



Rep. Elaine Nekritz

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LRB099 09565 MGM 36349 a

1 AMENDMENT TO SENATE BILL 1672

2 AMENDMENT NO. _____. Amend Senate Bill 1672 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended by
5 changing Sections 9.1, 9.12, 39, 40, and 41 and by adding
6 Sections 3.298, 3.363, and 40.3 as follows:

7 (415 ILCS 5/3.298 new)

8 Sec. 3.298. Nonattainment new source review (NA NSR)
9 permit. "Nonattainment New Source Review permit" or "NA NSR
10 permit" means a permit or a portion of a permit for a new major
11 source or major modification that is issued by the Illinois
12 Environmental Protection Agency under the construction permit
13 program pursuant to subsection (c) of Section 9.1 that has been
14 approved by the United States Environmental Protection Agency
15 and incorporated into the Illinois State Implementation Plan to
16 implement the requirements of Section 173 of the Clean Air Act

1 and 40 CFR 51.165.

2 (415 ILCS 5/3.363 new)

3 Sec. 3.363. Prevention of significant deterioration (PSD)
4 permit. "Prevention of Significant Deterioration permit" or
5 "PSD permit" means a permit or the portion of a permit for a
6 new major source or major modification that is issued by the
7 Illinois Environmental Protection Agency under the
8 construction permit program pursuant to subsection (c) of
9 Section 9.1 that has been approved by the United States
10 Environmental Protection Agency and incorporated into the
11 Illinois State Implementation Plan to implement the
12 requirements of Section 165 of the Clean Air Act and 40 CFR
13 51.166.

14 (415 ILCS 5/9.1) (from Ch. 111 1/2, par. 1009.1)

15 Sec. 9.1. (a) The General Assembly finds that the federal
16 Clean Air Act, as amended, and regulations adopted pursuant
17 thereto establish complex and detailed provisions for
18 State-federal cooperation in the field of air pollution
19 control, provide for a Prevention of Significant Deterioration
20 program to regulate the issuance of preconstruction permits to
21 insure that economic growth will occur in a manner consistent
22 with the preservation of existing clean air resources, and also
23 provide for plan requirements for nonattainment areas to
24 regulate the construction, modification and operation of

1 sources of air pollution to insure that economic growth will
2 occur in a manner consistent with the goal of achieving the
3 national ambient air quality standards, and that the General
4 Assembly cannot conveniently or advantageously set forth in
5 this Act all the requirements of such federal Act or all
6 regulations which may be established thereunder.

7 It is the purpose of this Section to avoid the existence of
8 duplicative, overlapping or conflicting State and federal
9 regulatory systems.

10 (b) The provisions of Section 111 of the federal Clean Air
11 Act (42 USC 7411), as amended, relating to standards of
12 performance for new stationary sources, and Section 112 of the
13 federal Clean Air Act (42 USC 7412), as amended, relating to
14 the establishment of national emission standards for hazardous
15 air pollutants are applicable in this State and are enforceable
16 under this Act. Any such enforcement shall be stayed consistent
17 with any stay granted in any federal judicial action to review
18 such standards. Enforcement shall be consistent with the
19 results of any such judicial review.

20 (c) The Board shall ~~may~~ adopt regulations establishing
21 permit programs for PSD and NA NSR permits meeting the
22 respective requirements of Sections 165 and 173 of the Clean
23 Air Act (42 USC 7475 and 42 USC 7503) as amended. The Agency
24 may adopt procedures for the administration of such programs.

25 The regulations adopted by the Board to establish a PSD
26 permit program shall incorporate by reference, pursuant to

1 subsection (a) of Section 5-75 of the Illinois Administrative
2 Procedure Act, the provisions of 40 CFR 52.21, except for the
3 following subparts: (a)(1) Plan disapproval, (q) Public
4 participation, (s) Environmental impact statements, (t)
5 Disputed permits or redesignations and (u) Delegation of
6 authority; the Board may adopt more stringent or additional
7 provisions to the extent it deems appropriate. To the extent
8 that the provisions of 40 CFR 52.21 provide for the
9 Administrator to make various determinations and to take
10 certain actions, these provisions shall be modified to indicate
11 the Agency if appropriate. Nothing in this subsection shall be
12 construed to limit the right of any person to submit a proposal
13 to the Board or the authority of the Board to adopt elements of
14 a PSD permit program that are more stringent than those
15 contained in 40 CFR 52.21, pursuant to the rulemaking
16 requirements of Title VII of this Act and Section 5-35 of the
17 Illinois Administrative Procedure Act.

18 (d) No person shall:

19 (1) violate any provisions of Sections 111, 112, 165 or
20 173 of the Clean Air Act, as now or hereafter amended, or
21 federal regulations adopted pursuant thereto; or

22 (2) construct, install, modify or operate any
23 equipment, building, facility, source or installation
24 which is subject to regulation under Sections 111, 112, 165
25 or 173 of the Clean Air Act, as now or hereafter amended,
26 except in compliance with the requirements of such Sections

1 and federal regulations adopted pursuant thereto, and no
2 such action shall be undertaken (A) without a permit
3 granted by the Agency whenever a permit is required
4 pursuant to (i) this Act or Board regulations or (ii)
5 Section 111, 112, 165, or 173 of the Clean Air Act or
6 federal regulations adopted pursuant thereto or (B) in
7 violation of any conditions imposed by such permit. The
8 issuance or any ~~Any~~ denial of such a PSD permit or any
9 conditions imposed therein ~~in such a permit~~ shall be
10 reviewable by the Board in accordance with Section 40.3 ~~40~~
11 of this Act. Other permits addressed in this subsection (d)
12 shall be reviewable by the Board in accordance with Section
13 40 of this Act.

