

AN ACT concerning coal ash.

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

Section 5. The Environmental Protection Act is amended by changing Sections 3.140, 21, 39, and 40 and by adding Sections 3.142, 3.143, and 22.59 as follows:

(415 ILCS 5/3.140) (was 415 ILCS 5/3.76)

Sec. 3.140. Coal combustion waste. "Coal combustion waste" means any CCR or any fly ash, bottom ash, slag, or flue gas or fluid bed boiler desulfurization by-products generated as a result of the combustion of:

(1) coal, or

(2) coal in combination with: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel, or

(3) coal (with or without: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel) in combination with no more than 20% of tire derived fuel or wood or other materials by weight of the materials combusted; provided that the coal is burned with other materials, the Agency has made a written determination that the storage or disposal of the resultant wastes in accordance with the provisions of item (r) of Section 21 would

result in no environmental impact greater than that of wastes generated as a result of the combustion of coal alone, and the storage disposal of the resultant wastes would not violate applicable federal law.

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

(415 ILCS 5/3.142 new)

Sec. 3.142. Coal combustion residual; CCR. "Coal combustion residual" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

(415 ILCS 5/3.143 new)

Sec. 3.143. CCR surface impoundment. "CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

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

Sec. 21. Prohibited acts. No person shall:

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

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

by the Board.

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

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

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; provided, however, that, except for municipal solid waste landfill units that receive waste on or after October 9, 1993, and CCR surface impoundments, no permit shall be required for (i) any person conducting a waste-storage, waste-treatment, or waste-disposal operation for wastes generated by such person's own activities which are stored, treated, or disposed within the site where such wastes are generated, or (ii) a facility located in a county with a population over 700,000 as of January 1, 2000, operated and located in accordance with Section 22.38 of this Act, and used exclusively for the transfer, storage, or treatment of general construction or demolition debris, provided that the facility was receiving construction or demolition debris on the effective date of this amendatory Act of the

96th General Assembly;

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

(3) which receives waste after August 31, 1988, does not have a permit issued by the Agency, and is (i) a landfill used exclusively for the disposal of waste generated at the site, (ii) a surface impoundment receiving special waste not listed in an NPDES permit, (iii) a waste pile in which the total volume of waste is greater than 100 cubic yards or the waste is stored for over one year, or (iv) a land treatment facility receiving special waste generated at the site; without giving notice of the operation to the Agency by January 1, 1989, or 30 days after the date on which the operation commences, whichever is later, and every 3 years thereafter. The form for such notification shall be specified by the Agency, and shall be limited to information regarding: the name and address of the location of the operation; the type of operation; the types and amounts of waste stored, treated or disposed of on an annual basis; the remaining capacity of the operation; and the remaining expected life of the operation.

Item (3) of this subsection (d) shall not apply to any person engaged in agricultural activity who is disposing of a substance that constitutes solid waste, if the substance was acquired for use by that person on his own property, and the

substance is disposed of on his own property in accordance with regulations or standards adopted by the Board.

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

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

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

(1) without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or

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

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

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

Notwithstanding the above, no RCRA permit shall be required under this subsection or subsection (d) of Section 39 of this

Act for any person engaged in agricultural activity who is disposing of a substance which has been identified as a hazardous waste, and which has been designated by Board regulations as being subject to this exception, if the substance was acquired for use by that person on his own property and the substance is disposed of on his own property in accordance with regulations or standards adopted by the Board.

(g) Conduct any hazardous waste-transportation operation:

(1) without registering with and obtaining a special waste hauling permit from the Agency in accordance with the regulations adopted by the Board under this Act; or

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

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

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

(j) Conduct any special waste transportation operation in violation of any regulations, standards or permit requirements adopted by the Board under this Act. However, sludge from a water or sewage treatment plant owned and operated by a unit of

local government which (1) is subject to a sludge management plan approved by the Agency or a permit granted by the Agency, and (2) has been tested and determined not to be a hazardous waste as required by applicable State and federal laws and regulations, may be transported in this State without a special waste hauling permit, and the preparation and carrying of a manifest shall not be required for such sludge under the rules of the Pollution Control Board. The unit of local government which operates the treatment plant producing such sludge shall file an annual report with the Agency identifying the volume of such sludge transported during the reporting period, the hauler of the sludge, and the disposal sites to which it was transported. This subsection (j) shall not apply to hazardous waste.

