



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1514

Introduced 02/10/05, by Rep. Sidney H. Mathias - Tom Cross

SYNOPSIS AS INTRODUCED:

415 ILCS 5/39

from Ch. 111 1/2, par. 1039

Amends the Environmental Protection Act. Requires the Environmental Protection Agency to issue a NPDES permit for a term ending one year after the date of issuance if so requested by the permittee. Effective immediately.

LRB094 05471 RSP 35516 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning safety.

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

4 Section 5. The Environmental Protection Act is amended by
5 changing Section 39 as follows:

6 (415 ILCS 5/39) (from Ch. 111 1/2, par. 1039)

7 Sec. 39. Issuance of permits; procedures.

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

1 permit application was denied. Such statements shall include,
2 but not be limited to the following:

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

5 (ii) the provision of the regulations, promulgated
6 under this Act, which may be violated if the permit were
7 granted;

8 (iii) the specific type of information, if any, which
9 the Agency deems the applicant did not provide the Agency;
10 and

11 (iv) a statement of specific reasons why the Act and
12 the regulations might not be met if the permit were
13 granted.

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

28 The Agency shall publish notice of all final permit
29 determinations for development permits for MSWLF units and for
30 significant permit modifications for lateral expansions for
31 existing MSWLF units one time in a newspaper of general
32 circulation in the county in which the unit is or is proposed
33 to be located.

34 After January 1, 1994 and until July 1, 1998, operating
35 permits issued under this Section by the Agency for sources of
36 air pollution permitted to emit less than 25 tons per year of

1 any combination of regulated air pollutants, as defined in
2 Section 39.5 of this Act, shall be required to be renewed only
3 upon written request by the Agency consistent with applicable
4 provisions of this Act and regulations promulgated hereunder.
5 Such operating permits shall expire 180 days after the date of
6 such a request. The Board shall revise its regulations for the
7 existing State air pollution operating permit program
8 consistent with this provision by January 1, 1994.

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

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

26 All NPDES permits shall contain those terms and conditions,
27 including but not limited to schedules of compliance, which may
28 be required to accomplish the purposes and provisions of this
29 Act.

30 The Agency may issue general NPDES permits for discharges
31 from categories of point sources which are subject to the same
32 permit limitations and conditions. Such general permits may be
33 issued without individual applications and shall conform to
34 regulations promulgated under Section 402 of the Federal Water
35 Pollution Control Act, as now or hereafter amended.

36 The Agency may include, among such conditions, effluent

1 limitations and other requirements established under this Act,
2 Board regulations, the Federal Water Pollution Control Act, as
3 now or hereafter amended, and regulations pursuant thereto, and
4 schedules for achieving compliance therewith at the earliest
5 reasonable date.

6 The Agency shall adopt filing requirements and procedures
7 which are necessary and appropriate for the issuance of NPDES
8 permits, and which are consistent with the Act or regulations
9 adopted by the Board, and with the Federal Water Pollution
10 Control Act, as now or hereafter amended, and regulations
11 pursuant thereto.

12 The Agency, subject to any conditions which may be
13 prescribed by Board regulations, may issue NPDES permits to
14 allow discharges beyond deadlines established by this Act or by
15 regulations of the Board without the requirement of a variance,
16 subject to the Federal Water Pollution Control Act, as now or
17 hereafter amended, and regulations pursuant thereto.

18 Notwithstanding any provision of this Act or Board
19 regulation, the Agency, in issuing a permit under this
20 subsection (b), must issue a permit for a term ending one year
21 after the date of issuance if so requested by the permittee,
22 subject to the Federal Water Pollution Control Act, as now or
23 hereafter amended, and regulations pursuant to that Act.

24 (c) Except for those facilities owned or operated by
25 sanitary districts organized under the Metropolitan Water
26 Reclamation District Act, no permit for the development or
27 construction of a new pollution control facility may be granted
28 by the Agency unless the applicant submits proof to the Agency
29 that the location of the facility has been approved by the
30 County Board of the county if in an unincorporated area, or the
31 governing body of the municipality when in an incorporated
32 area, in which the facility is to be located in accordance with
33 Section 39.2 of this Act.

