

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 a release or substantial  
11 threat of a release of a hazardous substance, pesticide, or  
12 petroleum for which the Agency is required to give notice under  
13 Section 25d-3(a) of this Act by authorizing the Director to  
14 issue orders, unilaterally or on consent, requiring  
15 appropriate response actions and by providing for the exclusive  
16 administrative and judicial review of these orders. This  
17 Section is also intended to allow persons subject to an order  
18 under this Section to recover the costs of complying with the  
19 order if it is overturned or if they remediate the share of a  
20 release or threat of a release for which a bankrupt or  
21 insolvent party is liable under this Act.

22 (b) In addition to any other action taken by federal,  
23 State, or local government, for any release or substantial  
24 threat of release for which the Agency is required to give  
25 notice under Section 25d-3(a) of this Act, the Director may  
26 issue to any person who is potentially liable under this Act  
27 for the release or substantial threat of release any order that  
28 may be necessary to protect the public health and welfare and  
29 the environment.

30 (1) Any order issued under this Section shall require  
31 response actions consistent with the federal regulations  
32 and amendments thereto promulgated by the United States

1 Environmental Protection Agency to implement Section 105  
2 of CERCLA, as amended, except that the remediation  
3 objectives for response actions ordered under this Section  
4 shall be determined in accordance with the risk-based  
5 remediation objectives adopted by the Board under Title  
6 XVII of this Act.

7 (2) Before the Director issues any order under this  
8 Section, the Agency shall send a Special Notice Letter to  
9 all persons identified by the Agency as potentially liable  
10 under this Act for the release or threat of release. This  
11 Special Notice Letter to the recipients shall include at a  
12 minimum the following information:

13 (A) that the Agency believes the recipient may be  
14 liable under the Act for responding to the release or  
15 threat of a release;

16 (B) the reasons why the Agency believes the  
17 recipient may be liable under the Act for the release  
18 or threat of a release; and

19 (C) the period of time, not less than 30 days from  
20 the date of issuance of the Special Notice Letter,  
21 during which the Agency is ready to negotiate with the  
22 recipient regarding their response to the release or  
23 threat of a release.

24 (3) To encourage the prompt negotiation of a settlement  
25 agreement or an order on consent with a recipient of a  
26 Special Notice Letter required under this Section, the  
27 Director shall not issue any unilateral order under this  
28 Section to the recipient during the 30 days immediately  
29 following the date of issuance of the Special Notice  
30 Letter.

31 (c) (1) The recipient of a unilateral order issued by the  
32 Director under this Section may petition the Board for a  
33 hearing on the order within 35 days after being served with the  
34 order. The Board shall take final action on the petition within  
35 60 days after the date the petition is filed with the Board  
36 unless all parties to the proceeding agree to the extension. If

1 necessary to expedite the hearing and decision, the Board may  
2 hold special meetings of the Board and may provide for  
3 alternative public notice of the hearing and meeting, other  
4 than as otherwise required by law. In any hearing on the order  
5 the Agency shall have the burden of proof to establish that the  
6 petitioner is liable under this Act for the release or threat  
7 of release and that the actions required by the order are  
8 consistent with the requirements of subsection (b)(1) of this  
9 Section. The Board shall sustain the order if the petitioner is  
10 liable under this Act for the release or threat of release and  
11 to the extent the actions ordered are consistent with the  
12 requirements of subsection (b)(1) of this Section and are not  
13 otherwise unreasonable under the circumstances.

14 (A) The order issued by the Agency shall remain in full  
15 force and effect pending the Board's final action on the  
16 petition for review of the order, provided that the Board  
17 may grant a stay of all or a portion of the order if it  
18 finds that (i) there is a substantial likelihood that the  
19 petitioner is not liable under this Act for the release or  
20 threat of release or (ii) there is a substantial likelihood  
21 that the actions required by the order are not consistent  
22 with the requirements of subsection (b)(1) of this Section  
23 and that the harm to the public from a stay of the order  
24 will be outweighed by the harm to the petitioner if a stay  
25 is not granted. Any stay granted by the Board under this  
26 subsection (c)(1)(A) shall expire upon the Board's  
27 issuance of its final action on the petition for review of  
28 the order.

29 (B) If the Board finds that the petitioner is not  
30 liable under this Act for the release or threat of release  
31 it may authorize the payment of (i) all reasonable response  
32 costs incurred by the petitioner to comply with the order  
33 if it finds the petitioner's actions were consistent with  
34 the requirements of subsection (b)(1) of this Section and  
35 (ii) the petitioner's reasonable and appropriate costs,  
36 fees, and expenses incurred in petitioning the Board for

1 review of the order, including, but not limited to,  
2 reasonable attorneys' fees and expenses.

