

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 3.160, 21, 22.51, 31.1, and 42 and by adding
6 Sections 3.202, 3.442, 22.51a, and 22.54 as follows:

7 (415 ILCS 5/3.160) (was 415 ILCS 5/3.78 and 3.78a)

8 Sec. 3.160. Construction or demolition debris.

9 (a) "General construction or demolition debris" means
10 non-hazardous, uncontaminated materials resulting from the
11 construction, remodeling, repair, and demolition of utilities,
12 structures, and roads, limited to the following: bricks,
13 concrete, and other masonry materials; soil; rock; wood,
14 including non-hazardous painted, treated, and coated wood and
15 wood products; wall coverings; plaster; drywall; plumbing
16 fixtures; non-asbestos insulation; roofing shingles and other
17 roof coverings; reclaimed or other asphalt pavement; glass;
18 plastics that are not sealed in a manner that conceals waste;
19 electrical wiring and components containing no hazardous
20 substances; and piping or metals incidental to any of those
21 materials.

22 General construction or demolition debris does not include
23 general fill ~~uncontaminated~~ soil generated during

1 construction, remodeling, repair, and demolition of utilities,
2 structures, and roads provided the general fill ~~uncontaminated~~
3 soil is not commingled with any general construction or
4 demolition debris or other waste.

5 To the extent allowed by federal law, uncontaminated
6 concrete with protruding rebar shall be considered clean
7 construction or demolition debris and shall not be considered
8 "waste" if it is separated or processed and returned to the
9 economic mainstream in the form of raw materials or products
10 within 4 years of its generation, if it is not speculatively
11 accumulated and, if used as a fill material, it is used in
12 accordance with item (i) in subsection (b) of this Section.

13 (b) "Clean construction or demolition debris" ("CCDD")
14 means uncontaminated broken concrete without protruding metal
15 bars, bricks, rock, stone, or reclaimed or other asphalt
16 pavement ~~, or soil~~ generated from construction or demolition
17 activities; provided that concrete without protruding metal
18 bars, bricks, rock, stone, or reclaimed or other asphalt
19 pavement that is generated from the construction or demolition
20 of a road may be considered "clean construction or demolition
21 debris" if it is uncontaminated except for pavement markings
22 that conform to Illinois Department of Transportation
23 specifications.

24 CCDD also includes general fill soil generated from
25 construction or demolition activities that is mixed with broken
26 concrete without protruding metal bars, bricks, rock, stone, or

1 reclaimed asphalt pavement that is CCDD. CCDD ~~Clean~~
2 ~~construction or demolition debris~~ does not include general fill
3 ~~uncontaminated~~ soil generated during construction, remodeling,
4 repair, and demolition of utilities, structures, and roads that
5 ~~provided the uncontaminated soil~~ is not commingled with any
6 CCDD ~~clean construction or demolition debris~~ or other waste.

7 To the extent allowed by federal law, CCDD ~~clean~~
8 ~~construction or demolition debris~~ shall not be considered
9 "waste" if it is (i) used as fill material outside of a setback
10 zone if (1) the fill is placed no higher than the highest point
11 of elevation existing prior to the filling immediately adjacent
12 to the fill area, and (2) except as otherwise allowed under
13 subdivision (f) (3) of Section 22.51 of this Act, it is ~~if~~
14 covered by sufficient general fill ~~uncontaminated~~ soil to
15 support vegetation within 30 days of the completion of filling
16 or is ~~if~~ covered by a road or structure and, (3) if used as fill
17 material in a current or former quarry, mine, or other
18 excavation, it is used in accordance with the requirements of
19 Section 22.51 of this Act and rules adopted thereunder, or (ii)
20 separated or processed and returned to the economic mainstream
21 in the form of raw materials or products, if it is not
22 speculatively accumulated and, if used as a fill material, it
23 is used in accordance with item (i), or (iii) solely broken
24 concrete without protruding metal bars used for erosion
25 control, or (iv) generated from the construction or demolition
26 of a building, road, or other structure and used to construct,

1 on the site where the construction or demolition has taken
2 place, a manmade functional structure not to exceed 20 feet
3 above the highest point of elevation of the property
4 immediately adjacent to the new manmade functional structure as
5 that elevation existed prior to the creation of that new
6 structure, provided that the structure shall be covered with
7 sufficient general fill soil ~~materials~~ to sustain vegetation or
8 by a road or structure, and further provided that no such
9 structure shall be constructed within a home rule municipality
10 with a population over 500,000 without the consent of the
11 municipality.

12 For purposes of this subsection (b), reclaimed or other
13 asphalt pavement shall not be considered speculatively
14 accumulated if: (i) it is not commingled with any other clean
15 construction or demolition debris or any waste; (ii) it is
16 returned to the economic mainstream in the form of raw
17 materials or products within 4 years after its generation;
18 (iii) at least 25% of the total amount present at a site during
19 a calendar year is transported off of the site during the next
20 calendar year; and (iv) if used as a fill material, it is used
21 in accordance with item (i) of the second paragraph of this
22 subsection (b).

23 (c) "Painted construction or demolition debris" means
24 broken concrete without protruding metal bars, bricks, rock,
25 stone, or reclaimed or other asphalt pavement generated from
26 construction or demolition activities that contains paint but

1 is otherwise uncontaminated. However, concrete without
2 protruding metal bars, bricks, rock, stone, or reclaimed or
3 other asphalt pavement that is generated from the construction
4 or demolition of a road may be considered "clean construction
5 or demolition debris" instead of "painted construction or
6 demolition debris" if it is uncontaminated except for pavement
7 markings that conform to Illinois Department of Transportation
8 specifications.

9 (Source: P.A. 94-272, eff. 7-19-05; 95-121, eff. 8-13-07.)

10 (415 ILCS 5/3.202 new)

11 Sec. 3.202. General Fill Soil. For purposes of Sections
12 3.160, 21, 22.51, and 22.51a of this Act, "General Fill Soil"
13 means soil generated from construction or demolition
14 activities that (i) does not exceed the most stringent Tier 1
15 exposure route values adopted by the Board pursuant to Title
16 XVII of this Act, as amended, (ii) based upon past and current
17 land uses and reasonable inquiry, is not known or suspected to
18 contain a regulated substance or pesticide for which a Tier 1
19 exposure route value has not been determined, and (iii) does
20 not contain waste. For purposes of this definition, the most
21 stringent Tier 1 exposure route values adopted by the Board
22 pursuant to Title XVII of this Act shall be determined as
23 follows:

24 (a) Except as otherwise provided in subsections (b)
25 through (d) of this Section, the most stringent Tier 1

1 exposure route values are the lowest of the following
2 values for each chemical listed in 35 Ill. Adm. Code 742,
3 Appendix B, as amended:

4 (1) The Ingestion Exposure Route-Specific Value
5 for Soils listed in Table A of 35 Ill. Adm. Code 742,
6 Appendix B;

7 (2) The Outdoor Inhalation Exposure Route-Specific
8 Value for Soils listed in Table A of 35 Ill. Adm. Code
9 742, Appendix B;

10 (3) The Class I Soil Component of the Groundwater
11 Ingestion Exposure Route Value listed in Table A of 35
12 Ill. Adm. Code 742, Appendix B;

13 (4) The Construction Worker Ingestion Exposure
14 Route-Specific Value for Soils listed in Table B of 35
15 Ill. Adm. Code 742, Appendix B;

16 (5) The Construction Worker Inhalation Exposure
17 Route-Specific Value for Soils listed in Table B of 35
18 Ill. Adm. Code 742, Appendix B; and

19 (6) Indoor inhalation exposure route values as may
20 be established by the Board.

21 Location and other designations, such as residential
22 and industrial/commercial designations, shall be ignored
23 when comparing the values identified in this subsection
24 (a). The lowest values shall be used regardless of
25 designation.

26 (b) For inorganic chemicals, either the leachable

1 value or the totals value set forth below can be used as
2 the most stringent Tier 1 exposure route value.

3 (1) The leachable value for each inorganic
4 chemical is the Class I Soil Component of the
5 Groundwater Ingestion Exposure Route Value listed in
6 Table A of 35 Ill. Adm. Code 742, Appendix B, as
7 amended.

8 (2) The totals value for each inorganic chemical is
9 the lowest of the following values, as amended:

10 (A) The Ingestion Exposure Route-Specific
11 Value for Soils listed in Table A of 35 Ill. Adm.
12 Code 742, Appendix B;

13 (B) The Outdoor Inhalation Exposure
14 Route-Specific Value for Soils listed in Table A of
15 35 Ill. Adm. Code 742, Appendix B;

16 (C) The Construction Worker Ingestion Exposure
17 Route-Specific Value for Soils listed in Table B of
18 35 Ill. Adm. Code 742, Appendix B;

19 (D) The Construction Worker Inhalation
20 Exposure Route-Specific Value for Soils listed in
21 Table B of 35 Ill. Adm. Code 742, Appendix B;

22 (E) The Class I pH Specific Soil Remediation
23 Objective listed in the column labeled "pH of 6.25
24 to 6.64" in Table C of 35 Ill. Adm. Code 742,
25 Appendix B; and

26 (F) Indoor inhalation exposure route values as

1 may be established by the Board.

2 Location and other designations, such as
3 residential or industrial/commercial designations,
4 shall be ignored when comparing the values identified
5 in this subdivision (b) (2) of this Section. The lowest
6 values shall be used for all soil regardless of
7 designation.

