

1 AN ACT concerning environmental 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
5 by changing Sections 57, 57.2, 57.7, 57.8, 57.10, 58.2, 58.6,
6 58.7, and 58.11 as follows:

7 (415 ILCS 5/57)

8 Sec. 57. Intent and purpose. This Title shall be known
9 and may be cited as the Leaking Underground Storage Tank
10 Program (LUST). The purpose of this Title is, in accordance
11 with the requirements of the Hazardous and Solid Waste
12 Amendments of 1984 of the Resource Conservation and Recovery
13 Act of 1976 and in accordance with the State's interest in
14 the protection of Illinois' land and water resources: (1) to
15 adopt procedures for the remediation of underground storage
16 tank sites due to the release of petroleum and other
17 substances regulated under this Title from certain
18 underground storage tanks or related tank systems; (2) to
19 establish and provide procedures for a Leaking Underground
20 Storage Tank Program which will oversee and review any
21 remediation required for leaking underground storage tanks,
22 and administer the Underground Storage Tank Fund; (3) to
23 establish an Underground Storage Tank Fund intended to be a
24 State fund by which persons who qualify for access to the
25 Underground Storage Tank Fund may satisfy the financial
26 responsibility requirements under applicable State law and
27 regulations; (4) to establish requirements for eligible
28 owners and operators of underground storage tanks to seek
29 payment for any costs associated with physical soil
30 classification, groundwater investigation, site
31 classification and corrective action from the Underground

1 Storage Tank Fund; and (5) to audit and approve corrective
2 action efforts performed by Licensed Professional Engineers
3 and Licensed Professional Geologists.

4 (Source: P.A. 91-357, eff. 7-29-99.)

5 (415 ILCS 5/57.2)

6 Sec. 57.2. Definitions. As used in this Title:

7 "Audit" means a systematic inspection or examination of
8 plans, reports, records, or documents to determine the
9 completeness and accuracy of the data and conclusions
10 contained therein.

11 "Bodily injury" means bodily injury, sickness, or disease
12 sustained by a person, including death at any time, resulting
13 from a release of petroleum from an underground storage tank.

14 "Release" means any spilling, leaking, emitting,
15 discharging, escaping, leaching or disposing of petroleum
16 from an underground storage tank into groundwater, surface
17 water or subsurface soils.

18 "Fill material" means non-native or disturbed materials
19 used to bed and backfill around an underground storage tank.

20 "Fund" means the Underground Storage Tank Fund.

21 "Heating Oil" means petroleum that is No. 1, No. 2, No. 4
22 - light, No. 4 - heavy, No. 5 - light, No. 5 - heavy or No. 6
23 technical grades of fuel oil; and other residual fuel oils
24 including Navy Special Fuel Oil and Bunker C.

25 "Indemnification" means indemnification of an owner or
26 operator for the amount of any judgment entered against the
27 owner or operator in a court of law, for the amount of any
28 final order or determination made against the owner or
29 operator by an agency of State government or any subdivision
30 thereof, or for the amount of any settlement entered into by
31 the owner or operator, if the judgment, order, determination,
32 or settlement arises out of bodily injury or property damage
33 suffered as a result of a release of petroleum from an

1 underground storage tank owned or operated by the owner or
2 operator.

3 "Corrective action" means activities associated with
4 compliance with the provisions of Sections 57.6 and 57.7 of
5 this Title.

6 "Occurrence" means an accident, including continuous or
7 repeated exposure to conditions, that results in a sudden or
8 nonsudden release from an underground storage tank.

9 When used in connection with, or when otherwise relating
10 to, underground storage tanks, the terms "facility", "owner",
11 "operator", "underground storage tank", "(UST)", "petroleum"
12 and "regulated substance" shall have the meanings ascribed to
13 them in Subtitle I of the Hazardous and Solid Waste
14 Amendments of 1984 (P.L. 98-616), of the Resource
15 Conservation and Recovery Act of 1976 (P.L. 94-580); provided
16 however that the term "underground storage tank" shall also
17 mean an underground storage tank used exclusively to store
18 heating oil for consumptive use on the premises where stored
19 and which serves other than a farm or residential unit.

20 "Licensed Professional Engineer" means a person,
21 corporation, or partnership licensed under the laws of the
22 State of Illinois to practice professional engineering.

23 "Licensed Professional Geologist" means a person licensed
24 under the laws of the State of Illinois to practice as a
25 professional geologist.

26 "Site" means any single location, place, tract of land or
27 parcel of property including contiguous property not
28 separated by a public right-of-way.

29 "Physical soil classification" means verification that
30 subsurface strata are as generally mapped in the publication
31 Illinois Geological Survey Circular (1984) titled "Potential
32 for Contamination of Shallow Aquifers in Illinois," by Berg,
33 Richard C., et al. Such classification may include review of
34 soil borings, well logs, physical soil analyses, regional

1 geologic maps, or other scientific publications.

2 "Property damage" means physical injury to, destruction
3 of, or contamination of tangible property, including all
4 resulting loss of use of that property; or loss of use of
5 tangible property that is not physically injured, destroyed,
6 or contaminated, but has been evacuated, withdrawn from use,
7 or rendered inaccessible because of a release of petroleum
8 from an underground storage tank.

9 "Class I Groundwater" means groundwater that meets the
10 Class I: Potable Resource Groundwater criteria set forth in
11 the Board regulations adopted pursuant to the Illinois
12 Groundwater Protection Act.

13 "Class III Groundwater" means groundwater that meets the
14 Class III: Special Resource Groundwater criteria set forth
15 in the Board regulations adopted pursuant to the Illinois
16 Groundwater Protection Act.

17 (Source: P.A. 88-496; 89-428, eff. 1-1-96; 89-457, eff.
18 5-22-96.)

19 (415 ILCS 5/57.7)

20 Sec. 57.7. Leaking underground storage tanks; physical
21 soil classification, groundwater investigation, site
22 classification, and corrective action.

23 (a) Physical soil classification and groundwater
24 investigation.

25 (1) Prior to conducting any physical soil
26 classification and groundwater investigation activities
27 required by statute or regulation, the owner or operator
28 shall prepare and submit to the Agency for the Agency's
29 approval or modification:

30 (A) a physical soil classification and
31 groundwater investigation plan designed to
32 determine site classification, in accordance
33 with subsection (b) of this Section, as High

1 Priority, Low Priority, or No Further Action.

2 (B) a request for payment of costs
3 associated with eligible early action costs as
4 provided in Section 57.6(b). However, for
5 purposes of payment for early action costs,
6 fill materials shall not be removed in an
7 amount in excess of 4 feet from the outside
8 dimensions of the tank.

9 (2) If the owner or operator intends to seek
10 payment from the Fund, prior to conducting any physical
11 soil classification and groundwater investigation
12 activities required by statute or regulation, the owner
13 or operator shall submit to the Agency for the Agency's
14 approval or modification a physical soil classification
15 and groundwater investigation budget which includes, but
16 is not limited to, an accounting of all costs associated
17 with the implementation and completion of the physical
18 soil classification and groundwater investigation plan.

19 (3) Within 30 days of completion of the physical
20 soil classification or groundwater investigation report
21 the owner or operator shall submit to the Agency:

22 (A) all physical soil classification and
23 groundwater investigation results; and

24 (B) a certification by a Licensed Professional
25 Engineer or Licensed Professional Geologist of the
26 site's classification as High Priority, Low
27 Priority, or No Further Action in accordance with
28 subsection (b) of this Section as High Priority, Low
29 Priority, or No Further Action.

30 (b) Site Classification.

