



1        (c) Every bid submitted to and contract executed by the  
2        State shall contain a certification by the bidder or  
3        contractor that the bidder or contractor is not barred from  
4        being awarded a contract under this Section and that the  
5        contractor acknowledges that the contracting State agency may  
6        declare the contract void if the certification completed  
7        pursuant to this subsection (c) is false.

8        Section 10. The Environmental Protection Act is amended  
9        by changing Sections 39 and 42 as follows:

10        (415 ILCS 5/39) (from Ch. 111 1/2, par. 1039)

11        Sec. 39. Issuance of permits; procedures.

12        (a) When the Board has by regulation required a permit  
13        for the construction, installation, or operation of any type  
14        of facility, equipment, vehicle, vessel, or aircraft, the  
15        applicant shall apply to the Agency for such permit and it  
16        shall be the duty of the Agency to issue such a permit upon  
17        proof by the applicant that the facility, equipment, vehicle,  
18        vessel, or aircraft will not cause a violation of this Act or  
19        of regulations hereunder. The Agency shall adopt such  
20        procedures as are necessary to carry out its duties under  
21        this Section. In making its determinations on permit  
22        applications under this Section granting-permits the Agency  
23        may consider prior adjudications of noncompliance with this  
24        Act by the applicant. In granting permits, the Agency may  
25        impose reasonable conditions related to the applicant's  
26        history of compliance or noncompliance with this Act and may  
27        impose such conditions as may be necessary to accomplish the  
28        purposes of this Act, and as are not inconsistent with the  
29        regulations promulgated by the Board hereunder. Except as  
30        otherwise provided in this Act, a bond or other security  
31        shall not be required as a condition for the issuance of a  
32        permit. If the Agency denies any permit under this Section,

1 the Agency shall transmit to the applicant within the time  
2 limitations of this Section specific, detailed statements as  
3 to the reasons the permit application was denied. Such  
4 statements shall include, but not be limited to the  
5 following:

6 (i) the Sections of this Act which may be violated  
7 if the permit were granted;

8 (ii) the provision of the regulations, promulgated  
9 under this Act, which may be violated if the permit were  
10 granted;

11 (iii) the specific type of information, if any,  
12 which the Agency deems the applicant did not provide the  
13 Agency; and

14 (iv) a statement of specific reasons why the Act  
15 and the regulations might not be met if the permit were  
16 granted.

17 If there is no final action by the Agency within 90 days  
18 after the filing of the application for permit, the applicant  
19 may deem the permit issued; except that this time period  
20 shall be extended to 180 days when (1) notice and opportunity  
21 for public hearing are required by State or federal law or  
22 regulation, (2) the application which was filed is for any  
23 permit to develop a landfill subject to issuance pursuant to  
24 this subsection, or (3) the application that was filed is for  
25 a MSWLF unit required to issue public notice under subsection  
26 (p) of Section 39. The 90-day and 180-day time periods for  
27 the Agency to take final action do not apply to NPDES permit  
28 applications under subsection (b) of this Section, to RCRA  
29 permit applications under subsection (d) of this Section, or  
30 to UIC permit applications under subsection (e) of this  
31 Section.

32 The Agency shall publish notice of all final permit  
33 determinations for development permits for MSWLF units and  
34 for significant permit modifications for lateral expansions

1 for existing MSWLF units one time in a newspaper of general  
2 circulation in the county in which the unit is or is proposed  
3 to be located.

4 After January 1, 1994 and until July 1, 1998, operating  
5 permits issued under this Section by the Agency for sources  
6 of air pollution permitted to emit less than 25 tons per year  
7 of any combination of regulated air pollutants, as defined in  
8 Section 39.5 of this Act, shall be required to be renewed  
9 only upon written request by the Agency consistent with  
10 applicable provisions of this Act and regulations promulgated  
11 hereunder. Such operating permits shall expire 180 days  
12 after the date of such a request. The Board shall revise its  
13 regulations for the existing State air pollution operating  
14 permit program consistent with this provision by January 1,  
15 1994.

16 After June 30, 1998, operating permits issued under this  
17 Section by the Agency for sources of air pollution that are  
18 not subject to Section 39.5 of this Act and are not required  
19 to have a federally enforceable State operating permit shall  
20 be required to be renewed only upon written request by the  
21 Agency consistent with applicable provisions of this Act and  
22 its rules. Such operating permits shall expire 180 days  
23 after the date of such a request. Before July 1, 1998, the  
24 Board shall revise its rules for the existing State air  
25 pollution operating permit program consistent with this  
26 paragraph and shall adopt rules that require a source to  
27 demonstrate that it qualifies for a permit under this  
28 paragraph.