8 (c) If a chemical's most stringent Tier 1 exposure
9 route value determined under subsections (a) and (b) of
10 this Section is less than the chemical's acceptable
11 detection limit (ADL) listed in 35 Ill. Adm. Code 742,
12 Appendix B, as amended, then the ADL shall serve as the
13 most stringent Tier 1 exposure route value.

14 (d) The following applies for soil used as fill
15 material or cover material in Chicago, a Metropolitan Area,
16 or a Non-Metropolitan Area as defined in Table H of 35 Ill.
17 Adm. Code 742, Appendix A:

18 (1) If a chemical's most stringent Tier 1 exposure
19 route value determined under subsections (a) through
20 (c) of this Section is less than the chemical's lowest
21 background concentration listed in Table H of 35 Ill.
22 Adm. Code 742, Appendix A, as amended, then the
23 chemical's lowest background concentration listed in
24 Table H shall serve as the most stringent Tier 1
25 exposure route value.

26 (2) For purposes of this subsection (d), the lowest

1 background concentration listed in Table H shall be
2 used, regardless of whether it is the background
3 concentration listed for Chicago, a Metropolitan Area,
4 or a Non-Metropolitan Area.

5 The most stringent Tier 1 exposure route values shall be
6 determined solely from the values listed in 35 Ill. Adm. Code
7 742, Appendix A and Appendix B as provided above. Except as
8 provided in subsection (d) of this Section, background
9 concentrations cannot be used. Other provisions of the Board's
10 rules, such as those pertaining to the use of engineered
11 barriers or institutional controls, cannot be used to exclude
12 or otherwise alter exposure routes or exposure route values for
13 purposes of determining the most stringent Tier 1 exposure
14 route.

15 The Agency shall maintain on its website a list of the most
16 stringent Tier 1 exposure route values adopted by the Board
17 pursuant to Title XVII of this Act, as amended.

18 To the extent allowed by federal law, general fill soil is
19 not a waste.

20 (415 ILCS 5/3.442 new)

21 Sec. 3.442. Restricted Fill Soil. For purposes of Section
22 22.51 of this Act, "restricted fill soil" means soil generated
23 from construction or demolition activities that (i) does not
24 exceed the Class I Soil Component of the Groundwater Ingestion
25 Exposure Route Values listed in Table A of 35 Ill. Adm. Code

1 742, Appendix B, as amended, (ii) based upon past and current
2 land uses and reasonable inquiry, is not known or suspected to
3 contain a regulated substance or pesticide that does not have a
4 Class I Soil Component of the Groundwater Ingestion Exposure
5 Route Value listed in Table A of 35 Ill. Adm. Code 742,
6 Appendix B, as amended, and (iii) does not contain waste.
7 General fill soil that is mixed with restricted fill soil shall
8 be considered restricted fill soil.

9 (415 ILCS 5/21) (from Ch. 111 1/2, par. 1021)

10 Sec. 21. Prohibited acts. No person shall:

11 (a) Cause or allow the open dumping of any waste.

12 (b) Abandon, dump, or deposit any waste upon the public
13 highways or other public property, except in a sanitary
14 landfill approved by the Agency pursuant to regulations adopted
15 by the Board.

16 (c) Abandon any vehicle in violation of the "Abandoned
17 Vehicles Amendment to the Illinois Vehicle Code", as enacted by
18 the 76th General Assembly.

19 (d) Conduct any waste-storage, waste-treatment, or
20 waste-disposal operation:

21 (1) without a permit granted by the Agency or in
22 violation of any conditions imposed by such permit,
23 including periodic reports and full access to adequate
24 records and the inspection of facilities, as may be
25 necessary to assure compliance with this Act and with

1 regulations and standards adopted thereunder; provided,
2 however, that, except for municipal solid waste landfill
3 units that receive waste on or after October 9, 1993, no
4 permit shall be required for (i) any person conducting a
5 waste-storage, waste-treatment, or waste-disposal
6 operation for wastes generated by such person's own
7 activities which are stored, treated, or disposed within
8 the site where such wastes are generated, or (ii) a
9 facility located in a county with a population over 700,000
10 as of January 1, 2000, operated and located in accordance
11 with Section 22.38 of this Act, and used exclusively for
12 the transfer, storage, or treatment of general
13 construction or demolition debris;

14 (2) in violation of any regulations or standards
15 adopted by the Board under this Act; or

16 (3) which receives waste after August 31, 1988, does
17 not have a permit issued by the Agency, and is (i) a
18 landfill used exclusively for the disposal of waste
19 generated at the site, (ii) a surface impoundment receiving
20 special waste not listed in an NPDES permit, (iii) a waste
21 pile in which the total volume of waste is greater than 100
22 cubic yards or the waste is stored for over one year, or
23 (iv) a land treatment facility receiving special waste
24 generated at the site; without giving notice of the
25 operation to the Agency by January 1, 1989, or 30 days
26 after the date on which the operation commences, whichever

1 is later, and every 3 years thereafter. The form for such
2 notification shall be specified by the Agency, and shall be
3 limited to information regarding: the name and address of
4 the location of the operation; the type of operation; the
5 types and amounts of waste stored, treated or disposed of
6 on an annual basis; the remaining capacity of the
7 operation; and the remaining expected life of the
8 operation.

9 Item (3) of this subsection (d) shall not apply to any
10 person engaged in agricultural activity who is disposing of a
11 substance that constitutes solid waste, if the substance was
12 acquired for use by that person on his own property, and the
13 substance is disposed of on his own property in accordance with
14 regulations or standards adopted by the Board.

15 This subsection (d) shall not apply to hazardous waste.

16 (e) Dispose, treat, store or abandon any waste, or
17 transport any waste into this State for disposal, treatment,
18 storage or abandonment, except at a site or facility which
19 meets the requirements of this Act and of regulations and
20 standards thereunder.

21 (f) Conduct any hazardous waste-storage, hazardous
22 waste-treatment or hazardous waste-disposal operation:

23 (1) without a RCRA permit for the site issued by the
24 Agency under subsection (d) of Section 39 of this Act, or
25 in violation of any condition imposed by such permit,
26 including periodic reports and full access to adequate

1 records and the inspection of facilities, as may be
2 necessary to assure compliance with this Act and with
3 regulations and standards adopted thereunder; or

4 (2) in violation of any regulations or standards
5 adopted by the Board under this Act; or

6 (3) in violation of any RCRA permit filing requirement
7 established under standards adopted by the Board under this
8 Act; or

9 (4) in violation of any order adopted by the Board
10 under this Act.

11 Notwithstanding the above, no RCRA permit shall be required
12 under this subsection or subsection (d) of Section 39 of this
13 Act for any person engaged in agricultural activity who is
14 disposing of a substance which has been identified as a
15 hazardous waste, and which has been designated by Board
16 regulations as being subject to this exception, if the
17 substance was acquired for use by that person on his own
18 property and the substance is disposed of on his own property
19 in accordance with regulations or standards adopted by the
20 Board.

21 (g) Conduct any hazardous waste-transportation operation:

22 (1) without registering with and obtaining a permit
23 from the Agency in accordance with the Uniform Program
24 implemented under subsection (1-5) of Section 22.2; or

25 (2) in violation of any regulations or standards
26 adopted by the Board under this Act.

1 (h) Conduct any hazardous waste-recycling or hazardous
2 waste-reclamation or hazardous waste-reuse operation in
3 violation of any regulations, standards or permit requirements
4 adopted by the Board under this Act.

5 (i) Conduct any process or engage in any act which produces
6 hazardous waste in violation of any regulations or standards
7 adopted by the Board under subsections (a) and (c) of Section
8 22.4 of this Act.

9 (j) Conduct any special waste transportation operation in
10 violation of any regulations, standards or permit requirements
11 adopted by the Board under this Act. However, sludge from a
12 water or sewage treatment plant owned and operated by a unit of
13 local government which (1) is subject to a sludge management
14 plan approved by the Agency or a permit granted by the Agency,
15 and (2) has been tested and determined not to be a hazardous
16 waste as required by applicable State and federal laws and
17 regulations, may be transported in this State without a special
18 waste hauling permit, and the preparation and carrying of a
19 manifest shall not be required for such sludge under the rules
20 of the Pollution Control Board. The unit of local government
21 which operates the treatment plant producing such sludge shall
22 file a semiannual report with the Agency identifying the volume
23 of such sludge transported during the reporting period, the
24 hauler of the sludge, and the disposal sites to which it was
25 transported. This subsection (j) shall not apply to hazardous
26 waste.

1 (k) Fail or refuse to pay any fee imposed under this Act.

2 (l) Locate a hazardous waste disposal site above an active
3 or inactive shaft or tunneled mine or within 2 miles of an
4 active fault in the earth's crust. In counties of population
5 less than 225,000 no hazardous waste disposal site shall be
6 located (1) within 1 1/2 miles of the corporate limits as
7 defined on June 30, 1978, of any municipality without the
8 approval of the governing body of the municipality in an
9 official action; or (2) within 1000 feet of an existing private
10 well or the existing source of a public water supply measured
11 from the boundary of the actual active permitted site and
12 excluding existing private wells on the property of the permit
13 applicant. The provisions of this subsection do not apply to
14 publicly-owned sewage works or the disposal or utilization of
15 sludge from publicly-owned sewage works.