31 (1) After evaluation of the physical soil
32 classification and groundwater investigation results,
33 when required, and general site information, the site
34 shall be classified as "No Further Action", "Low

1 Priority", or "High Priority" based on the requirements
2 of this Section. Site classification shall be determined
3 by a Licensed Professional Engineer or Licensed
4 Professional Geologist in accordance with the
5 requirements of this Title and the Licensed Professional
6 Engineer or Licensed Professional Geologist shall submit
7 a certification to the Agency of the site classification.
8 The Agency has the authority to audit site
9 classifications and reject or modify any site
10 classification inconsistent with the requirements of this
11 Title.

12 (2) Sites shall be classified as No Further Action
13 if the criteria in subparagraph (A) are satisfied:

14 (A)(i) The site is located in an area
15 designated D, E, F and G on the Illinois Geological
16 Survey Circular (1984) titled "Potential for
17 Contamination of Shallow Aquifers in Illinois," by
18 Berg, Richard C., et al.;

19 (ii) A site evaluation under the direction of
20 a Licensed Professional Engineer or Licensed
21 Professional Geologist verifies the physical soil
22 classification conditions are consistent with those
23 indicated on the Illinois Geological Survey Circular
24 (1984) titled "Potential for Contamination of
25 Shallow Aquifers in Illinois," by Berg, Richard C.,
26 et al.; and

27 (iii) The conditions identified in subsections
28 (b) (3)(B), (C), (D), and (E) do not exist.

29 (B) Groundwater investigation monitoring may
30 be required to confirm that a site meets the
31 criteria of a No Further Action site. The Board
32 shall adopt rules setting forth the criteria under
33 which the Agency may exercise its discretionary
34 authority to require investigations and the minimum

1 field requirements for conducting investigations.

2 (3) Sites shall be classified as High Priority if
3 any of the following are met:

4 (A) The site is located in an area designated
5 A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4,
6 or C5 on the Illinois Geological Survey Circular
7 (1984) titled "Potential for Contamination of
8 Shallow Aquifers in Illinois," by Berg, Richard C.,
9 et al.; a site evaluation under the direction of a
10 Licensed Professional Engineer or Licensed
11 Professional Geologist verifies the physical soil
12 classifications conditions are consistent with those
13 indicated on the Illinois Geological Survey Circular
14 (1984) entitled "Potential for Contamination of
15 Shallow Aquifers in Illinois," by Berg, Richard C.,
16 et al.; and the results of the physical soil
17 classification and groundwater investigation
18 indicate that an applicable indicator contaminant
19 groundwater quality standard or groundwater
20 objective has been exceeded at the property boundary
21 line or 200 feet from the excavation, whichever is
22 less as a consequence of the underground storage
23 tank release.

24 (B) The underground storage tank is within the
25 minimum or maximum setback zone of a potable water
26 supply well or regulated recharge area of a potable
27 water supply well.

28 (C) There is evidence that, through natural or
29 manmade pathways, migration of petroleum or vapors
30 threaten human health or human safety or may cause
31 explosions in basements, crawl spaces, utility
32 conduits, storm or sanitary sewers, vaults or other
33 confined spaces.

34 (D) Class III special resource groundwater

1 exists within 200 feet of the excavation.

2 (E) A surface water body is adversely affected
3 by the presence of a visible sheen or free product
4 layer as the result of an underground storage tank
5 release.

6 (4) Sites shall be classified as Low Priority if
7 all of the following are met:

8 (A) The site does not meet any of the criteria
9 for classification as a High Priority Site.

10 (B) (i) The site is located in area designated
11 A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4,
12 C5 on the Illinois Geological Survey Circular (1984)
13 entitled "Potential for Contamination of Shallow
14 Aquifers in Illinois," by Berg, Richard C., et al.;
15 and

16 (ii) a site evaluation under the direction of
17 a Licensed Professional Engineer or Licensed
18 Professional Geologist verifies the physical soil
19 classification conditions are consistent with those
20 indicated on the Illinois Geological Survey Circular
21 (1984) titled "Potential for Contamination of
22 Shallow Aquifers in Illinois," by Berg, Richard C.,
23 et al.; and

24 (iii) the results of the physical soil
25 classification and groundwater investigation do not
26 indicate an applicable indicator contaminant
27 groundwater quality standard or groundwater
28 objective has been exceeded at the property boundary
29 line or 200 feet from the underground storage tank,
30 whichever is less.

31 (5) In the event the results of the physical soil
32 classification and any required groundwater investigation
33 reveal that the actual site geologic characteristics are
34 different than those indicated by the Illinois Geological

1 Survey Circular (1984) titled "Potential for
2 Contamination of Shallow Aquifers in Illinois" by Berg,
3 Richard C., et al., classification of the site shall be
4 determined using the actual site geologic
5 characteristics.

6 (6) For purposes of physical soil classification,
7 the Board is authorized to prescribe by regulation
8 alternatives to use of the Illinois Geological Survey
9 Circular (1984) titled "Potential for Contamination of
10 Shallow Aquifers in Illinois" by Berg, Richard C., et al.

11 (c) Corrective Action.

12 (1) High Priority Site.

13 (A) Prior to performance of any corrective
14 action, beyond that required by Section 57.6 and
15 subsection (a) of Section 57.7 of this Act, the
16 owner or operator shall prepare and submit to the
17 Agency for the Agency's approval or modification a
18 corrective action plan designed to mitigate any
19 threat to human health, human safety or the
20 environment resulting from the underground storage
21 tank release.

22 (B) If the owner or operator intends to seek
23 payment from the Fund, prior to performance of any
24 corrective action beyond that required by Section
25 57.6 and subsection (a) of Section 57.7, the owner
26 or operator shall submit to the Agency for the
27 Agency's approval or modification a corrective
28 action plan budget which includes, but is not
29 limited to, an accounting of all costs associated
30 with the implementation and completion of the
31 corrective action plan.

32 (C) The corrective action plan shall do all of
33 the following:

34 (i) Provide that applicable indicator

1 contaminant groundwater quality standards or
2 groundwater objectives will not be exceeded in
3 groundwater at the property boundary line or
4 200 feet from the excavation, whichever is
5 less, or other level if approved by the Agency,
6 for any contaminant identified in the
7 groundwater investigation after complete
8 performance of the corrective action plan.

9 (ii) Provide that Class III special
10 resource groundwater quality standards for
11 Class III special resource groundwater within
12 200 feet of the excavation will not be exceeded
13 as a result of the underground storage tank
14 release for any indicator contaminant
15 identified in the groundwater investigation
16 after complete performance of the corrective
17 action plan.

18 (iii) Remediate threats due to the
19 presence or migration, through natural or
20 manmade pathways, of petroleum in
21 concentrations sufficient to harm human health
22 or human safety or to cause explosions in
23 basements, crawl spaces, utility conduits,
24 storm or sanitary sewers, vaults or other
25 confined spaces.

26 (iv) Remediate threats to a potable water
27 supply.

28 (v) Remediate threats to a surface water
29 body.

30 (D) Within 30 days of completion of the
31 corrective action, the owner or operator shall
32 submit to the Agency such a completion report that
33 includes a description of the corrective action plan
34 and a description of the corrective action work

1 performed and all analytical or sampling results
2 derived from performance of the corrective action
3 plan.

