



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0241

Introduced 2/2/2005, by Sen. John J. Cullerton - Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

415 ILCS 5/22.2d new
415 ILCS 5/22.50 new
415 ILCS 5/Title VI-D heading new
415 ILCS 5/25d-1 new
415 ILCS 5/25d-2 new
415 ILCS 5/25d-3 new
415 ILCS 5/25d-4 new
415 ILCS 5/25d-5 new
415 ILCS 5/25d-6 new
415 ILCS 5/25d-7 new
415 ILCS 5/25d-8 new
415 ILCS 5/25d-9 new
415 ILCS 5/25d-10 new
415 ILCS 5/58.8
415 ILCS 55/4

from Ch. 111 1/2, par. 7454

Amends the Environmental Protection Act and Groundwater Protection Act. Authorizes the Director of the Environmental Protection Agency to issue orders requiring an appropriate response from a potentially responsible party in the event of the release or substantial threat of release of a hazardous substance into the environment. Provides that a person may not use, cause the use of, or allow the use of (instead of "use") any site, for which a land use limitation has been imposed, in a manner that is inconsistent with that limitation unless certain conditions have been met. Establishes an internal Agency committee to recommend appropriate action for suspected or confirmed groundwater contamination and, among other things, requires the Agency to give notice of the actual or potential impact of the contamination to property owners served by the affected water system. Creates the Right-to-Know Committee to provide notice to the public about releases or suspected releases of contaminants in the State. Makes other changes. Effective immediately.

LRB094 07834 RSP 38014 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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 58.8, and by adding Sections 22.2d, 22.50, and
6 Title VI-D as follows:

7 (415 ILCS 5/22.2d new)

8 Sec. 22.2d. Authority of Director to issue orders.

9 (a) The purpose of this Section is to allow the Director to
10 quickly and effectively respond to imminent and substantial
11 endangerment to the public health or welfare or the environment
12 as a result of a release or substantial threat of a release of
13 a hazardous substance, pesticide, or petroleum by authorizing
14 the Director to issue orders requiring appropriate response
15 actions and by delaying the review of those orders until after
16 the response actions have been completed. This Section is also
17 intended to allow persons subject to such orders to recover the
18 costs of complying with the orders if they are not a
19 potentially responsible party with respect to the release or
20 threat of a release or if the Director's decision in selecting
21 the ordered response action was arbitrary and capricious or was
22 otherwise not in accordance with law.

23 The intent of this Section is to provide the Director with
24 order authority analogous to the order authority under Section
25 106(a) of the Comprehensive Environmental Response,
26 Compensation, and Liability Act of 1980 (P.L. 96-510), as
27 amended ("CERCLA"), to allow reimbursement of response costs
28 analogous to the reimbursement of response costs allowed under
29 Section 106(b) of CERCLA, and to limit the review of orders
30 issued under this Section to the same extent that the review of
31 orders issued under Section 106 of CERCLA are limited by
32 Section 113(h) of CERCLA.

1 (b) As used in this Section, the term "potentially
2 responsible party" means any person who may be liable under
3 this Act for a release or threat of a release of a hazardous
4 substance, pesticide, or petroleum.

5 (c) In addition to any other action taken by federal,
6 State, or local government, when the Director determines that
7 there may be an imminent and substantial endangerment to the
8 public health or welfare or the environment as a result of a
9 release or substantial threat of a release of a hazardous
10 substance, pesticide, or petroleum, the Director may issue to a
11 potentially responsible party any order that may be necessary
12 to protect the public health and welfare and the environment
13 that requires response actions consistent with the following:

14 (1) for a release or threat of a release of a hazardous
15 substance, pesticide, or petroleum other than the release
16 or threat of a release of petroleum from an underground
17 storage tank subject to Title XVI of this Act, the federal
18 regulations and amendments thereto promulgated by the
19 United States Environmental Protection Agency to implement
20 Section 105 of CERCLA, as amended; and

21 (2) for a release or threat of a release from an
22 underground storage tank subject to Title XVI of this Act,
23 the requirements of Title XVI of this Act and the
24 regulations adopted thereto.

25 (d) Any person who, without sufficient cause, willfully
26 violates or fails or refuses to comply with any order issued
27 under subsection (c) of this Section is in violation of this
28 Act.

