



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5939

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Bill Mitchell, et al.

SYNOPSIS AS INTRODUCED:

415 ILCS 5/4	from Ch. 111 1/2, par. 1004
415 ILCS 5/7	from Ch. 111 1/2, par. 1007

Amends the Environmental Protection Act. Authorizes the Agency to collect and solicit citizen complaints alleging a violation of the Act, any rule adopted under the Act, a permit granted by the Agency, or a condition of a permit via telephone, website, fax, mail, e-mail, or any other reasonable means. Provides that the Agency may accept citizen complaints that are anonymous and unaccompanied by the name and mailing address of the complainant, except that, for complaints alleging a violation arising out of agricultural production, the complainant must provide his or her name and mailing address. Sets forth that the Agency must keep the name and address of the complainant confidential, subject to certain penalties. Exempts the name and address of these complainants from public disclosure under provisions of the Act authorizing reasonable public inspection. Defines "agricultural production". Effective immediately.

LRB095 17932 BDD 44014 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 Sections 4 and 7 as follows:

6 (415 ILCS 5/4) (from Ch. 111 1/2, par. 1004)

7 Sec. 4. Environmental Protection Agency; establishment;
8 duties.

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

1 carry out the purposes of this Act. In addition, the Director
2 may by agreement secure such services as he or she may deem
3 necessary from any other department, agency, or unit of the
4 State Government, and may employ and compensate such
5 consultants and technical assistants as may be required.

6 (b) The Agency shall have the duty to collect and
7 disseminate such information, acquire such technical data, and
8 conduct such experiments as may be required to carry out the
9 purposes of this Act, including ascertainment of the quantity
10 and nature of discharges from any contaminant source and data
11 on those sources, and to operate and arrange for the operation
12 of devices for the monitoring of environmental quality.

13 (c) The Agency shall have authority to conduct a program of
14 continuing surveillance and of regular or periodic inspection
15 of actual or potential contaminant or noise sources, of public
16 water supplies, and of refuse disposal sites.

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

20 (1) Inspecting and investigating to ascertain possible
21 violations of this Act, any rule or regulation adopted
22 under this Act, any permit or term or condition of a
23 permit, or any Board order; or

24 (2) In accordance with the provisions of this Act,
25 taking whatever preventive or corrective action, including
26 but not limited to removal or remedial action, that is

1 necessary or appropriate whenever there is a release or a
2 substantial threat of a release of (A) a hazardous
3 substance or pesticide or (B) petroleum from an underground
4 storage tank.

5 (e) The Agency shall have the duty to investigate
6 violations of this Act, any rule or regulation adopted under
7 this Act, any permit or term or condition of a permit, or any
8 Board order; to issue administrative citations as provided in
9 Section 31.1 of this Act; and to take such summary enforcement
10 action as is provided for by Section 34 of this Act.

11 The Agency's duty to investigate under this Act may include
12 the authority to collect and solicit citizen complaints
13 alleging a violation of the Act, any rule adopted under the
14 Act, a permit granted by the Agency, or a condition of the
15 permit. The Agency may collect and solicit complaints via
16 telephone, website, fax, mail, e-mail, or any other reasonable
17 means. The Agency may accept citizen complaints that are
18 anonymous and unaccompanied by the name and mailing address of
19 the complainant, except that, for complaints alleging a
20 violation arising out of agricultural production, the
21 complainant must provide his or her name and mailing address.
22 The Agency shall keep the name and address of complainants
23 confidential as provided in Section 7 of this Act and subject
24 to the penalty provisions of Section 44 of this Act. As used in
25 this paragraph, "agricultural production" means the production
26 for commercial purposes of crops, livestock, and livestock and

1 aquatic products, but not the processing of such crops,
2 livestock, or livestock or aquatic products by persons who are
3 not producing them.