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

(l) Locate a hazardous waste disposal site above an active or inactive shaft or tunneled mine or within 2 miles of an active fault in the earth's crust. In counties of population less than 225,000 no hazardous waste disposal site shall be located (1) within 1 1/2 miles of the corporate limits as defined on June 30, 1978, of any municipality without the approval of the governing body of the municipality in an official action; or (2) within 1000 feet of an existing private well or the existing source of a public water supply measured from the boundary of the actual active permitted site and excluding existing private wells on the property of the permit

applicant. The provisions of this subsection do not apply to publicly-owned sewage works or the disposal or utilization of sludge from publicly-owned sewage works.

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

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

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

- (1) refuse in standing or flowing waters;
- (2) leachate flows entering waters of the State;
- (3) leachate flows exiting the landfill confines (as determined by the boundaries established for the landfill by a permit issued by the Agency);
- (4) open burning of refuse in violation of Section 9 of this Act;
- (5) uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, unless authorized by permit;
- (6) failure to provide final cover within time limits established by Board regulations;

- (7) acceptance of wastes without necessary permits;
- (8) scavenging as defined by Board regulations;
- (9) deposition of refuse in any unpermitted portion of the landfill;
- (10) acceptance of a special waste without a required manifest;
- (11) failure to submit reports required by permits or Board regulations;
- (12) failure to collect and contain litter from the site by the end of each operating day;
- (13) failure to submit any cost estimate for the site or any performance bond or other security for the site as required by this Act or Board rules.

The prohibitions specified in this subsection (o) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to sanitary landfills.

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

- (1) litter;
- (2) scavenging;
- (3) open burning;
- (4) deposition of waste in standing or flowing waters;

- (5) proliferation of disease vectors;
- (6) standing or flowing liquid discharge from the dump site;
- (7) deposition of:
 - (i) general construction or demolition debris as defined in Section 3.160(a) of this Act; or
 - (ii) clean construction or demolition debris as defined in Section 3.160(b) of this Act.

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

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

- (1) conducting a landscape waste composting operation for landscape wastes generated by such person's own activities which are stored, treated, or disposed of within the site where such wastes are generated; or
- (1.5) conducting a landscape waste composting operation that (i) has no more than 25 cubic yards of landscape waste, composting additives, composting material, or end-product compost on-site at any one time and (ii) is not engaging in commercial activity; or

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

(2.5) operating a landscape waste composting facility at a site having 10 or more occupied non-farm residences within 1/2 mile of its boundaries, if the facility meets all of the following criteria:

(A) the composting facility is operated by the farmer on property on which the composting material is utilized, and the composting facility constitutes no more than 2% of the site's total acreage;

(A-5) any composting additives that the composting facility accepts and uses at the facility are necessary to provide proper conditions for composting and do not exceed 10% of the total composting material at the facility at any one time;

(B) the property on which the composting facility is located, and any associated property on which the compost is used, is principally and diligently devoted to the production of agricultural crops and is not owned, leased, or otherwise controlled by any waste hauler or generator of nonagricultural compost materials, and the operator of the composting facility is not an employee, partner, shareholder, or in any way connected with or controlled by any such waste hauler or generator;

(C) all compost generated by the composting

facility is applied at agronomic rates and used as mulch, fertilizer, or soil conditioner on land actually farmed by the person operating the composting facility, and the finished compost is not stored at the composting site for a period longer than 18 months prior to its application as mulch, fertilizer, or soil conditioner;

(D) no fee is charged for the acceptance of materials to be composted at the facility; and

(E) the owner or operator, by January 1, 2014 (or the January 1 following commencement of operation, whichever is later) and January 1 of each year thereafter, registers the site with the Agency, (ii) reports to the Agency on the volume of composting material received and used at the site; (iii) certifies to the Agency that the site complies with the requirements set forth in subparagraphs (A), (A-5), (B), (C), and (D) of this paragraph (2.5); and (iv) certifies to the Agency that all composting material was placed more than 200 feet from the nearest potable water supply well, was placed outside the boundary of the 10-year floodplain or on a part of the site that is floodproofed, was placed at least 1/4 mile from the nearest residence (other than a residence located on the same property as the facility) or a lesser distance from the nearest residence (other than a residence

located on the same property as the facility) if the municipality in which the facility is located has by ordinance approved a lesser distance than 1/4 mile, and was placed more than 5 feet above the water table; any ordinance approving a residential setback of less than 1/4 mile that is used to meet the requirements of this subparagraph (E) of paragraph (2.5) of this subsection must specifically reference this paragraph; or

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

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

(A-1) the composting facility accepts from other agricultural operations for composting with landscape waste no materials other than uncontaminated and source-separated (i) crop residue and other agricultural plant residue generated from the production and harvesting of crops and other customary farm practices, including, but not limited to, stalks,

leaves, seed pods, husks, bagasse, and roots and (ii) plant-derived animal bedding, such as straw or sawdust, that is free of manure and was not made from painted or treated wood;

