



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1934

Introduced 2/9/2023, by Sen. Laura Ellman

SYNOPSIS AS INTRODUCED:

415 ILCS 5/58.2
415 ILCS 5/58.7

Amends the Environmental Protection Act. Provides that the Environmental Protection Agency may require an RA for a site to make an advance partial payment of \$2,500 (rather than an advance partial payment not exceeding \$5,000 or one-half the total anticipated costs of the Agency, whichever sum is less). Makes changes concerning the persons who must review and approve site remediation plans. Allows reviews undertaken by the Agency or a RELPEG to be completed and the decisions communicated to the RA within 90 days after the request for review or approval if 2 or more plans or reports are submitted concurrently. Provides that, notwithstanding any other provision, the Agency is not required to take action on any submission from or on behalf of an RA if the RA has failed to pay all fees due. Requires any deadline for Agency action on such a submission to be tolled until the fees are paid in full. Makes other changes.

LRB103 26823 CPF 53187 b

1 AN ACT concerning safety.

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

4 Section 5. The Environmental Protection Act is amended by
5 changing Sections 58.2 and 58.7 as follows:

6 (415 ILCS 5/58.2)

7 Sec. 58.2. Definitions. The following words and phrases
8 when used in this Title shall have the meanings given to them
9 in this Section unless the context clearly indicates
10 otherwise:

11 "Agrichemical facility" means a site on which agricultural
12 pesticides are stored or handled, or both, in preparation for
13 end use, or distributed. The term does not include basic
14 manufacturing facility sites.

15 "ASTM" means the American Society for Testing and
16 Materials.

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

22 "Brownfields site" or "brownfields" means a parcel of real
23 property, or a portion of the parcel, that has actual or

1 perceived contamination and an active potential for
2 redevelopment.

3 "Class I groundwater" means groundwater that meets the
4 Class I Potable Resource groundwater criteria set forth in the
5 Board rules adopted under the Illinois Groundwater Protection
6 Act.

7 "Class III groundwater" means groundwater that meets the
8 Class III Special Resource Groundwater criteria set forth in
9 the Board rules adopted under the Illinois Groundwater
10 Protection Act.

11 "Carcinogen" means a contaminant that is classified as a
12 Category A1 or A2 Carcinogen by the American Conference of
13 Governmental Industrial Hygienists; or a Category 1 or 2A/2B
14 Carcinogen by the World Health Organizations International
15 Agency for Research on Cancer; or a "Human Carcinogen" or
16 "Anticipated Human Carcinogen" by the United States Department
17 of Health and Human Service National Toxicological Program; or
18 a Category A or B1/B2 Carcinogen by the United States
19 Environmental Protection Agency in Integrated Risk Information
20 System or a Final Rule issued in a Federal Register notice by
21 the USEPA as of the effective date of this amendatory Act of
22 1995.

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

26 "Licensed Professional Geologist" means a person licensed

1 under the laws of the State of Illinois to practice as a
2 professional geologist.

3 "RELPEG" means a Licensed Professional Engineer or a
4 Licensed Professional Geologist engaged in review and
5 evaluation under this Title.

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

11 "Municipality" means an incorporated city, village, or
12 town in this State. "Municipality" does not mean a township,
13 town when that term is used as the equivalent of a township,
14 incorporated town that has superseded a civil township,
15 county, or school district, park district, sanitary district,
16 or similar governmental district.

17 "Natural pathway" means natural routes for the transport
18 of regulated substances including, but not limited to, soil,
19 groundwater, sand seams and lenses, and gravel seams and
20 lenses.

21 "Person" means individual, trust, firm, joint stock
22 company, joint venture, consortium, commercial entity,
23 corporation (including a government corporation), partnership,
24 association, State, municipality, commission, political
25 subdivision of a State, or any interstate body including the
26 United States Government and each department, agency, and

1 instrumentality of the United States.

2 "Regulated substance" means any hazardous substance as
3 defined under Section 101(14) of the Comprehensive
4 Environmental Response, Compensation, and Liability Act of
5 1980 (P.L. 96-510) and petroleum products including crude oil
6 or any fraction thereof, natural gas, natural gas liquids,
7 liquefied natural gas, or synthetic gas usable for fuel (or
8 mixtures of natural gas and such synthetic gas).

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

11 "Remediation Applicant" (RA) means any person seeking to
12 perform or performing investigative or remedial activities
13 under this Title, including an ~~the~~ owner or operator of the
14 site or a person ~~persons~~ authorized by law or consent to act on
15 behalf of or in lieu of an ~~the~~ owner or operator of the site.

16 "Remediation costs" means reasonable costs paid for
17 investigating and remediating regulated substances of concern
18 consistent with the remedy selected for a site.