16 (m) Transfer interest in any land which has been used as a
17 hazardous waste disposal site without written notification to
18 the Agency of the transfer and to the transferee of the
19 conditions imposed by the Agency upon its use under subsection
20 (g) of Section 39.

21 (n) Use any land which has been used as a hazardous waste
22 disposal site except in compliance with conditions imposed by
23 the Agency under subsection (g) of Section 39.

24 (o) Conduct a sanitary landfill operation which is required
25 to have a permit under subsection (d) of this Section, in a
26 manner which results in any of the following conditions:

- 1 (1) refuse in standing or flowing waters;
- 2 (2) leachate flows entering waters of the State;
- 3 (3) leachate flows exiting the landfill confines (as
4 determined by the boundaries established for the landfill
5 by a permit issued by the Agency);
- 6 (4) open burning of refuse in violation of Section 9 of
7 this Act;
- 8 (5) uncovered refuse remaining from any previous
9 operating day or at the conclusion of any operating day,
10 unless authorized by permit;
- 11 (6) failure to provide final cover within time limits
12 established by Board regulations;
- 13 (7) acceptance of wastes without necessary permits;
- 14 (8) scavenging as defined by Board regulations;
- 15 (9) deposition of refuse in any unpermitted portion of
16 the landfill;
- 17 (10) acceptance of a special waste without a required
18 manifest;
- 19 (11) failure to submit reports required by permits or
20 Board regulations;
- 21 (12) failure to collect and contain litter from the
22 site by the end of each operating day;
- 23 (13) failure to submit any cost estimate for the site
24 or any performance bond or other security for the site as
25 required by this Act or Board rules.

26 The prohibitions specified in this subsection (o) shall be

1 enforceable by the Agency either by administrative citation
2 under Section 31.1 of this Act or as otherwise provided by this
3 Act. The specific prohibitions in this subsection do not limit
4 the power of the Board to establish regulations or standards
5 applicable to sanitary landfills.

6 (p) In violation of subdivision (a) of this Section, cause
7 or allow the open dumping of any waste in a manner which
8 results in any of the following occurrences at the dump site:

9 (1) litter;

10 (2) scavenging;

11 (3) open burning;

12 (4) deposition of waste in standing or flowing waters;

13 (5) proliferation of disease vectors;

14 (6) standing or flowing liquid discharge from the dump
15 site;

16 (7) deposition of:

17 (i) general construction or demolition debris as
18 defined in Section 3.160(a) of this Act; or

19 (ii) clean construction or demolition debris as
20 defined in Section 3.160(b) of this Act.

21 The prohibitions specified in this subsection (p) shall be
22 enforceable by the Agency either by administrative citation
23 under Section 31.1 of this Act or as otherwise provided by this
24 Act. The specific prohibitions in this subsection do not limit
25 the power of the Board to establish regulations or standards
26 applicable to open dumping.

1 (q) Conduct a landscape waste composting operation without
2 an Agency permit, provided, however, that no permit shall be
3 required for any person:

4 (1) conducting a landscape waste composting operation
5 for landscape wastes generated by such person's own
6 activities which are stored, treated or disposed of within
7 the site where such wastes are generated; or

8 (2) applying landscape waste or composted landscape
9 waste at agronomic rates; or

10 (3) operating a landscape waste composting facility on
11 a farm, if the facility meets all of the following
12 criteria:

13 (A) the composting facility is operated by the
14 farmer on property on which the composting material is
15 utilized, and the composting facility constitutes no
16 more than 2% of the property's total acreage, except
17 that the Agency may allow a higher percentage for
18 individual sites where the owner or operator has
19 demonstrated to the Agency that the site's soil
20 characteristics or crop needs require a higher rate;

21 (B) the property on which the composting facility
22 is located, and any associated property on which the
23 compost is used, is principally and diligently devoted
24 to the production of agricultural crops and is not
25 owned, leased or otherwise controlled by any waste
26 hauler or generator of nonagricultural compost

1 materials, and the operator of the composting facility
2 is not an employee, partner, shareholder, or in any way
3 connected with or controlled by any such waste hauler
4 or generator;

5 (C) all compost generated by the composting
6 facility is applied at agronomic rates and used as
7 mulch, fertilizer or soil conditioner on land actually
8 farmed by the person operating the composting
9 facility, and the finished compost is not stored at the
10 composting site for a period longer than 18 months
11 prior to its application as mulch, fertilizer, or soil
12 conditioner;

13 (D) the owner or operator, by January 1, 1990 (or
14 the January 1 following commencement of operation,
15 whichever is later) and January 1 of each year
16 thereafter, (i) registers the site with the Agency,
17 (ii) reports to the Agency on the volume of composting
18 material received and used at the site, (iii) certifies
19 to the Agency that the site complies with the
20 requirements set forth in subparagraphs (A), (B) and
21 (C) of this paragraph (q) (3), and (iv) certifies to the
22 Agency that all composting material was placed more
23 than 200 feet from the nearest potable water supply
24 well, was placed outside the boundary of the 10-year
25 floodplain or on a part of the site that is
26 floodproofed, was placed at least 1/4 mile from the

1 nearest residence (other than a residence located on
2 the same property as the facility) and there are not
3 more than 10 occupied non-farm residences within 1/2
4 mile of the boundaries of the site on the date of
5 application, and was placed more than 5 feet above the
6 water table.

7 For the purposes of this subsection (q), "agronomic rates"
8 means the application of not more than 20 tons per acre per
9 year, except that the Agency may allow a higher rate for
10 individual sites where the owner or operator has demonstrated
11 to the Agency that the site's soil characteristics or crop
12 needs require a higher rate.

13 (r) Cause or allow the storage or disposal of coal
14 combustion waste unless:

15 (1) such waste is stored or disposed of at a site or
16 facility for which a permit has been obtained or is not
17 otherwise required under subsection (d) of this Section; or

18 (2) such waste is stored or disposed of as a part of
19 the design and reclamation of a site or facility which is
20 an abandoned mine site in accordance with the Abandoned
21 Mined Lands and Water Reclamation Act; or

22 (3) such waste is stored or disposed of at a site or
23 facility which is operating under NPDES and Subtitle D
24 permits issued by the Agency pursuant to regulations
25 adopted by the Board for mine-related water pollution and
26 permits issued pursuant to the Federal Surface Mining

1 Control and Reclamation Act of 1977 (P.L. 95-87) or the
2 rules and regulations thereunder or any law or rule or
3 regulation adopted by the State of Illinois pursuant
4 thereto, and the owner or operator of the facility agrees
5 to accept the waste; and either

6 (i) such waste is stored or disposed of in
7 accordance with requirements applicable to refuse
8 disposal under regulations adopted by the Board for
9 mine-related water pollution and pursuant to NPDES and
10 Subtitle D permits issued by the Agency under such
11 regulations; or

12 (ii) the owner or operator of the facility
13 demonstrates all of the following to the Agency, and
14 the facility is operated in accordance with the
15 demonstration as approved by the Agency: (1) the
16 disposal area will be covered in a manner that will
17 support continuous vegetation, (2) the facility will
18 be adequately protected from wind and water erosion,
19 (3) the pH will be maintained so as to prevent
20 excessive leaching of metal ions, and (4) adequate
21 containment or other measures will be provided to
22 protect surface water and groundwater from
23 contamination at levels prohibited by this Act, the
24 Illinois Groundwater Protection Act, or regulations
25 adopted pursuant thereto.

26 Notwithstanding any other provision of this Title, the

1 disposal of coal combustion waste pursuant to item (2) or (3)
2 of this subdivision (r) shall be exempt from the other
3 provisions of this Title V, and notwithstanding the provisions
4 of Title X of this Act, the Agency is authorized to grant
5 experimental permits which include provision for the disposal
6 of wastes from the combustion of coal and other materials
7 pursuant to items (2) and (3) of this subdivision (r).

8 (s) After April 1, 1989, offer for transportation,
9 transport, deliver, receive or accept special waste for which a
10 manifest is required, unless the manifest indicates that the
11 fee required under Section 22.8 of this Act has been paid.

12 (t) Cause or allow a lateral expansion of a municipal solid
13 waste landfill unit on or after October 9, 1993, without a
14 permit modification, granted by the Agency, that authorizes the
15 lateral expansion.

16 (u) Conduct any vegetable by-product treatment, storage,
17 disposal or transportation operation in violation of any
18 regulation, standards or permit requirements adopted by the
19 Board under this Act. However, no permit shall be required
20 under this Title V for the land application of vegetable
21 by-products conducted pursuant to Agency permit issued under
22 Title III of this Act to the generator of the vegetable
23 by-products. In addition, vegetable by-products may be
24 transported in this State without a special waste hauling
25 permit, and without the preparation and carrying of a manifest.

26 (v) (Blank).