14 (e) The Board shall exempt from regulation under the State
15 Implementation Plan for ozone the volatile organic compounds
16 which have been determined by the U.S. Environmental Protection
17 Agency to be exempt from regulation under state implementation
18 plans for ozone due to negligible photochemical reactivity. In
19 accordance with subsection (b) of Section 7.2, the Board shall
20 adopt regulations identical in substance to the U.S.
21 Environmental Protection Agency exemptions or deletion of
22 exemptions published in policy statements on the control of
23 volatile organic compounds in the Federal Register by amending
24 the list of exemptions to the Board's definition of volatile
25 organic material found at 35 Ill. Adm. Code Part 211. The
26 provisions and requirements of Title VII of this Act shall not

1 apply to regulations adopted under this subsection. Section
2 5-35 of the Illinois Administrative Procedure Act, relating to
3 procedures for rulemaking, does not apply to regulations
4 adopted under this subsection. However, the Board shall provide
5 for notice, a hearing if required by the U.S. Environmental
6 Protection Agency, and public comment before adopted rules are
7 filed with the Secretary of State. The Board may consolidate
8 into a single rulemaking under this subsection all such federal
9 policy statements published in the Federal Register within a
10 period of time not to exceed 6 months.

11 (f) (Blank).

12 (Source: P.A. 97-95, eff. 7-12-11; 98-284, eff. 8-9-13.)

13 (415 ILCS 5/9.12)

14 Sec. 9.12. Construction permit fees for air pollution
15 sources.

16 (a) An applicant for a new or revised air pollution
17 construction permit shall pay a fee, as established in this
18 Section, to the Agency at the time that he or she submits the
19 application for a construction permit. Except as set forth
20 below, the fee for each activity or category listed in this
21 Section is separate and is cumulative with any other applicable
22 fee listed in this Section.

23 (b) The fee amounts in this subsection (b) apply to
24 construction permit applications relating to (i) a source
25 subject to Section 39.5 of this Act (the Clean Air Act Permit

1 Program); (ii) a source that, upon issuance of the requested
2 construction permit, will become a major source subject to
3 Section 39.5; or (iii) a source that has or will require a
4 federally enforceable State operating permit limiting its
5 potential to emit.

6 (1) Base fees for each construction permit application
7 shall be assessed as follows:

8 (A) If the construction permit application relates
9 to one or more new emission units or to a combination
10 of new and modified emission units, a fee of \$4,000 for
11 the first new emission unit and a fee of \$1,000 for
12 each additional new or modified emission unit;
13 provided that the total base fee under this subdivision
14 (A) shall not exceed \$10,000.

15 (B) If the construction permit application relates
16 to one or more modified emission units but not to any
17 new emission unit, a fee of \$2,000 for the first
18 modified emission unit and a fee of \$1,000 for each
19 additional modified emission unit; provided that the
20 total base fee under this subdivision (B) shall not
21 exceed \$5,000.

22 (2) Supplemental fees for each construction permit
23 application shall be assessed as follows:

24 (A) If, based on the construction permit
25 application, the source will be, but is not currently,
26 subject to Section 39.5 of this Act, a CAAPP entry fee

1 of \$5,000.

2 (B) If the construction permit application
3 involves (i) a new source or emission unit subject to
4 Section 39.2 of this Act, (ii) a commercial incinerator
5 or other municipal waste, hazardous waste, or waste
6 tire incinerator, (iii) a commercial power generator,
7 or (iv) one or more other emission units designated as
8 a complex source by Agency rulemaking, a fee of
9 \$25,000.

10 (C) If the construction permit application
11 involves an emissions netting exercise or reliance on a
12 contemporaneous emissions decrease for a pollutant to
13 avoid application of the ~~federal~~ PSD permit program ~~(40~~
14 ~~CFR 52.21)~~ or nonattainment new source review ~~(35 Ill.~~
15 ~~Adm. Code 203)~~, a fee of \$3,000 for each such
16 pollutant.

17 (D) If the construction permit application is for a
18 new major source subject to the ~~federal~~ PSD permit
19 program, a fee of \$12,000.

20 (E) If the construction permit application is for a
21 new major source subject to nonattainment new source
22 review, a fee of \$20,000.

23 (F) If the construction permit application is for a
24 major modification subject to the ~~federal~~ PSD permit
25 program, a fee of \$6,000.

26 (G) If the construction permit application is for a

1 major modification subject to nonattainment new source
2 review, a fee of \$12,000.

3 (H) (Blank).

4 (I) If the construction permit application review
5 involves a determination of the Maximum Achievable
6 Control Technology standard for a pollutant and the
7 project is not otherwise subject to BACT or LAER for a
8 related pollutant under the ~~federal~~ PSD permit program
9 or nonattainment new source review, a fee of \$5,000 per
10 unit for which a determination is requested or
11 otherwise required.

12 (J) (Blank).

13 (3) If a public hearing is held regarding the
14 construction permit application, an administrative fee of
15 \$10,000. This fee shall be submitted at the time the
16 applicant requests a public hearing or, if a public hearing
17 is not requested by the applicant, then within 30 days
18 after the applicant is informed by the Agency that a public
19 hearing will be held.

20 (c) The fee amounts in this subsection (c) apply to
21 construction permit applications relating to a source that,
22 upon issuance of the construction permit, will not (i) be or
23 become subject to Section 39.5 of this Act (the Clean Air Act
24 Permit Program) or (ii) have or require a federally enforceable
25 state operating permit limiting its potential to emit.

26 (1) Base fees for each construction permit application

1 shall be assessed as follows:

2 (A) For a construction permit application
3 involving a single new emission unit, a fee of \$500.

4 (B) For a construction permit application
5 involving more than one new emission unit, a fee of
6 \$1,000.

7 (C) For a construction permit application
8 involving no more than 2 modified emission units, a fee
9 of \$500.

10 (D) For a construction permit application
11 involving more than 2 modified emission units, a fee of
12 \$1,000.

13 (2) Supplemental fees for each construction permit
14 application shall be assessed as follows:

15 (A) If the source is a new source, i.e., does not
16 currently have an operating permit, an entry fee of
17 \$500;

18 (B) If the construction permit application
19 involves (i) a new source or emission unit subject to
20 Section 39.2 of this Act, (ii) a commercial incinerator
21 or a municipal waste, hazardous waste, or waste tire
22 incinerator, (iii) a commercial power generator, or
23 (iv) an emission unit designated as a complex source by
24 Agency rulemaking, a fee of \$15,000.