4 (f) The Agency shall appear before the Board in any hearing
5 upon a petition for variance, the denial of a permit, or the
6 validity or effect of a rule or regulation of the Board, and
7 shall have the authority to appear before the Board in any
8 hearing under the Act.

9 (g) The Agency shall have the duty to administer, in accord
10 with Title X of this Act, such permit and certification systems
11 as may be established by this Act or by regulations adopted
12 thereunder. The Agency may enter into written delegation
13 agreements with any department, agency, or unit of State or
14 local government under which all or portions of this duty may
15 be delegated for public water supply storage and transport
16 systems, sewage collection and transport systems, air
17 pollution control sources with uncontrolled emissions of 100
18 tons per year or less and application of algicides to waters of
19 the State. Such delegation agreements will require that the
20 work to be performed thereunder will be in accordance with
21 Agency criteria, subject to Agency review, and shall include
22 such financial and program auditing by the Agency as may be
23 required.

24 (h) The Agency shall have authority to require the
25 submission of complete plans and specifications from any
26 applicant for a permit required by this Act or by regulations

1 thereunder, and to require the submission of such reports
2 regarding actual or potential violations of this Act, any rule
3 or regulation adopted under this Act, any permit or term or
4 condition of a permit, or any Board order, as may be necessary
5 for the purposes of this Act.

6 (i) The Agency shall have authority to make recommendations
7 to the Board for the adoption of regulations under Title VII of
8 the Act.

9 (j) The Agency shall have the duty to represent the State
10 of Illinois in any and all matters pertaining to plans,
11 procedures, or negotiations for interstate compacts or other
12 governmental arrangements relating to environmental
13 protection.

14 (k) The Agency shall have the authority to accept, receive,
15 and administer on behalf of the State any grants, gifts, loans,
16 indirect cost reimbursements, or other funds made available to
17 the State from any source for purposes of this Act or for air
18 or water pollution control, public water supply, solid waste
19 disposal, noise abatement, or other environmental protection
20 activities, surveys, or programs. Any federal funds received by
21 the Agency pursuant to this subsection shall be deposited in a
22 trust fund with the State Treasurer and held and disbursed by
23 him in accordance with Treasurer as Custodian of Funds Act,
24 provided that such monies shall be used only for the purposes
25 for which they are contributed and any balance remaining shall
26 be returned to the contributor.

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

4 (1) The Agency is hereby designated as water pollution
5 agency for the state for all purposes of the Federal Water
6 Pollution Control Act, as amended; as implementing agency for
7 the State for all purposes of the Safe Drinking Water Act,
8 Public Law 93-523, as now or hereafter amended, except Section
9 1425 of that Act; as air pollution agency for the state for all
10 purposes of the Clean Air Act of 1970, Public Law 91-604,
11 approved December 31, 1970, as amended; and as solid waste
12 agency for the state for all purposes of the Solid Waste
13 Disposal Act, Public Law 89-272, approved October 20, 1965, and
14 amended by the Resource Recovery Act of 1970, Public Law
15 91-512, approved October 26, 1970, as amended, and amended by
16 the Resource Conservation and Recovery Act of 1976, (P.L.
17 94-580) approved October 21, 1976, as amended; as noise control
18 agency for the state for all purposes of the Noise Control Act
19 of 1972, Public Law 92-574, approved October 27, 1972, as
20 amended; and as implementing agency for the State for all
21 purposes of the Comprehensive Environmental Response,
22 Compensation, and Liability Act of 1980 (P.L. 96-510), as
23 amended; and otherwise as pollution control agency for the
24 State pursuant to federal laws integrated with the foregoing
25 laws, for financing purposes or otherwise. The Agency is hereby
26 authorized to take all action necessary or appropriate to

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

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

19 (m) The Agency shall have authority, consistent with
20 Section 5(c) and other provisions of this Act, and for purposes
21 of Section 303(e) of the Federal Water Pollution Control Act,
22 as now or hereafter amended, to engage in planning processes
23 and activities and to develop plans in cooperation with units
24 of local government, state agencies and officers, and other
25 appropriate persons in connection with the jurisdiction or
26 duties of each such unit, agency, officer or person. Public

1 hearings shall be held on the planning process, at which any
2 person shall be permitted to appear and be heard, pursuant to
3 procedural regulations promulgated by the Agency.

