

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 Section 39.2 as follows:

6 (415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

7 Sec. 39.2. Local siting review.

8 (a) The county board of the county or the governing body of
9 the municipality, as determined by paragraph (c) of Section 39
10 of this Act, shall approve or disapprove the request for local
11 siting approval for each pollution control facility which is
12 subject to such review. An applicant for local siting approval
13 shall submit sufficient details describing the proposed
14 facility to demonstrate compliance, and local siting approval
15 shall be granted only if the proposed facility meets the
16 following criteria:

17 (i) the facility is necessary to accommodate the waste
18 needs of the area it is intended to serve;

19 (ii) the facility is so designed, located and proposed
20 to be operated that the public health, safety and welfare
21 will be protected;

22 (iii) the facility is located so as to minimize
23 incompatibility with the character of the surrounding area
24 and to minimize the effect on the value of the surrounding
25 property;

26 (iv) (A) for a facility other than a sanitary landfill
27 or waste disposal site, the facility is located outside the
28 boundary of the 100 year flood plain or the site is
29 flood-proofed; (B) for a facility that is a sanitary
30 landfill or waste disposal site, the facility is located
31 outside the boundary of the 100-year floodplain, or if the
32 facility is a facility described in subsection (b) (3) of

1 Section 22.19a, the site is flood-proofed;

2 (v) the plan of operations for the facility is designed
3 to minimize the danger to the surrounding area from fire,
4 spills, or other operational accidents;

5 (vi) the traffic patterns to or from the facility are
6 so designed as to minimize the impact on existing traffic
7 flows;

8 (vii) if the facility will be treating, storing or
9 disposing of hazardous waste, an emergency response plan
10 exists for the facility which includes notification,
11 containment and evacuation procedures to be used in case of
12 an accidental release;

13 (viii) if the facility is to be located in a county
14 where the county board has adopted a solid waste management
15 plan consistent with the planning requirements of the Local
16 Solid Waste Disposal Act or the Solid Waste Planning and
17 Recycling Act, the facility is consistent with that plan;
18 for purposes of this criterion (viii), the "solid waste
19 management plan" means the plan that is in effect as of the
20 date the application for siting approval is filed; and

21 (ix) if the facility will be located within a regulated
22 recharge area, any applicable requirements specified by
23 the Board for such areas have been met.

24 The county board or the governing body of the municipality
25 may also consider as evidence the previous operating experience
26 and past record of convictions or admissions of violations of
27 the applicant (and any subsidiary or parent corporation) in the
28 field of solid waste management when considering criteria (ii)
29 and (v) under this Section.

30 (b) No later than 14 days before the date on which the
31 county board or governing body of the municipality receives a
32 request for site approval, the applicant shall cause written
33 notice of such request to be served either in person or by
34 registered mail, return receipt requested, on the owners of all
35 property within the subject area not solely owned by the
36 applicant, and on the owners of all property within 250 feet in

1 each direction of the lot line of the subject property, said
2 owners being such persons or entities which appear from the
3 authentic tax records of the County in which such facility is
4 to be located; provided, that the number of all feet occupied
5 by all public roads, streets, alleys and other public ways
6 shall be excluded in computing the 250 feet requirement;
7 provided further, that in no event shall this requirement
8 exceed 400 feet, including public streets, alleys and other
9 public ways.

10 Such written notice shall also be served upon members of
11 the General Assembly from the legislative district in which the
12 proposed facility is located and shall be published in a
13 newspaper of general circulation published in the county in
14 which the site is located.

15 Such notice shall state the name and address of the
16 applicant, the location of the proposed site, the nature and
17 size of the development, the nature of the activity proposed,
18 the probable life of the proposed activity, the date when the
19 request for site approval will be submitted, and a description
20 of the right of persons to comment on such request as hereafter
21 provided.

22 (c) An applicant shall file a copy of its request with the
23 county board of the county or the governing body of the
24 municipality in which the proposed site is located. The request
25 shall include (i) the substance of the applicant's proposal and
26 (ii) all documents, if any, submitted as of that date to the
27 Agency pertaining to the proposed facility, except trade
28 secrets as determined under Section 7.1 of this Act. All such
29 documents or other materials on file with the county board or
30 governing body of the municipality shall be made available for
31 public inspection at the office of the county board or the
32 governing body of the municipality and may be copied upon
33 payment of the actual cost of reproduction.