29 (e) Any person who receives and complies with the terms of
30 any order issued under subsection (c) of this Section may,
31 within 60 days after completion of the required action,
32 petition the Director for reimbursement for the reasonable
33 costs of that action, plus interest, subject to all of the
34 following terms and conditions:

35 (1) The interest payable under this subsection accrues
36 on the amounts expended from the date of expenditure to the

1 date of payment of reimbursement at the rate set forth in
2 Section 3-2 of the Uniform Penalty and Interest Act.
3 Reimbursement for costs associated with a release or threat
4 of a release of hazardous substance, pesticide, or
5 petroleum other than the release or threat of a release of
6 petroleum from an underground storage tank subject to Title
7 XVI of this Act must be made from the Hazardous Waste Fund.
8 Reimbursement for costs associated with a release or threat
9 of a release from an underground storage tank subject to
10 Title XVI of this Act must be made from the Underground
11 Storage Tank Fund. Reimbursement from the Underground
12 Storage Tank Fund under this Section is not subject to the
13 requirements of Title XVI of this Act.

14 (2) If the Director refuses to grant all or part of a
15 petition made under this subsection, the petitioner may,
16 within 30 days after receipt of the refusal, file a
17 petition with the Board seeking reimbursement.

18 (3) Except as provided in item (4) of this subsection,
19 to obtain reimbursement, the petitioner must establish, by
20 a preponderance of the evidence, that (i) the petitioner is
21 not a potentially responsible party with respect to the
22 release or threat of a release for which the relevant order
23 was issued, (ii) the petitioner's response actions were
24 consistent with the federal regulations and amendments
25 thereto promulgated by the Administrator of the United
26 States Environmental Protection Agency to implement
27 Section 105 of CERCLA, as amended, or the requirements of
28 Title XVI of this Act, as required under subsection (c) of
29 this Section, and (iii) the costs for which the petitioner
30 seeks reimbursement are reasonable in light of the action
31 required by the relevant order.

32 (4) A petitioner who is a potentially responsible party
33 with respect to the release or threat of a release for
34 which the relevant order was issued may recover its
35 reasonable costs of response to the extent that it can
36 demonstrate, on the administrative record, that the

1 Director's decision in selecting the response action
2 ordered was arbitrary and capricious or was otherwise not
3 in accordance with law. Reimbursement awarded under this
4 subsection (e)(4) includes all reasonable response costs
5 incurred by the petitioner under the portions of the order
6 found to be arbitrary and capricious or otherwise not in
7 accordance with law.

8 (5) Reimbursement awarded by the Board under
9 subsections (e)(3) or (e)(4) of this Section may include
10 appropriate costs, fees, and other expenses incurred in
11 seeking reimbursement, including, but not limited to,
12 reasonable fees and expenses of attorneys.

13 (f) No court nor the Board has jurisdiction to review any
14 order issued under subsection (c) of this Section, in any
15 action except the following:

16 (1) An action to enforce an order issued under
17 subsection (c) of this Section or to recover a penalty for
18 violation of that order; and

19 (2) An action for reimbursement under subsection (e) of
20 this Section.

21 (g) The Board and the Agency may adopt rules as necessary
22 for the implementation of this Section.

23 (415 ILCS 5/22.50 new)

24 Sec. 22.50. Compliance with land use limitations. No
25 person shall use, or cause or allow the use of, any site for
26 which a land use limitation has been imposed under this Act in
27 a manner inconsistent with the land use limitation unless
28 further investigation or remedial action has been conducted
29 that documents the attainment of remedial objectives
30 appropriate for the new land use and a new closure letter has
31 been obtained from the Agency and recorded in the chain of
32 title for the site. For the purpose of this Section, the term
33 "land use limitation" shall include, but shall not be limited
34 to, institutional controls and engineered barriers imposed
35 under this Act and the regulations adopted under this Act. For

1 the purposes of this Section, the term "closure letter" shall
2 include, but shall not be limited to, No Further Remediation
3 Letters issued under Titles XVI and XVII of this Act and the
4 regulations adopted under those Titles.

5 (415 ILCS 5/Title VI-D heading new)

6 TITLE VI-D. RIGHT-TO-KNOW

7 (415 ILCS 5/25d-1 new)

8 Sec. 25d-1. Definitions. For the purposes of this Title,
9 the terms "community water system," "non-community water
10 system", "potable", "private water system", and "semi-private
11 water system" have the meanings ascribed to them in the
12 Illinois Groundwater Protection Act, and the term "potentially
13 responsible party" has the meaning ascribed to it in Section
14 22.2d of this Act.

15 (415 ILCS 5/25d-2 new)

16 Sec. 25d-2. Contaminant evaluation committee. Beginning
17 January 1, 2006, the Agency shall establish, internally within
18 the Agency, a contaminant evaluation committee to evaluate
19 releases of contaminants. The committee shall perform this
20 evaluation whenever the Agency suspects or confirms that the
21 actual or modeled extent of groundwater contamination
22 exceeding the Class I groundwater quality standards adopted by
23 the Board under the Groundwater Protection Act extends beyond
24 the boundary of the site where the release occurred. The
25 committee shall recommend appropriate Agency actions in
26 response to the release, which may include, but shall not be
27 limited to, public notices, investigations, administrative
28 orders, and enforcement referrals.