(A-2) any composting additives that the composting facility accepts and uses at the facility are necessary to provide proper conditions for composting and do not exceed 10% of the total composting material at the facility at any one time;

(B) the property on which the composting facility is located, and any associated property on which the compost is used, is principally and diligently devoted to the production of agricultural crops and is not owned, leased or otherwise controlled by any waste hauler or generator of nonagricultural compost materials, and the operator of the composting facility is not an employee, partner, shareholder, or in any way connected with or controlled by any such waste hauler or generator;

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

conditioner;

(D) the owner or operator, by January 1 of each year, (i) registers the site with the Agency, (ii) reports to the Agency on the volume of composting material received and used at the site, (iii) certifies to the Agency that the site complies with the requirements set forth in subparagraphs (A), (A-1), (A-2), (B), and (C) of this paragraph (q) (3), and (iv) certifies to the Agency that all composting material:

(I) was placed more than 200 feet from the nearest potable water supply well;

(II) was placed outside the boundary of the 10-year floodplain or on a part of the site that is floodproofed;

(III) was placed either (aa) at least 1/4 mile from the nearest residence (other than a residence located on the same property as the facility) and there are not more than 10 occupied non-farm residences within 1/2 mile of the boundaries of the site on the date of application or (bb) a lesser distance from the nearest residence (other than a residence located on the same property as the facility) provided that the municipality or county in which the facility is located has by ordinance approved a lesser distance than 1/4 mile and there are not more than 10 occupied non-farm residences

within 1/2 mile of the boundaries of the site on the date of application; and

(IV) was placed more than 5 feet above the water table.

Any ordinance approving a residential setback of less than 1/4 mile that is used to meet the requirements of this subparagraph (D) must specifically reference this subparagraph.

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

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

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

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

(3) such waste is stored or disposed of at a site or facility which is operating under NPDES and Subtitle D permits issued by the Agency pursuant to regulations

adopted by the Board for mine-related water pollution and permits issued pursuant to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto, and the owner or operator of the facility agrees to accept the waste; and either

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

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

adopted pursuant thereto.

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

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

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

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

permit, and without the preparation and carrying of a manifest.

(v) (Blank).

(w) Conduct any generation, transportation, or recycling of construction or demolition debris, clean or general, or uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads that is not commingled with any waste, without the maintenance of documentation identifying the hauler, generator, place of origin of the debris or soil, the weight or volume of the debris or soil, and the location, owner, and operator of the facility where the debris or soil was transferred, disposed, recycled, or treated. This documentation must be maintained by the generator, transporter, or recycler for 3 years. This subsection (w) shall not apply to (1) a permitted pollution control facility that transfers or accepts construction or demolition debris, clean or general, or uncontaminated soil for final disposal, recycling, or treatment, (2) a public utility (as that term is defined in the Public Utilities Act) or a municipal utility, (3) the Illinois Department of Transportation, or (4) a municipality or a county highway department, with the exception of any municipality or county highway department located within a county having a population of over 3,000,000 inhabitants or located in a county that is contiguous to a county having a population of over 3,000,000 inhabitants; but it shall apply to an entity that contracts with a public utility, a municipal utility, the Illinois

Department of Transportation, or a municipality or a county highway department. The terms "generation" and "recycling" as used in this subsection do not apply to clean construction or demolition debris when (i) used as fill material below grade outside of a setback zone if covered by sufficient uncontaminated soil to support vegetation within 30 days of the completion of filling or if covered by a road or structure, (ii) solely broken concrete without protruding metal bars is used for erosion control, or (iii) milled asphalt or crushed concrete is used as aggregate in construction of the shoulder of a roadway. The terms "generation" and "recycling", as used in this subsection, do not apply to uncontaminated soil that is not commingled with any waste when (i) used as fill material below grade or contoured to grade, or (ii) used at the site of generation.

(Source: P.A. 100-103, eff. 8-11-17.)

(415 ILCS 5/22.59 new)

Sec. 22.59. CCR surface impoundments.

(a) The General Assembly finds that:

(1) the State of Illinois has a long-standing policy to restore, protect, and enhance the environment, including the purity of the air, land, and waters, including groundwaters, of this State;

(2) a clean environment is essential to the growth and well-being of this State;

(3) CCR generated by the electric generating industry has caused groundwater contamination and other forms of pollution at active and inactive plants throughout this State;

(4) environmental laws should be supplemented to ensure consistent, responsible regulation of all existing CCR surface impoundments; and

(5) meaningful participation of State residents, especially vulnerable populations who may be affected by regulatory actions, is critical to ensure that environmental justice considerations are incorporated in the development of, decision-making related to, and implementation of environmental laws and rulemaking that protects and improves the well-being of communities in this State that bear disproportionate burdens imposed by environmental pollution.