3 (2) Any party to a Board hearing under this subsection (c)  
4 may obtain judicial review, by filing a petition for review  
5 within 35 days from the date that a copy of the Board's final  
6 action sought to be reviewed was served upon the party affected  
7 by the final Board action complained of, under the provisions  
8 of the Administrative Review Law and the rules adopted pursuant  
9 thereto, except that the review shall be afforded in the  
10 appellate court for the district in which the cause of action  
11 arose and not in the circuit court. The appellate court shall  
12 retain jurisdiction during the pendency of any further action  
13 conducted by the Board under an order by the appellate court.  
14 The appellate court shall have jurisdiction to review all  
15 issues of law and fact presented upon appeal.

16 (A) The order issued by the Agency shall remain in full  
17 force and effect pending the appellate court's ruling on  
18 the order, provided that the appellate court may grant a  
19 stay of all or a portion of the order if it finds that (i)  
20 there is a substantial likelihood that the petitioner is  
21 not liable under this Act for the release or threat of  
22 release or (ii) there is a substantial likelihood that the  
23 actions required by the order are not consistent with the  
24 requirements of subsection (b)(1) of this Section and that  
25 the harm to the public from a stay of the order will be  
26 outweighed by the harm to the petitioner if a stay is not  
27 granted. Any stay granted by the appellate court under this  
28 subsection (c)(2)(A) shall expire upon the issuance of the  
29 appellate court's ruling on the appeal of the Board's final  
30 action.

31 (B) If the appellate court finds that the petitioner is  
32 not liable under this Act for the release or threat of  
33 release it may authorize the payment of (i) all reasonable  
34 response costs incurred by the petitioner to comply with  
35 the order if it finds that the petitioner's actions were  
36 consistent with the requirements of subsection (b)(1) of

1 this Section and (ii) the petitioner's reasonable and  
2 appropriate costs, fees, and expenses incurred in  
3 petitioning the Appellate Court for review of the order,  
4 including, but not limited to, reasonable attorneys' fees  
5 and expenses.

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

11 (1) The interest payable under this subsection accrues  
12 on the amounts expended from the date of expenditure to the  
13 date of payment of reimbursement at the rate set forth in  
14 Section 3-2 of the Uniform Penalty and Interest Act.

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

19 (3) To obtain reimbursement, the petitioner must  
20 establish, by a preponderance of the evidence, that:

21 (A) the only costs for which the petitioner seeks  
22 reimbursement are costs incurred by the petitioner in  
23 remediating the share of a release or threat of a  
24 release for which a bankrupt or insolvent party is  
25 liable under this Act, the costs of the share are a  
26 fair and accurate apportionment among the persons  
27 potentially liable under this Act for the release or  
28 threat of a release, and the bankrupt or insolvent  
29 party failed to pay the costs of the share; and

30 (B) the petitioner's response actions were  
31 consistent with the federal regulations and amendments  
32 thereto promulgated by the Administrator of the United  
33 States Environmental Protection Agency to implement  
34 Section 105 of CERCLA, as amended, except that the  
35 remediation objectives for response actions shall be  
36 determined in accordance with the risk-based

1 remediation objectives adopted by the Board under  
2 Title XVII of this Act; and

3 (C) the costs for which the petitioner seeks  
4 reimbursement are reasonable in light of the action  
5 required by the relevant order.

6 (4) Reimbursement awarded by the Board under item (3)  
7 of subsection (d) may include appropriate costs, fees, and  
8 other expenses incurred in petitioning the Director or  
9 Board for reimbursement under subsection (d), including,  
10 but not limited to, reasonable fees and expenses of  
11 attorneys.

12 (5) Costs paid to a petitioner under a policy of  
13 insurance, another written agreement, or a court order are  
14 not eligible for payment under this subsection (d). A  
15 petitioner who receives payment under a policy of  
16 insurance, another written agreement, or a court order  
17 shall reimburse the State to the extent that such payment  
18 covers costs for which payment was received under this  
19 subsection (d). Any monies received by the State under this  
20 item (5) shall be deposited into the Hazardous Waste Fund.

21 (e) Except as otherwise provided in subsection (c) of this  
22 Section, no court nor the Board has jurisdiction to review any  
23 order issued under this Section or any administrative or  
24 judicial action related to the order.

25 (f) Except as provided in subsection (g) of this Section,  
26 any person may seek contribution from any other person who is  
27 liable for the costs of response actions under this Section. In  
28 resolving contribution claims, the Board or court may allocate  
29 response costs among liable parties using such equitable  
30 factors as the court determines are appropriate.