4 (n) In accordance with the powers conferred upon the Agency
5 by Sections 10(g), 13(b), 19, 22(d) and 25 of this Act, the
6 Agency shall have authority to establish and enforce minimum
7 standards for the operation of laboratories relating to
8 analyses and laboratory tests for air pollution, water
9 pollution, noise emissions, contaminant discharges onto land
10 and sanitary, chemical, and mineral quality of water
11 distributed by a public water supply. The Agency may enter into
12 formal working agreements with other departments or agencies of
13 state government under which all or portions of this authority
14 may be delegated to the cooperating department or agency.

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

24 (p) Except as provided in Section 17.7, the Agency shall
25 have the duty to analyze samples as required from each public
26 water supply to determine compliance with the contaminant

1 levels specified by the Pollution Control Board. The maximum
2 number of samples which the Agency shall be required to analyze
3 for microbiological quality shall be 6 per month, but the
4 Agency may, at its option, analyze a larger number each month
5 for any supply. Results of sample analyses for additional
6 required bacteriological testing, turbidity, residual chlorine
7 and radionuclides are to be provided to the Agency in
8 accordance with Section 19. Owners of water supplies may enter
9 into agreements with the Agency to provide for reduced Agency
10 participation in sample analyses.

11 (q) The Agency shall have the authority to provide notice
12 to any person who may be liable pursuant to Section 22.2(f) of
13 this Act for a release or a substantial threat of a release of
14 a hazardous substance or pesticide. Such notice shall include
15 the identified response action and an opportunity for such
16 person to perform the response action.

17 (r) The Agency may enter into written delegation agreements
18 with any unit of local government under which it may delegate
19 all or portions of its inspecting, investigating and
20 enforcement functions. Such delegation agreements shall
21 require that work performed thereunder be in accordance with
22 Agency criteria and subject to Agency review. Notwithstanding
23 any other provision of law to the contrary, no unit of local
24 government shall be liable for any injury resulting from the
25 exercise of its authority pursuant to such a delegation
26 agreement unless the injury is proximately caused by the

1 willful and wanton negligence of an agent or employee of the
2 unit of local government, and any policy of insurance coverage
3 issued to a unit of local government may provide for the denial
4 of liability and the nonpayment of claims based upon injuries
5 for which the unit of local government is not liable pursuant
6 to this subsection (r).

7 (s) The Agency shall have authority to take whatever
8 preventive or corrective action is necessary or appropriate,
9 including but not limited to expenditure of monies appropriated
10 from the Build Illinois Bond Fund and the Build Illinois
11 Purposes Fund for removal or remedial action, whenever any
12 hazardous substance or pesticide is released or there is a
13 substantial threat of such a release into the environment. The
14 State, the Director, and any State employee shall be
15 indemnified for any damages or injury arising out of or
16 resulting from any action taken under this subsection. The
17 Director of the Agency is authorized to enter into such
18 contracts and agreements as are necessary to carry out the
19 Agency's duties under this subsection.

20 (t) The Agency shall have authority to distribute grants,
21 subject to appropriation by the General Assembly, for financing
22 and construction of municipal wastewater facilities. With
23 respect to all monies appropriated from the Build Illinois Bond
24 Fund and the Build Illinois Purposes Fund for wastewater
25 facility grants, the Agency shall make distributions in
26 conformity with the rules and regulations established pursuant

1 to the Anti-Pollution Bond Act, as now or hereafter amended.

2 (u) Pursuant to the Illinois Administrative Procedure Act,
3 the Agency shall have the authority to adopt such rules as are
4 necessary or appropriate for the Agency to implement Section
5 31.1 of this Act.