1 (w) Conduct any generation, transportation, or recycling
2 of construction or demolition debris, clean or general, or
3 painted construction or demolition debris or general fill
4 ~~uncontaminated~~ soil or restricted fill soil that is generated
5 during construction, remodeling, repair, and demolition of
6 utilities, structures, and roads that is not commingled with
7 any waste, without the maintenance of documentation
8 identifying the hauler, generator, place of origin of the
9 debris or soil, the weight or volume of the debris or soil, and
10 the location, owner, and operator of the facility where the
11 debris or soil was transferred, disposed, recycled, or treated.
12 This documentation must be maintained by the generator,
13 transporter, or recycler for 3 years. This subsection (w) shall
14 not apply to (1) a permitted pollution control facility that
15 transfers or accepts construction or demolition debris, clean
16 or general, or painted construction or demolition debris or
17 general fill soil or restricted fill ~~uncontaminated~~ soil for
18 final disposal, recycling, or treatment, (2) a public utility
19 (as that term is defined in the Public Utilities Act) or a
20 municipal utility, (3) the Illinois Department of
21 Transportation, ~~or~~ (4) a municipality or a county highway
22 department, with the exception of any municipality or county
23 highway department located within a county having a population
24 of over 3,000,000 inhabitants or located in a county that is
25 contiguous to a county having a population of over 3,000,000
26 inhabitants, or (5) the Illinois State Toll Highway Authority;

1 but it shall apply to an entity that contracts with a public
2 utility, a municipal utility, the Illinois Department of
3 Transportation, the Illinois State Toll Highway Authority or a
4 municipality or a county highway department. The terms
5 "generation" and "recycling" as used in this subsection do not
6 apply to clean construction or demolition debris when (i) used
7 as fill material below grade outside of a setback zone if
8 covered by sufficient general fill ~~uncontaminated~~ soil to
9 support vegetation within 30 days of the completion of filling
10 or if covered by a road or structure, (ii) solely broken
11 concrete without protruding metal bars is used for erosion
12 control, or (iii) milled asphalt or crushed concrete is used as
13 aggregate in construction of the shoulder of a roadway. The
14 terms "generation" and "recycling", as used in this subsection,
15 do not apply to general fill ~~uncontaminated~~ soil that is not
16 commingled with any waste when (i) used as fill material below
17 grade or contoured to grade, or (ii) used at the site of
18 generation.

19 (Source: P.A. 93-179, eff. 7-11-03; 94-94, eff. 7-1-05.)

20 (415 ILCS 5/22.51)

21 Sec. 22.51. Clean Construction or Demolition Debris Fill
22 Operations.

23 (a) No person shall conduct any CCDD ~~clean construction or~~
24 ~~demolition debris~~ fill operation in violation of this Act or
25 any regulations or standards adopted by the Board.

1 (b) (1) (A) Beginning July 19, 2005 ~~30 days after the~~
2 ~~effective date of this amendatory Act of the 94th General~~
3 ~~Assembly~~ but prior to July 1, 2008, no person shall use CCDD
4 ~~clean construction or demolition debris~~ as fill material in a
5 current or former quarry, mine, or other excavation, unless
6 they have applied for an interim authorization from the Agency
7 for the CCDD ~~clean construction or demolition debris~~ fill
8 operation.

9 (B) The Agency shall approve an interim authorization upon
10 its receipt of a written application for the interim
11 authorization that is signed by the site owner and the site
12 operator, or their duly authorized agent, and that contains the
13 following information: (i) the location of the site where the
14 CCDD ~~clean construction or demolition debris~~ fill operation is
15 taking place, (ii) the name and address of the site owner,
16 (iii) the name and address of the site operator, and (iv) the
17 types and amounts of CCDD ~~clean construction or demolition~~
18 ~~debris~~ being used as fill material at the site.

19 (C) The Agency may deny an interim authorization if the
20 site owner or the site operator, or their duly authorized
21 agent, fails to provide to the Agency the information listed in
22 subsection (b) (1) (B) of this Section. Any denial of an interim
23 authorization shall be subject to appeal to the Board in
24 accordance with the procedures of Section 40 of this Act.

25 (D) No person shall use CCDD ~~clean construction or~~
26 ~~demolition debris~~ as fill material in a current or former

1 quarry, mine, or other excavation for which the Agency has
2 denied interim authorization under subsection (b)(1)(C) of
3 this Section. The Board may stay the prohibition of this
4 subsection (D) during the pendency of an appeal of the Agency's
5 denial of the interim authorization brought under subsection
6 (b)(1)(C) of this Section.

7 (2) Beginning September 1, 2006, owners and operators of
8 CCDD ~~clean construction or demolition debris~~ fill operations
9 shall, in accordance with a schedule prescribed by the Agency,
10 submit to the Agency applications for the permits required
11 under this Section. The Agency shall notify owners and
12 operators in writing of the due date for their permit
13 application. The due date shall be no less than 90 days after
14 the date of the Agency's written notification. Owners and
15 operators who do not receive a written notification from the
16 Agency by October 1, 2007, shall submit a permit application to
17 the Agency by January 1, 2008. The interim authorization of
18 owners and operators who fail to submit a permit application to
19 the Agency by the permit application's due date shall terminate
20 on (i) the due date established by the Agency if the owner or
21 operator received a written notification from the Agency prior
22 to October 1, 2007, or (ii) or January 1, 2008, if the owner or
23 operator did not receive a written notification from the Agency
24 by October 1, 2007.

25 (3) On and after July 1, 2008, no person shall use CCDD
26 ~~clean construction or demolition debris~~ as fill material in a

1 current or former quarry, mine, or other excavation (i) without
2 a permit granted by the Agency for the clean construction or
3 demolition debris fill operation or in violation of any
4 conditions imposed by such permit, including periodic reports
5 and full access to adequate records and the inspection of
6 facilities, as may be necessary to assure compliance with this
7 Act and with Board regulations and standards adopted under this
8 Act; or (ii) in violation of any regulations or standards
9 adopted by the Board under this Act.

10 No person shall use restricted fill soil or painted
11 construction or demolition debris as fill material in a current
12 or former quarry, mine, or other excavation (i) without a
13 permit granted by the Agency or in violation of any conditions
14 imposed by such permit, including periodic reports and full
15 access to adequate records and the inspection of facilities, as
16 may be necessary to assure compliance with this Act and with
17 Board regulations and standards adopted under this Act; or (ii)
18 in violation of any rules or standards adopted by the Board
19 under this Act.

20 (A) Owners and operators of clean construction or
21 demolition debris fill operations with a permit issued prior to
22 the effective date of this amendatory Act of the 96th General
23 Assembly must, in accordance with a schedule prescribed by the
24 Agency, submit an application for a permit modification to make
25 the permit consistent with the requirements of this Section.
26 The Agency shall notify owners and operators in writing of the

1 due date for the application. The due date shall be no less
2 than 90 days after the date of the Agency's written
3 notification. Owners and operators who do not receive a written
4 notification from the Agency by April 1, 2010, shall submit
5 their application for permit modification by July 1, 2010.
6 Owners and operators seeking a modification that includes the
7 use of restricted fill soil or painted construction or
8 demolition debris as fill material may submit their application
9 for modification prior to the dates set forth in this paragraph
10 or the schedule prescribed by the Agency. Until a permit
11 modification is issued, persons required to submit an
12 application for a permit modification must operate their clean
13 construction or demolition debris fill operation in accordance
14 with the requirements of their permit as modified by the
15 requirements of this Act and Board rules adopted hereunder;
16 provided that until a permit modification is issued no person
17 shall use restricted fill soil or painted construction or
18 demolition debris as fill material without interim
19 authorization under subdivision (b) (3) (B) of this Section.

20 (B) Prior to January 1, 2011, owners and operators of clean
21 construction or demolition debris fill operations that are
22 required under subdivision (b) (3) (A) of this Section to submit
23 an application for a permit modification may use restricted
24 fill soil or painted construction or demolition debris as fill
25 material at the clean construction or demolition debris fill
26 operation if they obtain interim authorization under this

1 subdivision (b)(3)(B). Within 30 days after receipt of a
2 complete application for interim authorization that includes
3 the following information, the Agency shall approve interim
4 authorization: (i) the owner and the operator of the clean
5 construction or demolition debris fill operation, (ii) the name
6 of the clean construction or demolition debris fill operation
7 and its location, (iii) a copy of the recorded land use
8 restriction required under subdivision (d)(1) of this Section
9 and proof of its recording, and (iv) the signatures of the
10 owner and the operator or their duly authorized agents. The
11 application for interim authorization must be submitted on a
12 form and in a format prescribed by the Agency. Persons using
13 restricted fill soil or painted construction or demolition
14 debris as fill material under an interim authorization must
15 comply with the requirements of subdivisions (d)(1) through
16 (d)(5) of this Section. The interim authorization shall expire
17 60 days after the date the Agency approves the application for
18 interim authorization unless, within those 60 days, the owner
19 or operator submits an application for a permit modification
20 that includes the use of restricted fill soil or painted
21 construction or demolition debris as fill material. If the
22 application for permit modification is submitted within those
23 60 days, the interim authorization shall expire on the date the
24 Agency issues its final decision on the application for a
25 permit modification or, if the Agency's decision is appealed,
26 the date of final disposition of the appeal.

1 (C) Beginning January 1, 2011, no person required under
2 subdivision (b) (3) (A) of this Section to submit an application
3 for a permit modification shall operate a clean construction or
4 demolition debris fill operation without a permit modification
5 granted by the Agency that is consistent with the requirements
6 of this Section.