34 In the event that siting approval granted pursuant to
35 Section 39.2 has been transferred to a subsequent owner or
36 operator, that subsequent owner or operator may apply to the

1 Agency for, and the Agency may grant, a development or
2 construction permit for the facility for which local siting
3 approval was granted. Upon application to the Agency for a
4 development or construction permit by that subsequent owner or
5 operator, the permit applicant shall cause written notice of
6 the permit application to be served upon the appropriate county
7 board or governing body of the municipality that granted siting
8 approval for that facility and upon any party to the siting
9 proceeding pursuant to which siting approval was granted. In
10 that event, the Agency shall conduct an evaluation of the
11 subsequent owner or operator's prior experience in waste
12 management operations in the manner conducted under subsection
13 (i) of Section 39 of this Act.

14 Beginning August 20, 1993, if the pollution control
15 facility consists of a hazardous or solid waste disposal
16 facility for which the proposed site is located in an
17 unincorporated area of a county with a population of less than
18 100,000 and includes all or a portion of a parcel of land that
19 was, on April 1, 1993, adjacent to a municipality having a
20 population of less than 5,000, then the local siting review
21 required under this subsection (c) in conjunction with any
22 permit applied for after that date shall be performed by the
23 governing body of that adjacent municipality rather than the
24 county board of the county in which the proposed site is
25 located; and for the purposes of that local siting review, any
26 references in this Act to the county board shall be deemed to
27 mean the governing body of that adjacent municipality;
28 provided, however, that the provisions of this paragraph shall
29 not apply to any proposed site which was, on April 1, 1993,
30 owned in whole or in part by another municipality.

31 In the case of a pollution control facility for which a
32 development permit was issued before November 12, 1981, if an
33 operating permit has not been issued by the Agency prior to
34 August 31, 1989 for any portion of the facility, then the
35 Agency may not issue or renew any development permit nor issue
36 an original operating permit for any portion of such facility

1 unless the applicant has submitted proof to the Agency that the
2 location of the facility has been approved by the appropriate
3 county board or municipal governing body pursuant to Section
4 39.2 of this Act.

5 After January 1, 1994, if a solid waste disposal facility,
6 any portion for which an operating permit has been issued by
7 the Agency, has not accepted waste disposal for 5 or more
8 consecutive calendars years, before that facility may accept
9 any new or additional waste for disposal, the owner and
10 operator must obtain a new operating permit under this Act for
11 that facility unless the owner and operator have applied to the
12 Agency for a permit authorizing the temporary suspension of
13 waste acceptance. The Agency may not issue a new operation
14 permit under this Act for the facility unless the applicant has
15 submitted proof to the Agency that the location of the facility
16 has been approved or re-approved by the appropriate county
17 board or municipal governing body under Section 39.2 of this
18 Act after the facility ceased accepting waste.

19 Except for those facilities owned or operated by sanitary
20 districts organized under the Metropolitan Water Reclamation
21 District Act, and except for new pollution control facilities
22 governed by Section 39.2, and except for fossil fuel mining
23 facilities, the granting of a permit under this Act shall not
24 relieve the applicant from meeting and securing all necessary
25 zoning approvals from the unit of government having zoning
26 jurisdiction over the proposed facility.

27 Before beginning construction on any new sewage treatment
28 plant or sludge drying site to be owned or operated by a
29 sanitary district organized under the Metropolitan Water
30 Reclamation District Act for which a new permit (rather than
31 the renewal or amendment of an existing permit) is required,
32 such sanitary district shall hold a public hearing within the
33 municipality within which the proposed facility is to be
34 located, or within the nearest community if the proposed
35 facility is to be located within an unincorporated area, at
36 which information concerning the proposed facility shall be

1 made available to the public, and members of the public shall
2 be given the opportunity to express their views concerning the
3 proposed facility.

4 The Agency may issue a permit for a municipal waste
5 transfer station without requiring approval pursuant to
6 Section 39.2 provided that the following demonstration is made:

7 (1) the municipal waste transfer station was in
8 existence on or before January 1, 1979 and was in
9 continuous operation from January 1, 1979 to January 1,
10 1993;

11 (2) the operator submitted a permit application to the
12 Agency to develop and operate the municipal waste transfer
13 station during April of 1994;

14 (3) the operator can demonstrate that the county board
15 of the county, if the municipal waste transfer station is
16 in an unincorporated area, or the governing body of the
17 municipality, if the station is in an incorporated area,
18 does not object to resumption of the operation of the
19 station; and

20 (4) the site has local zoning approval.