29 (b) The Agency may issue NPDES permits exclusively under  
30 this subsection for the discharge of contaminants from point  
31 sources into navigable waters, all as defined in the Federal  
32 Water Pollution Control Act, as now or hereafter amended,  
33 within the jurisdiction of the State, or into any well.

34 All NPDES permits shall contain those terms and

1 conditions, including but not limited to schedules of  
2 compliance, which may be required to accomplish the purposes  
3 and provisions of this Act.

4 The Agency may issue general NPDES permits for discharges  
5 from categories of point sources which are subject to the  
6 same permit limitations and conditions. Such general permits  
7 may be issued without individual applications and shall  
8 conform to regulations promulgated under Section 402 of the  
9 Federal Water Pollution Control Act, as now or hereafter  
10 amended.

11 The Agency may include, among such conditions, effluent  
12 limitations and other requirements established under this  
13 Act, Board regulations, the Federal Water Pollution Control  
14 Act, as now or hereafter amended, and regulations pursuant  
15 thereto, and schedules for achieving compliance therewith at  
16 the earliest reasonable date.

17 The Agency shall adopt filing requirements and procedures  
18 which are necessary and appropriate for the issuance of NPDES  
19 permits, and which are consistent with the Act or regulations  
20 adopted by the Board, and with the Federal Water Pollution  
21 Control Act, as now or hereafter amended, and regulations  
22 pursuant thereto.

23 The Agency, subject to any conditions which may be  
24 prescribed by Board regulations, may issue NPDES permits to  
25 allow discharges beyond deadlines established by this Act or  
26 by regulations of the Board without the requirement of a  
27 variance, subject to the Federal Water Pollution Control Act,  
28 as now or hereafter amended, and regulations pursuant  
29 thereto.

30 (c) Except for those facilities owned or operated by  
31 sanitary districts organized under the Metropolitan Water  
32 Reclamation District Act, no permit for the development or  
33 construction of a new pollution control facility may be  
34 granted by the Agency unless the applicant submits proof to

1 the Agency that the location of the facility has been  
2 approved by the County Board of the county if in an  
3 unincorporated area, or the governing body of the  
4 municipality when in an incorporated area, in which the  
5 facility is to be located in accordance with Section 39.2 of  
6 this Act.

7 In the event that siting approval granted pursuant to  
8 Section 39.2 has been transferred to a subsequent owner or  
9 operator, that subsequent owner or operator may apply to the  
10 Agency for, and the Agency may grant, a development or  
11 construction permit for the facility for which local siting  
12 approval was granted. Upon application to the Agency for a  
13 development or construction permit by that subsequent owner  
14 or operator, the permit applicant shall cause written notice  
15 of the permit application to be served upon the appropriate  
16 county board or governing body of the municipality that  
17 granted siting approval for that facility and upon any party  
18 to the siting proceeding pursuant to which siting approval  
19 was granted. In that event, the Agency shall conduct an  
20 evaluation of the subsequent owner or operator's prior  
21 experience in waste management operations in the manner  
22 conducted under subsection (i) of Section 39 of this Act.

23 Beginning August 20, 1993, if the pollution control  
24 facility consists of a hazardous or solid waste disposal  
25 facility for which the proposed site is located in an  
26 unincorporated area of a county with a population of less  
27 than 100,000 and includes all or a portion of a parcel of  
28 land that was, on April 1, 1993, adjacent to a municipality  
29 having a population of less than 5,000, then the local siting  
30 review required under this subsection (c) in conjunction with  
31 any permit applied for after that date shall be performed by  
32 the governing body of that adjacent municipality rather than  
33 the county board of the county in which the proposed site is  
34 located; and for the purposes of that local siting review,

1 any references in this Act to the county board shall be  
2 deemed to mean the governing body of that adjacent  
3 municipality; provided, however, that the provisions of this  
4 paragraph shall not apply to any proposed site which was, on  
5 April 1, 1993, owned in whole or in part by another  
6 municipality.

7 In the case of a pollution control facility for which a  
8 development permit was issued before November 12, 1981, if an  
9 operating permit has not been issued by the Agency prior to  
10 August 31, 1989 for any portion of the facility, then the  
11 Agency may not issue or renew any development permit nor  
12 issue an original operating permit for any portion of such  
13 facility unless the applicant has submitted proof to the  
14 Agency that the location of the facility has been approved by  
15 the appropriate county board or municipal governing body  
16 pursuant to Section 39.2 of this Act.

