

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, unilaterally or on consent,
15 requiring appropriate response actions and by delaying the
16 review of those orders until after the response actions have
17 been completed. This Section is also intended to allow persons
18 subject to such orders to recover the costs of complying with
19 the orders if they are not liable under this Act for the
20 release or threat of a release or if the Director's decision in
21 selecting the ordered response action was arbitrary and
22 capricious or was 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) In addition to any other action taken by federal,
2 State, or local government, when the Director determines that
3 there may be an imminent and substantial endangerment to the
4 public health or welfare or the environment as a result of a
5 release or substantial threat of a release of a hazardous
6 substance, pesticide, or petroleum, the Director may issue to
7 any person who is potentially liable under this Act for the
8 release or substantial threat of a release any order that may
9 be necessary to protect the public health and welfare and the
10 environment. In determining the presence of an imminent and
11 substantial endangerment, the Director shall consider: the
12 quantities of hazardous substances, pesticides, or petroleum
13 involved; the nature and degree of the hazard caused by the
14 hazardous substances, pesticides, or petroleum; and the
15 likelihood of human or environmental exposure.

16 (1) Any order issued under this Section shall require
17 response actions consistent with the federal regulations
18 and amendments thereto promulgated by the United States
19 Environmental Protection Agency to implement Section 105
20 of CERCLA, as amended, except that the remediation
21 objectives for response actions ordered under this Section
22 shall be determined in accordance with the risk-based
23 remediation objectives adopted by the Board under Title
24 XVII of this Act.

25 (2) Before the Director issues any order under this
26 Section, the Agency shall send a Special Notice Letter to
27 all persons identified by the Agency as potentially liable
28 under this Act for the release or threat of release. This
29 Special Notice Letter to the recipients shall include at a
30 minimum the following information:

31 (A) that the Agency believes the recipient may be
32 liable under the Act for responding to the release or
33 threat of a release;

34 (B) the reasons why the Agency believes the
35 recipient may be liable under the Act for the release
36 or threat of a release; and

1 (C) the period of time, not to exceed 30 days from
2 the date of issuance of the Special Notice Letter,
3 during which the Agency is ready to negotiate with the
4 recipient regarding their response to the release or
5 threat of a release.

6 In an effort to encourage the prompt negotiation of a
7 settlement agreement or an order on consent, the Director
8 shall not issue any unilateral order under this Section
9 during the period of time specified by the Agency in the
10 Special Notice Letter in accordance with item (2)(C) of
11 this subsection.

12 (c) Any person who, without sufficient cause, willfully
13 violates or fails or refuses to comply with any order issued
14 under this Section is in violation of this Act.

15 (d) Any person who receives and complies with the terms of
16 any order issued under this Section may, within 60 days after
17 completion of the required action, petition the Director for
18 reimbursement for the reasonable costs of that action, plus
19 interest, subject to all of the following terms and conditions:

20 (1) The interest payable under this subsection accrues
21 on the amounts expended from the date of expenditure to the
22 date of payment of reimbursement at the rate set forth in
23 Section 3-2 of the Uniform Penalty and Interest Act.
24 Reimbursement for costs associated with a release or threat
25 of a release of hazardous substance, pesticide, or
26 petroleum must be made from the Hazardous Waste Fund.

27 (2) If the Director refuses to grant all or part of a
28 petition made under this subsection, the petitioner may,
29 within 35 days after receipt of the refusal, file a
30 petition with the Board seeking reimbursement.

31 (3) Except as provided in item (4) of this subsection
32 (d), to obtain reimbursement, the petitioner must
33 establish, by a preponderance of the evidence, that:

34 (A) either: (i) the petitioner is not liable under
35 this Act for the release or threat of a release to
36 which the relevant order applies or (ii) the only costs

1 for which the petitioner seeks reimbursement are costs
2 incurred by the petitioner in remediating the share of
3 a release or threat of a release for which a bankrupt
4 or insolvent party is in whole or in part liable under
5 this Act, the costs of the share are a fair and
6 accurate apportionment among the persons potentially
7 liable under this Act for the release or threat of a
8 release, and the bankrupt or insolvent party failed to
9 pay the costs of the share; and

10 (B) the petitioner's response actions were
11 consistent with the federal regulations and amendments
12 thereto promulgated by the Administrator of the United
13 States Environmental Protection Agency to implement
14 Section 105 of CERCLA, as amended, except that the
15 remediation objectives for response actions shall be
16 determined in accordance with the risk-based
17 remediation objectives adopted by the Board under
18 Title XVII of this Act; and

19 (C) the costs for which the petitioner seeks
20 reimbursement are reasonable in light of the action
21 required by the relevant order.