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

25 All RCRA permits shall contain those terms and conditions,
26 including but not limited to schedules of compliance, which may
27 be required to accomplish the purposes and provisions of this
28 Act. The Agency may include among such conditions standards and
29 other requirements established under this Act, Board
30 regulations, the Resource Conservation and Recovery Act of 1976
31 (P.L. 94-580), as amended, and regulations pursuant thereto,
32 and may include schedules for achieving compliance therewith as
33 soon as possible. The Agency shall require that a performance
34 bond or other security be provided as a condition for the
35 issuance of a RCRA permit.

36 In the case of a permit to operate a hazardous waste or PCB

1 incinerator as defined in subsection (k) of Section 44, the
2 Agency shall require, as a condition of the permit, that the
3 operator of the facility perform such analyses of the waste to
4 be incinerated as may be necessary and appropriate to ensure
5 the safe operation of the incinerator.

6 The Agency shall adopt filing requirements and procedures
7 which are necessary and appropriate for the issuance of RCRA
8 permits, and which are consistent with the Act or regulations
9 adopted by the Board, and with the Resource Conservation and
10 Recovery Act of 1976 (P.L. 94-580), as amended, and regulations
11 pursuant thereto.

12 The applicant shall make available to the public for
13 inspection all documents submitted by the applicant to the
14 Agency in furtherance of an application, with the exception of
15 trade secrets, at the office of the county board or governing
16 body of the municipality. Such documents may be copied upon
17 payment of the actual cost of reproduction during regular
18 business hours of the local office. The Agency shall issue a
19 written statement concurrent with its grant or denial of the
20 permit explaining the basis for its decision.

21 (e) The Agency may issue UIC permits exclusively under this
22 subsection to persons owning or operating a facility for the
23 underground injection of contaminants as defined under this
24 Act.

25 All UIC permits shall contain those terms and conditions,
26 including but not limited to schedules of compliance, which may
27 be required to accomplish the purposes and provisions of this
28 Act. The Agency may include among such conditions standards and
29 other requirements established under this Act, Board
30 regulations, the Safe Drinking Water Act (P.L. 93-523), as
31 amended, and regulations pursuant thereto, and may include
32 schedules for achieving compliance therewith. The Agency shall
33 require that a performance bond or other security be provided
34 as a condition for the issuance of a UIC permit.

35 The Agency shall adopt filing requirements and procedures
36 which are necessary and appropriate for the issuance of UIC

1 permits, and which are consistent with the Act or regulations
2 adopted by the Board, and with the Safe Drinking Water Act
3 (P.L. 93-523), as amended, and regulations pursuant thereto.

4 The applicant shall make available to the public for
5 inspection, all documents submitted by the applicant to the
6 Agency in furtherance of an application, with the exception of
7 trade secrets, at the office of the county board or governing
8 body of the municipality. Such documents may be copied upon
9 payment of the actual cost of reproduction during regular
10 business hours of the local office. The Agency shall issue a
11 written statement concurrent with its grant or denial of the
12 permit explaining the basis for its decision.

13 (f) In making any determination pursuant to Section 9.1 of
14 this Act:

15 (1) The Agency shall have authority to make the
16 determination of any question required to be determined by
17 the Clean Air Act, as now or hereafter amended, this Act,
18 or the regulations of the Board, including the
19 determination of the Lowest Achievable Emission Rate,
20 Maximum Achievable Control Technology, or Best Available
21 Control Technology, consistent with the Board's
22 regulations, if any.

23 (2) The Agency shall, after conferring with the
24 applicant, give written notice to the applicant of its
25 proposed decision on the application including the terms
26 and conditions of the permit to be issued and the facts,
27 conduct or other basis upon which the Agency will rely to
28 support its proposed action.