Therefore, the purpose of this Section is to promote a healthful environment, including clean water, air, and land, meaningful public involvement, and the responsible disposal and storage of coal combustion residuals, so as to protect public health and to prevent pollution of the environment of this State.

The provisions of this Section shall be liberally construed to carry out the purposes of this Section.

(b) No person shall:

(1) cause or allow the discharge of any contaminants

from a CCR surface impoundment into the environment so as to cause, directly or indirectly, a violation of this Section or any regulations or standards adopted by the Board under this Section, either alone or in combination with contaminants from other sources;

(2) construct, install, modify, operate, or close any CCR surface impoundment without a permit granted by the Agency, or so as to violate any conditions imposed by such permit, any provision of this Section or any regulations or standards adopted by the Board under this Section; or

(3) cause or allow, directly or indirectly, the discharge, deposit, injection, dumping, spilling, leaking, or placing of any CCR upon the land in a place and manner so as to cause or tend to cause a violation this Section or any regulations or standards adopted by the Board under this Section.

(c) For purposes of this Section, a permit issued by the Administrator of the United States Environmental Protection Agency under Section 4005 of the federal Resource Conservation and Recovery Act, shall be deemed to be a permit under this Section and subsection (y) of Section 39.

(d) Before commencing closure of a CCR surface impoundment, in accordance with Board rules, the owner of a CCR surface impoundment must submit to the Agency for approval a closure alternatives analysis that analyzes all closure methods being considered and that otherwise satisfies all closure

requirements adopted by the Board under this Act. Complete removal of CCR, as specified by the Board's rules, from the CCR surface impoundment must be considered and analyzed. Section 3.405 does not apply to the Board's rules specifying complete removal of CCR. The selected closure method must ensure compliance with regulations adopted by the Board pursuant to this Section.

(e) Owners or operators of CCR surface impoundments who have submitted a closure plan to the Agency before May 1, 2019, and who have completed closure prior to 24 months after the effective date of this amendatory Act of the 101st General Assembly shall not be required to obtain a construction permit for the surface impoundment closure under this Section.

(f) Except for the State, its agencies and institutions, a unit of local government, or not-for-profit electric cooperative as defined in Section 3.4 of the Electric Supplier Act, any person who owns or operates a CCR surface impoundment in this State shall post with the Agency a performance bond or other security for the purpose of: (i) ensuring closure of the CCR surface impoundment and post-closure care in accordance with this Act and its rules; and (ii) insuring remediation of releases from the CCR surface impoundment. The only acceptable forms of financial assurance are: a trust fund, a surety bond guaranteeing payment, a surety bond guaranteeing performance, or an irrevocable letter of credit.

(1) The cost estimate for the post-closure care of a

CCR surface impoundment shall be calculated using a 30-year post-closure care period or such longer period as may be approved by the Agency under Board or federal rules.

(2) The Agency is authorized to enter into such contracts and agreements as it may deem necessary to carry out the purposes of this Section. Neither the State, nor the Director, nor any State employee shall be liable for any damages or injuries arising out of or resulting from any action taken under this Section.

(3) The Agency shall have the authority to approve or disapprove any performance bond or other security posted under this subsection. Any person whose performance bond or other security is disapproved by the Agency may contest the disapproval as a permit denial appeal pursuant to Section 40.

(g) The Board shall adopt rules establishing construction permit requirements, operating permit requirements, design standards, reporting, financial assurance, and closure and post-closure care requirements for CCR surface impoundments. Not later than 8 months after the effective date of this amendatory Act of the 101st General Assembly the Agency shall propose, and not later than one year after receipt of the Agency's proposal the Board shall adopt, rules under this Section. The rules must, at a minimum:

(1) be at least as protective and comprehensive as the federal regulations or amendments thereto promulgated by

the Administrator of the United States Environmental Protection Agency in Subpart D of 40 CFR 257 governing CCR surface impoundments;

(2) specify the minimum contents of CCR surface impoundment construction and operating permit applications, including the closure alternatives analysis required under subsection (d);

(3) specify which types of permits include requirements for closure, post-closure, remediation and all other requirements applicable to CCR surface impoundments;

(4) specify when permit applications for existing CCR surface impoundments must be submitted, taking into consideration whether the CCR surface impoundment must close under the RCRA;

(5) specify standards for review and approval by the Agency of CCR surface impoundment permit applications;

(6) specify meaningful public participation procedures for the issuance of CCR surface impoundment construction and operating permits, including, but not limited to, public notice of the submission of permit applications, an opportunity for the submission of public comments, an opportunity for a public hearing prior to permit issuance, and a summary and response of the comments prepared by the Agency;