4 (E) The Agency shall issue to the owner or
5 operator a no further remediation letter in
6 accordance with Section 57.10 if all of the
7 following are met:

- 8 (i) The corrective action completion
9 report demonstrates that: (a) applicable
10 indicator contaminant groundwater quality
11 standards or groundwater objectives are not
12 exceeded at the property boundary line or 200
13 feet from the excavation, whichever is less, as
14 a result of the underground storage tank
15 release for any indicator contaminant
16 identified in the groundwater investigation;
17 (b) Class III special use resource groundwater
18 quality standards, for Class III special use
19 resource groundwater within 200 feet of the
20 underground storage tank, are not exceeded as a
21 result of the underground storage tank release
22 for any contaminant identified in the
23 groundwater investigation; (c) the underground
24 storage tank release does not threaten human
25 health or human safety due to the presence or
26 migration, through natural or manmade pathways,
27 of petroleum or hazardous substances in
28 concentrations sufficient to harm human health
29 or human safety or to cause explosions in
30 basements, crawl spaces, utility conduits,
31 storm or sanitary sewers, vaults or other
32 confined spaces; (d) the underground storage
33 tank release does not threaten any surface
34 water body; and (e) the underground storage

1 tank release does not threaten any potable
2 water supply.

3 (ii) The owner or operator submits to the
4 Agency a certification from a Licensed
5 Professional Engineer or Licensed Professional
6 Geologist that the work described in the
7 approved corrective action plan has been
8 completed and that the information presented in
9 the corrective action completion report is
10 accurate and complete.

11 (2) Low Priority Site.

12 (A) Corrective action at a low priority site
13 must include groundwater monitoring consistent with
14 part (B) of this paragraph (2).

15 (B) Prior to implementation of groundwater
16 monitoring, the owner or operator shall prepare and
17 submit to the Agency a groundwater monitoring plan
18 and, if the owner or operator intends to seek
19 payment under this Title, an associated budget which
20 includes, at a minimum, all of the following:

21 (i) Placement of groundwater monitoring
22 wells at the property line, or at 200 feet from
23 the excavation which ever is closer, designed
24 to provide the greatest likelihood of detecting
25 migration of groundwater contamination.

26 (ii) Quarterly groundwater sampling for a
27 period of one year, semi-annual sampling for
28 the second year and annual groundwater sampling
29 for one subsequent year for all indicator
30 contaminants identified during the groundwater
31 investigation.

32 (iii) The annual submittal to the Agency
33 of a summary of groundwater sampling results.

34 (C) If at any time groundwater sampling

1 results indicate a confirmed exceedence of
2 applicable indicator contaminant groundwater quality
3 standards or groundwater objectives as a result of
4 the underground storage tank release, the site may
5 be reclassified as a High Priority Site by the
6 Agency at any time before the Agency's final
7 approval of a Low Priority groundwater monitoring
8 completion report. Agency review and approval shall
9 be in accordance with paragraph (4) of subsection
10 (c) of this Section. If the owner or operator elects
11 to appeal an Agency action to disapprove, modify, or
12 reject by operation of law a Low Priority
13 groundwater monitoring completion report, the Agency
14 shall indicate to the Board in conjunction with such
15 appeal whether it intends to reclassify the site as
16 High Priority. If a site is reclassified as a High
17 Priority Site, the owner or operator shall submit a
18 corrective action plan and budget to the Agency
19 within 120 days of the confirmed exceedence and
20 shall initiate compliance with all corrective action
21 requirements for a High Priority Site.

22 (D) If, throughout the implementation of the
23 groundwater monitoring plan, the groundwater
24 sampling results do not confirm an exceedence of
25 applicable indicator contaminant groundwater quality
26 standards or groundwater objectives as a result of
27 the underground storage tank release, the owner or
28 operator shall submit to the Agency a certification
29 of a Licensed Professional Engineer or Licensed
30 Professional Geologist so stating.

31 (E) Unless the Agency takes action under
32 subsection (b)(2)(C) to reclassify a site as high
33 priority, upon receipt of a certification by a
34 Licensed Professional Engineer or Licensed

1 Professional Geologist submitted pursuant to
2 paragraph (2) of subsection (c) of this Section, the
3 Agency shall issue to the owner or operator a no
4 further remediation letter in accordance with
5 Section 57.10.

6 (3) No Further Action Site.

7 (A) No Further Action sites require no
8 remediation beyond that required in Section 57.6 and
9 subsection (a) of this Section if the owner or
10 operator has submitted to the Agency a certification
11 by a Licensed Professional Engineer or License
12 Professional Geologist that the site meets all of
13 the criteria for classification as No Further Action
14 in subsection (b) of this Section.

15 (B) Unless the Agency takes action to reject
16 or modify a site classification under subsection (b)
17 of this Section or the site classification is
18 rejected by operation of law under item (4)(B) of
19 subsection (c) of this Section, upon receipt of a
20 certification by a Licensed Professional Engineer or
21 Licensed Professional Geologist submitted pursuant
22 to part (A) of paragraph (3) of subsection (c) of
23 this Section, the Agency shall issue to the owner or
24 operator a no further remediation letter in
25 accordance with Section 57.10.

26 (4) Agency review and approval.

27 (A) Agency approval of any plan and associated
28 budget, as described in this item (4), shall be
29 considered final approval for purposes of seeking
30 and obtaining payment from the Underground Storage
31 Tank Fund if the costs associated with the
32 completion of any such plan are less than or equal
33 to the amounts approved in such budget.

34 (B) In the event the Agency fails to approve,

1 disapprove, or modify any plan or report submitted
2 pursuant to this Title in writing within 120 days of
3 the receipt by the Agency, the plan or report shall
4 be considered to be rejected by operation of law for
5 purposes of this Title and rejected for purposes of
6 payment from the Leaking Underground Storage Tank
7 Fund.

8 (i) For purposes of those plans as
9 identified in subparagraph (E) of this
10 subsection (c)(4), the Agency's review may be
11 an audit procedure. Such review or audit shall
12 be consistent with the procedure for such
13 review or audit as promulgated by the Board
14 under item (7) of subsection (b) of Section
15 57.14. The Agency has the authority to
16 establish an auditing program to verify
17 compliance of such plans with the provisions of
18 this Title.

19 (ii) For purposes of those plans
20 submitted pursuant to Part (E) (iii) of this
21 paragraph (4) for which payment from the Fund
22 is not being sought, the Agency need not take
23 action on such plan until 120 days after it
24 receives the corrective action completion
25 report required under Section 57(c)(1)(D). In
26 the event the Agency approved the plan, it
27 shall proceed under the provisions of Section
28 57(c)(4).

29 (C) In approving any plan submitted pursuant
30 to Part (E) of this paragraph (4), the Agency shall
31 determine, by a procedure promulgated by the Board
32 under item (7) of subsection (b) of Section 57.14,
33 that the costs associated with the plan are
34 reasonable, will be incurred in the performance of

1 corrective action, and will not be used for
2 corrective action activities in excess of those
3 required to meet the minimum requirements of this
4 title.

5 (D) For any plan or report received after the
6 effective date of this amendatory Act of 1993, any
7 action by the Agency to disapprove or modify a plan
8 submitted pursuant to this Title shall be provided
9 to the owner or operator in writing within 120 days
10 of the receipt by the Agency or, in the case of a
11 corrective action plan for which payment is not
12 being sought, within 120 days of receipt of the
13 corrective action completion report, and shall be
14 accompanied by:

15 (i) an explanation of the Sections of
16 this Act which may be violated if the plans
17 were approved;

18 (ii) an explanation of the provisions of
19 the regulations, promulgated under this Act,
20 which may be violated if the plan were
21 approved;

22 (iii) an explanation of the specific type
23 of information, if any, which the Agency deems
24 the applicant did not provide the Agency; and

25 (iv) a statement of specific reasons why
26 the Act and the regulations might not be met if
27 the plan were approved.

28 Any action by the Agency to disapprove or
29 modify a plan or report or the rejection of any plan
30 or report by operation of law shall be subject to
31 appeal to the Board in accordance with the
32 procedures of Section 40. If the owner or operator
33 elects to incorporate modifications required by the
34 Agency rather than appeal, an amended plan shall be

1 submitted to the Agency within 35 days of receipt of
2 the Agency's written notification.