25 (3) If a public hearing is held regarding the
26 construction permit application, an administrative fee of

1 \$10,000. This fee shall be submitted at the time the
2 applicant requests a public hearing or, if a public hearing
3 is not requested by the applicant, then within 30 days
4 after the applicant is informed by the Agency that a public
5 hearing will be held.

6 (d) If no other fee is applicable under this Section, a
7 construction permit application addressing one or more of the
8 following shall be subject to a filing fee of \$500:

9 (1) A construction permit application to add or replace
10 a control device on a permitted emission unit.

11 (2) A construction permit application to conduct a
12 pilot project or trial burn for a permitted emission unit.

13 (3) A construction permit application for a land
14 remediation project.

15 (4) (Blank).

16 (5) A construction permit application to revise an
17 emissions testing methodology or the timing of required
18 emissions testing.

19 (6) A construction permit application that provides
20 for a change in the name, address, or phone number of any
21 person identified in the permit, or for a change in the
22 stated ownership or control, or for a similar minor
23 administrative permit change at the source.

24 (e) No fee shall be assessed for a request to correct an
25 issued permit that involves only an Agency error, if the
26 request is received within the deadline for a permit appeal to

1 the Pollution Control Board.

2 (f) The applicant for a new or revised air pollution
3 construction permit shall submit to the Agency, with the
4 construction permit application, both a certification of the
5 fee that he or she estimates to be due under this Section and
6 the fee itself.

7 (g) Notwithstanding the requirements of subsection (a) of
8 Section 39 of this Act, the application for an air pollution
9 construction permit shall not be deemed to be filed with the
10 Agency until the Agency receives the initial air pollution
11 construction permit application fee and the certified estimate
12 of the fee required by this Section. Unless the Agency has
13 received the initial air pollution construction permit
14 application fee and the certified estimate of the fee required
15 by this Section, the Agency is not required to review or
16 process the application.

17 (h) If the Agency determines at any time that a
18 construction permit application is subject to an additional fee
19 under this Section that the applicant has not submitted, the
20 Agency shall notify the applicant in writing of the amount due
21 under this Section. The applicant shall have 60 days to remit
22 the assessed fee to the Agency.

23 If the proper fee established under this Section is not
24 submitted within 60 days after the request for further
25 remittance:

26 (1) If the construction permit has not yet been issued,

1 the Agency is not required to further review or process,
2 and the provisions of subsection (a) of Section 39 of this
3 Act do not apply to, the application for a construction
4 permit until such time as the proper fee is remitted.

5 (2) If the construction permit has been issued, the
6 Agency may, upon written notice, immediately revoke the
7 construction permit.

8 The denial or revocation of a construction permit does not
9 excuse the applicant from the duty of paying the fees required
10 under this Section.

11 (i) The Agency may deny the issuance of a pending air
12 pollution construction permit or the subsequent operating
13 permit if the applicant has not paid the required fees by the
14 date required for issuance of the permit. The denial or
15 revocation of a permit for failure to pay a construction permit
16 fee is subject to review by the Board pursuant to the
17 provisions of subsection (a) of Section 40 of this Act.

18 (j) If the owner or operator undertakes construction
19 without obtaining an air pollution construction permit, the fee
20 under this Section is still required. Payment of the required
21 fee does not preclude the Agency or the Attorney General or
22 other authorized persons from pursuing enforcement against the
23 applicant for failure to have an air pollution construction
24 permit prior to commencing construction.

25 (k) If an air pollution construction permittee makes a fee
26 payment under this Section from an account with insufficient

1 funds to cover the amount of the fee payment, the Agency shall
2 notify the permittee of the failure to pay the fee. If the
3 permittee fails to pay the fee within 60 days after such
4 notification, the Agency may, by written notice, immediately
5 revoke the air pollution construction permit. Failure of the
6 Agency to notify the permittee of the permittee's failure to
7 make payment does not excuse or alter the duty of the permittee
8 to comply with the provisions of this Section.

9 (l) The Agency may establish procedures for the collection
10 of air pollution construction permit fees.

11 (m) Fees collected pursuant to this Section shall be
12 deposited into the Environmental Protection Permit and
13 Inspection Fund.

14 (Source: P.A. 97-95, eff. 7-12-11.)

15 (415 ILCS 5/39) (from Ch. 111 1/2, par. 1039)

16 Sec. 39. Issuance of permits; procedures.

17 (a) When the Board has by regulation required a permit for
18 the construction, installation, or operation of any type of
19 facility, equipment, vehicle, vessel, or aircraft, the
20 applicant shall apply to the Agency for such permit and it
21 shall be the duty of the Agency to issue such a permit upon
22 proof by the applicant that the facility, equipment, vehicle,
23 vessel, or aircraft will not cause a violation of this Act or
24 of regulations hereunder. The Agency shall adopt such
25 procedures as are necessary to carry out its duties under this

1 Section. In making its determinations on permit applications
2 under this Section the Agency may consider prior adjudications
3 of noncompliance with this Act by the applicant that involved a
4 release of a contaminant into the environment. In granting
5 permits, the Agency may impose reasonable conditions
6 specifically related to the applicant's past compliance
7 history with this Act as necessary to correct, detect, or
8 prevent noncompliance. The Agency may impose such other
9 conditions as may be necessary to accomplish the purposes of
10 this Act, and as are not inconsistent with the regulations
11 promulgated by the Board hereunder. Except as otherwise
12 provided in this Act, a bond or other security shall not be
13 required as a condition for the issuance of a permit. If the
14 Agency denies any permit under this Section, the Agency shall
15 transmit to the applicant within the time limitations of this
16 Section specific, detailed statements as to the reasons the
17 permit application was denied. Such statements shall include,
18 but not be limited to the following:

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

21 (ii) the provision of the regulations, promulgated
22 under this Act, which may be violated if the permit were
23 granted;

24 (iii) the specific type of information, if any, which
25 the Agency deems the applicant did not provide the Agency;
26 and

1 (iv) a statement of specific reasons why the Act and
2 the regulations might not be met if the permit were
3 granted.