17 After January 1, 1994, if a solid waste disposal  
18 facility, any portion for which an operating permit has been  
19 issued by the Agency, has not accepted waste disposal for 5  
20 or more consecutive calendar years, before that facility may  
21 accept any new or additional waste for disposal, the owner  
22 and operator must obtain a new operating permit under this  
23 Act for that facility unless the owner and operator have  
24 applied to the Agency for a permit authorizing the temporary  
25 suspension of waste acceptance. The Agency may not issue a  
26 new operation permit under this Act for the facility unless  
27 the applicant has submitted proof to the Agency that the  
28 location of the facility has been approved or re-approved by  
29 the appropriate county board or municipal governing body  
30 under Section 39.2 of this Act after the facility ceased  
31 accepting waste.

32 Except for those facilities owned or operated by sanitary  
33 districts organized under the Metropolitan Water Reclamation  
34 District Act, and except for new pollution control facilities

1 governed by Section 39.2, and except for fossil fuel mining  
2 facilities, the granting of a permit under this Act shall not  
3 relieve the applicant from meeting and securing all necessary  
4 zoning approvals from the unit of government having zoning  
5 jurisdiction over the proposed facility.

6 Before beginning construction on any new sewage treatment  
7 plant or sludge drying site to be owned or operated by a  
8 sanitary district organized under the Metropolitan Water  
9 Reclamation District Act for which a new permit (rather than  
10 the renewal or amendment of an existing permit) is required,  
11 such sanitary district shall hold a public hearing within the  
12 municipality within which the proposed facility is to be  
13 located, or within the nearest community if the proposed  
14 facility is to be located within an unincorporated area, at  
15 which information concerning the proposed facility shall be  
16 made available to the public, and members of the public shall  
17 be given the opportunity to express their views concerning  
18 the proposed facility.

19 The Agency may issue a permit for a municipal waste  
20 transfer station without requiring approval pursuant to  
21 Section 39.2 provided that the following demonstration is  
22 made:

23 (1) the municipal waste transfer station was in  
24 existence on or before January 1, 1979 and was in  
25 continuous operation from January 1, 1979 to January 1,  
26 1993;

27 (2) the operator submitted a permit application to  
28 the Agency to develop and operate the municipal waste  
29 transfer station during April of 1994;

30 (3) the operator can demonstrate that the county  
31 board of the county, if the municipal waste transfer  
32 station is in an unincorporated area, or the governing  
33 body of the municipality, if the station is in an  
34 incorporated area, does not object to resumption of the



1 operation of the station; and

2 (4) the site has local zoning approval.

3 (d) The Agency may issue RCRA permits exclusively under  
4 this subsection to persons owning or operating a facility for  
5 the treatment, storage, or disposal of hazardous waste as  
6 defined under this Act.

7 All RCRA permits shall contain those terms and  
8 conditions, including but not limited to schedules of  
9 compliance, which may be required to accomplish the purposes  
10 and provisions of this Act. The Agency may include among  
11 such conditions standards and other requirements established  
12 under this Act, Board regulations, the Resource Conservation  
13 and Recovery Act of 1976 (P.L. 94-580), as amended, and  
14 regulations pursuant thereto, and may include schedules for  
15 achieving compliance therewith as soon as possible. The  
16 Agency shall require that a performance bond or other  
17 security be provided as a condition for the issuance of a  
18 RCRA permit.

19 In the case of a permit to operate a hazardous waste or  
20 PCB incinerator as defined in subsection (k) of Section 44,  
21 the Agency shall require, as a condition of the permit, that  
22 the operator of the facility perform such analyses of the  
23 waste to be incinerated as may be necessary and appropriate  
24 to ensure the safe operation of the incinerator.

25 The Agency shall adopt filing requirements and procedures  
26 which are necessary and appropriate for the issuance of RCRA  
27 permits, and which are consistent with the Act or regulations  
28 adopted by the Board, and with the Resource Conservation and  
29 Recovery Act of 1976 (P.L. 94-580), as amended, and  
30 regulations pursuant thereto.

31 The applicant shall make available to the public for  
32 inspection all documents submitted by the applicant to the  
33 Agency in furtherance of an application, with the exception  
34 of trade secrets, at the office of the county board or

1 governing body of the municipality. Such documents may be  
2 copied upon payment of the actual cost of reproduction during  
3 regular business hours of the local office. The Agency shall  
4 issue a written statement concurrent with its grant or denial  
5 of the permit explaining the basis for its decision.