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

33 (g) The Agency shall include as conditions upon all permits
34 issued for hazardous waste disposal sites such restrictions
35 upon the future use of such sites as are reasonably necessary
36 to protect public health and the environment, including

1 permanent prohibition of the use of such sites for purposes
2 which may create an unreasonable risk of injury to human health
3 or to the environment. After administrative and judicial
4 challenges to such restrictions have been exhausted, the Agency
5 shall file such restrictions of record in the Office of the
6 Recorder of the county in which the hazardous waste disposal
7 site is located.

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

36 (i) Before issuing any RCRA permit or any permit for a

1 waste storage site, sanitary landfill, waste disposal site,
2 waste transfer station, waste treatment facility, waste
3 incinerator, or any waste-transportation operation, the Agency
4 shall conduct an evaluation of the prospective owner's or
5 operator's prior experience in waste management operations.
6 The Agency may deny such a permit if the prospective owner or
7 operator or any employee or officer of the prospective owner or
8 operator has a history of:

9 (1) repeated violations of federal, State, or local
10 laws, regulations, standards, or ordinances in the
11 operation of waste management facilities or sites; or

12 (2) conviction in this or another State of any crime
13 which is a felony under the laws of this State, or
14 conviction of a felony in a federal court; or

15 (3) proof of gross carelessness or incompetence in
16 handling, storing, processing, transporting or disposing
17 of waste.

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

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

35 (l) No permit shall be issued by the Agency under this Act
36 for construction or operation of any facility or site located

1 within the boundaries of any setback zone established pursuant
2 to this Act, where such construction or operation is
3 prohibited.

4 (m) The Agency may issue permits to persons owning or
5 operating a facility for composting landscape waste. In
6 granting such permits, the Agency may impose such conditions as
7 may be necessary to accomplish the purposes of this Act, and as
8 are not inconsistent with applicable regulations promulgated
9 by the Board. Except as otherwise provided in this Act, a bond
10 or other security shall not be required as a condition for the
11 issuance of a permit. If the Agency denies any permit pursuant
12 to this subsection, the Agency shall transmit to the applicant
13 within the time limitations of this subsection specific,
14 detailed statements as to the reasons the permit application
15 was denied. Such statements shall include but not be limited to
16 the following:

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

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

21 (3) the specific information, if any, the Agency deems
22 the applicant did not provide in its application to the
23 Agency; and

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

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

31 The Agency shall issue permits for such facilities upon
32 receipt of an application that includes a legal description of
33 the site, a topographic map of the site drawn to the scale of
34 200 feet to the inch or larger, a description of the operation,
35 including the area served, an estimate of the volume of
36 materials to be processed, and documentation that:

1 (1) the facility includes a setback of at least 200
2 feet from the nearest potable water supply well;

3 (2) the facility is located outside the boundary of the
4 10-year floodplain or the site will be floodproofed;

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

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

18 (5) the operation of the facility will include
19 appropriate dust and odor control measures, limitations on
20 operating hours, appropriate noise control measures for
21 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 with
28 any applicable rules adopted by the Board.

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

33 The operator of any facility permitted under this
34 subsection (m) must submit a written annual statement to the
35 Agency on or before April 1 of each year that includes an
36 estimate of the amount of material, in tons, received for

1 composting.

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

6 (o) (Blank.)

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

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

29 (2) The Agency shall accept written comments concerning the
30 permit application that are postmarked no later than 30 days
31 after the filing of the permit application, unless the time
32 period to accept comments is extended by the Agency.

33 (3) Each applicant for a permit described in part (1) of
34 this subsection shall file a copy of the permit application
35 with the county board or governing body of the municipality in
36 which the MSWLF unit is or is proposed to be located at the

1 same time the application is submitted to the Agency. The
2 permit application filed with the county board or governing
3 body of the municipality shall include all documents submitted
4 to or to be submitted to the Agency, except trade secrets as
5 determined under Section 7.1 of this Act. The permit
6 application and other documents on file with the county board
7 or governing body of the municipality shall be made available
8 for public inspection during regular business hours at the
9 office of the county board or the governing body of the
10 municipality and may be copied upon payment of the actual cost
11 of reproduction.

12 (Source: P.A. 92-574, eff. 6-26-02; 93-575, eff. 1-1-04.)

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