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

18 The Agency shall publish notice of all final permit
19 determinations for development permits for MSWLF units and for
20 significant permit modifications for lateral expansions for
21 existing MSWLF units one time in a newspaper of general
22 circulation in the county in which the unit is or is proposed
23 to be located.

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

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

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

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

26 All NPDES permits shall contain those terms and conditions,

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

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

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

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

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

1 hereafter amended, and regulations pursuant thereto.

2 (c) Except for those facilities owned or operated by
3 sanitary districts organized under the Metropolitan Water
4 Reclamation District Act, no permit for the development or
5 construction of a new pollution control facility may be granted
6 by the Agency unless the applicant submits proof to the Agency
7 that the location of the facility has been approved by the
8 County Board of the county if in an unincorporated area, or the
9 governing body of the municipality when in an incorporated
10 area, in which the facility is to be located in accordance with
11 Section 39.2 of this Act. For purposes of this subsection (c),
12 and for purposes of Section 39.2 of this Act, the appropriate
13 county board or governing body of the municipality shall be the
14 county board of the county or the governing body of the
15 municipality in which the facility is to be located as of the
16 date when the application for siting approval is filed.

17 In the event that siting approval granted pursuant to
18 Section 39.2 has been transferred to a subsequent owner or
19 operator, that subsequent owner or operator may apply to the
20 Agency for, and the Agency may grant, a development or
21 construction permit for the facility for which local siting
22 approval was granted. Upon application to the Agency for a
23 development or construction permit by that subsequent owner or
24 operator, the permit applicant shall cause written notice of
25 the permit application to be served upon the appropriate county
26 board or governing body of the municipality that granted siting

1 approval for that facility and upon any party to the siting
2 proceeding pursuant to which siting approval was granted. In
3 that event, the Agency shall conduct an evaluation of the
4 subsequent owner or operator's prior experience in waste
5 management operations in the manner conducted under subsection
6 (i) of Section 39 of this Act.

7 Beginning August 20, 1993, if the pollution control
8 facility consists of a hazardous or solid waste disposal
9 facility for which the proposed site is located in an
10 unincorporated area of a county with a population of less than
11 100,000 and includes all or a portion of a parcel of land that
12 was, on April 1, 1993, adjacent to a municipality having a
13 population of less than 5,000, then the local siting review
14 required under this subsection (c) in conjunction with any
15 permit applied for after that date shall be performed by the
16 governing body of that adjacent municipality rather than the
17 county board of the county in which the proposed site is
18 located; and for the purposes of that local siting review, any
19 references in this Act to the county board shall be deemed to
20 mean the governing body of that adjacent municipality;
21 provided, however, that the provisions of this paragraph shall
22 not apply to any proposed site which was, on April 1, 1993,
23 owned in whole or in part by another municipality.

24 In the case of a pollution control facility for which a
25 development permit was issued before November 12, 1981, if an
26 operating permit has not been issued by the Agency prior to

1 August 31, 1989 for any portion of the facility, then the
2 Agency may not issue or renew any development permit nor issue
3 an original operating permit for any portion of such facility
4 unless the applicant has submitted proof to the Agency that the
5 location of the facility has been approved by the appropriate
6 county board or municipal governing body pursuant to Section
7 39.2 of this Act.

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

22 Except for those facilities owned or operated by sanitary
23 districts organized under the Metropolitan Water Reclamation
24 District Act, and except for new pollution control facilities
25 governed by Section 39.2, and except for fossil fuel mining
26 facilities, the granting of a permit under this Act shall not

1 relieve the applicant from meeting and securing all necessary
2 zoning approvals from the unit of government having zoning
3 jurisdiction over the proposed facility.

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

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

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

24 (2) the operator submitted a permit application to the
25 Agency to develop and operate the municipal waste transfer
26 station during April of 1994;

1 (3) the operator can demonstrate that the county board
2 of the county, if the municipal waste transfer station is
3 in an unincorporated area, or the governing body of the
4 municipality, if the station is in an incorporated area,
5 does not object to resumption of the operation of the
6 station; and

7 (4) the site has local zoning approval.

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

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

23 In the case of a permit to operate a hazardous waste or PCB
24 incinerator as defined in subsection (k) of Section 44, the
25 Agency shall require, as a condition of the permit, that the
26 operator of the facility perform such analyses of the waste to

1 be incinerated as may be necessary and appropriate to ensure
2 the safe operation of the incinerator.

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

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

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

22 All UIC permits shall contain those terms and conditions,
23 including but not limited to schedules of compliance, which may
24 be required to accomplish the purposes and provisions of this
25 Act. The Agency may include among such conditions standards and
26 other requirements established under this Act, Board

1 regulations, the Safe Drinking Water Act (P.L. 93-523), as
2 amended, and regulations pursuant thereto, and may include
3 schedules for achieving compliance therewith. The Agency shall
4 require that a performance bond or other security be provided
5 as a condition for the issuance of a UIC permit.

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

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

20 (f) In making any determination pursuant to Section 9.1 of
21 this Act:

22 (1) The Agency shall have authority to make the
23 determination of any question required to be determined by
24 the Clean Air Act, as now or hereafter amended, this Act,
25 or the regulations of the Board, including the
26 determination of the Lowest Achievable Emission Rate,

1 Maximum Achievable Control Technology, or Best Available
2 Control Technology, consistent with the Board's
3 regulations, if any.

4 (2) The Agency shall adopt requirements as necessary to
5 implement public participation procedures, including, but
6 not limited to, public notice, comment, and an opportunity
7 for hearing, which must accompany the processing of
8 applications for PSD permits. The Agency shall briefly
9 describe and respond to all significant comments on the
10 draft permit raised during the public comment period or
11 during any hearing. The Agency may group related comments
12 together and provide one unified response for each issue
13 raised.

14 (3) Any complete permit application submitted to the
15 Agency under this subsection for a PSD permit shall be
16 granted or denied by the Agency not later than one year
17 after the filing of such completed application.

18 (4) ~~(2)~~ The Agency shall, after conferring with the
19 applicant, give written notice to the applicant of its
20 proposed decision on the application including the terms
21 and conditions of the permit to be issued and the facts,
22 conduct or other basis upon which the Agency will rely to
23 support its proposed action.