7 (4) This subsection (b) does not apply to:

8 (A) the use of CCDD, restricted fill soil, or painted
9 construction or demolition debris ~~clean construction or~~
10 ~~demolition debris~~ as fill material in a current or former
11 quarry, mine, or other excavation located on the site where
12 the clean construction or demolition debris was generated;

13 (B) the use of CCDD ~~clean construction or demolition~~
14 ~~debris~~ as fill material in an excavation other than a
15 current or former quarry or mine if this use complies with
16 Illinois Department of Transportation specifications; or

17 (C) current or former quarries, mines, and other
18 excavations that do not use CCDD, restricted fill soil, or
19 painted construction or demolition debris ~~clean~~
20 ~~construction or demolition debris~~ as fill material.

21 (c) In accordance with Title VII of this Act, the Board may
22 adopt regulations to promote the purposes of this Section. The
23 Agency shall consult with the mining and construction
24 industries during the development of any regulations to promote
25 the purposes of this Section.

26 (1) No later than December 15, 2005, the Agency shall

1 propose to the Board, and no later than September 1, 2006,
2 the Board shall adopt, regulations for the use of CCDD
3 ~~clean construction or demolition debris~~ as fill material in
4 current and former quarries, mines, and other excavations.
5 Such regulations shall include, but shall not be limited
6 to, standards for CCDD ~~clean construction or demolition~~
7 ~~debris~~ fill operations and the submission and review of
8 permits required under this Section.

9 (2) Until the Board adopts rules under subsection
10 (c)(1) of this Section, all persons using clean
11 construction or demolition debris as fill material in a
12 current or former quarry, mine, or other excavation shall:

13 (A) Assure that only CCDD ~~clean construction or~~
14 ~~demolition debris~~ is being used as fill material by
15 screening each truckload of material received using a
16 device approved by the Agency that detects volatile
17 organic compounds. Such devices may include, but are
18 not limited to, photo ionization detectors. All
19 screening devices shall be operated and maintained in
20 accordance with manufacturer's specifications.
21 Unacceptable fill material shall be rejected from the
22 site; and

23 (B) Retain for a minimum of 3 years the following
24 information:

25 (i) The name of the hauler, the name of the
26 generator, and place of origin of the debris or

1 soil;

2 (ii) The approximate weight or volume of the
3 debris or soil; and

4 (iii) The date the debris or soil was received.

5 (d) To the extent allowed by federal law, the Agency shall,
6 in a permit or a permit modification granted under this
7 Section, and in accordance with Sections 39 and 40 of this Act,
8 authorize the use of restricted fill soil and painted
9 construction or demolition debris as fill material at a clean
10 construction or demolition debris fill operation if the
11 requirements of this subsection (d) are met. To the extent
12 allowed by federal law, restricted fill soil and painted
13 construction or demolition debris used as fill material in
14 accordance with the permit and this Section are not waste.

15 (1) Before restricted fill soil is used as fill
16 material at the clean construction or demolition debris
17 fill operation: (i) a land use restriction that restricts
18 property use to industrial or commercial uses must be
19 recorded in the chain of title for the property on which
20 the clean construction or demolition debris fill operation
21 is located and (ii) proof of the recording must be
22 submitted to the Agency. Upon closure of the clean
23 construction or demolition debris fill operation, the land
24 use restriction may be removed if the site is entered into
25 the Agency's Site Remediation Program and, pursuant to
26 procedures adopted by the Board, the site is demonstrated

1 to meet the Tier 1 residential remediation objectives
2 adopted by the Board pursuant to Title XVII of this Act.

3 (2) The owner or operator of the clean construction or
4 demolition debris fill operation must develop and
5 implement a closure and post-closure care plan that
6 includes, but is not limited to, the following:

7 (i) covering all restricted fill soil and painted
8 construction or demolition debris with a minimum of 10
9 feet of general fill soil, or an engineered barrier
10 approved by the Agency in a permit granted under this
11 Section, within 180 days after completion of filling or
12 as approved by the Agency;

13 (ii) for all buildings at the site on or after
14 completion of filling, the installation and
15 maintenance of building control technologies as
16 approved by the Agency in accordance with Title XVII of
17 this Act and rules adopted thereunder to prevent indoor
18 inhalation exposures.

19 (3) Painted construction or demolition debris shall
20 not be used as fill material unless chemical analysis
21 demonstrates that the paint does not exceed the Class I
22 Soil Component of the Groundwater Ingestion Exposure Route
23 Values listed in Table A of 35 Ill. Adm. Code 742, Appendix
24 B, as amended. Chemical analysis is not required for
25 pavement markings that conform to Illinois Department of
26 Transportation specifications.

1 (4) The owner or operator of the CCDD fill operation
2 must develop and implement a Receipt Control and Screening
3 Plan that includes, but is not limited to, the following:

4 (A) Documentation from the owner or operator
5 of the site where the restricted fill soil, general
6 fill soil, painted construction or demolition
7 debris, or clean construction or demolition debris
8 was removed that contains the following
9 information for each load received: (i) location
10 of the removal site, (ii) the owner of the removal
11 site, (iii) the site operator or general
12 contractor responsible for removal, and (iv) the
13 hauler of the load.

14 (B) For all soil, either (i) a certification
15 from the owner or operator of the site from which
16 the soil was removed that the site has never been
17 used for commercial or industrial purposes or (ii)
18 a certification from a Licensed Professional
19 Engineer that the soil is restricted fill soil or
20 general fill soil. Certifications required under
21 subdivision (d) (4) (B) of this Section must be on
22 forms and in a format prescribed by the Agency.

23 (C) Chemical analysis of paint on painted
24 construction or demolition debris to confirm that
25 the paint does not exceed the Class I Soil
26 Component of the Groundwater Ingestion Exposure

1 Route Values listed in Table A of 35 Ill. Adm. Code
2 742, Appendix B, as amended. Chemical analysis is
3 not required for pavement markings that conform to
4 Illinois Department of Transportation
5 specifications.

6 (D) A visual inspection to confirm that only
7 restricted fill soil, painted construction or
8 demolition debris, clean construction or
9 demolition debris, or general fill soil is being
10 accepted for use as fill.

11 (E) Screening of the soil with a photo
12 ionization detector or a flame ionization
13 detector, in accordance with procedures approved
14 by the Agency in the CCDD fill operation permit, to
15 confirm that the soil is consistent with the
16 definitions of restricted fill soil or general
17 fill soil and any chemical analysis used to
18 determine that the soil is restricted fill soil or
19 general fill soil.

20 (F) Confirmation that the soil was not removed
21 from a site as a part of a cleanup or removal of
22 contaminants, including, but not limited to,
23 activities conducted under the Comprehensive
24 Environmental Response, Compensation, and
25 Liability Act of 1980, as amended; as a part of a
26 Closure or Corrective Action under the Resource

1 Conservation and Recovery Act, as amended; or
2 under an Agency remediation program, such as the
3 Leaking Underground Storage Tank Program or Site
4 Remediation Program, but excluding sites subject
5 to Section 58.16 of this Act where there is no
6 presence or likely presence of a release or a
7 substantial threat of a release of a regulated
8 substance at, on, to, or from the real property.

9 (G) Documentation of all activities conducted
10 under the Receipt Control and Screening Plan.
11 Documentation of any chemical analysis must
12 include, but is not limited to, (i) a copy of the
13 lab analysis, (ii) accreditation status of the
14 laboratory performing the analysis, and (iii)
15 certification by an authorized agent of the
16 laboratory that the analysis has been performed in
17 accordance with the Agency's rules for the
18 accreditation of environmental laboratories and
19 the scope of accreditation. Documentation must be
20 submitted on forms and in a format prescribed by
21 the Agency.

22 (5) The owner or operator of the CCDD fill operation
23 must develop and implement a Testing and Sampling Plan
24 which ensures that soil used as fill does not exceed the
25 Class I Soil Component of the Groundwater Ingestion
26 Exposure Route Values listed in Table A of 35 Ill. Adm.

1 Code 742, Appendix B, as amended. The Testing and Sampling
2 Plan must include, but is not limited to, the following:

3 (A) For every 500 cubic yards of soil used as
4 fill, a minimum of one representative soil sample
5 must be screened with an X-ray Fluorescence
6 Spectroscopy instrument in accordance with
7 procedures approved by the Agency in the CCDD fill
8 operation permit. Soil samples must be screened
9 after the soil is placed as fill at the site. If a
10 screening sample indicates that soil may exceed
11 the Class I Soil Component of the Groundwater
12 Ingestion Exposure Route Values listed in Table A
13 of 35 Ill. Adm. Code 742, Appendix B, as amended,
14 then additional representative soil samples must
15 be collected and analyzed by a laboratory for all
16 of the chemicals listed in Table A of 35 Ill. Adm.
17 Code 742, Appendix B, as amended, to determine
18 whether the soil exceeds the Class I Soil Component
19 of the Groundwater Ingestion Exposure Route Values
20 listed in Table A of 35 Ill. Adm. Code 742,
21 Appendix B, as amended. All soil that exceeds the
22 Class I Soil Component of the Groundwater
23 Ingestion Exposure Route Values listed in Table A
24 of 35 Ill. Adm. Code 742, Appendix B, as amended,
25 must be removed and disposed of at a landfill.