29 (415 ILCS 5/25d-3 new)

30 Sec. 25d-3. Committee action.

31 (a) Beginning January 1, 2006, if the committee established
32 under Section 25d-2 of this Title determines there is an actual

1 or potential impact to an offsite well serving a private,
2 semi-private, or non-community water system, the Agency shall
3 give notice of the actual or potential impact to the owners of
4 the properties served by the private, semi-private, or
5 non-community water system. If the committee determines there
6 is an actual or potential impact to an offsite well serving a
7 community water system, the Agency shall give notice of the
8 actual or potential impact to the owner or operator of the
9 community water system and may issue an advisory of groundwater
10 contamination hazard under Section 17.1(g) of this Act. The
11 committee's determination must be based on the credible,
12 scientific information available to it, and the Agency is not
13 required to perform additional investigations or studies
14 beyond those required by applicable federal or State laws.

15 (b) Beginning January 1, 2006, if any of the following
16 actions occur: (i) the Agency refers a matter for enforcement
17 under Section 43(a) of this Act; (ii) the Agency issues a seal
18 order under Section 34(a) of this Act; or (iii) the Agency, the
19 United States Environmental Protection Agency (USEPA), or a
20 third party under Agency or USEPA oversight performs an
21 immediate removal under the federal Comprehensive
22 Environmental Response, Compensation, and Liability Act, as
23 amended, then, within 60 days after the action, the Agency must
24 give notice of the action to the owners of all property within
25 2,500 feet of the subject contamination. Within 30 days after a
26 request by the Agency, the appropriate officials of the county
27 in which the property is located must provide to the Agency the
28 names and addresses of all property owners to whom the Agency
29 is required to give notice under this subsection (b).

30 (c) Notices required under this Section must be given in
31 accordance with the methods recommended by the Right-to-Know
32 Committee under Section 25d-5 of this Title. The notices must
33 contain, at a minimum, the following information:

34 (1) the name and address of the site or facility where
35 the release occurred or is suspected to have occurred;

36 (2) the identification of the contaminant released or

1 suspected to have been released;

2 (3) information as to whether the contaminant was
3 released or suspected to have been released into the air,
4 land, or water;

5 (4) a brief description of the potential adverse health
6 effects posed by the contaminant;

7 (5) a recommendation that water systems with wells
8 impacted or potentially impacted by the contaminant be
9 appropriately tested; and

10 (6) the name, business address, and phone number of
11 persons at the Agency from whom additional information
12 about the release or suspected release can be obtained.

13 (d) Any person who is a potentially responsible party with
14 respect to the release or substantial threat of release for
15 which notice is given under this Section is liable for all
16 costs incurred by the State in giving the notice. All moneys
17 received by the State under this subsection (d) must be
18 deposited in the Hazardous Waste Fund.

19 (415 ILCS 5/25d-4 new)

20 Sec. 25d-4. Agency authority. Whenever there is a release
21 or suspected release of a contaminant, the Agency has the
22 authority to issue an order to the owner or operator of the
23 site or facility where the release occurred or is suspected to
24 have occurred that requires the owner or operator to provide
25 the Agency with the information necessary to give the notices
26 required under Section 25d-3 of this Title. In the case of a
27 release or suspected release from an underground storage tank
28 subject to Title XVI of this Act, the Agency has the authority
29 to issue such an order to the owner or operator of the
30 underground storage tank. Any person who, without sufficient
31 cause, willfully violates, or fails or refuses to comply with,
32 any order issued under this Section is in violation of this
33 Act.

34 (415 ILCS 5/25d-5 new)

1 Sec. 25d-5. Right-to-Know Committee. Beginning January 1,
2 2006, the Agency shall establish a committee known as the
3 Right-to-Know Committee. The Right-to-Know Committee shall be
4 composed of the following persons and shall be chaired by the
5 Director or the Director's designee: representatives of the
6 Agency, representatives of the Illinois Department of Public
7 Health, representatives of the Interagency Coordinating
8 Committee on Groundwater established in the Groundwater
9 Protection Act, representatives of the Groundwater Advisory
10 Council established in the Groundwater Protection Act,
11 representatives of priority groundwater protection regional
12 planning committees established under Section 17.2 of this Act,
13 and up to 3 individuals appointed by the Director who are
14 owners of properties served by private, semi-private, or
15 non-community drinking water systems that have been impacted by
16 a release of a contaminant. The Right-to-Know Committee, in
17 consultation with the Agency, shall evaluate and recommend
18 appropriate and effective methods of providing the notices
19 required under Section 25d-3 of this Title. The methods of
20 notification evaluated by the Right-to-Know Committee shall
21 include, but shall not be limited to, the following:

- 22 (a) personal notification;
23 (b) public meetings;
24 (c) signs;
25 (d) electronic notification; and
26 (e) print media.