34 Any person may file written comment with the county board
35 or governing body of the municipality concerning the
36 appropriateness of the proposed site for its intended purpose.

1 The county board or governing body of the municipality shall
2 consider any comment received or postmarked not later than 30
3 days after the date of the last public hearing.

4 (d) At least one public hearing is to be held by the county
5 board or governing body of the municipality no sooner than 90
6 days but no later than 120 days after the date on which it
7 received the request for site approval. No later than 14 days
8 prior to such hearing, notice shall be published in a newspaper
9 of general circulation published in the county of the proposed
10 site, and delivered by certified mail to all members of the
11 General Assembly from the district in which the proposed site
12 is located, to the governing authority of every municipality
13 contiguous to the proposed site or contiguous to the
14 municipality in which the proposed site is to be located, to
15 the county board of the county where the proposed site is to be
16 located, if the proposed site is located within the boundaries
17 of a municipality, and to the Agency. Members or
18 representatives of the governing authority of a municipality
19 contiguous to the proposed site or contiguous to the
20 municipality in which the proposed site is to be located and,
21 if the proposed site is located in a municipality, members or
22 representatives of the county board of a county in which the
23 proposed site is to be located may appear at and participate in
24 public hearings held pursuant to this Section. The public
25 hearing shall develop a record sufficient to form the basis of
26 appeal of the decision in accordance with Section 40.1 of this
27 Act. The fact that a member of the county board or governing
28 body of the municipality has publicly expressed an opinion on
29 an issue related to a site review proceeding shall not preclude
30 the member from taking part in the proceeding and voting on the
31 issue.

32 (e) Decisions of the county board or governing body of the
33 municipality are to be in writing, specifying the reasons for
34 the decision, such reasons to be in conformance with subsection
35 (a) of this Section. In granting approval for a site the county
36 board or governing body of the municipality may impose such

1 conditions as may be reasonable and necessary to accomplish the
2 purposes of this Section and as are not inconsistent with
3 regulations promulgated by the Board. Such decision shall be
4 available for public inspection at the office of the county
5 board or governing body of the municipality and may be copied
6 upon payment of the actual cost of reproduction. If there is no
7 final action by the county board or governing body of the
8 municipality within 180 days after the date on which it
9 received the request for site approval, the applicant may deem
10 the request approved.

11 At any time prior to completion by the applicant of the
12 presentation of the applicant's factual evidence and an
13 opportunity for cross-questioning by the county board or
14 governing body of the municipality and any participants, the
15 applicant may file not more than one amended application upon
16 payment of additional fees pursuant to subsection (k); in which
17 case the time limitation for final action set forth in this
18 subsection (e) shall be extended for an additional period of 90
19 days.

20 If, prior to making a final local siting decision, a county
21 board or governing body of a municipality has negotiated and
22 entered into a host agreement with the local siting applicant,
23 the terms and conditions of the host agreement, whether written
24 or oral, shall be disclosed and made a part of the hearing
25 record for that local siting proceeding. In the case of an oral
26 agreement, the disclosure shall be made in the form of a
27 written summary jointly prepared and submitted by the county
28 board or governing body of the municipality and the siting
29 applicant and shall describe the terms and conditions of the
30 oral agreement.

31 (e-5) Siting approval obtained pursuant to this Section is
32 transferable and may be transferred to a subsequent owner or
33 operator. In the event that siting approval has been
34 transferred to a subsequent owner or operator, that subsequent
35 owner or operator assumes and takes subject to any and all
36 conditions imposed upon the prior owner or operator by the

1 county board of the county or governing body of the
2 municipality pursuant to subsection (e). However, any such
3 conditions imposed pursuant to this Section may be modified by
4 agreement between the subsequent owner or operator and the
5 appropriate county board or governing body. Further, in the
6 event that siting approval obtained pursuant to this Section
7 has been transferred to a subsequent owner or operator, that
8 subsequent owner or operator assumes all rights and obligations
9 and takes the facility subject to any and all terms and
10 conditions of any existing host agreement between the prior
11 owner or operator and the appropriate county board or governing
12 body.