24 ~~(3) Following such notice, the Agency shall give the~~
25 ~~applicant an opportunity for a hearing in accordance with~~
26 ~~the provisions of Sections 10 25 through 10 60 of the~~

1 ~~Illinois Administrative Procedure Act.~~

2 (g) The Agency shall include as conditions upon all permits
3 issued for hazardous waste disposal sites such restrictions
4 upon the future use of such sites as are reasonably necessary
5 to protect public health and the environment, including
6 permanent prohibition of the use of such sites for purposes
7 which may create an unreasonable risk of injury to human health
8 or to the environment. After administrative and judicial
9 challenges to such restrictions have been exhausted, the Agency
10 shall file such restrictions of record in the Office of the
11 Recorder of the county in which the hazardous waste disposal
12 site is located.

13 (h) A hazardous waste stream may not be deposited in a
14 permitted hazardous waste site unless specific authorization
15 is obtained from the Agency by the generator and disposal site
16 owner and operator for the deposit of that specific hazardous
17 waste stream. The Agency may grant specific authorization for
18 disposal of hazardous waste streams only after the generator
19 has reasonably demonstrated that, considering technological
20 feasibility and economic reasonableness, the hazardous waste
21 cannot be reasonably recycled for reuse, nor incinerated or
22 chemically, physically or biologically treated so as to
23 neutralize the hazardous waste and render it nonhazardous. In
24 granting authorization under this Section, the Agency may
25 impose such conditions as may be necessary to accomplish the
26 purposes of the Act and are consistent with this Act and

1 regulations promulgated by the Board hereunder. If the Agency
2 refuses to grant authorization under this Section, the
3 applicant may appeal as if the Agency refused to grant a
4 permit, pursuant to the provisions of subsection (a) of Section
5 40 of this Act. For purposes of this subsection (h), the term
6 "generator" has the meaning given in Section 3.205 of this Act,
7 unless: (1) the hazardous waste is treated, incinerated, or
8 partially recycled for reuse prior to disposal, in which case
9 the last person who treats, incinerates, or partially recycles
10 the hazardous waste prior to disposal is the generator; or (2)
11 the hazardous waste is from a response action, in which case
12 the person performing the response action is the generator.
13 This subsection (h) does not apply to any hazardous waste that
14 is restricted from land disposal under 35 Ill. Adm. Code 728.

15 (i) Before issuing any RCRA permit, any permit for a waste
16 storage site, sanitary landfill, waste disposal site, waste
17 transfer station, waste treatment facility, waste incinerator,
18 or any waste-transportation operation, or any permit or interim
19 authorization for a clean construction or demolition debris
20 fill operation, the Agency shall conduct an evaluation of the
21 prospective owner's or operator's prior experience in waste
22 management operations and clean construction or demolition
23 debris fill operations. The Agency may deny such a permit, or
24 deny or revoke interim authorization, if the prospective owner
25 or operator or any employee or officer of the prospective owner
26 or operator has a history of:

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

6 (2) conviction in this or another State of any crime
7 which is a felony under the laws of this State, or
8 conviction of a felony in a federal court; or conviction in
9 this or another state or federal court of any of the
10 following crimes: forgery, official misconduct, bribery,
11 perjury, or knowingly submitting false information under
12 any environmental law, regulation, or permit term or
13 condition; or

14 (3) proof of gross carelessness or incompetence in
15 handling, storing, processing, transporting or disposing
16 of waste or clean construction or demolition debris, or
17 proof of gross carelessness or incompetence in using clean
18 construction or demolition debris as fill.

19 (i-5) Before issuing any permit or approving any interim
20 authorization for a clean construction or demolition debris
21 fill operation in which any ownership interest is transferred
22 between January 1, 2005, and the effective date of the
23 prohibition set forth in Section 22.52 of this Act, the Agency
24 shall conduct an evaluation of the operation if any previous
25 activities at the site or facility may have caused or allowed
26 contamination of the site. It shall be the responsibility of

1 the owner or operator seeking the permit or interim
2 authorization to provide to the Agency all of the information
3 necessary for the Agency to conduct its evaluation. The Agency
4 may deny a permit or interim authorization if previous
5 activities at the site may have caused or allowed contamination
6 at the site, unless such contamination is authorized under any
7 permit issued by the Agency.

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

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

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

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

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

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

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

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

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

26 If no final action is taken by the Agency within 90 days

1 after the filing of the application for permit, the applicant
2 may deem the permit issued. Any applicant for a permit may
3 waive the 90 day limitation by filing a written statement with
4 the Agency.

5 The Agency shall issue permits for such facilities upon
6 receipt of an application that includes a legal description of
7 the site, a topographic map of the site drawn to the scale of
8 200 feet to the inch or larger, a description of the operation,
9 including the area served, an estimate of the volume of
10 materials to be processed, and documentation that:

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

13 (2) the facility is located outside the boundary of the
14 10-year floodplain or the site will be floodproofed;

15 (3) the facility is located so as to minimize
16 incompatibility with the character of the surrounding
17 area, including at least a 200 foot setback from any
18 residence, and in the case of a facility that is developed
19 or the permitted composting area of which is expanded after
20 November 17, 1991, the composting area is located at least
21 1/8 mile from the nearest residence (other than a residence
22 located on the same property as the facility);

23 (4) the design of the facility will prevent any compost
24 material from being placed within 5 feet of the water
25 table, will adequately control runoff from the site, and
26 will collect and manage any leachate that is generated on

1 the site;

2 (5) the operation of the facility will include
3 appropriate dust and odor control measures, limitations on
4 operating hours, appropriate noise control measures for
5 shredding, chipping and similar equipment, management
6 procedures for composting, containment and disposal of
7 non-compostable wastes, procedures to be used for
8 terminating operations at the site, and recordkeeping
9 sufficient to document the amount of materials received,
10 composted and otherwise disposed of; and

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

13 The Agency shall issue renewable permits of not longer than
14 10 years in duration for the composting of landscape wastes, as
15 defined in Section 3.155 of this Act, based on the above
16 requirements.