(7) prescribe the type and amount of the performance

bonds or other securities required under subsection (f), and the conditions under which the State is entitled to collect moneys from such performance bonds or other securities;

(8) specify a procedure to identify areas of environmental justice concern in relation to CCR surface impoundments;

(9) specify a method to prioritize CCR surface impoundments required to close under RCRA if not otherwise specified by the United States Environmental Protection Agency, so that the CCR surface impoundments with the highest risk to public health and the environment, and areas of environmental justice concern are given first priority;

(10) define when complete removal of CCR is achieved and specify the standards for responsible removal of CCR from CCR surface impoundments, including, but not limited to, dust controls and the protection of adjacent surface water and groundwater; and

(11) describe the process and standards for identifying a specific alternative source of groundwater pollution when the owner or operator of the CCR surface impoundment believes that groundwater contamination on the site is not from the CCR surface impoundment.

(h) Any owner of a CCR surface impoundment that generates CCR and sells or otherwise provides coal combustion byproducts

pursuant to Section 3.135 shall, every 12 months, post on its publicly available website a report specifying the volume or weight of CCR, in cubic yards or tons, that it sold or provided during the past 12 months.

(i) The owner of a CCR surface impoundment shall post all closure plans, permit applications, and supporting documentation, as well as any Agency approval of the plans or applications on its publicly available website.

(j) The owner or operator of a CCR surface impoundment shall pay the following fees:

(1) An initial fee to the Agency within 6 months after the effective date of this amendatory Act of the 101st General Assembly of:

\$50,000 for each closed CCR surface impoundment;

and

\$75,000 for each CCR surface impoundment that have not completed closure.

(2) Annual fees to the Agency, beginning on July 1, 2020, of:

\$25,000 for each CCR surface impoundment that has not completed closure; and

\$15,000 for each CCR surface impoundment that has completed closure, but has not completed post-closure care.

(k) All fees collected by the Agency under subsection (j) shall be deposited into the Environmental Protection Permit and

Inspection Fund.

(l) The Coal Combustion Residual Surface Impoundment Financial Assurance Fund is created as a special fund in the State treasury. Any moneys forfeited to the State of Illinois from any performance bond or other security required under this Section shall be placed in the Coal Combustion Residual Surface Impoundment Financial Assurance Fund and shall, upon approval by the Governor and the Director, be used by the Agency for the purposes for which such performance bond or other security was issued. The Coal Combustion Residual Surface Impoundment Financial Assurance Fund is not subject to the provisions of subsection (c) of Section 5 of the State Finance Act.

(m) The provisions of this Section shall apply, without limitation, to all existing CCR surface impoundments and any CCR surface impoundments constructed after the effective date of this amendatory Act of the 101st General Assembly, except to the extent prohibited by the Illinois or United States Constitutions.

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

Sec. 39. Issuance of permits; procedures.

(a) When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon

proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In making its determinations on permit applications under this Section the Agency may consider prior adjudications of noncompliance with this Act by the applicant that involved a release of a contaminant into the environment. In granting permits, the Agency may impose reasonable conditions specifically related to the applicant's past compliance history with this Act as necessary to correct, detect, or prevent noncompliance. The Agency may impose such other conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder. Except as otherwise provided in this Act, a bond or other security shall not be required as a condition for the issuance of a permit. If the Agency denies any permit under this Section, the Agency shall transmit to the applicant within the time limitations of this Section specific, detailed statements as to the reasons the permit application was denied. Such statements shall include, but not be limited to the following:

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

(ii) the provision of the regulations, promulgated under this Act, which may be violated if the permit were

granted;

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

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

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

The Agency shall publish notice of all final permit determinations for development permits for MSWLF units and for significant permit modifications for lateral expansions for

existing MSWLF units one time in a newspaper of general circulation in the county in which the unit is or is proposed to be located.

After January 1, 1994 and until July 1, 1998, operating permits issued under this Section by the Agency for sources of air pollution permitted to emit less than 25 tons per year of any combination of regulated air pollutants, as defined in Section 39.5 of this Act, shall be required to be renewed only upon written request by the Agency consistent with applicable provisions of this Act and regulations promulgated hereunder. Such operating permits shall expire 180 days after the date of such a request. The Board shall revise its regulations for the existing State air pollution operating permit program consistent with this provision by January 1, 1994.

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

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

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

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

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

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of NPDES permits, and which are consistent with the Act or regulations adopted by the Board, and with the Federal Water Pollution Control Act, as now or hereafter amended, and regulations

pursuant thereto.