27 (415 ILCS 5/25d-6 new)

28 Sec. 25d-6. Notification. Beginning July 1, 2006, the
29 Agency shall make all of the following information available on
30 the Internet:

- 31 (i) Copies of all notifications given under Section
32 25d-3 of this Section. The copies must be indexed and the
33 index shall, at a minimum, be searchable by notification
34 date, zip code, site or facility name, and geographic
35 location.

1 (ii) Appropriate Agency databases containing
2 information about releases or suspected releases of
3 contaminants in the State. The databases must, at a
4 minimum, be searchable by notification date, zip code, site
5 or facility name, and geographic location.

6 (iii) Links to appropriate USEPA databases containing
7 information about releases or suspected releases of
8 contaminants in the State.

9 (415 ILCS 5/25d-7 new)

10 Sec. 25d-7. Agency coordination. Beginning January 1,
11 2006, the Agency shall coordinate with the Department of Public
12 Health to provide training to regional and local health
13 department staff on the use of the information posted on the
14 Internet under Section 25d-6 of this Title. Also beginning
15 January 1, 2006, the Agency shall coordinate with the
16 Department of Public Health to provide training to licensed
17 water well drillers on the use of the information posted on the
18 Internet under Section 25d-6 of this Title in relation to the
19 location and installation of new wells serving private,
20 semi-private, and non-community water systems.

21 (415 ILCS 5/25d-8 new)

22 Sec. 25d-8. Amendment. Within 180 days after the effective
23 date of this amendatory Act of the 94th General Assembly, the
24 Agency shall evaluate the Board's rules and propose amendments
25 to the rules as necessary to require potable water supply well
26 surveys and community relations activities where such surveys
27 and activities are appropriate in response to releases of
28 contaminants that have impacted or that may impact offsite
29 potable water supply wells. Within 180 days after receiving the
30 Agency's proposal, the Board shall amend its rules as necessary
31 to require potable water supply well surveys and community
32 relations activities where such surveys and activities are
33 appropriate in response to releases of contaminants that have
34 impacted or that may impact offsite potable water supply wells.

1 Community relations activities required by the Board shall
2 include, but shall not be limited to, submitting a community
3 relations plan for Agency approval, maintaining a public
4 information repository that contains timely information about
5 the actions being taken in response to a release, and
6 maintaining dialogue with the community through means such as
7 public meetings, fact sheets, and community advisory groups.

8 (415 ILCS 5/25d-9 new)

9 Sec. 25d-9. Liability. Neither the State, the Director,
10 nor any State employee shall be liable for any damages or
11 injuries arising out of or resulting from any act or omission
12 occurring under this amendatory Act of the 94th General
13 Assembly.

14 (415 ILCS 5/25d-10 new)

15 Sec. 25d-10. Admissibility. The Agency's failure to give
16 notice under Section 25d-3 of this Title shall not be
17 admissible for any purpose in any administrative or judicial
18 proceeding.

19 (415 ILCS 5/58.8)

20 Sec. 58.8. Duty to record.

21 (a) The RA receiving a No Further Remediation Letter from
22 the Agency pursuant to Section 58.10, shall submit the letter
23 to the Office of the Recorder or the Registrar of Titles of the
24 county in which the site is located within 45 days of receipt
25 of the letter. The Office of the Recorder or the Registrar of
26 Titles shall accept and record that letter in accordance with
27 Illinois law so that it forms a permanent part of the chain of
28 title for the site.

29 (b) A No Further Remediation Letter shall not become
30 effective until officially recorded in accordance with
31 subsection (a) of this Section. The RA shall obtain and submit
32 to the Agency a certified copy of the No Further Remediation
33 Letter as recorded.