17 The operator of any facility permitted under this
18 subsection (m) must submit a written annual statement to the
19 Agency on or before April 1 of each year that includes an
20 estimate of the amount of material, in tons, received for
21 composting.

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

26 (o) (Blank.)

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

19 When a permit applicant submits information to the Agency
20 to supplement a permit application being reviewed by the
21 Agency, the applicant shall not be required to reissue the
22 notice under this subsection.

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

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

16 (q) Within 6 months after the effective date of this
17 amendatory Act of the 97th General Assembly, the Agency, in
18 consultation with the regulated community, shall develop a web
19 portal to be posted on its website for the purpose of enhancing
20 review and promoting timely issuance of permits required by
21 this Act. At a minimum, the Agency shall make the following
22 information available on the web portal:

23 (1) Checklists and guidance relating to the completion
24 of permit applications, developed pursuant to subsection
25 (s) of this Section, which may include, but are not limited
26 to, existing instructions for completing the applications

1 and examples of complete applications. As the Agency
2 develops new checklists and develops guidance, it shall
3 supplement the web portal with those materials.

4 (2) Within 2 years after the effective date of this
5 amendatory Act of the 97th General Assembly, permit
6 application forms or portions of permit applications that
7 can be completed and saved electronically, and submitted to
8 the Agency electronically with digital signatures.

9 (3) Within 2 years after the effective date of this
10 amendatory Act of the 97th General Assembly, an online
11 tracking system where an applicant may review the status of
12 its pending application, including the name and contact
13 information of the permit analyst assigned to the
14 application. Until the online tracking system has been
15 developed, the Agency shall post on its website semi-annual
16 permitting efficiency tracking reports that include
17 statistics on the timeframes for Agency action on the
18 following types of permits received after the effective
19 date of this amendatory Act of the 97th General Assembly:
20 air construction permits, new NPDES permits and associated
21 water construction permits, and modifications of major
22 NPDES permits and associated water construction permits.
23 The reports must be posted by February 1 and August 1 each
24 year and shall include:

25 (A) the number of applications received for each
26 type of permit, the number of applications on which the

1 Agency has taken action, and the number of applications
2 still pending; and

3 (B) for those applications where the Agency has not
4 taken action in accordance with the timeframes set
5 forth in this Act, the date the application was
6 received and the reasons for any delays, which may
7 include, but shall not be limited to, (i) the
8 application being inadequate or incomplete, (ii)
9 scientific or technical disagreements with the
10 applicant, USEPA, or other local, state, or federal
11 agencies involved in the permitting approval process,
12 (iii) public opposition to the permit, or (iv) Agency
13 staffing shortages. To the extent practicable, the
14 tracking report shall provide approximate dates when
15 cause for delay was identified by the Agency, when the
16 Agency informed the applicant of the problem leading to
17 the delay, and when the applicant remedied the reason
18 for the delay.

19 (r) Upon the request of the applicant, the Agency shall
20 notify the applicant of the permit analyst assigned to the
21 application upon its receipt.

22 (s) The Agency is authorized to prepare and distribute
23 guidance documents relating to its administration of this
24 Section and procedural rules implementing this Section.
25 Guidance documents prepared under this subsection shall not be
26 considered rules and shall not be subject to the Illinois

1 Administrative Procedure Act. Such guidance shall not be
2 binding on any party.

3 (t) Except as otherwise prohibited by federal law or
4 regulation, any person submitting an application for a permit
5 may include with the application suggested permit language for
6 Agency consideration. The Agency is not obligated to use the
7 suggested language or any portion thereof in its permitting
8 decision. If requested by the permit applicant, the Agency
9 shall meet with the applicant to discuss the suggested
10 language.

11 (u) If requested by the permit applicant, the Agency shall
12 provide the permit applicant with a copy of the draft permit
13 prior to any public review period.

14 (v) If requested by the permit applicant, the Agency shall
15 provide the permit applicant with a copy of the final permit
16 prior to its issuance.

17 (w) An air pollution permit shall not be required due to
18 emissions of greenhouse gases, as specified by Section 9.15 of
19 this Act.

20 (x) If, before the expiration of a State operating permit
21 that is issued pursuant to subsection (a) of this Section and
22 contains federally enforceable conditions limiting the
23 potential to emit of the source to a level below the major
24 source threshold for that source so as to exclude the source
25 from the Clean Air Act Permit Program, the Agency receives a
26 complete application for the renewal of that permit, then all

1 of the terms and conditions of the permit shall remain in
2 effect until final administrative action has been taken on the
3 application for the renewal of the permit.

4 (Source: P.A. 97-95, eff. 7-12-11; 98-284, eff. 8-9-13.)

5 (415 ILCS 5/40) (from Ch. 111 1/2, par. 1040)

6 Sec. 40. Appeal of permit denial.

7 (a) (1) If the Agency refuses to grant or grants with
8 conditions a permit under Section 39 of this Act, the applicant
9 may, within 35 days after the date on which the Agency served
10 its decision on the applicant, petition for a hearing before
11 the Board to contest the decision of the Agency. However, the
12 35-day period for petitioning for a hearing may be extended for
13 an additional period of time not to exceed 90 days by written
14 notice provided to the Board from the applicant and the Agency
15 within the initial appeal period. The Board shall give 21 day
16 notice to any person in the county where is located the
17 facility in issue who has requested notice of enforcement
18 proceedings and to each member of the General Assembly in whose
19 legislative district that installation or property is located;
20 and shall publish that 21 day notice in a newspaper of general
21 circulation in that county. The Agency shall appear as
22 respondent in such hearing. At such hearing the rules
23 prescribed in Section 32 and subsection (a) of Section 33 of
24 this Act shall apply, and the burden of proof shall be on the
25 petitioner. If, however, the Agency issues an NPDES permit that

1 imposes limits which are based upon a criterion or denies a
2 permit based upon application of a criterion, then the Agency
3 shall have the burden of going forward with the basis for the
4 derivation of those limits or criterion which were derived
5 under the Board's rules.