6 (e) The Agency may issue UIC permits exclusively under  
7 this subsection to persons owning or operating a facility for  
8 the underground injection of contaminants as defined under  
9 this Act.

10 All UIC permits shall contain those terms and conditions,  
11 including but not limited to schedules of compliance, which  
12 may be required to accomplish the purposes and provisions of  
13 this Act. The Agency may include among such conditions  
14 standards and other requirements established under this Act,  
15 Board regulations, the Safe Drinking Water Act (P.L. 93-523),  
16 as amended, and regulations pursuant thereto, and may include  
17 schedules for achieving compliance therewith. The Agency  
18 shall require that a performance bond or other security be  
19 provided as a condition for the issuance of a UIC permit.

20 The Agency shall adopt filing requirements and procedures  
21 which are necessary and appropriate for the issuance of UIC  
22 permits, and which are consistent with the Act or regulations  
23 adopted by the Board, and with the Safe Drinking Water Act  
24 (P.L. 93-523), as amended, and regulations pursuant thereto.

25 The applicant shall make available to the public for  
26 inspection, all documents submitted by the applicant to the  
27 Agency in furtherance of an application, with the exception  
28 of trade secrets, at the office of the county board or  
29 governing body of the municipality. Such documents may be  
30 copied upon payment of the actual cost of reproduction during  
31 regular business hours of the local office. The Agency shall  
32 issue a written statement concurrent with its grant or denial  
33 of the permit explaining the basis for its decision.

34 (f) In making any determination pursuant to Section 9.1

1 of this Act:

2 (1) The Agency shall have authority to make the  
3 determination of any question required to be determined  
4 by the Clean Air Act, as now or hereafter amended, this  
5 Act, or the regulations of the Board, including the  
6 determination of the Lowest Achievable Emission Rate,  
7 Maximum Achievable Control Technology, or Best Available  
8 Control Technology, consistent with the Board's  
9 regulations, if any.

10 (2) The Agency shall, after conferring with the  
11 applicant, give written notice to the applicant of its  
12 proposed decision on the application including the terms  
13 and conditions of the permit to be issued and the facts,  
14 conduct or other basis upon which the Agency will rely to  
15 support its proposed action.

16 (3) Following such notice, the Agency shall give  
17 the applicant an opportunity for a hearing in accordance  
18 with the provisions of Sections 10-25 through 10-60 of  
19 the Illinois Administrative Procedure Act.

20 (g) The Agency shall include as conditions upon all  
21 permits issued for hazardous waste disposal sites such  
22 restrictions upon the future use of such sites as are  
23 reasonably necessary to protect public health and the  
24 environment, including permanent prohibition of the use of  
25 such sites for purposes which may create an unreasonable risk  
26 of injury to human health or to the environment. After  
27 administrative and judicial challenges to such restrictions  
28 have been exhausted, the Agency shall file such restrictions  
29 of record in the Office of the Recorder of the county in  
30 which the hazardous waste disposal site is located.

31 (h) A hazardous waste stream may not be deposited in a  
32 permitted hazardous waste site unless specific authorization  
33 is obtained from the Agency by the generator and disposal  
34 site owner and operator for the deposit of that specific

1 hazardous waste stream. The Agency may grant specific  
2 authorization for disposal of hazardous waste streams only  
3 after the generator has reasonably demonstrated that,  
4 considering technological feasibility and economic  
5 reasonableness, the hazardous waste cannot be reasonably  
6 recycled for reuse, nor incinerated or chemically, physically  
7 or biologically treated so as to neutralize the hazardous  
8 waste and render it nonhazardous. In granting authorization  
9 under this Section, the Agency may impose such conditions as  
10 may be necessary to accomplish the purposes of the Act and  
11 are consistent with this Act and regulations promulgated by  
12 the Board hereunder. If the Agency refuses to grant  
13 authorization under this Section, the applicant may appeal as  
14 if the Agency refused to grant a permit, pursuant to the  
15 provisions of subsection (a) of Section 40 of this Act. For  
16 purposes of this subsection (h), the term "generator" has the  
17 meaning given in Section 3.205 of this Act, unless: (1) the  
18 hazardous waste is treated, incinerated, or partially  
19 recycled for reuse prior to disposal, in which case the last  
20 person who treats, incinerates, or partially recycles the  
21 hazardous waste prior to disposal is the generator; or (2)  
22 the hazardous waste is from a response action, in which case  
23 the person performing the response action is the generator.  
24 This subsection (h) does not apply to any hazardous waste  
25 that is restricted from land disposal under 35 Ill. Adm. Code  
26 728.