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

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

In the event that siting approval granted pursuant to Section 39.2 has been transferred to a subsequent owner or operator, that subsequent owner or operator may apply to the Agency for, and the Agency may grant, a development or

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

Beginning August 20, 1993, if the pollution control facility consists of a hazardous or solid waste disposal facility for which the proposed site is located in an unincorporated area of a county with a population of less than 100,000 and includes all or a portion of a parcel of land that was, on April 1, 1993, adjacent to a municipality having a population of less than 5,000, then the local siting review required under this subsection (c) in conjunction with any permit applied for after that date shall be performed by the governing body of that adjacent municipality rather than the county board of the county in which the proposed site is located; and for the purposes of that local siting review, any references in this Act to the county board shall be deemed to mean the governing body of that adjacent municipality;

provided, however, that the provisions of this paragraph shall not apply to any proposed site which was, on April 1, 1993, owned in whole or in part by another municipality.

In the case of a pollution control facility for which a development permit was issued before November 12, 1981, if an operating permit has not been issued by the Agency prior to August 31, 1989 for any portion of the facility, then the Agency may not issue or renew any development permit nor issue an original operating permit for any portion of such facility unless the applicant has submitted proof to the Agency that the location of the facility has been approved by the appropriate county board or municipal governing body pursuant to Section 39.2 of this Act.

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

Act after the facility ceased accepting waste.

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

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

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

- (1) the municipal waste transfer station was in

existence on or before January 1, 1979 and was in continuous operation from January 1, 1979 to January 1, 1993;

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

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

(4) the site has local zoning approval.

(d) The Agency may issue RCRA permits exclusively under this subsection to persons owning or operating a facility for the treatment, storage, or disposal of hazardous waste as defined under this Act. Subsection (y) of this Section, rather than this subsection (d), shall apply to permits issued for CCR surface impoundments.

All RCRA permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act. The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, and regulations pursuant thereto,

and may include schedules for achieving compliance therewith as soon as possible. The Agency shall require that a performance bond or other security be provided as a condition for the issuance of a RCRA permit.

In the case of a permit to operate a hazardous waste or PCB incinerator as defined in subsection (k) of Section 44, the Agency shall require, as a condition of the permit, that the operator of the facility perform such analyses of the waste to be incinerated as may be necessary and appropriate to ensure the safe operation of the incinerator.

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

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

(e) The Agency may issue UIC permits exclusively under this

subsection to persons owning or operating a facility for the underground injection of contaminants as defined under this Act.

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

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

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

permit explaining the basis for its decision.

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

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

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

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

(4) The Agency shall, after conferring with the

applicant, give written notice to the applicant of its proposed decision on the application including the terms and conditions of the permit to be issued and the facts, conduct or other basis upon which the Agency will rely to support its proposed action.

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

(h) A hazardous waste stream may not be deposited in a permitted hazardous waste site unless specific authorization is obtained from the Agency by the generator and disposal site owner and operator for the deposit of that specific hazardous waste stream. The Agency may grant specific authorization for disposal of hazardous waste streams only after the generator has reasonably demonstrated that, considering technological feasibility and economic reasonableness, the hazardous waste cannot be reasonably recycled for reuse, nor incinerated or chemically, physically or biologically treated so as to

neutralize the hazardous waste and render it nonhazardous. In granting authorization under this Section, the Agency may impose such conditions as may be necessary to accomplish the purposes of the Act and are consistent with this Act and regulations promulgated by the Board hereunder. If the Agency refuses to grant authorization under this Section, the applicant may appeal as if the Agency refused to grant a permit, pursuant to the provisions of subsection (a) of Section 40 of this Act. For purposes of this subsection (h), the term "generator" has the meaning given in Section 3.205 of this Act, unless: (1) the hazardous waste is treated, incinerated, or partially recycled for reuse prior to disposal, in which case the last person who treats, incinerates, or partially recycles the hazardous waste prior to disposal is the generator; or (2) the hazardous waste is from a response action, in which case the person performing the response action is the generator. This subsection (h) does not apply to any hazardous waste that is restricted from land disposal under 35 Ill. Adm. Code 728.

(i) Before issuing any RCRA permit, any permit for a waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, waste incinerator, or any waste-transportation operation, any permit or interim authorization for a clean construction or demolition debris fill operation, or any permit required under subsection (d-5) of Section 55, the Agency shall conduct an evaluation of the prospective owner's or operator's prior experience in waste

management operations, clean construction or demolition debris fill operations, and tire storage site management. The Agency may deny such a permit, or deny or revoke interim authorization, if the prospective owner or operator or any employee or officer of the prospective owner or operator has a history of:

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

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

(3) proof of gross carelessness or incompetence in handling, storing, processing, transporting or disposing of waste, clean construction or demolition debris, or used or waste tires, or proof of gross carelessness or incompetence in using clean construction or demolition debris as fill.