22 (4) A petitioner who is liable under this Act for the
23 release or threat of a release to which the relevant order
24 applies may recover its reasonable costs of response to the
25 extent that it can demonstrate, on the administrative
26 record, that the Director's decision in selecting the
27 response action ordered was arbitrary and capricious or was
28 otherwise not in accordance with law. Reimbursement
29 awarded under this item (4) includes all reasonable
30 response costs incurred by the petitioner under the
31 portions of the order found to be arbitrary and capricious
32 or otherwise not in accordance with law.

33 (5) Reimbursement awarded by the Board under item (3)
34 or (4) of subsection (d) may include appropriate costs,
35 fees, and other expenses incurred in petitioning the
36 Director or Board for reimbursement under subsection (d),

1 including, but not limited to, reasonable fees and expenses
2 of attorneys.

3 (6) Costs paid to a petitioner under a policy of
4 insurance, another written agreement, or a court order are
5 not eligible for payment under this subsection (d). A
6 petitioner who receives payment under a policy of
7 insurance, another written agreement, or a court order
8 shall reimburse the State to the extent that such payment
9 covers costs for which payment was received under this
10 subsection (d). Any monies received by the State under this
11 item (6) shall be deposited into the Hazardous Waste Fund.

12 (e) No court nor the Board has jurisdiction to review any
13 order issued under this Section, in any action except the
14 following:

15 (1) An action to enforce an order or to recover a
16 penalty for violation of the order; and

17 (2) An action for reimbursement under subsection (d) of
18 this Section.

19 (f) Except as provided in subsection (g) of this Section,
20 any person may seek contribution from any other person who is
21 liable for the costs of response actions under this Section. In
22 resolving contribution claims, the Board or court may allocate
23 response costs among liable parties using such equitable
24 factors as the court determines are appropriate.

25 (g) A person who has complied with an order under this
26 Section and has resolved their liability under this Act with
27 respect to the release or threat of a release shall not be
28 liable for claims for contribution relating to the release or
29 threat of a release.

30 (h) This Section does not apply to releases or threats of
31 releases from underground storage tanks subject to Title XVI of
32 this Act. Orders issued by the Agency in response to such
33 releases or threats of releases shall be issued under Section
34 57.12(d) of this Act instead of this Section, and the costs of
35 complying with said orders shall be reimbursed in accordance
36 with Title XVI of this Act instead of this Section.

1 (i) The Agency may adopt rules as necessary for the
2 implementation of this Section. The Agency shall consult with
3 affected members of the public during the development of any
4 such rules.

5 (415 ILCS 5/22.50 new)

6 Sec. 22.50. Compliance with land use limitations. No
7 person shall use, or cause or allow the use of, any site for
8 which a land use limitation has been imposed under this Act in
9 a manner inconsistent with the land use limitation unless
10 further investigation or remedial action has been conducted
11 that documents the attainment of remedial objectives
12 appropriate for the new land use and a new closure letter has
13 been obtained from the Agency and recorded in the chain of
14 title for the site. For the purpose of this Section, the term
15 "land use limitation" shall include, but shall not be limited
16 to, institutional controls and engineered barriers imposed
17 under this Act and the regulations adopted under this Act. For
18 the purposes of this Section, the term "closure letter" shall
19 include, but shall not be limited to, No Further Remediation
20 Letters issued under Titles XVI and XVII of this Act and the
21 regulations adopted under those Titles.

22 (415 ILCS 5/Title VI-D heading new)

23 TITLE VI-D. RIGHT-TO-KNOW

24 (415 ILCS 5/25d-1 new)

25 Sec. 25d-1. Definitions. For the purposes of this Title,
26 the terms "community water system", "non-community water
27 system", "potable", "private water system", and "semi-private
28 water system" have the meanings ascribed to them in the
29 Illinois Groundwater Protection Act.

30 (415 ILCS 5/25d-2 new)

31 Sec. 25d-2. Contaminant evaluation committee. Beginning
32 January 1, 2006, the Agency shall establish, internally within

1 the Agency, a contaminant evaluation committee to evaluate
2 releases of contaminants. The committee shall perform this
3 evaluation whenever the Agency determines that the extent of
4 soil or groundwater contamination may extend beyond the
5 boundary of the site where the release occurred. The committee
6 shall recommend appropriate Agency actions in response to the
7 release, which may include, but shall not be limited to, public
8 notices, investigations, administrative orders under Sections
9 22.2d or 57.12(d) of this Act, and enforcement referrals.