6 (2) Except as provided in paragraph (a) (3), if there is no
7 final action by the Board within 120 days after the date on
8 which it received the petition, the petitioner may deem the
9 permit issued under this Act, provided, however, that that
10 period of 120 days shall not run for any period of time, not to
11 exceed 30 days, during which the Board is without sufficient
12 membership to constitute the quorum required by subsection (a)
13 of Section 5 of this Act, and provided further that such 120
14 day period shall not be stayed for lack of quorum beyond 30
15 days regardless of whether the lack of quorum exists at the
16 beginning of such 120 day period or occurs during the running
17 of such 120 day period.

18 (3) Paragraph (a) (2) shall not apply to any permit which is
19 subject to subsection (b), (d) or (e) of Section 39. If there
20 is no final action by the Board within 120 days after the date
21 on which it received the petition, the petitioner shall be
22 entitled to an Appellate Court order pursuant to subsection (d)
23 of Section 41 of this Act.

24 (b) If the Agency grants a RCRA permit for a hazardous
25 waste disposal site, a third party, other than the permit
26 applicant or Agency, may, within 35 days after the date on

1 which the Agency issued its decision, petition the Board for a
2 hearing to contest the issuance of the permit. Unless the Board
3 determines that such petition is duplicative or frivolous, or
4 that the petitioner is so located as to not be affected by the
5 permitted facility, the Board shall hear the petition in
6 accordance with the terms of subsection (a) of this Section and
7 its procedural rules governing denial appeals, such hearing to
8 be based exclusively on the record before the Agency. The
9 burden of proof shall be on the petitioner. The Agency and the
10 permit applicant shall be named co-respondents.

11 The provisions of this subsection do not apply to the
12 granting of permits issued for the disposal or utilization of
13 sludge from publicly-owned sewage works.

14 (c) Any party to an Agency proceeding conducted pursuant to
15 Section 39.3 of this Act may petition as of right to the Board
16 for review of the Agency's decision within 35 days from the
17 date of issuance of the Agency's decision, provided that such
18 appeal is not duplicative or frivolous. However, the 35-day
19 period for petitioning for a hearing may be extended by the
20 applicant for a period of time not to exceed 90 days by written
21 notice provided to the Board from the applicant and the Agency
22 within the initial appeal period. If another person with
23 standing to appeal wishes to obtain an extension, there must be
24 a written notice provided to the Board by that person, the
25 Agency, and the applicant, within the initial appeal period.
26 The decision of the Board shall be based exclusively on the

1 record compiled in the Agency proceeding. In other respects the
2 Board's review shall be conducted in accordance with subsection
3 (a) of this Section and the Board's procedural rules governing
4 permit denial appeals.

5 (d) In reviewing the denial or any condition of a NA NSR
6 permit issued by the Agency pursuant to rules and regulations
7 adopted under subsection (c) of Section 9.1 of this Act, the
8 decision of the Board shall be based exclusively on the record
9 before the Agency including the record of the hearing, if any,
10 ~~held pursuant to paragraph (f) (3) of Section 39~~ unless the
11 parties agree to supplement the record. The Board shall, if it
12 finds the Agency is in error, make a final determination as to
13 the substantive limitations of the permit including a final
14 determination of Lowest Achievable Emission Rate ~~or Best~~
15 ~~Available Control Technology~~.

16 (e) (1) If the Agency grants or denies a permit under
17 subsection (b) of Section 39 of this Act, a third party,
18 other than the permit applicant or Agency, may petition the
19 Board within 35 days from the date of issuance of the
20 Agency's decision, for a hearing to contest the decision of
21 the Agency.

22 (2) A petitioner shall include the following within a
23 petition submitted under subdivision (1) of this
24 subsection:

25 (A) a demonstration that the petitioner raised the
26 issues contained within the petition during the public

1 notice period or during the public hearing on the NPDES
2 permit application, if a public hearing was held; and

3 (B) a demonstration that the petitioner is so
4 situated as to be affected by the permitted facility.

5 (3) If the Board determines that the petition is not
6 duplicative or frivolous and contains a satisfactory
7 demonstration under subdivision (2) of this subsection,
8 the Board shall hear the petition (i) in accordance with
9 the terms of subsection (a) of this Section and its
10 procedural rules governing permit denial appeals and (ii)
11 exclusively on the basis of the record before the Agency.
12 The burden of proof shall be on the petitioner. The Agency
13 and permit applicant shall be named co-respondents.

14 (f) Any person who files a petition to contest the issuance
15 of a permit by the Agency shall pay a filing fee.

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

17 (415 ILCS 5/40.3 new)

18 Sec. 40.3. Review process for PSD permits.

19 (a) (1) Subsection (a) of Section 40 does not apply to any
20 PSD permit that is subject to subsection (c) of Section 9.1 of
21 this Act. If the Agency refused to grant or grants with
22 conditions a PSD permit, the applicant may, within 35 days
23 after final permit action, petition for a hearing before the
24 Board to contest the decision of the Agency. If the Agency
25 fails to act on an application for a PSD permit within the time

1 frame specified in paragraph (3) of subsection (f) of Section
2 39 of this Act, the applicant may, before the Agency denies or
3 issues the final permit, petition for a hearing before the
4 Board to compel the Agency to act on the application in a time
5 that is deemed reasonable.

6 (2) Any person who participated in the public comment
7 process and is either aggrieved or has an interest that is or
8 may be adversely affected by the PSD permit may, within 35 days
9 after final permit action, petition for a hearing before the
10 Board to contest the decision of the Agency. If the petitioner
11 failed to participate in the public comment process, the person
12 may still petition for a hearing, but only upon issues where
13 the final permit conditions reflect changes from the proposed
14 draft permit.

15 The petition shall: (i) include such facts as necessary to
16 demonstrate that the petitioner is aggrieved or has an interest
17 that is or may be adversely affected; (ii) state the issues
18 proposed for review, citing to the record where those issues
19 were raised or explaining why such issues were not required to
20 be raised during the public comment process; and (iii) explain
21 why the Agency's previous response, if any, to those issues is
22 (A) clearly erroneous or (B) an exercise of discretion or an
23 important policy consideration that the Board should, in its
24 discretion, review.