19 For purposes of Section 58.14, "remediation costs" shall
20 not include costs incurred prior to January 1, 1998, costs
21 incurred after the issuance of a No Further Remediation Letter
22 under Section 58.10 of this Act, or costs incurred more than 12
23 months prior to acceptance into the Site Remediation Program.

24 For the purpose of Section 58.14a, "remediation costs" do
25 not include any costs incurred before January 1, 2007, any
26 costs incurred after the issuance of a No Further Remediation

1 Letter under Section 58.10, or any costs incurred more than 12
2 months before acceptance into the Site Remediation Program.

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

7 "River Edge Redevelopment Zone" has the meaning set forth
8 under the River Edge Redevelopment Zone Act.

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

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

16 (Source: P.A. 95-454, eff. 8-27-07.)

17 (415 ILCS 5/58.7)

18 Sec. 58.7. Review and approvals.

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

1 evaluation services for activities carried out pursuant to
2 this Title for which the RA requested the services in
3 writing. As a condition for providing such services, the
4 Agency may require that the RA for a site:

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

6 (B) Allow for or otherwise arrange site visits or
7 other site evaluation by the Agency when so requested;

8 (C) Agree to perform the Remedial Action Plan as
9 approved under this Title;

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

12 (E) Make an advance partial payment to the Agency
13 for such anticipated services in the ~~an~~ amount of
14 \$2,500 ~~, acceptable to the Agency, but not to exceed~~
15 ~~\$5,000 or one-half of the total anticipated costs of~~
16 ~~the Agency, whichever sum is less; and~~

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

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

23 (3) An RA requesting services under subdivision (b)
24 (1) of this Section may, at any time, notify the Agency, in
25 writing, that Agency services previously requested are no
26 longer wanted. Within 180 days after receipt of the

1 notice, the Agency shall provide the RA with a final
2 invoice for services provided until the date of such
3 notifications.

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

8 (A) The Agency has incurred costs in performing
9 response actions, other than review or evaluation
10 services, due to the failure of the RA to take response
11 action in accordance with a notice issued pursuant to
12 this Act;

13 (B) The RA has agreed in writing to the payment of
14 such costs;

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

18 (D) The RA has requested or has consented to
19 Agency review or evaluation services under subdivision
20 (b) (1) of this Section.

21 (5) The Agency may, subject to available resources,
22 agree to provide review and evaluation services for
23 response actions if there is a written agreement among
24 parties to a legal action or if a notice to perform a
25 response action has been issued by the Agency.

26 (c) Review and evaluation by a RELPEG ~~licensed~~

1 ~~Professional Engineer or Licensed Professional Geologist.~~ A RA
2 may elect to contract with a Licensed Professional Engineer
3 or, in the case of a site investigation report only, a Licensed
4 Professional Geologist, who will perform review and evaluation
5 services on behalf of and under the direction of the Agency
6 relative to the site activities.

7 (1) Prior to entering into the contract with the
8 RELPEG, the RA shall notify the Agency of the RELPEG to be
9 selected. The Agency and the RA shall discuss the
10 potential terms of the contract.

11 (2) At a minimum, the contract with the RELPEG shall
12 provide that the RELPEG will submit any reports directly
13 to the Agency, will take his or her directions for work
14 assignments from the Agency, and will perform the assigned
15 work on behalf of the Agency.

16 (3) Reasonable costs incurred by the Agency shall be
17 paid by the RA directly to the Agency in accordance with
18 the terms of the review and evaluation services agreement
19 entered into under subdivision (b) (1) of Section 58.7.

20 (4) In no event shall the RELPEG acting on behalf of
21 the Agency be an employee of the RA or the owner or
22 operator of the site or be an employee of any other person
23 the RA has contracted to provide services relative to the
24 site.

25 (d) Review and approval. All reviews required under this
26 Title shall be carried out by the Agency or a RELPEG contracted

1 by the RA pursuant to subsection (c) ~~, both under the direction~~
2 ~~of a Licensed Professional Engineer or, in the case of the~~
3 ~~review of a site investigation only, a Licensed Professional~~
4 ~~Geologist.~~

5 (1) All review activities conducted by the Agency or a
6 RELPEG shall be carried out in conformance with this Title
7 and rules promulgated under Section 58.11.

8 (2) Subject to the limitations in subsection (c) and
9 this subsection (d), the specific plans, reports, and
10 activities that the Agency or a RELPEG may review include:

11 (A) Site Investigation Reports and related
12 activities;

13 (B) Remediation Objectives Reports;

14 (C) Remedial Action Plans and related activities;
15 and

16 (D) Remedial Action Completion Reports and related
17 activities.

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

26 (A) An explanation of the Sections of this Title

1 that may be violated if the plan or report was
2 approved;

3 (B) An explanation of the provisions of the rules
4 promulgated under this Title that may be violated if
5 the plan or report was approved;

6 (C) An explanation of the specific type of
7 information, if any, that the Agency deems the
8 applicant did not provide the Agency;

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

12 (E) An explanation of the reasons for conditions
13 if conditions are required.