1 (c) (Blank). ~~At no time shall any site for which a land use~~
2 ~~limitation has been imposed as a result of remediation~~
3 ~~activities under this Title be used in a manner inconsistent~~
4 ~~with the land use limitation unless further investigation or~~
5 ~~remedial action has been conducted that documents the~~
6 ~~attainment of objectives appropriate for the new land use and a~~
7 ~~new No Further Remediation Letter obtained and recorded in~~
8 ~~accordance with this Title.~~

9 (d) In the event that a No Further Remediation Letter
10 issues by operation of law pursuant to Section 58.10, the RA
11 may, for purposes of this Section, file an affidavit stating
12 that the letter issued by operation of law. Upon receipt of the
13 No Further Remediation Letter from the Agency, the RA shall
14 comply with the requirements of subsections (a) and (b) of this
15 Section.

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

17 Section 10. The Illinois Groundwater Protection Act is
18 amended by changing Section 4 as follows:

19 (415 ILCS 55/4) (from Ch. 111 1/2, par. 7454)

20 Sec. 4. (a) There shall be established within State
21 government an interagency committee which shall be known as the
22 Interagency Coordinating Committee on Groundwater. The
23 Committee shall be composed of the Director, or his designee,
24 of the following agencies:

25 (1) The Illinois Environmental Protection Agency, who
26 shall chair the Committee.

27 (2) The Illinois Department of Natural Resources.

28 (3) The Illinois Department of Public Health.

29 (4) The Office of Mines and Minerals within the
30 Department of Natural Resources.

31 (5) The Office of the State Fire Marshal.

32 (6) The Division of Water Resources of the Department
33 of Natural Resources.

34 (7) The Illinois Department of Agriculture.

1 (8) The Illinois Emergency Management Agency.

2 (9) The Illinois Department of Nuclear Safety.

3 (10) The Illinois Department of Commerce and Economic
4 Opportunity Community Affairs.

5 (b) The Committee shall meet not less than twice each
6 calendar year and shall:

7 (1) Review and coordinate the State's policy on
8 groundwater protection.

9 (2) Review and evaluate State laws, regulations and
10 procedures that relate to groundwater protection.

11 (3) Review and evaluate the status of the State's
12 efforts to improve the quality of the groundwater and of
13 the State enforcement efforts for protection of the
14 groundwater and make recommendations on improving the
15 State efforts to protect the groundwater.

16 (4) Recommend procedures for better coordination among
17 State groundwater programs and with local programs related
18 to groundwater protection.

19 (5) Review and recommend procedures to coordinate the
20 State's response to specific incidents of groundwater
21 pollution and coordinate dissemination of information
22 between agencies responsible for the State's response.

23 (6) Make recommendations for and prioritize the
24 State's groundwater research needs.

25 (7) Review, coordinate and evaluate groundwater data
26 collection and analysis.

27 (8) Beginning on January 1, 1990, report biennially to
28 the Governor and the General Assembly on groundwater
29 quality, quantity, and the State's enforcement efforts.
30 Beginning January 1, 2006, the Committee's biennial report
31 shall also include, with input from the Groundwater
32 Advisory Council established under Section 5 of this Act,
33 the priority groundwater protection regional planning
34 committees established pursuant to Section 17.2 of the
35 Environmental Protection Act, and the Right-to-Know
36 Committee established pursuant to Section 25d-5 of the

1 Environmental Protection Act, information on the
2 implementation of this amendatory Act of the 94th General
3 Assembly.

4 (c) The Chairman of the Committee shall propose a
5 groundwater protection regulatory agenda for consideration by
6 the Committee and the Council. The principal purpose of the
7 agenda shall be to systematically consider the groundwater
8 protection aspects of relevant federal and State regulatory
9 programs and to identify any areas where improvements may be
10 warranted. To the extent feasible, the agenda may also serve to
11 facilitate a more uniform and coordinated approach toward
12 protection of groundwaters in Illinois. Upon adoption of the
13 final agenda by the Committee, the Chairman of the Committee
14 shall assign a lead agency and any support agencies to prepare
15 a regulatory assessment report for each item on the agenda.
16 Each regulatory assessment report shall specify the nature of
17 the groundwater protection provisions being implemented and
18 shall evaluate the results achieved therefrom. Special
19 attention shall be given to any preventive measures being
20 utilized for protection of groundwaters. The reports shall be
21 completed in a timely manner. After review and consideration by
22 the Committee, the reports shall become the basis for
23 recommending further legislative or regulatory action.

24 (d) No later than January 1, 1992, the Interagency
25 Coordinating Committee on Groundwater shall provide a
26 comprehensive status report to the Governor and the General
27 Assembly concerning implementation of this Act.

28 (e) The Committee shall consider findings and
29 recommendations that are provided by the Council, and respond
30 in writing regarding such matters. The Chairman of the
31 Committee shall designate a liaison person to serve as a
32 facilitator of communications with the Council.

33 (Source: P.A. 89-445, eff. 2-7-96; revised 12-6-03.)

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