3 (E) For purposes of this Title, the term
4 "plan" shall include:

5 (i) Any physical soil classification and
6 groundwater investigation plan submitted
7 pursuant to item (1)(A) of subsection (a) of
8 this Section, or budget under item (2) of
9 subsection (a) of this Section;

10 (ii) Any groundwater monitoring plan or
11 budget submitted pursuant to subsection
12 (c)(2)(B) of this Section;

13 (iii) Any corrective action plan
14 submitted pursuant to subsection (c)(1)(A) of
15 this Section; or

16 (iv) Any corrective action plan budget
17 submitted pursuant to subsection (c)(1)(B) of
18 this Section.

19 (d) For purposes of this Title, the term "indicator
20 contaminant" shall mean, unless and until the Board
21 promulgates regulations to the contrary, the following: (i)
22 if an underground storage tank contains gasoline, the
23 indicator parameter shall be BTEX and Benzene; (ii) if the
24 tank contained petroleum products consisting of middle
25 distillate or heavy ends, then the indicator parameter shall
26 be determined by a scan of PNA's taken from the location
27 where contamination is most likely to be present; and (iii)
28 if the tank contained used oil, then the indicator
29 contaminant shall be those chemical constituents which
30 indicate the type of petroleum stored in an underground
31 storage tank. All references in this Title to groundwater
32 objectives shall mean Class I groundwater standards or
33 objectives as applicable.

34 (e) (1) Notwithstanding the provisions of this Section,

1 an owner or operator may proceed to conduct physical soil
2 classification, groundwater investigation, site
3 classification or other corrective action prior to the
4 submittal or approval of an otherwise required plan. If
5 the owner or operator elects to so proceed, an applicable
6 plan shall be filed with the Agency at any time. Such
7 plan shall detail the steps taken to determine the type
8 of corrective action which was necessary at the site
9 along with the corrective action taken or to be taken, in
10 addition to costs associated with activities to date and
11 anticipated costs.

12 (2) Upon receipt of a plan submitted after
13 activities have commenced at a site, the Agency shall
14 proceed to review in the same manner as required under
15 this Title. In the event the Agency disapproves all or
16 part of the costs, the owner or operator may appeal such
17 decision to the Board. The owner or operator shall not
18 be eligible to be reimbursed for such disapproved costs
19 unless and until the Board determines that such costs
20 were eligible for payment.

21 (Source: P.A. 88-496; 88-668, eff. 9-16-94; 89-428, eff.
22 1-1-96; 89-457, eff. 5-22-96.)

23 (415 ILCS 5/57.8)

24 Sec. 57.8. Underground Storage Tank Fund; payment;
25 options for State payment; deferred correction election to
26 commence corrective action upon availability of funds. If an
27 owner or operator is eligible to access the Underground
28 Storage Tank Fund pursuant to an Office of State Fire Marshal
29 eligibility/deductible final determination letter issued in
30 accordance with Section 57.9, the owner or operator may
31 submit a complete application for final or partial payment to
32 the Agency for activities taken in response to a confirmed
33 release. An owner or operator may submit a request for

1 partial or final payment regarding a site no more frequently
2 than once every 90 days.

3 (a) Payment after completion of corrective action
4 measures. The owner or operator may submit an application for
5 payment for activities performed at a site after completion
6 of the requirements of Sections 57.6 and 57.7, or after
7 completion of any other required activities at the
8 underground storage tank site.

9 (1) In the case of any approved plan and budget for
10 which payment is being sought, the Agency shall make a
11 payment determination within 120 days of receipt of the
12 application. Such determination shall be considered a
13 final decision. The Agency's review shall be limited to
14 generally accepted auditing and accounting practices. In
15 no case shall the Agency conduct additional review of any
16 plan which was completed within the budget, beyond
17 auditing for adherence to the corrective action measures
18 in the proposal. If the Agency fails to approve the
19 payment application within 120 days, such application
20 shall be deemed approved by operation of law and the
21 Agency shall proceed to reimburse the owner or operator
22 the amount requested in the payment application.
23 However, in no event shall the Agency reimburse the owner
24 or operator an amount greater than the amount approved in
25 the plan.

26 (2) If sufficient funds are available in the
27 Underground Storage Tank Fund, the Agency shall, within
28 60 days, forward to the Office of the State Comptroller a
29 voucher in the amount approved under the payment
30 application.

31 (3) In the case of insufficient funds, the Agency
32 shall form a priority list for payment and shall notify
33 persons in such priority list monthly of the availability
34 of funds and when payment shall be made. Payment shall

1 be made to the owner or operator at such time as
2 sufficient funds become available for the costs
3 associated with corrective action and costs expended for
4 activities performed where no proposal is required, if
5 applicable. Such priority list shall be available to any
6 owner or operator upon request. Priority for payment
7 shall be determined by the date the Agency receives a
8 complete request for partial or final payment. Upon
9 receipt of notification from the Agency that the
10 requirements of this Title have been met, the Comptroller
11 shall make payment to the owner or operator of the amount
12 approved by the Agency, if sufficient money exists in the
13 Fund. If there is insufficient money in the Fund, then
14 payment shall not be made. If the owner or operator
15 appeals a final Agency payment determination and it is
16 determined that the owner or operator is eligible for
17 payment or additional payment, the priority date for the
18 payment or additional payment shall be the same as the
19 priority date assigned to the original request for
20 partial or final payment.

21 (4) Any deductible, as determined pursuant to the
22 Office of the State Fire Marshal's eligibility and
23 deductibility final determination in accordance with
24 Section 57.9, shall be subtracted from any payment
25 invoice paid to an eligible owner or operator. Only one
26 deductible shall apply per underground storage tank site.

27 (5) In the event that costs are or will be incurred
28 in addition to those approved by the Agency, or after
29 payment, the owner or operator may submit successive
30 plans containing amended budgets. The requirements of
31 Section 57.7 shall apply to any amended plans.

32 (6) For purposes of this Section, a complete
33 application shall consist of:

34 (A) A certification from a Licensed

1 Professional Engineer or Licensed Professional
2 Geologist as required under this Title and
3 acknowledged by the owner or operator.

4 (B) A statement of the amount approved in the
5 plan and the amount actually sought for payment
6 along with a certified statement that the amount so
7 sought shall be expended in conformance with the
8 approved budget.

9 (C) A copy of the Office of the State Fire
10 Marshal's eligibility and deductibility
11 determination.

12 (D) Proof that approval of the payment
13 requested will not result in the limitations set
14 forth in subsection (g) of this Section being
15 exceeded.

16 (E) A federal taxpayer identification number
17 and legal status disclosure certification on a form
18 prescribed and provided by the Agency.

19 (b) Commencement of corrective action upon availability
20 of funds. The Board shall adopt regulations setting forth
21 procedures based on risk to human health or the environment
22 under which the owner or operator who has received approval
23 for any budget plan submitted pursuant to Section 57.7, and
24 who is eligible for payment from the Underground Storage Tank
25 Fund pursuant to an Office of the State Fire Marshal
26 eligibility and deductibility determination, may elect to
27 defer site classification, low priority groundwater
28 monitoring, or remediation activities until funds are
29 available in an amount equal to the amount approved in the
30 budget plan. The regulations shall establish criteria based
31 on risk to human health or the environment to be used for
32 determining on a site-by-site basis whether deferral is
33 appropriate. The regulations also shall establish the
34 minimum investigatory requirements for determining whether

1 the risk based criteria are present at a site considering
 2 deferral and procedures for the notification of owners or
 3 operators of insufficient funds, Agency review of request for
 4 deferral, notification of Agency final decisions, returning
 5 deferred sites to active status, and earmarking of funds for
 6 payment.