26 (B) In addition to the screening and sampling

1 required under subdivision (d)(5)(A) of this
2 Section, for every 2,500 cubic yards of soil used
3 as fill a minimum of one representative soil sample
4 must be collected and analyzed by a laboratory for
5 all of the chemicals listed in Table A of 35 Ill.
6 Adm. Code 742, Appendix B, as amended, to determine
7 whether the soil exceeds the Class I Soil Component
8 of the Groundwater Ingestion Exposure Route Values
9 listed in Table A of 35 Ill. Adm. Code 742,
10 Appendix B, as amended. The samples may be combined
11 into composite samples as approved by the Agency in
12 the CCDD fill operation permit. Copies of the
13 laboratory analytical results must be submitted to
14 the Agency at least quarterly. The results must be
15 submitted in a form and manner prescribed by the
16 Agency. All soil that exceeds the Class I Soil
17 Component of the Groundwater Ingestion Exposure
18 Route Values listed in Table A of 35 Ill. Adm. Code
19 742, Appendix B, as amended, must be removed and
20 disposed at a landfill.

21 ~~(d) This Section applies only to clean construction or~~
22 ~~demolition debris that is not considered "waste" as provided in~~
23 ~~Section 3.160 of this Act.~~

24 (e) For purposes of this Section ~~a clean construction or~~
25 ~~demolition debris fill operation:~~

26 (1) The term "operator" means a person responsible for

1 the operation and maintenance of a CCDD ~~clean construction~~
2 ~~or demolition debris~~ fill operation.

3 (2) The term "owner" means a person who has any direct
4 or indirect interest in a CCDD ~~clean construction or~~
5 ~~demolition debris~~ fill operation or in land on which a
6 person operates and maintains a CCDD ~~clean construction or~~
7 ~~demolition debris~~ fill operation. A "direct or indirect
8 interest" does not include the ownership of publicly traded
9 stock. The "owner" is the "operator" if there is no other
10 person who is operating and maintaining a CCDD ~~clean~~
11 ~~construction or demolition debris~~ fill operation.

12 (3) The term "clean construction or demolition debris
13 fill operation" means a current or former quarry, mine, or
14 other excavation where clean construction or demolition
15 debris is used as fill material.

16 (4) The term "other excavation" does not include holes,
17 trenches, or similar earth removal created as part of
18 normal construction, removal, or maintenance of a
19 structure, utility, or transportation infrastructure.

20 (f) Owners and operators of CCDD fill operations that are
21 not permitted under subsection (d) of this Section to use
22 restricted fill soil or painted construction or demolition
23 debris as fill material must do all of the following:

24 (1) Develop and implement a Receipt Control and
25 Screening Plan that includes, but is not limited to, the
26 following:

1 (A) Documentation from the owner or operator of the
2 site where the general fill soil or clean construction
3 or demolition debris was removed that contains the
4 following information for each load received: (i)
5 location of the removal site; (ii) the owner of the
6 removal site; (iii) the site operator or general
7 contractor responsible for removal; and (iv) the
8 hauler of the load.

9 (B) For all soil, either (i) a certification from
10 the owner or operator of the site from which the soil
11 was removed that the site has never been used for
12 commercial or industrial purposes and is presumed to be
13 general fill soil, or (ii) a certification from a
14 Licensed Professional Engineer that the soil is
15 general fill soil. Certifications required under
16 subdivision (f)(1)(B) of this Section must be on forms
17 and in a format prescribed by the Agency.

18 (C) A visual inspection to confirm that only clean
19 construction or demolition debris or general fill soil
20 is being accepted for use as fill.

21 (D) Screening of the soil with a photo ionization
22 detector or a flame ionization detector, in accordance
23 with procedures approved by the Agency in the CCDD fill
24 operation permit, to confirm that the soil is
25 consistent with the definition of general fill soil and
26 any chemical analysis used to determine that the soil

1 is general fill soil.

2 (E) Confirmation that the soil was not removed from
3 a site as a part of a cleanup or removal of
4 contaminants, including, but not limited to,
5 activities conducted under the Comprehensive
6 Environmental Response, Compensation, and Liability
7 Act of 1980, as amended; as a part of a Closure or
8 Corrective Action under the Resource Conservation and
9 Recovery Act, as amended; or under an Agency
10 remediation program, such as the Leaking Underground
11 Storage Tank Program or Site Remediation Program, but
12 excluding sites subject to Section 58.16 of this Act
13 where there is no presence or likely presence of a
14 release or a substantial threat of a release of a
15 regulated substance at, on, to, or from the real
16 property.

17 (F) Documentation of all activities conducted
18 under the Receipt Control and Screening Plan.
19 Documentation of any chemical analysis must include,
20 but is not limited to, (i) a copy of the lab analysis,
21 (ii) accreditation status of the laboratory performing
22 the analysis, and (iii) certification by an authorized
23 agent of the laboratory that the analysis has been
24 performed in accordance with the Agency's rules for the
25 accreditation of environmental laboratories and the
26 scope of accreditation. Documentation must be

1 submitted on forms and in a format prescribed by the
2 Agency.

3 (2) Develop and implement a Testing and Sampling Plan
4 which ensures that soil used as fill does not exceed the
5 most stringent Tier 1 exposure route values adopted by the
6 Board under Title XVII of this Act. The most stringent Tier
7 1 exposure route values adopted by the Board under Title
8 XVII of this Act shall be determined in the manner set
9 forth in the definition of general fill soil under Section
10 3.508 of this Act. The Testing and Sampling Plan must
11 include, but is not limited to, all of the following:

12 (A) For every 2,500 cubic yards of soil used as
13 fill, a minimum of one representative soil sample must
14 be collected and analyzed by a laboratory for all of
15 the chemicals listed in Table A of 35 Ill. Adm. Code
16 742, Appendix B, as amended, to determine whether the
17 soil exceeds the most stringent Tier 1 exposure route
18 values adopted by the Board under Title XVII of this
19 Act. The samples may be combined into composite samples
20 as approved by the Agency in the CCDD fill operation
21 permit. Copies of the laboratory analytical results
22 must be submitted to the Agency in a form and manner to
23 be determined by the Agency at least quarterly. The
24 results must be submitted in a form and manner
25 prescribed by the Agency.

26 (B) All soil that exceeds the most stringent Tier 1

1 exposure route values adopted by the Board under Title
2 XVII of this Act must be removed and disposed at a
3 landfill.

4 (3) A closure and post-closure care plan that includes,
5 but is not limited to, covering, within 90 days after
6 completion of the filling or as approved by the Agency, all
7 clean construction or demolition debris with a minimum of 3
8 feet of general fill soil, a road, pavement, or structure.

9 (g) Owners and operators of clean construction or
10 demolition debris fill operations must maintain all
11 documentation required under this Section until at least 3
12 years after the date of receipt of the restricted fill soil,
13 painted construction or demolition debris, clean construction
14 or demolition debris, or general fill soil, except that
15 documentation relating to an appeal, litigation, or other
16 disputed claim must be maintained until at least 3 years after
17 the date of the final disposition of the appeal, litigation, or
18 other disputed claim. Copies of the documentation must be made
19 available to the Agency for inspection and copying during
20 normal business hours.

21 Chemical analysis conducted under this Section must be
22 conducted in accordance with the requirements of 35 Ill. Adm.
23 Code 742 and "Test Methods for Evaluating Solid Waste,
24 Physical/Chemical Methods", USEPA Publication No. SW-846, as
25 amended.

26 (h) Except at CCDD fill operations permitted under

1 subsection (d) of this Section to use restricted fill soil as
2 fill material, no person shall use soil other than general fill
3 soil as fill material at a CCDD fill operation. At CCDD fill
4 operations permitted under subsection (d) of this Section to
5 use restricted fill soil as fill material, no person shall use
6 soil other than restricted fill soil or general fill soil as
7 fill material.

8 (h-5) Except at CCDD fill operations permitted under
9 subsection (d) of this Section to use painted construction or
10 demolition debris as fill material, no person shall use
11 construction or demolition debris other than clean
12 construction or demolition debris as fill material at a CCDD
13 fill operation. At CCDD fill operations permitted under
14 subsection (d) of this Section to use painted construction or
15 demolition debris as fill material, no person shall use
16 construction or demolition debris other than painted
17 construction or demolition debris or clean construction or
18 demolition debris as fill material.

19 (i) No person shall use, or cause or allow the use of, any
20 site on which a land use restriction has been recorded under
21 subdivision (d)(1) of this Section in a manner that is
22 inconsistent with the land use restriction unless the land use
23 restriction has been removed in accordance with subdivision
24 (d)(1) of this Section.

25 (j) After completion of filling at a CCDD fill operation
26 where restricted fill soil has been used as fill material, no

1 person shall occupy, or cause or allow the occupancy, of any
2 building at the site unless the building control technologies
3 required under subdivision (d)(2) of this Section have been
4 installed and are maintained. No person shall perform any
5 activity that disturbs the building controls technologies
6 unless the site is entered into the Agency's Site Remediation
7 Program and the activity is approved by the Agency as
8 consistent with Title XVII of this Act and rules adopted
9 thereunder.

10 (1) No person other than the State of Illinois, its
11 agencies and institutions, or a unit of local government shall
12 use restricted fill soil or painted construction or demolition
13 debris as fill material in a current or former quarry, mine, or
14 other excavation unless that person has posted with the Agency
15 a performance bond or other security for the purpose of
16 insuring (i) closure of the site in accordance with this
17 Section and its regulations and (ii) completion of corrective
18 action remedies required under this Act and its regulations.
19 The amount of the performance bond or other security shall be
20 directly related to the design and volume of the site. The cost
21 estimate for the performance bond or other security shall be
22 calculated using a period of time not to exceed 30 years beyond
23 closure and may be a shorter period as may be approved or
24 required by the Agency. Cost estimates shall be in current
25 dollars. Any moneys forfeited to the State from any performance
26 bond or other security required under this subsection shall be

1 placed in the Landfill Closure and Post-Closure Fund and shall,
2 upon approval by the Governor and the Director, be used by and
3 under the direction of the Agency for the purposes for which
4 such performance bond or other security was issued.