27 (i) Before issuing any RCRA permit or any permit for a  
28 waste storage site, sanitary landfill, waste disposal site,  
29 waste transfer station, waste treatment facility, waste  
30 incinerator, or any waste-transportation operation, the  
31 Agency shall conduct an evaluation of the prospective owner's  
32 or operator's prior experience in waste management  
33 operations. The Agency may deny such a permit if the  
34 prospective owner or operator or any employee or officer of

1 the prospective owner or operator has a history of:

2 (1) repeated violations of federal, State, or local  
3 laws, regulations, standards, or ordinances in the  
4 operation of waste management facilities or sites; or

5 (2) conviction in this or another State of any  
6 crime which is a felony under the laws of this State, or  
7 conviction of a felony in a federal court; or

8 (3) proof of gross carelessness or incompetence in  
9 handling, storing, processing, transporting or disposing  
10 of waste.

11 (j) The issuance under this Act of a permit to engage in  
12 the surface mining of any resources other than fossil fuels  
13 shall not relieve the permittee from its duty to comply with  
14 any applicable local law regulating the commencement,  
15 location or operation of surface mining facilities.

16 (k) A development permit issued under subsection (a) of  
17 Section 39 for any facility or site which is required to have  
18 a permit under subsection (d) of Section 21 shall expire at  
19 the end of 2 calendar years from the date upon which it was  
20 issued, unless within that period the applicant has taken  
21 action to develop the facility or the site. In the event that  
22 review of the conditions of the development permit is sought  
23 pursuant to Section 40 or 41, or permittee is prevented from  
24 commencing development of the facility or site by any other  
25 litigation beyond the permittee's control, such two-year  
26 period shall be deemed to begin on the date upon which such  
27 review process or litigation is concluded.

28 (l) No permit shall be issued by the Agency under this  
29 Act for construction or operation of any facility or site  
30 located within the boundaries of any setback zone established  
31 pursuant to this Act, where such construction or operation is  
32 prohibited.

33 (m) The Agency may issue permits to persons owning or  
34 operating a facility for composting landscape waste. In

1 granting such permits, the Agency may impose such conditions  
2 as may be necessary to accomplish the purposes of this Act,  
3 and as are not inconsistent with applicable regulations  
4 promulgated by the Board. Except as otherwise provided in  
5 this Act, a bond or other security shall not be required as a  
6 condition for the issuance of a permit. If the Agency denies  
7 any permit pursuant to this subsection, the Agency shall  
8 transmit to the applicant within the time limitations of this  
9 subsection specific, detailed statements as to the reasons  
10 the permit application was denied. Such statements shall  
11 include but not be limited to the following:

12 (1) the Sections of this Act that may be violated  
13 if the permit were granted;

14 (2) the specific regulations promulgated pursuant  
15 to this Act that may be violated if the permit were  
16 granted;

17 (3) the specific information, if any, the Agency  
18 deems the applicant did not provide in its application to  
19 the Agency; and

20 (4) a statement of specific reasons why the Act and  
21 the regulations might be violated if the permit were  
22 granted.

23 If no final action is taken by the Agency within 90 days  
24 after the filing of the application for permit, the applicant  
25 may deem the permit issued. Any applicant for a permit may  
26 waive the 90 day limitation by filing a written statement  
27 with the Agency.

28 The Agency shall issue permits for such facilities upon  
29 receipt of an application that includes a legal description  
30 of the site, a topographic map of the site drawn to the scale  
31 of 200 feet to the inch or larger, a description of the  
32 operation, including the area served, an estimate of the  
33 volume of materials to be processed, and documentation that:

34 (1) the facility includes a setback of at least 200

1 feet from the nearest potable water supply well;

2 (2) the facility is located outside the boundary of  
3 the 10-year floodplain or the site will be floodproofed;

4 (3) the facility is located so as to minimize  
5 incompatibility with the character of the surrounding  
6 area, including at least a 200 foot setback from any  
7 residence, and in the case of a facility that is  
8 developed or the permitted composting area of which is  
9 expanded after November 17, 1991, the composting area is  
10 located at least 1/8 mile from the nearest residence  
11 (other than a residence located on the same property as  
12 the facility);

13 (4) the design of the facility will prevent any  
14 compost material from being placed within 5 feet of the  
15 water table, will adequately control runoff from the  
16 site, and will collect and manage any leachate that is  
17 generated on the site;

18 (5) the operation of the facility will include  
19 appropriate dust and odor control measures, limitations  
20 on operating hours, appropriate noise control measures  
21 for shredding, chipping and similar equipment, management  
22 procedures for composting, containment and disposal of  
23 non-compostable wastes, procedures to be used for  
24 terminating operations at the site, and recordkeeping  
25 sufficient to document the amount of materials received,  
26 composted and otherwise disposed of; and

27 (6) the operation will be conducted in accordance  
28 with any applicable rules adopted by the Board.