7 (c) When the owner or operator requests indemnification
 8 for payment of costs incurred as a result of a release of
 9 petroleum from an underground storage tank, if the owner or
 10 operator has satisfied the requirements of subsection (a) of
 11 this Section, the Agency shall forward a copy of the request
 12 to the Attorney General. The Attorney General shall review
 13 and approve the request for indemnification if:

14 (1) there is a legally enforceable judgment entered
 15 against the owner or operator and such judgment was
 16 entered due to harm caused by a release of petroleum from
 17 an underground storage tank and such judgment was not
 18 entered as a result of fraud; or

19 (2) a settlement with a third party due to a
 20 release of petroleum from an underground storage tank is
 21 reasonable.

22 (d) Notwithstanding any other provision of this Title,
 23 the Agency shall not approve payment to an owner or operator
 24 from the Fund for costs of corrective action or
 25 indemnification incurred during a calendar year in excess of
 26 the following aggregate amounts based on the number of
 27 petroleum underground storage tanks owned or operated by such
 28 owner or operator in Illinois.

Amount	Number of Tanks
\$1,000,000.....	fewer than 101
\$2,000,000.....	101 or more

32 (1) Costs incurred in excess of the aggregate
 33 amounts set forth in paragraph (1) of this subsection
 34 shall not be eligible for payment in subsequent years.

1 (2) For purposes of this subsection, requests
 2 submitted by any of the agencies, departments, boards,
 3 committees or commissions of the State of Illinois shall
 4 be acted upon as claims from a single owner or operator.

5 (3) For purposes of this subsection, owner or
 6 operator includes (i) any subsidiary, parent, or joint
 7 stock company of the owner or operator and (ii) any
 8 company owned by any parent, subsidiary, or joint stock
 9 company of the owner or operator.

10 (e) Costs of corrective action or indemnification
 11 incurred by an owner or operator which have been paid to an
 12 owner or operator under a policy of insurance, another
 13 written agreement, or a court order are not eligible for
 14 payment under this Section. An owner or operator who
 15 receives payment under a policy of insurance, another written
 16 agreement, or a court order shall reimburse the State to the
 17 extent such payment covers costs for which payment was
 18 received from the Fund. Any monies received by the State
 19 under this subsection (e) shall be deposited into the Fund.

20 (f) Until the Board adopts regulations pursuant to
 21 Section 57.14, handling charges are eligible for payment only
 22 if they are equal to or less than the amount determined by
 23 the following table:

Subcontract or field	Eligible Handling Charges
Purchase Cost	as a Percentage of Cost
\$0 - \$5,000.....	12%
\$5,001 - \$15,000.....	\$600+10% of amt. over \$5,000
\$15,001 - \$50,000.....	\$1600+8% of amt. over \$15,000
\$50,001 - \$100,000.....	\$4400+5% of amt. over \$50,000
\$100,001 - \$1,000,000.....	\$6900+2% of amt. over \$100,000

31 (g) The Agency shall not approve any payment from the
 32 Fund to pay an owner or operator:

33 (1) for costs of corrective action incurred by such
 34 owner or operator in an amount in excess of \$1,000,000

1 per occurrence; and

2 (2) for costs of indemnification of such owner or
3 operator in an amount in excess of \$1,000,000 per
4 occurrence.

5 (h) Payment of any amount from the Fund for corrective
6 action or indemnification shall be subject to the State
7 acquiring by subrogation the rights of any owner, operator,
8 or other person to recover the costs of corrective action or
9 indemnification for which the Fund has compensated such
10 owner, operator, or person from the person responsible or
11 liable for the release.

12 (i) If the Agency refuses to pay or authorizes only a
13 partial payment, the affected owner or operator may petition
14 the Board for a hearing in the manner provided for the review
15 of permit decisions in Section 40 of this Act.

16 (j) Costs of corrective action or indemnification
17 incurred by an owner or operator prior to July 28, 1989,
18 shall not be eligible for payment or reimbursement under this
19 Section.

20 (k) The Agency shall not pay costs of corrective action
21 or indemnification incurred before providing notification of
22 the release of petroleum in accordance with the provisions of
23 this Title.

24 (l) Corrective action does not include legal defense
25 costs. Legal defense costs include legal costs for seeking
26 payment under this Title unless the owner or operator
27 prevails before the Board in which case the Board may
28 authorize payment of legal fees.

29 (m) The Agency may apportion payment of costs for plans
30 submitted under Section 57.7(c)(4)(E)(iii) if:

31 (1) the owner or operator was deemed eligible to
32 access the Fund for payment of corrective action costs
33 for some, but not all, of the underground storage tanks
34 at the site; and

1 (2) the owner or operator failed to justify all
2 costs attributable to each underground storage tank at
3 the site.

4 (Source: P.A. 91-357, eff. 7-29-99.)

5 (415 ILCS 5/57.10)

6 Sec. 57.10. Professional Engineer or Professional
7 Geologist certification; presumptions against liability.

8 (a) Within 120 days of the Agency's receipt of a No
9 Further Action site classification report, a Low Priority
10 groundwater monitoring report, or a High Priority corrective
11 action completion report, the Agency shall issue to the owner
12 or operator a "no further remediation letter" unless the
13 Agency has requested a modification, issued a rejection under
14 subsection (d) of this Section, or the report has been
15 rejected by operation of law.

16 (b) By certifying such a statement, a Licensed
17 Professional Engineer or Licensed Professional Geologist
18 shall in no way be liable thereon, unless the engineer or
19 geologist gave such certification despite his or her actual
20 knowledge that the performed measures were not in compliance
21 with applicable statutory or regulatory requirements or any
22 plan submitted to the Agency.

23 (c) The Agency's issuance of a no further remediation
24 letter shall signify, based on the certification of the
25 Licensed Professional Engineer or Licensed Professional
26 Geologist, that:

27 (1) all statutory and regulatory corrective
28 action requirements applicable to the occurrence have
29 been complied with;

30 (2) all corrective action concerning the
31 remediation of the occurrence has been completed; and

32 (3) no further corrective action concerning the
33 occurrence is necessary for the protection of human

1 health, safety and the environment.

2 (d) The no further remediation letter issued under this
3 Section shall apply in favor of the following parties:

4 (1) The owner or operator to whom the letter was
5 issued.

6 (2) Any parent corporation or subsidiary of such
7 owner or operator.

8 (3) Any co-owner or co-operator, either by joint
9 tenancy, right-of-survivorship, or any other party
10 sharing a legal relationship with the owner or operator
11 to whom the letter is issued.

12 (4) Any holder of a beneficial interest of a land
13 trust or inter vivos trust whether revocable or
14 irrevocable.

15 (5) Any mortgagee or trustee of a deed of trust of
16 such owner or operator.

17 (6) Any successor-in-interest of such owner or
18 operator.

19 (7) Any transferee of such owner or operator
20 whether the transfer was by sale, bankruptcy proceeding,
21 partition, dissolution of marriage, settlement or
22 adjudication of any civil action, charitable gift, or
23 bequest.

24 (8) Any heir or devisee or such owner or operator.

25 (e) If the Agency notifies the owner or operator that
26 the "no further remediation" letter has been rejected, the
27 grounds for such rejection shall be described in the notice.
28 Such a decision shall be a final determination which may be
29 appealed by the owner or operator.

30 (f) The Board shall adopt rules setting forth the
31 criteria under which the Agency may require an owner or
32 operator to conduct further investigation or remediation
33 related to a release for which a no further remediation
34 letter has been issued.