6 (v) (Blank.)

7 (w) Neither the State, nor the Director, nor the Board, nor
8 any State employee shall be liable for any damages or injury
9 arising out of or resulting from any action taken under
10 subsection (s).

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

21 (2) The Agency shall not terminate a grant to a unit of
22 local government for the financing and construction of
23 public water supply facilities unless and until the Agency
24 adopts rules that set forth precise and complete standards,
25 pursuant to Section 5-20 of the Illinois Administrative
26 Procedure Act, for the termination of such grants. The

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

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

19 (Source: P.A. 92-574, eff. 6-26-02; 93-152, eff. 7-10-03.)

20 (415 ILCS 5/7) (from Ch. 111 1/2, par. 1007)

21 Sec. 7. Public inspection; fees.

22 (a) All files, records, and data of the Agency, the Board,
23 and the Department shall be open to reasonable public
24 inspection and may be copied upon payment of reasonable fees to
25 be established where appropriate by the Agency, the Board, or

1 the Department, except for the following:

2 (i) information which constitutes a trade secret;

3 (ii) information privileged against introduction in
4 judicial proceedings;

5 (iii) internal communications of the several agencies;

6 (iv) information concerning secret manufacturing
7 processes or confidential data submitted by any person
8 under this Act; and -

9 (v) information concerning the name or address of a
10 citizen complainant who has submitted a complaint to the
11 Agency alleging a violation of the Act, any rule adopted
12 under the Act, a permit granted by the Agency, or a
13 condition of the permit.

14 (b) Notwithstanding subsection (a) above, as to
15 information from or concerning persons subject to NPDES permit
16 requirements:

17 (i) effluent data may under no circumstances be kept
18 confidential; and

19 (ii) the Agency, the Board, and the Department may make
20 available to the public for inspection and copying any
21 required records, reports, information, permits, and
22 permit applications obtained from contaminant sources
23 subject to the provisions of Section 12 (f) of this Act;
24 provided that upon a showing satisfactory to the Agency,
25 the Board or the Department, as the case may be, by any
26 person that such information, or any part thereof (other

1 than effluent data) would, if made public, divulge methods
2 or processes entitled to protection as trade secrets of
3 such person, the Agency, the Board, or the Department, as
4 the case may be, shall treat such information as
5 confidential.

6 (c) Notwithstanding any other provision of this Title or
7 any other law to the contrary, all emission data reported to or
8 otherwise obtained by the Agency, the Board or the Department
9 in connection with any examination, inspection or proceeding
10 under this Act shall be available to the public to the extent
11 required by the federal Clean Air Act, as amended.

12 (d) Notwithstanding subsection (a) above, the quantity and
13 identity of substances being placed or to be placed in
14 landfills or hazardous waste treatment, storage or disposal
15 facilities, and the name of the generator of such substances
16 may under no circumstances be kept confidential.

17 (e) Notwithstanding any other provisions of this Title, or
18 any other law to the contrary, any information accorded
19 confidential treatment may be disclosed or transmitted to other
20 officers, employees or authorized representatives of this
21 State or of the United States concerned with or for the
22 purposes of carrying out this Act or federal environmental
23 statutes and regulations; provided, however, that such
24 information shall be identified as confidential by the Agency,
25 the Board, or the Department, as the case may be. Any
26 confidential information disclosed or transmitted under this

1 provision shall be used for the purposes stated herein.

2 (f) Except as provided in this Act neither the Agency, the
3 Board, nor the Department shall charge any fee for the
4 performance of its respective duties under this Act.

5 (g) All files, records and data of the Agency, the Board
6 and the Department shall be made available to the Department of
7 Public Health pursuant to the Illinois Health and Hazardous
8 Substances Registry Act. Expenses incurred in the copying and
9 transmittal of files, records and data requested pursuant to
10 this subsection (g) shall be the responsibility of the
11 Department of Public Health.

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

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