(i-5) Before issuing any permit or approving any interim

authorization for a clean construction or demolition debris fill operation in which any ownership interest is transferred between January 1, 2005, and the effective date of the prohibition set forth in Section 22.52 of this Act, the Agency shall conduct an evaluation of the operation if any previous activities at the site or facility may have caused or allowed contamination of the site. It shall be the responsibility of the owner or operator seeking the permit or interim authorization to provide to the Agency all of the information necessary for the Agency to conduct its evaluation. The Agency may deny a permit or interim authorization if previous activities at the site may have caused or allowed contamination at the site, unless such contamination is authorized under any permit issued by the Agency.

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

(k) A development permit issued under subsection (a) of Section 39 for any facility or site which is required to have a permit under subsection (d) of Section 21 shall expire at the end of 2 calendar years from the date upon which it was issued, unless within that period the applicant has taken action to develop the facility or the site. In the event that review of the conditions of the development permit is sought pursuant to

Section 40 or 41, or permittee is prevented from commencing development of the facility or site by any other litigation beyond the permittee's control, such two-year period shall be deemed to begin on the date upon which such review process or litigation is concluded.

(l) No permit shall be issued by the Agency under this Act for construction or operation of any facility or site located within the boundaries of any setback zone established pursuant to this Act, where such construction or operation is prohibited.

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

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

(2) the specific regulations promulgated pursuant to

this Act that may be violated if the permit were granted;

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

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

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

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

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

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

(3) the facility is located so as to minimize incompatibility with the character of the surrounding area, including at least a 200 foot setback from any residence, and in the case of a facility that is developed or the permitted composting area of which is expanded after

November 17, 1991, the composting area is located at least 1/8 mile from the nearest residence (other than a residence located on the same property as the facility);

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

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

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

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

The operator of any facility permitted under this subsection (m) must submit a written annual statement to the Agency on or before April 1 of each year that includes an

estimate of the amount of material, in tons, received for composting.

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

(o) (Blank.)

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

When a permit applicant submits information to the Agency

to supplement a permit application being reviewed by the Agency, the applicant shall not be required to reissue the notice under this subsection.

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

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

(q) Within 6 months after July 12, 2011 (the effective date of Public Act 97-95), the Agency, in consultation with the regulated community, shall develop a web portal to be posted on its website for the purpose of enhancing review and promoting

timely issuance of permits required by this Act. At a minimum, the Agency shall make the following information available on the web portal:

(1) Checklists and guidance relating to the completion of permit applications, developed pursuant to subsection (s) of this Section, which may include, but are not limited to, existing instructions for completing the applications and examples of complete applications. As the Agency develops new checklists and develops guidance, it shall supplement the web portal with those materials.

(2) Within 2 years after July 12, 2011 (the effective date of Public Act 97-95), permit application forms or portions of permit applications that can be completed and saved electronically, and submitted to the Agency electronically with digital signatures.

(3) Within 2 years after July 12, 2011 (the effective date of Public Act 97-95), an online tracking system where an applicant may review the status of its pending application, including the name and contact information of the permit analyst assigned to the application. Until the online tracking system has been developed, the Agency shall post on its website semi-annual permitting efficiency tracking reports that include statistics on the timeframes for Agency action on the following types of permits received after July 12, 2011 (the effective date of Public Act 97-95): air construction permits, new NPDES permits and

associated water construction permits, and modifications of major NPDES permits and associated water construction permits. The reports must be posted by February 1 and August 1 each year and shall include:

(A) the number of applications received for each type of permit, the number of applications on which the Agency has taken action, and the number of applications still pending; and

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

(r) Upon the request of the applicant, the Agency shall notify the applicant of the permit analyst assigned to the

application upon its receipt.

(s) The Agency is authorized to prepare and distribute guidance documents relating to its administration of this Section and procedural rules implementing this Section. Guidance documents prepared under this subsection shall not be considered rules and shall not be subject to the Illinois Administrative Procedure Act. Such guidance shall not be binding on any party.

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

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

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

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

(x) If, before the expiration of a State operating permit

that is issued pursuant to subsection (a) of this Section and contains federally enforceable conditions limiting the potential to emit of the source to a level below the major source threshold for that source so as to exclude the source from the Clean Air Act Permit Program, the Agency receives a complete application for the renewal of that permit, then all of the terms and conditions of the permit shall remain in effect until final administrative action has been taken on the application for the renewal of the permit.

(y) The Agency may issue permits exclusively under this subsection to persons owning or operating a CCR surface impoundment subject to Section 22.59.

