16 Attorney General to represent and defend the contractor in
17 the proceeding. The giving of this notice to the Attorney
18 General shall constitute an agreement by the contractor to
19 cooperate with the Attorney General in his defense of the
20 action and a consent that the Attorney General shall conduct
21 the defense as he deems advisable and in the best interests
22 of the contractor and the State, including settlement in the
23 Attorney General's discretion. In any such proceeding, the
24 State shall pay the court costs and litigation expenses of
25 defending such action, to the extent approved by the Attorney
26 General as reasonable, as they are incurred.

27 In the event that the Attorney General determines either
28 (1) that so appearing and defending a contractor involves an
29 actual or potential conflict of interest, or (2) that the act
30 or omission which gave rise to the claim was not within the
31 scope of the State response action contract, or was
32 intentional, willful or wanton misconduct, the Attorney

1 General shall decline in writing to appear or defend or shall
2 promptly take appropriate action to withdraw as attorney for
3 such contractor. Upon receipt of such declination or
4 withdrawal by the Attorney General on the basis of an actual
5 or potential conflict of interest, the contractor may employ
6 his own attorney to appear and defend, in which event the
7 State shall pay the contractor's court costs, litigation
8 expenses and attorneys' fees to the extent approved by the
9 Attorney General as reasonable, as they are incurred.

10 (b) In any civil proceeding arising out of a State
11 response action contract in which notice was given to the
12 Attorney General under subsection (a), if the court or jury
13 finds that the act or omission of the response action
14 contractor was within the scope of the State response action
15 contract and was not intentional, willful or wanton
16 misconduct, the court shall so state in its judgement, and
17 the State shall indemnify the contractor for any damages
18 awarded and court costs and attorneys' fees assessed as part
19 of the final and unreversed judgment. In such event, if the
20 Attorney General declined to appear or withdrew on the
21 grounds that the act or omission was not within the scope of
22 the State response action contract, or was intentional,
23 willful or wanton misconduct, the State shall also pay the
24 contractor's court costs, litigation expenses and attorneys
25 fees to the extent approved by the Attorney General as
26 reasonable.

27 (c) Unless the Attorney General determines that the
28 conduct or inaction which gave rise to the claim or cause of
29 action was not within the scope of the State response action
30 contract, or was intentional, willful or wanton misconduct,
31 any case in which notice was given pursuant to subsection (a)
32 may be settled, in the Attorney General's discretion, and the
33 State shall indemnify the contractor for any damages, court
34 costs and attorneys' fees agreed to as part of the

1 settlement. If the contractor is represented by private
2 counsel, any settlement which obligates the State to
3 indemnify the contractor must be approved by the Attorney
4 General and the court having jurisdiction.

5 (d) Court costs and litigation expenses and other costs
6 of providing a defense, including attorneys' fees, paid or
7 obligated under this Section, and the costs of
8 indemnification, including the payment of any final judgment
9 or final settlement under this Section, shall be paid by
10 warrant from the Response Contractors Indemnification Fund
11 pursuant to vouchers certified by the Attorney General.

12 (e) Nothing contained or implied in this Section shall
13 operate, or be construed or applied, to deprive the State, or
14 any response action contractor, of any defense otherwise
15 available.

16 (f) Any judgment subject to State indemnification under
17 this Section shall not be enforceable against the response
18 action contractor, but shall be paid by the State in the
19 following manner. Upon receipt of a certified copy of the
20 judgment, the Attorney General shall review it to determine
21 if the judgment is (1) final, unreversed and no longer
22 subject to appeal, and (2) subject to indemnification under
23 this Section. If he determines that it is, he shall submit a
24 voucher for the amount of the judgment and any interest
25 thereon to the State Comptroller, and the amount shall be
26 paid by warrant to the judgment creditor solely out of funds
27 available in the Response Contractors Indemnification Fund.
28 ~~If the balance in such Fund is insufficient to pay any~~
29 ~~properly certified voucher for a warrant drawn thereon, the~~
30 ~~Comptroller shall transfer the necessary amount to the Fund~~
31 ~~from the General Revenue Fund.~~ In no event will the amount
32 paid for a single occurrence surpass \$100,000 \$2,000,000,
33 provided that this limitation shall not render any portion of
34 the judgment enforceable against the response action

1 contractor.

2 (Source: P.A. 84-1445.)

3 (415 ILCS 100/5) (from Ch. 111 1/2, par. 7205)

4 Sec. 5. Response Contractors Indemnification Fund.

5 (a) There is hereby created the Response Contractors
6 Indemnification Fund. The State Treasurer, ex officio, shall
7 be custodian of the Fund, and the Comptroller shall direct
8 payments from the Fund upon vouchers properly certified by
9 the Attorney General in accordance with Section 4. The
10 Treasurer shall credit interest on the Fund to the Fund.

11 (b) Every State response action contract shall provide
12 that 5% of each payment to be made by the State under the
13 contract shall be paid by the State directly into the
14 Response Contractors Indemnification Fund rather than to the
15 contractor, except that when there is at least \$100,000 more
16 than ~~\$2,000,000~~ in the Fund at the beginning of a State
17 fiscal year, State response action contracts during that
18 fiscal year need not provide that 5% of each payment made
19 under the contract be paid into the Fund. When only a
20 portion of a contract relates to a remedial or response
21 action, or to the identification, handling, storage,
22 treatment or disposal of a pollutant, the contract shall
23 provide that only that portion is subject to this subsection.

24 (c) Within 30 days after the effective date of this
25 amendatory Act of 1997, the Comptroller shall order
26 transferred and the Treasurer shall transfer \$1,200,000 from
27 the Response Contractors Indemnification Fund to the
28 Brownfields Redevelopment Fund. The Comptroller shall order
29 transferred and the Treasurer shall transfer \$1,200,000 from
30 the Response Contractors Indemnification Fund to the
31 Brownfields Redevelopment Fund on the first day of fiscal
32 years 1999, 2000, 2001, 2002, and 2003~~7-20047-and-2005~~.

33 (d) Within 30 days after the effective date of this

1 amendatory Act of the 91st General Assembly, the Comptroller
2 shall order transferred and the Treasurer shall transfer
3 \$2,000,000 from the Response Contractors Indemnification Fund
4 to the Asbestos Abatement Fund.

5 (e) Within 30 days after the effective date of this
6 amendatory Act of the 93rd General Assembly, the Comptroller
7 shall order transferred and the Treasurer shall transfer all
8 monies in the Response Action Contractor Indemnification Fund
9 in excess of \$100,000 from the Response Action Contractor
10 Indemnification Fund to the Brownfields Redevelopment Fund.

11 (Source: P.A. 91-704, eff. 7-1-00; 92-486, eff. 1-1-02.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.