1 (g) Holders of security interests in sites subject to
2 the requirements of this Title XVI shall be entitled to the
3 same protections and subject to the same responsibilities
4 provided under general regulations promulgated under Subtitle
5 I of the Hazardous and Solid Waste Amendments of 1984 (P.L.
6 98-616) of the Resource Conservation and Recovery Act of 1976
7 (P.L. 94-580).
8 (Source: P.A. 88-496; 89-428, eff. 1-1-96; 89-457, eff.
9 5-22-96.)

10 (415 ILCS 5/58.2)

11 Sec. 58.2. Definitions. The following words and phrases
12 when used in this Title shall have the meanings given to them
13 in this Section unless the context clearly indicates
14 otherwise:

15 "Agrichemical facility" means a site on which
16 agricultural pesticides are stored or handled, or both, in
17 preparation for end use, or distributed. The term does not
18 include basic manufacturing facility sites.

19 "ASTM" means the American Society for Testing and
20 Materials.

21 "Area background" means concentrations of regulated
22 substances that are consistently present in the environment
23 in the vicinity of a site that are the result of natural
24 conditions or human activities, and not the result solely of
25 releases at the site.

26 "Brownfields site" or "brownfields" means a parcel of
27 real property, or a portion of the parcel, that has actual or
28 perceived contamination and an active potential for
29 redevelopment.

30 "Class I groundwater" means groundwater that meets the
31 Class I Potable Resource groundwater criteria set forth in
32 the Board rules adopted under the Illinois Groundwater
33 Protection Act.

1 "Class III groundwater" means groundwater that meets the
2 Class III Special Resource Groundwater criteria set forth in
3 the Board rules adopted under the Illinois Groundwater
4 Protection Act.

5 "Carcinogen" means a contaminant that is classified as a
6 Category A1 or A2 Carcinogen by the American Conference of
7 Governmental Industrial Hygienists; or a Category 1 or 2A/2B
8 Carcinogen by the World Health Organizations International
9 Agency for Research on Cancer; or a "Human Carcinogen" or
10 "Anticipated Human Carcinogen" by the United States
11 Department of Health and Human Service National Toxicological
12 Program; or a Category A or B1/B2 Carcinogen by the United
13 States Environmental Protection Agency in Integrated Risk
14 Information System or a Final Rule issued in a Federal
15 Register notice by the USEPA as of the effective date of this
16 amendatory Act of 1995.

17 "Licensed Professional Engineer" (LPE) means a person,
18 corporation, or partnership licensed under the laws of this
19 State to practice professional engineering.

20 "Licensed Professional Geologist" means a person licensed
21 under the laws of the State of Illinois to practice as a
22 professional geologist.

23 "RELPEG" means a Licensed Professional Engineer or a
24 Licensed Professional Geologist engaged in review and
25 evaluation under this Title.

26 "Man-made pathway" means constructed routes that may
27 allow for the transport of regulated substances including,
28 but not limited to, sewers, utility lines, utility vaults,
29 building foundations, basements, crawl spaces, drainage
30 ditches, or previously excavated and filled areas.

31 "Municipality" means an incorporated city, village, or
32 town in this State. "Municipality" does not mean a township,
33 town when that term is used as the equivalent of a township,
34 incorporated town that has superseded a civil township,

1 county, or school district, park district, sanitary district,
2 or similar governmental district.

3 "Natural pathway" means natural routes for the transport
4 of regulated substances including, but not limited to, soil,
5 groundwater, sand seams and lenses, and gravel seams and
6 lenses.

7 "Person" means individual, trust, firm, joint stock
8 company, joint venture, consortium, commercial entity,
9 corporation (including a government corporation),
10 partnership, association, State, municipality, commission,
11 political subdivision of a State, or any interstate body
12 including the United States Government and each department,
13 agency, and instrumentality of the United States.

14 "Regulated substance" means any hazardous substance as
15 defined under Section 101(14) of the Comprehensive
16 Environmental Response, Compensation, and Liability Act of
17 1980 (P.L. 96-510) and petroleum products including crude oil
18 or any fraction thereof, natural gas, natural gas liquids,
19 liquefied natural gas, or synthetic gas usable for fuel (or
20 mixtures of natural gas and such synthetic gas).

21 "Remedial action" means activities associated with
22 compliance with the provisions of Sections 58.6 and 58.7.

23 "Remediation Applicant" (RA) means any person seeking to
24 perform or performing investigative or remedial activities
25 under this Title, including the owner or operator of the site
26 or persons authorized by law or consent to act on behalf of
27 or in lieu of the owner or operator of the site.

28 "Remediation costs" means reasonable costs paid for
29 investigating and remediating regulated substances of concern
30 consistent with the remedy selected for a site. For purposes
31 of Section 58.14, "remediation costs" shall not include costs
32 incurred prior to January 1, 1998, costs incurred after the
33 issuance of a No Further Remediation Letter under Section
34 58.10 of this Act, or costs incurred more than 12 months

1 prior to acceptance into the Site Remediation Program.

2 "Residential property" means any real property that is
3 used for habitation by individuals and other property uses
4 defined by Board rules such as education, health care, child
5 care and related uses.

6 "Site" means any single location, place, tract of land or
7 parcel of property, or portion thereof, including contiguous
8 property separated by a public right-of-way.

9 "Regulated substance of concern" means any contaminant
10 that is expected to be present at the site based upon past
11 and current land uses and associated releases that are known
12 to the Remediation Applicant based upon reasonable inquiry.

13 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96;
14 90-123, eff. 7-21-97.)

15 (415 ILCS 5/58.6)

16 Sec. 58.6. Remedial investigations and reports.

17 (a) Any RA who proceeds under this Title may elect to
18 seek review and approval for any of the remediation
19 objectives provided in Section 58.5 for any or all regulated
20 substances of concern. The RA shall conduct investigations
21 and remedial activities for regulated substances of concern
22 and prepare plans and reports in accordance with this Section
23 and rules adopted hereunder. The RA shall submit the plans
24 and reports for review and approval in accordance with
25 Section 58.7. All investigations, plans, and reports
26 conducted or prepared under this Section shall be under the
27 supervision of a Licensed Professional Engineer (LPE) or
28 Licensed Professional Geologist in accordance with the
29 requirements of this Title.

30 (b) (1) Site investigation and Site Investigation
31 Report. The RA shall conduct a site investigation to
32 determine the significant physical features of the site
33 and vicinity that may affect contaminant transport and

1 risk to human health, safety, and the environment and to
2 determine the nature, concentration, direction and rate
3 of movement, and extent of the contamination at the site.

4 (2) The RA shall compile the results of the
5 investigations into a Site Investigation Report. At a
6 minimum, the reports shall include the following, as
7 applicable:

8 (A) Executive summary;

9 (B) Site history;

10 (C) Site-specific sampling methods and
11 results;

12 (D) Documentation of field activities,
13 including quality assurance project plan;

14 (E) Interpretation of results; and

15 (F) Conclusions.

16 (c) Remediation Objectives Report.

17 (1) If a RA elects to determine remediation
18 objectives appropriate for the site using the Tier II or
19 Tier III procedures under subsection (d) of Section
20 58.5, the RA shall develop such remediation objectives
21 based on site-specific information. In support of such
22 remediation objectives, the RA shall prepare a
23 Remediation Objectives Report demonstrating how the
24 site-specific objectives were calculated or otherwise
25 determined.

26 (2) If a RA elects to determine remediation
27 objectives appropriate for the site using the area
28 background procedures under subsection (b) of Section
29 58.5, the RA shall develop such remediation objectives
30 based on site-specific literature review, sampling
31 protocol, or appropriate statistical methods in
32 accordance with Board rules. In support of such
33 remediation objectives, the RA shall prepare a
34 Remediation Objectives Report demonstrating how the area

1 background remediation objectives were determined.