29 The Agency shall issue renewable permits of not longer  
30 than 10 years in duration for the composting of landscape  
31 wastes, as defined in Section 3.155 of this Act, based on the  
32 above requirements.

33 The operator of any facility permitted under this  
34 subsection (m) must submit a written annual statement to the

1 Agency on or before April 1 of each year that includes an  
2 estimate of the amount of material, in tons, received for  
3 composting.

4 (n) The Agency shall issue permits jointly with the  
5 Department of Transportation for the dredging or deposit of  
6 material in Lake Michigan in accordance with Section 18 of  
7 the Rivers, Lakes, and Streams Act.

8 (o) (Blank.)

9 (p) (1) Any person submitting an application for a  
10 permit for a new MSWLF unit or for a lateral expansion under  
11 subsection (t) of Section 21 of this Act for an existing  
12 MSWLF unit that has not received and is not subject to local  
13 siting approval under Section 39.2 of this Act shall publish  
14 notice of the application in a newspaper of general  
15 circulation in the county in which the MSWLF unit is or is  
16 proposed to be located. The notice must be published at  
17 least 15 days before submission of the permit application to  
18 the Agency. The notice shall state the name and address of  
19 the applicant, the location of the MSWLF unit or proposed  
20 MSWLF unit, the nature and size of the MSWLF unit or proposed  
21 MSWLF unit, the nature of the activity proposed, the probable  
22 life of the proposed activity, the date the permit  
23 application will be submitted, and a statement that persons  
24 may file written comments with the Agency concerning the  
25 permit application within 30 days after the filing of the  
26 permit application unless the time period to submit comments  
27 is extended by the Agency.

28 When a permit applicant submits information to the Agency  
29 to supplement a permit application being reviewed by the  
30 Agency, the applicant shall not be required to reissue the  
31 notice under this subsection.

32 (2) The Agency shall accept written comments concerning  
33 the permit application that are postmarked no later than 30  
34 days after the filing of the permit application, unless the



1 time period to accept comments is extended by the Agency.

2 (3) Each applicant for a permit described in part (1) of  
3 this subsection shall file a copy of the permit application  
4 with the county board or governing body of the municipality  
5 in which the MSWLF unit is or is proposed to be located at  
6 the same time the application is submitted to the Agency.  
7 The permit application filed with the county board or  
8 governing body of the municipality shall include all  
9 documents submitted to or to be submitted to the Agency,  
10 except trade secrets as determined under Section 7.1 of this  
11 Act. The permit application and other documents on file with  
12 the county board or governing body of the municipality shall  
13 be made available for public inspection during regular  
14 business hours at the office of the county board or the  
15 governing body of the municipality and may be copied upon  
16 payment of the actual cost of reproduction.

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

18 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

19 Sec. 42. Civil penalties.

20 (a) Except as provided in this Section, any person that  
21 violates any provision of this Act or any regulation adopted  
22 by the Board, or any permit or term or condition thereof, or  
23 that violates any determination or order of the Board  
24 pursuant to this Act, shall be liable to a civil penalty of  
25 not to exceed \$50,000 for the violation and an additional  
26 civil penalty of not to exceed \$10,000 for each day during  
27 which the violation continues; such penalties may, upon order  
28 of the Board or a court of competent jurisdiction, be made  
29 payable to the Environmental Protection Trust Fund, to be  
30 used in accordance with the provisions of the Environmental  
31 Protection Trust Fund Act.

32 (b) Notwithstanding the provisions of subsection (a) of  
33 this Section:

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

6 (2) Any person that violates Section 12(g) of this  
7 Act or any UIC permit or term or condition thereof, or  
8 any filing requirement, regulation or order relating to  
9 the State UIC program for all wells, except Class II  
10 wells as defined by the Board under this Act, shall be  
11 liable to a civil penalty not to exceed \$2,500 per day of  
12 violation; provided, however, that any person who commits  
13 such violations relating to the State UIC program for  
14 Class II wells, as defined by the Board under this Act,  
15 shall be liable to a civil penalty of not to exceed  
16 \$10,000 for the violation and an additional civil penalty  
17 of not to exceed \$1,000 for each day during which the  
18 violation continues.