25 The Board shall hold a hearing upon a petition to contest
26 the decision of the Agency under this paragraph (a)(2) unless

1 the request is determined by the Board to be frivolous or to
2 lack a facially adequate factual statements required in this
3 paragraph (a) (2).

4 The Agency shall appear as respondent in any hearing
5 pursuant to this subsection (a). At such hearing the rules
6 prescribed in Section 32 and subsection (a) of Section 33 of
7 this Act shall apply, and the burden of proof shall be on the
8 petitioner.

9 (b) If there is no final action by the Board within 120
10 days after the date on which it received the petition, the PSD
11 permit shall not be deemed issued; rather, any party shall be
12 entitled to an Appellate Court order pursuant to subsection (d)
13 of Section 41 of this Act. This period of 120 days shall not
14 run for any period of time, not to exceed 30 days, during which
15 the Board is without sufficient membership to constitute the
16 quorum required by subsection (a) of Section 5 of this Act. The
17 120-day period shall not be stayed for lack of quorum beyond 30
18 days, regardless of whether the lack of quorum exists at the
19 beginning of the 120-day period or occurs during the running of
20 the 120-day period.

21 (c) Any person who files a petition to contest the final
22 permit action by the Agency under this Section shall pay the
23 filing fee for petitions for review of permit set forth in
24 Section 7.5.

25 (d) (1) In reviewing the denial or any condition of a PSD
26 permit issued by the Agency pursuant to rules adopted under

1 subsection (c) of Section 9.1 of this Act, the decision of the
2 Board shall be based exclusively on the record before the
3 Agency unless the parties agree to supplement the record.

4 (2) If requested by the applicant, the Board may stay the
5 effectiveness of any final Agency action on a PSD permit
6 application identified in subsection (f) of Section 39 of this
7 Act during the pendency of the review process. In such cases,
8 the Board shall stay the effectiveness of all the contested
9 conditions of the PSD permit and may stay the effectiveness of
10 any or all uncontested conditions only if the Board determines
11 that the uncontested conditions would be affected by its review
12 of contested conditions. Any stays granted by the Board shall
13 be deemed effective upon the date of final Agency action
14 appealed by the applicant under this subsection (d). Subsection
15 (b) of Section 10-65 of the Illinois Administrative Procedure
16 Act shall not apply to actions under this subsection (d).

17 (3) If requested by a party other than the applicant, the
18 Board may stay the effectiveness of any final Agency action on
19 a PSD permit application identified in subsection (f) of
20 Section 39 of this Act during the pendency of the review
21 process. In such cases, the Board may stay the effectiveness of
22 all the contested conditions of the PSD permit and may stay the
23 effectiveness of any or all uncontested conditions only if the
24 Board determines that the uncontested conditions would be
25 affected by its review of contested conditions. The party
26 requesting the stay has the burden of demonstrating the

1 following: (i) that an immediate stay is required in order to
2 preserve the status quo without endangering the public, (ii)
3 that it is not contrary to public policy, and (iii) that there
4 is a reasonable likelihood of success on the merits. Any stays
5 granted by the Board shall be deemed effective upon the date of
6 final Agency action appealed under this subsection (d) and
7 shall remain in effect until a decision is issued by the Board
8 on the petition. Subsection (b) of Section 10-65 of the
9 Illinois Administrative Procedure Act shall not apply to
10 actions under this paragraph.

11 (415 ILCS 5/41) (from Ch. 111 1/2, par. 1041)

12 Sec. 41. Judicial review.

13 (a) Any party to a Board hearing, any person who filed a
14 complaint on which a hearing was denied, any person who has
15 been denied a variance or permit under this Act, any party
16 adversely affected by a final order or determination of the
17 Board, and any person who participated in the public comment
18 process under subsection (8) of Section 39.5 of this Act may
19 obtain judicial review, by filing a petition for review within
20 35 days from the date that a copy of the order or other final
21 action sought to be reviewed was served upon the party affected
22 by the order or other final Board action complained of, under
23 the provisions of the Administrative Review Law, as amended and
24 the rules adopted pursuant thereto, except that review shall be
25 afforded directly in the Appellate Court for the District in

1 which the cause of action arose and not in the Circuit Court.
2 Review of any rule or regulation promulgated by the Board shall
3 not be limited by this section but may also be had as provided
4 in Section 29 of this Act.

5 (b) Any final order of the Board under this Act shall be
6 based solely on the evidence in the record of the particular
7 proceeding involved, and any such final order for permit
8 appeals, enforcement actions and variance proceedings, shall
9 be invalid if it is against the manifest weight of the
10 evidence. Notwithstanding this subsection, the Board may
11 include such conditions in granting a variance and may adopt
12 such rules and regulations as the policies of this Act may
13 require. If an objection is made to a variance condition, the
14 board shall reconsider the condition within not more than 75
15 days from the date of the objection.

16 (c) No challenge to the validity of a Board order shall be
17 made in any enforcement proceeding under Title XII of this Act
18 as to any issue that could have been raised in a timely
19 petition for review under this Section.

20 (d) If there is no final action by the Board within 120
21 days on a request for a variance which is subject to subsection
22 (c) of Section 38 or a permit appeal which is subject to
23 paragraph (a) (3) of Section 40 or paragraph (d) of Section
24 40.2 or Section 40.3, the petitioner shall be entitled to an
25 Appellate Court order under this subsection. If a hearing is
26 required under this Act and was not held by the Board, the

1 Appellate Court shall order the Board to conduct such a
2 hearing, and to make a decision within 90 days from the date of
3 the order. If a hearing was held by the Board, or if a hearing
4 is not required under this Act and was not held by the Board,
5 the Appellate Court shall order the Board to make a decision
6 within 90 days from the date of the order.

7 The Appellate Court shall retain jurisdiction during the
8 pendency of any further action conducted by the Board under an
9 order by the Appellate Court. The Appellate Court shall have
10 jurisdiction to review all issues of law and fact presented
11 upon appeal.

12 (Source: P.A. 87-1213; 88-1; 88-464; 88-670, eff. 12-2-94.)".