2 (d) Remedial Action Plan. If the approved remediation
3 objectives for any regulated substance established under
4 Section 58.5 are less than the levels existing at the site
5 prior to any remedial action, the RA shall prepare a Remedial
6 Action Plan. The Remedial Action Plan shall describe the
7 selected remedy and evaluate its ability and effectiveness to
8 achieve the remediation objectives approved for the site. At
9 a minimum, the reports shall include the following, as
10 applicable:

- 11 (1) Executive summary;
- 12 (2) Statement of remediation objectives;
- 13 (3) Remedial technologies selected;
- 14 (4) Confirmation sampling plan;
- 15 (5) Current and projected future use of the
16 property; and
- 17 (6) Applicable preventive, engineering, and
18 institutional controls including long-term reliability,
19 operating, and maintenance plans, and monitoring
20 procedures.

21 (e) Remedial Action Completion Report.

22 (1) Upon completion of the Remedial Action Plan,
23 the RA shall prepare a Remedial Action Completion Report.
24 The report shall demonstrate whether the remedial action
25 was completed in accordance with the approved Remedial
26 Action Plan and whether the remediation objectives, as
27 well as any other requirements of the plan, have been
28 attained.

29 (2) If the approved remediation objectives for the
30 regulated substances of concern established under Section
31 58.5 are equal to or above the levels existing at the
32 site prior to any remedial action, notification and
33 documentation of such shall constitute the entire
34 Remedial Action Completion Report for purposes of this

1 Title.

2 (f) Ability to proceed. The RA may elect to prepare and
3 submit for review and approval any and all reports or plans
4 required under the provisions of this Section individually,
5 following completion of each such activity; concurrently,
6 following completion of all activities; or in any other
7 combination. In any event, the review and approval process
8 shall proceed in accordance with Section 58.7 and rules
9 adopted thereunder.

10 (g) Nothing in this Section shall prevent an RA from
11 implementing or conducting an interim or any other remedial
12 measure prior to election to proceed under Section 58.6.

13 (h) In accordance with Section 58.11, the Agency shall
14 propose and the Board shall adopt rules to carry out the
15 purposes of this Section.

16 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96.)

17 (415 ILCS 5/58.7)

18 Sec. 58.7. Review and approvals.

19 (a) Requirements. All plans and reports that are
20 submitted pursuant to this Title shall be submitted for
21 review or approval in accordance with this Section.

22 (b) Review and evaluation by the Agency.

23 (1) Except for sites excluded under subdivision (a)
24 (2) of Section 58.1, the Agency shall, subject to
25 available resources, agree to provide review and
26 evaluation services for activities carried out pursuant
27 to this Title for which the RA requested the services in
28 writing. As a condition for providing such services, the
29 Agency may require that the RA for a site:

30 (A) Conform with the procedures of this Title;

31 (B) Allow for or otherwise arrange site visits
32 or other site evaluation by the Agency when so
33 requested;

1 (C) Agree to perform the work plan as approved
2 under this Title;

3 (D) Agree to pay any reasonable costs incurred
4 and documented by the Agency in providing such
5 services;

6 (E) Make an advance partial payment to the
7 Agency for such anticipated services in an amount,
8 acceptable to the Agency, but not to exceed \$5,000
9 or one-half of the total anticipated costs of the
10 Agency, whichever sum is less; and

11 (F) Demonstrate, if necessary, authority to
12 act on behalf of or in lieu of the owner or
13 operator.

14 (2) Any moneys received by the State for costs
15 incurred by the Agency in performing review or evaluation
16 services for actions conducted pursuant to this Title
17 shall be deposited in the Hazardous Waste Fund.

18 (3) An RA requesting services under subdivision (b)
19 (1) of this Section may, at any time, notify the Agency,
20 in writing, that Agency services previously requested are
21 no longer wanted. Within 180 days after receipt of the
22 notice, the Agency shall provide the RA with a final
23 invoice for services provided until the date of such
24 notifications.

25 (4) The Agency may invoice or otherwise request or
26 demand payment from a RA for costs incurred by the Agency
27 in performing review or evaluation services for actions
28 by the RA at sites only if:

29 (A) The Agency has incurred costs in
30 performing response actions, other than review or
31 evaluation services, due to the failure of the RA to
32 take response action in accordance with a notice
33 issued pursuant to this Act;

34 (B) The RA has agreed in writing to the

1 payment of such costs;

2 (C) The RA has been ordered to pay such costs
3 by the Board or a court of competent jurisdiction
4 pursuant to this Act; or

5 (D) The RA has requested or has consented to
6 Agency review or evaluation services under
7 subdivision (b) (1) of this Section.

8 (5) The Agency may, subject to available resources,
9 agree to provide review and evaluation services for
10 response actions if there is a written agreement among
11 parties to a legal action or if a notice to perform a
12 response action has been issued by the Agency.

13 (c) Review and evaluation by a Licensed Professional
14 Engineer or Licensed Professional Geologist. A RA may elect
15 to contract with a Licensed Professional Engineer or Licensed
16 Professional Geologist who will perform review and evaluation
17 services on behalf of and under the direction of the Agency
18 relative to the site activities.

19 (1) Prior to entering into the contract with the
20 RELPEG Review---and--Evaluation--Licensed--Professional
21 Engineer-(REBPE), the RA shall notify the Agency of the
22 RELPEG REBPE to be selected. The Agency and the RA shall
23 discuss the potential terms of the contract.

24 (2) At a minimum, the contract with the RELPEG
25 REBPE shall provide that the RELPEG REBPE will submit
26 any reports directly to the Agency, will take his or her
27 directions for work assignments from the Agency, and will
28 perform the assigned work on behalf of the Agency.

29 (3) Reasonable costs incurred by the Agency shall
30 be paid by the RA directly to the Agency in accordance
31 with the terms of the review and evaluation services
32 agreement entered into under subdivision (b) (1) of
33 Section 58.7.

34 (4) In no event shall the RELPEG REBPE acting on

1 behalf of the Agency be an employee of the RA or the
2 owner or operator of the site or be an employee of any
3 other person the RA has contracted to provide services
4 relative to the site.

5 (d) Review and approval. All reviews required under
6 this Title shall be carried out by the Agency or a RELPEG
7 RELPE, both under the direction of a Licensed Professional
8 Engineer or Licensed Professional Geologist.

9 (1) All review activities conducted by the Agency
10 or a RELPEG RELPE shall be carried out in conformance
11 with this Title and rules promulgated under Section
12 58.11.

13 (2) Specific plans, reports, and activities which
14 the Agency or a RELPEG RELPE may review include:

15 (A) Site Investigation Reports and related
16 activities;

17 (B) Remediation Objectives Reports;

18 (C) Remedial Action Plans and related
19 activities; and

20 (D) Remedial Action Completion Reports and
21 related activities.

22 (3) Only the Agency shall have the authority to
23 approve, disapprove, or approve with conditions a plan
24 or report as a result of the review process including
25 those plans and reports reviewed by a RELPEG RELPE. If
26 the Agency disapproves a plan or report or approves a
27 plan or report with conditions, the written notification
28 required by subdivision (d) (4) of this Section shall
29 contain the following information, as applicable:

30 (A) An explanation of the Sections of this
31 Title that may be violated if the plan or report was
32 approved;

33 (B) An explanation of the provisions of the
34 rules promulgated under this Title that may be

1 violated if the plan or report was approved;

2 (C) An explanation of the specific type of
3 information, if any, that the Agency deems the
4 applicant did not provide the Agency;

5 (D) A statement of specific reasons why the
6 Title and regulations might not be met if the plan
7 or report were approved; and

8 (E) An explanation of the reasons for
9 conditions if conditions are required.