All CCR surface impoundment permits shall contain those terms and conditions, including, but not limited to, schedules of compliance, which may be required to accomplish the purposes and provisions of this Act, Board regulations, the Illinois Groundwater Protection Act and regulations pursuant thereto, and the Resource Conservation and Recovery Act and regulations pursuant thereto, and may include schedules for achieving compliance therewith as soon as possible.

The Board shall adopt filing requirements and procedures that are necessary and appropriate for the issuance of CCR surface impoundment permits and that are consistent with this Act or regulations adopted by the Board, and with the RCRA, as amended, and regulations pursuant thereto.

The applicant shall make available to the public for

inspection all documents submitted by the applicant to the Agency in furtherance of an application, with the exception of trade secrets, on its public internet website as well as at the office of the county board or governing body of the municipality where CCR from the CCR surface impoundment will be permanently disposed. Such documents may be copied upon payment of the actual cost of reproduction during regular business hours of the local office.

The Agency shall issue a written statement concurrent with its grant or denial of the permit explaining the basis for its decision.

(Source: P.A. 98-284, eff. 8-9-13; 99-396, eff. 8-18-15; 99-463, eff. 1-1-16; 99-642, eff. 7-28-16.)

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

Sec. 40. Appeal of permit denial.

(a)(1) If the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, the applicant may, within 35 days after the date on which the Agency served its decision on the applicant, petition for a hearing before the Board to contest the decision of the Agency. However, the 35-day period for petitioning for a hearing may be extended for an additional period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. The Board shall give 21 days' notice to any person in the county where is located the

facility in issue who has requested notice of enforcement proceedings and to each member of the General Assembly in whose legislative district that installation or property is located; and shall publish that 21-day notice in a newspaper of general circulation in that county. The Agency shall appear as respondent in such hearing. At such hearing the rules prescribed in Section 32 and subsection (a) of Section 33 of this Act shall apply, and the burden of proof shall be on the petitioner. If, however, the Agency issues an NPDES permit that imposes limits which are based upon a criterion or denies a permit based upon application of a criterion, then the Agency shall have the burden of going forward with the basis for the derivation of those limits or criterion which were derived under the Board's rules.

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

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

(b) If the Agency grants a RCRA permit for a hazardous waste disposal site, a third party, other than the permit applicant or Agency, may, within 35 days after the date on which the Agency issued its decision, petition the Board for a hearing to contest the issuance of the permit. Unless the Board determines that such petition is duplicative or frivolous, or that the petitioner is so located as to not be affected by the permitted facility, the Board shall hear the petition in accordance with the terms of subsection (a) of this Section and its procedural rules governing denial appeals, such hearing to be based exclusively on the record before the Agency. The burden of proof shall be on the petitioner. The Agency and the permit applicant shall be named co-respondents.

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

(c) Any party to an Agency proceeding conducted pursuant to Section 39.3 of this Act may petition as of right to the Board for review of the Agency's decision within 35 days from the date of issuance of the Agency's decision, provided that such

appeal is not duplicative or frivolous. However, the 35-day period for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. If another person with standing to appeal wishes to obtain an extension, there must be a written notice provided to the Board by that person, the Agency, and the applicant, within the initial appeal period. The decision of the Board shall be based exclusively on the record compiled in the Agency proceeding. In other respects the Board's review shall be conducted in accordance with subsection (a) of this Section and the Board's procedural rules governing permit denial appeals.

(d) In reviewing the denial or any condition of a NA NSR permit issued by the Agency pursuant to rules and regulations adopted under subsection (c) of Section 9.1 of this Act, the decision of the Board shall be based exclusively on the record before the Agency including the record of the hearing, if any, unless the parties agree to supplement the record. The Board shall, if it finds the Agency is in error, make a final determination as to the substantive limitations of the permit including a final determination of Lowest Achievable Emission Rate.

(e)(1) If the Agency grants or denies a permit under subsection (b) of Section 39 of this Act, a third party, other than the permit applicant or Agency, may petition the Board

within 35 days from the date of issuance of the Agency's decision, for a hearing to contest the decision of the Agency.

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

(A) a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held; and

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

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

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

(g) If the Agency grants or denies a permit under subsection (y) of Section 39, a third party, other than the permit applicant or Agency, may appeal the Agency's decision as provided under federal law for CCR surface impoundment permits.

(Source: P.A. 99-463, eff. 1-1-16; 100-201, eff. 8-18-17.)

Public Act 101-0171

SB0009 Enrolled

LRB101 06168 JWD 51190 b

Section 10. The State Finance Act is amended by adding Section 5.891 as follows:

(30 ILCS 105/5.891 new)

Sec. 5.891. The Coal Combustion Residual Surface Impoundment Financial Assurance Fund.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

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