13 (f) A local siting approval granted under this Section
14 shall expire at the end of 2 calendar years from the date upon
15 which it was granted, unless the local siting approval granted
16 under this Section is for a sanitary landfill operation, in
17 which case the approval shall expire at the end of 3 calendar
18 years from the date upon which it was granted, and unless
19 within that period the applicant has made application to the
20 Agency for a permit to develop the site. In the event that the
21 local siting decision has been appealed, such expiration period
22 shall be deemed to begin on the date upon which the appeal
23 process is concluded.

24 Except as otherwise provided in this subsection, upon the
25 expiration of a development permit under subsection (k) of
26 Section 39, any associated local siting approval granted for
27 the facility under this Section shall also expire.

28 If a first development permit for a municipal waste
29 incineration facility expires under subsection (k) of Section
30 39 after September 30, 1989 due to circumstances beyond the
31 control of the applicant, any associated local siting approval
32 granted for the facility under this Section may be used to
33 fulfill the local siting approval requirement upon application
34 for a second development permit for the same site, provided
35 that the proposal in the new application is materially the
36 same, with respect to the criteria in subsection (a) of this

1 Section, as the proposal that received the original siting
2 approval, and application for the second development permit is
3 made before January 1, 1990.

4 (g) The siting approval procedures, criteria and appeal
5 procedures provided for in this Act for new pollution control
6 facilities shall be the exclusive siting procedures and rules
7 and appeal procedures for facilities subject to such
8 procedures. Local zoning or other local land use requirements
9 shall not be applicable to such siting decisions.

10 (h) Nothing in this Section shall apply to any existing or
11 new pollution control facility located within the corporate
12 limits of a municipality with a population of over 1,000,000.

13 (i) (Blank.)

14 The Board shall adopt regulations establishing the
15 geologic and hydrologic siting criteria necessary to protect
16 usable groundwater resources which are to be followed by the
17 Agency in its review of permit applications for new pollution
18 control facilities. Such regulations, insofar as they apply to
19 new pollution control facilities authorized to store, treat or
20 dispose of any hazardous waste, shall be at least as stringent
21 as the requirements of the Resource Conservation and Recovery
22 Act and any State or federal regulations adopted pursuant
23 thereto.

24 (j) Any new pollution control facility which has never
25 obtained local siting approval under the provisions of this
26 Section shall be required to obtain such approval after a final
27 decision on an appeal of a permit denial.

28 (k) A county board or governing body of a municipality may
29 charge applicants for siting review under this Section a
30 reasonable fee to cover the reasonable and necessary costs
31 incurred by such county or municipality in the siting review
32 process.

33 (l) The governing Authority as determined by subsection (c)
34 of Section 39 of this Act may request the Department of
35 Transportation to perform traffic impact studies of proposed or
36 potential locations for required pollution control facilities.

1 (m) An applicant may not file a request for local siting
2 approval which is substantially the same as a request which was
3 disapproved pursuant to a finding against the applicant under
4 any of criteria (i) through (ix) of subsection (a) of this
5 Section within the preceding 2 years.

6 (n) In any review proceeding of a decision of the county
7 board or governing body of a municipality made pursuant to the
8 local siting review process, the petitioner in the review
9 proceeding shall pay to the county or municipality the cost of
10 preparing and certifying the record of proceedings. Should the
11 petitioner in the review proceeding fail to make payment, the
12 provisions of Section 3-109 of the Code of Civil Procedure
13 shall apply.

14 In the event the petitioner is a citizens' group that
15 participated in the siting proceeding and is so located as to
16 be affected by the proposed facility, such petitioner shall be
17 exempt from paying the costs of preparing and certifying the
18 record.

19 (o) Notwithstanding any other provision of this Section, a
20 transfer station used exclusively for landscape waste, where
21 landscape waste is held no longer than 24 hours from the time
22 it was received, is not subject to the requirements of local
23 siting approval under this Section, but is subject only to
24 local zoning approval.

25 (Source: P.A. 91-588, eff. 8-14-99; 92-574, eff. 6-26-02.)

26 Section 98. Applicability. The change made to Section 39.2
27 of the Environmental Protection Act by this amendatory Act of
28 the 94th General Assembly applies only to siting applications
29 filed on or after the effective date of this amendatory Act.

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