10 (4) Upon approving, disapproving, or approving with
11 conditions a plan or report, the Agency shall notify the
12 RA in writing of its decision. In the case of approval
13 or approval with conditions of a Remedial Action
14 Completion Report, the Agency shall prepare a No Further
15 Remediation Letter that meets the requirements of Section
16 58.10 and send a copy of the letter to the RA.

17 (5) All reviews undertaken by the Agency or a
18 RELPEG RELPE shall be completed and the decisions
19 communicated to the RA within 60 days of the request for
20 review or approval. The RA may waive the deadline upon a
21 request from the Agency. If the Agency disapproves or
22 approves with conditions a plan or report or fails to
23 issue a final decision within the 60 day period and the
24 RA has not agreed to a waiver of the deadline, the RA
25 may, within 35 days, file an appeal to the Board.
26 Appeals to the Board shall be in the manner provided for
27 the review of permit decisions in Section 40 of this Act.

28 (e) Standard of review. In making determinations, the
29 following factors, and additional factors as may be adopted
30 by the Board in accordance with Section 58.11, shall be
31 considered by the Agency when reviewing or approving plans,
32 reports, and related activities, or the RELPEG RELPE, when
33 reviewing plans, reports, and related activities:

34 (1) Site Investigation Reports and related

1 activities: Whether investigations have been conducted
2 and the results compiled in accordance with the
3 appropriate procedures and whether the interpretations
4 and conclusions reached are supported by the information
5 gathered. In making the determination, the following
6 factors shall be considered:

7 (A) The adequacy of the description of the
8 site and site characteristics that were used to
9 evaluate the site;

10 (B) The adequacy of the investigation of
11 potential pathways and risks to receptors identified
12 at the site; and

13 (C) The appropriateness of the sampling and
14 analysis used.

15 (2) Remediation Objectives Reports: Whether the
16 remediation objectives are consistent with the
17 requirements of the applicable method for selecting or
18 determining remediation objectives under Section 58.5.
19 In making the determination, the following factors shall
20 be considered:

21 (A) If the objectives were based on the
22 determination of area background levels under
23 subsection (b) of Section 58.5, whether the review
24 of current and historic conditions at or in the
25 immediate vicinity of the site has been thorough and
26 whether the site sampling and analysis has been
27 performed in a manner resulting in accurate
28 determinations;

29 (B) If the objectives were calculated on the
30 basis of predetermined equations using site specific
31 data, whether the calculations were accurately
32 performed and whether the site specific data reflect
33 actual site conditions; and

34 (C) If the objectives were determined using a

1 site specific risk assessment procedure, whether the
2 procedure used is nationally recognized and
3 accepted, whether the calculations were accurately
4 performed, and whether the site specific data
5 reflect actual site conditions.

6 (3) Remedial Action Plans and related activities:
7 Whether the plan will result in compliance with this
8 Title, and rules adopted under it and attainment of the
9 applicable remediation objectives. In making the
10 determination, the following factors shall be considered:

11 (A) The likelihood that the plan will result
12 in the attainment of the applicable remediation
13 objectives;

14 (B) Whether the activities proposed are
15 consistent with generally accepted engineering and
16 geologic practices; and

17 (C) The management of risk relative to any
18 remaining contamination, including but not limited
19 to, provisions for the long-term enforcement,
20 operation, and maintenance of institutional and
21 engineering controls, if relied on.

22 (4) Remedial Action Completion Reports and related
23 activities: Whether the remedial activities have been
24 completed in accordance with the approved Remedial Action
25 Plan and whether the applicable remediation objectives
26 have been attained.

27 (f) All plans and reports submitted for review shall
28 include a Licensed Professional Engineer's or Licensed
29 Professional Geologist's certification that all
30 investigations and remedial activities were carried out
31 under his or her direction and, to the best of his or her
32 knowledge and belief, the work described in the plan or
33 report has been completed in accordance with generally
34 accepted engineering and geologic practices, and the

1 information presented is accurate and complete.

2 (g) In accordance with Section 58.11, the Agency shall
3 propose and the Board shall adopt rules to carry out the
4 purposes of this Section. At a minimum, the rules shall
5 detail the types of services the Agency may provide in
6 response to requests under subdivision (b) (1) of this
7 Section and the recordkeeping it will utilize in documenting
8 to the RA the costs incurred by the Agency in providing such
9 services. Until the Board adopts the rules, the Agency may
10 continue to offer services of the type offered under
11 subsections (m) and (n) of Section 22.2 of this Act prior to
12 their repeal.

13 (h) Public participation.

14 (1) The Agency shall develop guidance to assist
15 RA's in the implementation of a community relations plan
16 to address activity at sites undergoing remedial action
17 pursuant to this Title.

18 (2) The RA may elect to enter into a services
19 agreement with the Agency for Agency assistance in
20 community outreach efforts.

21 (3) The Agency shall maintain a registry listing
22 those sites undergoing remedial action pursuant to this
23 Title.

24 (4) Notwithstanding any provisions of this Section,
25 the RA of a site undergoing remedial activity pursuant to
26 this Title may elect to initiate a community outreach
27 effort for the site.

28 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96;
29 89-626, eff. 8-9-96.)

30 (415 ILCS 5/58.11)

31 Sec. 58.11. Regulations and Site Remediation Advisory
32 Committee.

33 (a) There is hereby established an 11-member ~~a 10-member~~

1 Site Remediation Advisory Committee, which shall be appointed
2 by the Governor. The Committee shall include one member
3 recommended by the Illinois State Chamber of Commerce, one
4 member recommended by the Illinois Manufacturers'
5 Association, one member recommended by the Chemical Industry
6 Council of Illinois, one member recommended by the Consulting
7 Engineers Council of Illinois, one member recommended by the
8 Illinois Chapter of the American Institute of Professional
9 Geologists, one member recommended by the Illinois Bankers
10 Association, one member recommended by the Community Bankers
11 Association of Illinois, one member recommended by the
12 National Solid Waste Management Association, and 3 other
13 members as determined by the Governor. Members of the
14 Advisory Committee may organize themselves as they deem
15 necessary and shall serve without compensation.

16 (b) The Committee shall:

17 (1) Review, evaluate, and make recommendations
18 regarding State laws, rules, and procedures that relate
19 to site remediations.

20 (2) Review, evaluate, and make recommendations
21 regarding the review and approval activities of the
22 Agency and Review and Evaluation Licensed Professional
23 Engineers and Geologists.

24 (3) Make recommendations relating to the State's
25 efforts to implement this Title.

26 (4) Review, evaluate, and make recommendations
27 regarding the procedures for determining proportionate
28 degree of responsibility for a release of regulated
29 substances.

30 (5) Review, evaluate, and make recommendations
31 regarding the reports prepared by the Agency in
32 accordance with subsection (e) of this Section.

33 (c) Within 9 months after the effective date of this
34 amendatory Act of 1995, the Agency, after consideration of

1 the recommendations of the Committee, shall propose rules
2 prescribing procedures and standards for its administration
3 of this Title. Within 9 months after receipt of the Agency's
4 proposed rules, the Board shall adopt, pursuant to Sections
5 27 and 28 of this Act, rules that are consistent with this
6 Title, including classifications of land use and provisions
7 for the avoidance of No Further Remediation Letters.

8 (d) Until such time as the rules required under this
9 Section take effect, the Agency shall administer its
10 activities under this Title in accordance with Agency
11 procedures and applicable provisions of this Act.

12 (e) By July 1, 1997 and as deemed appropriate
13 thereafter, the Agency shall prepare reports to the Governor
14 and the General Assembly concerning the status of all sites
15 for which the Agency has expended money from the Hazardous
16 Waste Fund. The reports shall include specific information
17 on the financial, technical, and cost recovery status of each
18 site.

19 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96;
20 89-626, eff. 8-9-96.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.