19 (3) Any person that violates Sections 21(f), 21(g),  
20 21(h) or 21(i) of this Act, or any RCRA permit or term or  
21 condition thereof, or any filing requirement, regulation  
22 or order relating to the State RCRA program, shall be  
23 liable to a civil penalty of not to exceed \$25,000 per  
24 day of violation.

25 (4) In an administrative citation action under  
26 Section 31.1 of this Act, any person found to have  
27 violated any provision of subsection (o) of Section 21 of  
28 this Act shall pay a civil penalty of \$500 for each  
29 violation of each such provision, plus any hearing costs  
30 incurred by the Board and the Agency. Such penalties  
31 shall be made payable to the Environmental Protection  
32 Trust Fund, to be used in accordance with the provisions  
33 of the Environmental Protection Trust Fund Act; except  
34 that if a unit of local government issued the

1 administrative citation, 50% of the civil penalty shall  
2 be payable to the unit of local government.

3 (4-5) In an administrative citation action under  
4 Section 31.1 of this Act, any person found to have  
5 violated any provision of subsection (p) of Section 21 of  
6 this Act shall pay a civil penalty of \$1,500 for a first  
7 offense and \$3,000 for a second or subsequent offense,  
8 plus any hearing costs incurred by the Board and the  
9 Agency. The penalties shall be deposited into the  
10 Environmental Protection Trust Fund, to be used in  
11 accordance with the provisions of the Environmental  
12 Protection Trust Fund Act; except that if a unit of local  
13 government issued the administrative citation, 50% of the  
14 civil penalty shall be payable to the unit of local  
15 government.

16 (5) Any person who violates subsection 6 of Section  
17 39.5 of this Act or any CAAPP permit, or term or  
18 condition thereof, or any fee or filing requirement, or  
19 any duty to allow or carry out inspection, entry or  
20 monitoring activities, or any regulation or order  
21 relating to the CAAPP shall be liable for a civil penalty  
22 not to exceed \$10,000 per day of violation.

23 (b.5) In lieu of the penalties set forth in subsections  
24 (a) and (b) of this Section, any person who fails to file, in  
25 a timely manner, toxic chemical release forms with the Agency  
26 pursuant to Section 25b-2 of this Act shall be liable for a  
27 civil penalty of \$100 per day for each day the forms are  
28 late, not to exceed a maximum total penalty of \$6,000. This  
29 daily penalty shall begin accruing on the thirty-first day  
30 after the date that the person receives the warning notice  
31 issued by the Agency pursuant to Section 25b-6 of this Act;  
32 and the penalty shall be paid to the Agency. The daily  
33 accrual of penalties shall cease as of January 1 of the  
34 following year. All penalties collected by the Agency

1 pursuant to this subsection shall be deposited into the  
2 Environmental Protection Permit and Inspection Fund.

3 (c) Any person that violates this Act, or an order or  
4 other determination of the Board under this Act and causes  
5 the death of fish or aquatic life shall, in addition to the  
6 other penalties provided by this Act, be liable to pay to the  
7 State an additional sum for the reasonable value of the fish  
8 or aquatic life destroyed. Any money so recovered shall be  
9 placed in the Wildlife and Fish Fund in the State Treasury.

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

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

16 (f) The State's Attorney of the county in which the  
17 violation occurred, or the Attorney General, shall bring such  
18 actions in the name of the people of the State of Illinois.  
19 Without limiting any other authority which may exist for the  
20 awarding of attorney's fees and costs, the Board or a court  
21 of competent jurisdiction may award costs and reasonable  
22 attorney's fees, including the reasonable costs of expert  
23 witnesses and consultants, to the State's Attorney or the  
24 Attorney General in a case where he has prevailed against a  
25 person who has committed a wilful, knowing or repeated  
26 violation of the Act.

27 Any funds collected under this subsection (f) in which  
28 the Attorney General has prevailed shall be deposited in the  
29 Hazardous Waste Fund created in Section 22.2 of this Act. Any  
30 funds collected under this subsection (f) in which a State's  
31 Attorney has prevailed shall be retained by the county in  
32 which he serves.

33 (g) All final orders imposing civil penalties pursuant  
34 to this Section shall prescribe the time for payment of such

1 penalties. If any such penalty is not paid within the time  
 2 prescribed, interest on such penalty at the rate set forth in  
 3 subsection (a) of Section 1003 of the Illinois Income Tax  
 4 Act, shall be paid for the period from the date payment is  
 5 due until the date payment is received. However, if the time  
 6 for payment is stayed during the pendency of an appeal,  
 7 interest shall not accrue during such stay.