5 The Agency is authorized to enter into such contracts and
6 agreements as it may deem necessary to carry out the purposes
7 of this Section. Neither the State, nor the Director, nor any
8 State employee is liable for any damages or injuries arising
9 out of or resulting from any action taken under this Section.
10 Nothing in this Section shall bar a cause of action by the
11 State for any other penalty or relief provided by this Act or
12 any other law.

13 The Agency has the authority to approve or disapprove any
14 performance bond or other security posted under this subsection
15 (l). Any person whose performance bond or other security is
16 disapproved by the Agency may contest the disapproval as a
17 permit denial appeal under Section 40 of this Act.

18 (m) The Agency may establish the procedures it deems
19 necessary to implement and execute its responsibilities under
20 this Section.

21 (Source: P.A. 94-272, eff. 7-19-05; 94-725, eff. 6-1-06.)

22 (415 ILCS 5/22.51a new)

23 Sec. 22.51a. Soil Fill Operations. This Section applies to
24 persons using soil as fill material at a soil fill operation.

25 (a) For purposes of this Section:

1 (1) The term "soil fill operation" means a current or
2 former quarry, mine, or other excavation, other than a
3 clean construction or demolition debris fill operation as
4 defined in subdivision (e) (3) of Section 22.51 of this Act,
5 where soil is used as fill material.

6 (2) The term "other excavation" does not include holes,
7 trenches, or similar earth removal created as part of
8 normal construction, removal, or maintenance of a
9 structure, utility, or transportation infrastructure.

10 (b) No person shall:

11 (1) Use soil as fill material at a soil fill operation
12 unless the requirements of this Section are met.

13 (2) Use soil other than general fill soil as fill
14 material at a soil fill operation.

15 (3) Use construction or demolition debris, including,
16 but not limited to, painted construction or demolition
17 debris and clean construction or demolition debris, as fill
18 material at a soil fill operation.

19 (c) On and after January 1, 2010, no person shall use soil
20 as fill material at a soil fill operation unless the owner or
21 operator of the soil fill operation has notified the Agency of
22 the soil fill operation. The notice must be submitted on forms
23 and in a format prescribed by the Agency.

24 (d) Owners and operators of soil fill operations must do
25 all of the following:

26 (1) Develop and implement a Receipt Control and

1 Screening Plan that includes, but is not limited to, the
2 following:

3 (A) For all soil, either (i) a certification from
4 the owner or operator of the site from which the soil
5 was removed that the site has never been used for
6 commercial or industrial purposes or (ii) a
7 certification from a Licensed Professional Engineer
8 that the soil is general fill soil. Certifications
9 required under this subdivision (d)(1)(A) of this
10 Section must be on forms and in format prescribed by
11 the Agency.

12 (B) A visual inspection to confirm that only
13 general fill soil is being accepted for use as fill.

14 (C) Screening of the soil with a photo ionization
15 detector or a flame ionization detector to confirm that
16 the soil is consistent with the definition of general
17 fill soil and any chemical analysis used to determine
18 that the soil is general fill soil.

19 (D) Confirmation that the soil was not removed from
20 a site as a part of the cleanup or removal of
21 contaminants, including, but not limited to,
22 activities conducted under the Comprehensive
23 Environmental Response, Compensation, and Liability
24 Act of 1980, as amended; as a part of a Closure or
25 Corrective Action under the Resource Conservation and
26 Recovery Act, as amended; or under an Agency

1 remediation program, such as the Leaking Underground
2 Storage Tank Program or Site Remediation Program, but
3 excluding sites subject to Section 58.16 of this Act
4 where there is no presence or likely presence of a
5 release or a substantial threat of a release of a
6 regulated substance at, on, to, or from the real
7 property.

8 (E) Documentation of all activities conducted
9 under the Receipt Control and Screening Plan.
10 Documentation of any chemical analysis must include,
11 but is not limited to, (i) a copy of the lab analysis,
12 (ii) accreditation status of the laboratory performing
13 the analysis, and (iii) certification by an authorized
14 agent of the laboratory that the analysis has been
15 performed in accordance with the Agency's rules for the
16 accreditation of environmental laboratories and the
17 scope of accreditation. Documentation must be
18 submitted on forms and in a format prescribed by the
19 Agency.

20 (2) Develop and implement a Testing and Sampling Plan
21 which ensures that soil used as fill does not exceed the
22 most stringent Tier 1 exposure route values adopted by the
23 Board under Title XVII of this Act. The most stringent Tier
24 1 exposure route values adopted by the Board under Title
25 XVII of this Act shall be determined in the manner set
26 forth in the definition of general fill soil under Section

1 3.508 of this Act. The Testing and Sampling Plan must
2 include, but is not limited to, the following:

3 (A) For every 5,000 cubic yards of soil used as
4 fill, a minimum of one representative soil sample must
5 be collected and analyzed by a laboratory for all of
6 the chemicals listed in Table A of 35 Ill. Adm. Code
7 742, Appendix B, as amended, to determine whether the
8 soil exceeds the most stringent Tier 1 exposure route
9 values adopted by the Board under Title XVII of this
10 Act. The samples may be combined into composite samples
11 as approved by the Agency. Copies of the laboratory
12 analytical results must be submitted to the Agency at
13 least quarterly. The results must be submitted in a
14 form and manner prescribed by the Agency.

15 (B) All soil that exceeds the most stringent Tier 1
16 exposure route values adopted by the Board under Title
17 XVII of this Act must be removed and disposed of at a
18 landfill.

19 (e) Owners and operators of soil fill operations must
20 maintain all documentation required under this Section until at
21 least 3 years after the date of receipt of the soil, except
22 that documentation relating to an appeal, litigation, or other
23 disputed claim must be maintained until at least 3 years after
24 the date of the final disposition of the appeal, litigation, or
25 other disputed claim. Copies of the documentation must be made
26 available to the Agency for inspection and copying during

1 normal business hours.

2 Chemical analysis conducted under this Section must be
3 conducted in accordance with the requirements of 35 Ill. Adm.
4 Code 742, as amended, and "Test Methods for Evaluating Solid
5 Waste, Physical/Chemical Methods", USEPA Publication No.
6 SW-846, as amended.

7 (415 ILCS 5/22.54 new)

8 Sec. 22.54. Intergovernmental agreements. Notwithstanding
9 any other provisions of this Act, to the extent allowed by
10 federal law, the Agency may, through intergovernmental
11 agreements, authorize reuse of soil and clean construction or
12 demolition debris by State agencies, or by counties with a
13 population of 3,000,000 or more, or by units of local
14 government located in a county with a population of 3,000,000
15 or more, as long as the reuse is protective of human health and
16 the environment.

17 To the extent allowed by federal law, no permit is required
18 for the reuse of soil or clean construction or demolition
19 debris under agreements entered into under this Section. To the
20 extent allowed by federal law, soil and clean construction or
21 demolition debris reused under agreements entered into under
22 this Section are not waste. Intergovernmental Agreements are
23 not required for the purpose of reuse of general fill soil or
24 for the purpose of reuse of soil or clean construction or
25 demolition debris on the site from which it was removed.

1 (415 ILCS 5/31.1) (from Ch. 111 1/2, par. 1031.1)

2 Sec. 31.1. Administrative citation.

3 (a) The prohibitions specified in subsections (o) and (p)
4 of Section 21 and in Sections 22.51 and 22.51a of this Act
5 shall be enforceable either by administrative citation under
6 this Section or as otherwise provided by this Act.

7 (b) Whenever Agency personnel or personnel of a unit of
8 local government to which the Agency has delegated its
9 functions pursuant to subsection (r) of Section 4 of this Act,
10 on the basis of direct observation, determine that any person
11 has violated any provision of subsection (o) or (p) of Section
12 21 or any provision of Section 22.51 or 22.51a of this Act, the
13 Agency or such unit of local government may issue and serve an
14 administrative citation upon such person within not more than
15 60 days after the date of the observed violation. Each such
16 citation issued shall be served upon the person named therein
17 or such person's authorized agent for service of process, and
18 shall include the following information:

19 (1) a statement specifying the provisions of
20 subsection (o) or (p) of Section 21 or the provisions of
21 Section 22.51 or 22.51a of which the person was observed to
22 be in violation;

23 (2) a copy of the inspection report in which the Agency
24 or local government recorded the violation, which report
25 shall include the date and time of inspection, and weather

1 conditions prevailing during the inspection;

2 (3) the penalty imposed by subdivision (b) (4) ~~, or~~
3 (b) (4-5), or (b) (6) of Section 42 for such violation;

4 (4) instructions for contesting the administrative
5 citation findings pursuant to this Section, including
6 notification that the person has 35 days within which to
7 file a petition for review before the Board to contest the
8 administrative citation; and

9 (5) an affidavit by the personnel observing the
10 violation, attesting to their material actions and
11 observations.

12 (c) The Agency or unit of local government shall file a
13 copy of each administrative citation served under subsection
14 (b) of this Section with the Board no later than 10 days after
15 the date of service.