10 (415 ILCS 5/25d-3 new)

11 Sec. 25d-3. Committee action.

12 (a) Beginning January 1, 2006, if the committee established
13 under Section 25d-2 of this Title determines that:

14 (1) Soil contamination beyond the boundary of the site
15 where the release occurred poses a threat of exposure to
16 the public above the Tier 1 residential remediation
17 objectives adopted by the Board under Title XVII of this
18 Act, the Agency shall give notice of the threat to the
19 owner of the contaminated property; or

20 (2) Groundwater contamination poses a threat of
21 exposure to the public above the Class I groundwater
22 quality standards adopted by the Board under this Act and
23 the Groundwater Protection Act, the Agency shall give
24 notice of the threat to the following:

25 (A) for any private, semi-private, or non-community
26 water system, the owners of the properties served by
27 the system; and

28 (B) for any community water system, the owners and
29 operators of the system.

30 The committee's determination must be based on the credible,
31 scientific information available to it, and the Agency is not
32 required to perform additional investigations or studies
33 beyond those required by applicable federal or State laws.

34 (b) Beginning January 1, 2006, if any of the following
35 actions occur: (i) the Agency refers a matter for enforcement

1 under Section 43(a) of this Act; (ii) the Agency issues a seal
2 order under Section 34(a) of this Act; or (iii) the Agency, the
3 United States Environmental Protection Agency (USEPA), or a
4 third party under Agency or USEPA oversight performs an
5 immediate removal under the federal Comprehensive
6 Environmental Response, Compensation, and Liability Act, as
7 amended, then, within 60 days after the action, the Agency must
8 give notice of the action to the owners of all property within
9 2,500 feet of the subject contamination. Within 30 days after a
10 request by the Agency, the appropriate officials of the county
11 in which the property is located must provide to the Agency the
12 names and addresses of all property owners to whom the Agency
13 is required to give notice under this subsection (b), these
14 owners being the persons or entities that appear from the
15 authentic tax records of the county.

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

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

22 (2) the identification of the contaminant released or
23 suspected to have been released;

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

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

29 (5) a recommendation that water systems with wells
30 impacted or potentially impacted by the contaminant be
31 appropriately tested; and

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

35 (d) Any person who is a responsible party with respect to
36 the release or substantial threat of release for which notice

1 is given under this Section is liable for all reasonable costs
2 incurred by the State in giving the notice. All moneys received
3 by the State under this subsection (d) for costs related to
4 releases and substantial threats of releases of hazardous
5 substances, pesticides, and petroleum other than releases and
6 substantial threats of releases of petroleum from underground
7 storage tanks subject to Title XVI of this Act must be
8 deposited in and used for purposes consistent with the
9 Hazardous Waste Fund. All moneys received by the State under
10 this subsection (d) for costs related to releases and
11 substantial threats of releases of petroleum from underground
12 storage tanks subject to Title XVI of this Act must be
13 deposited in and used for purposes consistent with the
14 Underground Storage Tank Fund.

15 (415 ILCS 5/25d-4 new)

16 Sec. 25d-4. Agency authority. Whenever the contamination
17 evaluation committee determines that a public notice should be
18 issued under this Title, the Agency has the authority to issue
19 an information demand letter to the owner or operator of the
20 site or facility where the release occurred or is suspected to
21 have occurred that requires the owner or operator to provide
22 the Agency with the information necessary, to the extent
23 practicable, to give the notices required under Section 25d-3
24 of this Title. In the case of a release or suspected release
25 from an underground storage tank subject to Title XVI of this
26 Act, the Agency has the authority to issue such a letter to the
27 owner or operator of the underground storage tank. Within 30
28 days after the issuance of a letter under this Section, or
29 within a greater period specified by the Agency, the person who
30 receives the letter shall provide the Agency with the required
31 information. Any person who, without sufficient cause,
32 willfully violates, or fails or refuses to comply with, any
33 letter issued under this Section is in violation of this 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 240 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. Except for willful and wanton
10 misconduct, neither the State, the Director, nor any State
11 employee shall be liable for any damages or injuries arising
12 out of or resulting from any act or omission occurring under
13 this amendatory Act of the 94th General Assembly.

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

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