8 (h) In determining the appropriate civil penalty to be  
 9 imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or  
 10 (b)(5) of this Section, the Board is authorized to consider  
 11 any matters of record in mitigation or aggravation of  
 12 penalty, including but not limited to the following factors:

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

14 (2) the presence or absence of due diligence on the  
 15 part of the respondent ~~violate~~r in attempting to comply  
 16 with requirements of this Act and regulations thereunder  
 17 or to secure relief therefrom as provided by this Act;

18 (3) any economic benefits accrued by the respondent  
 19 ~~violate~~r because of delay in compliance with  
 20 requirements, in which case the economic benefits shall  
 21 be determined by the lowest cost alternative for  
 22 achieving compliance;

23 (4) the amount of monetary penalty which will serve  
 24 to deter further violations by the respondent ~~violate~~r  
 25 and to otherwise aid in enhancing voluntary compliance  
 26 with this Act by the respondent ~~violate~~r and other  
 27 persons similarly subject to the Act; and

28 (5) the number, proximity in time, and gravity of  
 29 previously adjudicated violations of this Act by the  
 30 respondent; ~~violate~~r-

31 (6) whether the respondent voluntarily  
 32 self-disclosed, in accordance with subsection (i) of this  
 33 Section, the non-compliance to the Agency; and

34 (7) whether the respondent has agreed to undertake

1 a "supplemental environmental project," which means an  
2 environmentally beneficial project that a respondent  
3 agrees to undertake in settlement of an enforcement  
4 action brought under this Act, but which the respondent  
5 is not otherwise legally required to perform.

6 In determining the appropriate civil penalty to be  
7 imposed under subsection (a) or paragraph (1), (2), (3), or  
8 (5) of subsection (b) of this Section, the Board shall  
9 ensure, in all cases, that the penalty is at least as great  
10 as the economic benefits, if any, accrued by the respondent  
11 as a result of the violation, unless the Board finds that  
12 imposition of such penalty would result in an arbitrary or  
13 unreasonable financial hardship. However, such civil penalty  
14 may be off-set in whole or in part pursuant to a supplemental  
15 environmental project agreed to by the complainant and the  
16 respondent.

17 (i) A person who voluntarily self-discloses  
18 non-compliance to the Agency, of which the Agency had been  
19 unaware, is entitled to a 100% reduction in the portion of  
20 the penalty that is not based on the economic benefit of  
21 non-compliance if the person can establish the following:

22 (1) that the non-compliance was discovered through  
23 an environmental audit, as defined in Section 52.2 of  
24 this Act, and the person waives the environmental audit  
25 privileges as provided in that Section with respect to  
26 that non-compliance;

27 (2) that the non-compliance was disclosed in  
28 writing within 30 days of the date on which the person  
29 discovered it;

30 (3) that the non-compliance was discovered and  
31 disclosed prior to:

32 (i) the commencement of an Agency inspection,  
33 investigation, or request for information;

34 (ii) notice of a citizen suit;

1           (iii) the filing of a complaint by a citizen,  
2           the Illinois Attorney General, or the State's  
3           Attorney of the county in which the violation  
4           occurred;

5           (iv) the reporting of the non-compliance by an  
6           employee of the person without that person's  
7           knowledge; or

8           (v) imminent discovery of the non-compliance  
9           by the Agency;

10          (4) that the non-compliance is being corrected and  
11          any environmental harm is being remediated in a timely  
12          fashion;

13          (5) that the person agrees to prevent a recurrence  
14          of the non-compliance;

15          (6) that no related non-compliance events have  
16          occurred in the past 3 years at the same facility or in  
17          the past 5 years as part of a pattern at multiple  
18          facilities owned or operated by the person;

19          (7) that the non-compliance did not result in  
20          serious actual harm or present an imminent and  
21          substantial endangerment to human health or the  
22          environment or violate the specific terms of any judicial  
23          or administrative order or consent agreement;

24          (8) that the person cooperates as reasonably  
25          requested by the Agency after the disclosure; and

26          (9) that the non-compliance was identified  
27          voluntarily and not through a monitoring, sampling, or  
28          auditing procedure that is required by statute, rule,  
29          permit, judicial or administrative order, or consent  
30          agreement.

31          If a person can establish all of the elements under this  
32          subsection except the element set forth in paragraph (1) of  
33          this subsection, the person is entitled to a 75% reduction in  
34          the portion of the penalty that is not based upon the

1 economic benefit of non-compliance.

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