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

21 (5) All reviews undertaken by the Agency or a RELPEG
22 shall be completed and the decisions communicated to the
23 RA within 60 days of the request for review or approval of
24 a single plan or report and within 90 days after the
25 request for review or approval of 2 or more plans or
26 reports submitted concurrently. The RA may waive the

1 deadline upon a request from the Agency. If the Agency
2 disapproves or approves with conditions a plan or report
3 or fails to issue a final decision within the applicable
4 60-day or 90-day ~~60-day~~ period and the RA has not agreed to
5 a waiver of the deadline, the RA may, within 35 days, file
6 an appeal to the Board. Appeals to the Board shall be in
7 the manner provided for the review of permit decisions in
8 Section 40 of this Act.

9 (e) Standard of review. In making determinations, the
10 following factors, and additional factors as may be adopted by
11 the Board in accordance with Section 58.11, shall be
12 considered by the Agency when reviewing or approving plans,
13 reports, and related activities, or the RELPEG, when reviewing
14 plans, reports, and related activities:

15 (1) Site Investigation Reports and related activities:
16 Whether investigations have been conducted and the results
17 compiled in accordance with the appropriate procedures and
18 whether the interpretations and conclusions reached are
19 supported by the information gathered. In making the
20 determination, the following factors shall be considered:

21 (A) The adequacy of the description of the site
22 and site characteristics that were used to evaluate
23 the site;

24 (B) The adequacy of the investigation of potential
25 pathways and risks to receptors identified at the
26 site; and

1 (C) The appropriateness of the sampling and
2 analysis used.

3 (2) Remediation Objectives Reports: Whether the
4 remediation objectives are consistent with the
5 requirements of the applicable method for selecting or
6 determining remediation objectives under Section 58.5. In
7 making the determination, the following factors shall be
8 considered:

9 (A) If the objectives were based on the
10 determination of area background levels under
11 subsection (b) of Section 58.5, whether the review of
12 current and historic conditions at or in the immediate
13 vicinity of the site has been thorough and whether the
14 site sampling and analysis has been performed in a
15 manner resulting in accurate determinations;

16 (B) If the objectives were calculated on the basis
17 of predetermined equations using site specific data,
18 whether the calculations were accurately performed and
19 whether the site specific data reflect actual site
20 conditions; and

21 (C) If the objectives were determined using a site
22 specific risk assessment procedure, whether the
23 procedure used is nationally recognized and accepted,
24 whether the calculations were accurately performed,
25 and whether the site specific data reflect actual site
26 conditions.

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

6 (A) The likelihood that the plan will result in
7 the attainment of the applicable remediation
8 objectives;

9 (B) Whether the activities proposed are consistent
10 with generally accepted engineering practices; and

11 (C) The management of risk relative to any
12 remaining contamination, including but not limited to,
13 provisions for the long-term enforcement, operation,
14 and maintenance of institutional and engineering
15 controls, if relied on.

16 (4) Remedial Action Completion Reports and related
17 activities: Whether the remedial activities have been
18 completed in accordance with the approved Remedial Action
19 Plan and whether the applicable remediation objectives
20 have been attained.

21 (f) All plans and reports submitted for review shall
22 include a Licensed Professional Engineer's certification that
23 all investigations and remedial activities were carried out
24 under his or her direction and, to the best of his or her
25 knowledge and belief, the work described in the plan or report
26 has been completed in accordance with generally accepted

1 engineering practices, and the information presented is
2 accurate and complete. In the case of a site investigation
3 report prepared or supervised by a Licensed Professional
4 Geologist, the required certification may be made by the
5 Licensed Professional Geologist (rather than a Licensed
6 Professional Engineer) and based upon generally accepted
7 principles of professional geology.

8 (g) In accordance with Section 58.11, the Agency shall
9 propose and the Board shall adopt rules to carry out the
10 purposes of this Section. At a minimum, the rules shall detail
11 the types of services the Agency may provide in response to
12 requests under subdivision (b) (1) of this Section and the
13 recordkeeping it will utilize in documenting to the RA the
14 costs incurred by the Agency in providing such services.

15 (h) Public participation.

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

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

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

25 (4) Notwithstanding any provisions of this Section,
26 the RA of a site undergoing remedial activity pursuant to

1 this Title may elect to initiate a community outreach
2 effort for the site.

3 (i) Notwithstanding any other provision of this Title, the
4 Agency is not required to take action on any submission under
5 this Title from or on behalf of an RA if the RA has failed to
6 pay all fees due pursuant to an invoice or other request or
7 demand for payment under this Title. Any deadline for Agency
8 action on such a submission shall be tolled until the fees due
9 are paid in full.

10 (Source: P.A. 95-331, eff. 8-21-07.)