16 (d) (1) If the person named in the administrative citation
17 fails to petition the Board for review within 35 days from the
18 date of service, the Board shall adopt a final order, which
19 shall include the administrative citation and findings of
20 violation as alleged in the citation, and shall impose the
21 penalty specified in subdivision (b) (4) ~~, or~~ (b) (4-5), or (b) (6)
22 of Section 42.

23 (2) If a petition for review is filed before the Board to
24 contest an administrative citation issued under subsection (b)
25 of this Section, the Agency or unit of local government shall
26 appear as a complainant at a hearing before the Board to be

1 conducted pursuant to Section 32 of this Act at a time not less
2 than 21 days after notice of such hearing has been sent by the
3 Board to the Agency or unit of local government and the person
4 named in the citation. In such hearings, the burden of proof
5 shall be on the Agency or unit of local government. If, based
6 on the record, the Board finds that the alleged violation
7 occurred, it shall adopt a final order which shall include the
8 administrative citation and findings of violation as alleged in
9 the citation, and shall impose the penalty specified in
10 subdivision (b) (4), ~~or (b) (4-5)~~, or (b) (6) of Section 42.
11 However, if the Board finds that the person appealing the
12 citation has shown that the violation resulted from
13 uncontrollable circumstances, the Board shall adopt a final
14 order which makes no finding of violation and which imposes no
15 penalty.

16 (e) Sections 10-25 through 10-60 of the Illinois
17 Administrative Procedure Act shall not apply to any
18 administrative citation issued under subsection (b) of this
19 Section.

20 (f) The other provisions of this Section shall not apply to
21 a sanitary landfill operated by a unit of local government
22 solely for the purpose of disposing of water and sewage
23 treatment plant sludges, including necessary stabilizing
24 materials.

25 (g) All final orders issued and entered by the Board
26 pursuant to this Section shall be enforceable by injunction,

1 mandamus or other appropriate remedy, in accordance with
2 Section 42 of this Act.

3 (Source: P.A. 92-16, eff. 6-28-01.)

4 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

5 Sec. 42. Civil penalties.

6 (a) Except as provided in this Section, any person that
7 violates any provision of this Act or any regulation adopted by
8 the Board, or any permit or term or condition thereof, or that
9 violates any order of the Board pursuant to this Act, shall be
10 liable for a civil penalty of not to exceed \$50,000 for the
11 violation and an additional civil penalty of not to exceed
12 \$10,000 for each day during which the violation continues; such
13 penalties may, upon order of the Board or a court of competent
14 jurisdiction, be made payable to the Environmental Protection
15 Trust Fund, to be used in accordance with the provisions of the
16 Environmental Protection Trust Fund Act.

17 (b) Notwithstanding the provisions of subsection (a) of
18 this Section:

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

24 (2) Any person that violates Section 12(g) of this Act
25 or any UIC permit or term or condition thereof, or any

1 filing requirement, regulation or order relating to the
2 State UIC program for all wells, except Class II wells as
3 defined by the Board under this Act, shall be liable to a
4 civil penalty not to exceed \$2,500 per day of violation;
5 provided, however, that any person who commits such
6 violations relating to the State UIC program for Class II
7 wells, as defined by the Board under this Act, shall be
8 liable to a civil penalty of not to exceed \$10,000 for the
9 violation and an additional civil penalty of not to exceed
10 \$1,000 for each day during which the violation continues.

11 (3) Any person that violates Sections 21(f), 21(g),
12 21(h) or 21(i) of this Act, or any RCRA permit or term or
13 condition thereof, or any filing requirement, regulation
14 or order relating to the State RCRA program, shall be
15 liable to a civil penalty of not to exceed \$25,000 per day
16 of violation.

17 (4) In an administrative citation action under Section
18 31.1 of this Act, any person found to have violated any
19 provision of subsection (o) of Section 21 of this Act shall
20 pay a civil penalty of \$500 for each violation of each such
21 provision, plus any hearing costs incurred by the Board and
22 the Agency. Such penalties shall be made payable to the
23 Environmental Protection Trust Fund, to be used in
24 accordance with the provisions of the Environmental
25 Protection Trust Fund Act; except that if a unit of local
26 government issued the administrative citation, 50% of the

1 civil penalty shall be payable to the unit of local
2 government.

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

18 (5) Any person who violates subsection 6 of Section
19 39.5 of this Act or any CAAPP permit, or term or condition
20 thereof, or any fee or filing requirement, or any duty to
21 allow or carry out inspection, entry or monitoring
22 activities, or any regulation or order relating to the
23 CAAPP shall be liable for a civil penalty not to exceed
24 \$10,000 per day of violation.

25 (6) In an administrative citation action under Section
26 31.1 of this Act, any person without a permit issued under

1 Section 22.51 of this Act that is found to have violated
2 any provision of Section 22.51 of this Act shall pay a
3 civil penalty of \$1,500 for each violation of each
4 provision, plus any hearing costs incurred by the Board and
5 the Agency, except that the civil penalty amount shall be
6 \$3,000 for each violation of any provision of Section 22.51
7 that is the person's second or subsequent adjudicated
8 violation of that provision. Any person with a permit
9 issued under Section 22.51 of this Act that is found to
10 have violated any provision of Section 22.51 or the permit,
11 or any person that is found to have violated Section 22.51a
12 of this Act, shall pay a civil penalty of \$1,000 for each
13 violation of each provision, plus any hearing costs
14 incurred by the Board and the Agency, except that the civil
15 penalty amount shall be \$2,000 for each violation of any
16 provision of Section 22.51, the permit, or Section 22.51a,
17 that is the person's second or subsequent adjudicated
18 violation of that provision. The penalties shall be
19 deposited into the Environmental Protection Trust Fund, to
20 be used in accordance with the provisions of the
21 Environmental Protection Trust Fund Act; except that if a
22 delegated unit of local government issued the
23 administrative citation, 50% of the civil penalty shall be
24 payable to the unit of local government.

25 (b.5) In lieu of the penalties set forth in subsections (a)
26 and (b) of this Section, any person who fails to file, in a

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

13 (c) Any person that violates this Act, any rule or
14 regulation adopted under this Act, any permit or term or
15 condition of a permit, or any Board order and causes the death
16 of fish or aquatic life shall, in addition to the other
17 penalties provided by this Act, be liable to pay to the State
18 an additional sum for the reasonable value of the fish or
19 aquatic life destroyed. Any money so recovered shall be placed
20 in the Wildlife and Fish Fund in the State Treasury.

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

23 (e) The State's Attorney of the county in which the
24 violation occurred, or the Attorney General, may, at the
25 request of the Agency or on his own motion, institute a civil
26 action for an injunction, prohibitory or mandatory, to restrain

1 violations of this Act, any rule or regulation adopted under
2 this Act, any permit or term or condition of a permit, or any
3 Board order, or to require such other actions as may be
4 necessary to address violations of this Act, any rule or
5 regulation adopted under this Act, any permit or term or
6 condition of a permit, or any Board order.

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

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

26 (g) All final orders imposing civil penalties pursuant to

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

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

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

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

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

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

1 (5) the number, proximity in time, and gravity of
2 previously adjudicated violations of this Act by the
3 respondent;

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

7 (7) whether the respondent has agreed to undertake a
8 "supplemental environmental project," which means an
9 environmentally beneficial project that a respondent
10 agrees to undertake in settlement of an enforcement action
11 brought under this Act, but which the respondent is not
12 otherwise legally required to perform.

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

23 (i) A person who voluntarily self-discloses non-compliance
24 to the Agency, of which the Agency had been unaware, is
25 entitled to a 100% reduction in the portion of the penalty that
26 is not based on the economic benefit of non-compliance if the

1 person can establish the following:

2 (1) that the non-compliance was discovered through an
3 environmental audit or a compliance management system
4 documented by the regulated entity as reflecting the
5 regulated entity's due diligence in preventing, detecting,
6 and correcting violations;

7 (2) that the non-compliance was disclosed in writing
8 within 30 days of the date on which the person discovered
9 it;

10 (3) that the non-compliance was discovered and
11 disclosed prior to:

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

14 (ii) notice of a citizen suit;

15 (iii) the filing of a complaint by a citizen, the
16 Illinois Attorney General, or the State's Attorney of
17 the county in which the violation occurred;

18 (iv) the reporting of the non-compliance by an
19 employee of the person without that person's
20 knowledge; or

21 (v) imminent discovery of the non-compliance by
22 the Agency;

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

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

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

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

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

12 (9) that the non-compliance was identified voluntarily
13 and not through a monitoring, sampling, or auditing
14 procedure that is required by statute, rule, permit,
15 judicial or administrative order, or consent agreement.

16 If a person can establish all of the elements under this
17 subsection except the element set forth in paragraph (1) of
18 this subsection, the person is entitled to a 75% reduction in
19 the portion of the penalty that is not based upon the economic
20 benefit of non-compliance.

21 (j) In addition to an other remedy or penalty that may
22 apply, whether civil or criminal, any person who violates
23 Section 22.52 of this Act shall be liable for an additional
24 civil penalty of up to 3 times the gross amount of any
25 pecuniary gain resulting from the violation.

26 (Source: P.A. 94-272, eff. 7-19-05; 94-580, eff. 8-12-05;

1 95-331, eff. 8-21-07.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.