31 (g) A person who has complied with an order under this  
32 Section and has resolved their liability under this Act with  
33 respect to the release or threat of a release shall not be  
34 liable for claims for contribution relating to the release or  
35 threat of a release.

36 (h) The provisions of Section 58.9 of this Act do not apply

1 to any action taken under this Section.

2 (i) This Section does not apply to releases or threats of  
3 releases from underground storage tanks subject to Title XVI of  
4 this Act. Orders issued by the Agency in response to such  
5 releases or threats of releases shall be issued under Section  
6 57.12(d) of this Act instead of this Section, and the costs of  
7 complying with said orders shall be reimbursed in accordance  
8 with Title XVI of this Act instead of this Section.

9 (j) Any person who, without sufficient cause, willfully  
10 violates or fails or refuses to comply with any order issued  
11 under this Section is in violation of this Act.

12 (k) The Agency may adopt rules as necessary for the  
13 implementation of this Section.

14 (415 ILCS 5/22.50 new)

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

31 (415 ILCS 5/Title VI-D heading new)

32 TITLE VI-D. RIGHT-TO-KNOW

33 (415 ILCS 5/25d-1 new)

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

6           (415 ILCS 5/25d-2 new)

7       Sec. 25d-2. Contaminant evaluation. The Agency shall  
8 evaluate releases of contaminants whenever it determines that  
9 the extent of soil or groundwater contamination may extend  
10 beyond the boundary of the site where the release occurred. The  
11 Agency shall take appropriate actions in response to the  
12 release, which may include, but shall not be limited to, public  
13 notices, investigations, administrative orders under Sections  
14 22.2d or 57.12(d) of this Act, and enforcement referrals.  
15 Except as provided in Section 25d-3 of this Act, for releases  
16 undergoing investigation or remediation under Agency oversight  
17 the Agency may determine that no further action is necessary to  
18 comply with this Section.

19           (415 ILCS 5/25d-3 new)

20       Sec. 25d-3. Notices.

21       (a) Beginning January 1, 2006, if the Agency determines  
22 that:

23           (1) Soil contamination beyond the boundary of the site  
24 where the release occurred poses a threat of exposure to  
25 the public above the appropriate Tier 1 remediation  
26 objectives, based on the current use of the off-site  
27 property, adopted by the Board under Title XVII of this  
28 Act, the Agency shall give notice of the threat to the  
29 owner of the contaminated property; or

30           (2) Groundwater contamination poses a threat of  
31 exposure to the public above the Class I groundwater  
32 quality standards adopted by the Board under this Act and  
33 the Groundwater Protection Act, the Agency shall give  
34 notice of the threat to the following:

1           (A) for any private, semi-private, or non-community  
2           water system, the owners of the properties served by  
3           the system; and

4           (B) for any community water system, the owners and  
5           operators of the system.

6           The Agency's determination must be based on the credible,  
7           scientific information available to it, and the Agency is not  
8           required to perform additional investigations or studies  
9           beyond those required by applicable federal or State laws.

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

29           (c) The methods by which the Agency gives the notices  
30           required under this Section shall be determined in consultation  
31           with members of the public and appropriate members of the  
32           regulated community and may include, but shall not be limited  
33           to, personal notification, public meetings, signs, electronic  
34           notification, and print media. For sites at which a responsible  
35           party has implemented a community relations plan, the Agency  
36           may allow the responsible party to provide Agency-approved

1 notices in lieu of the notices required to be given by the  
2 Agency. Notices issued under this Section may contain the  
3 following information:

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

6 (2) the identification of the contaminant released or  
7 suspected to have been released;

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

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

13 (5) a recommendation that water systems with wells  
14 impacted or potentially impacted by the contaminant be  
15 appropriately tested; and

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

19 (d) Any person who is a responsible party with respect to  
20 the release or substantial threat of release for which notice  
21 is given under this Section is liable for all reasonable costs  
22 incurred by the State in giving the notice. All moneys received  
23 by the State under this subsection (d) for costs related to  
24 releases and substantial threats of releases of hazardous  
25 substances, pesticides, and petroleum other than releases and  
26 substantial threats of releases of petroleum from underground  
27 storage tanks subject to Title XVI of this Act must be  
28 deposited in and used for purposes consistent with the  
29 Hazardous Waste Fund. All moneys received by the State under  
30 this subsection (d) for costs related to releases and  
31 substantial threats of releases of petroleum from underground  
32 storage tanks subject to Title XVI of this Act must be  
33 deposited in and used for purposes consistent with the  
34 Underground Storage Tank Fund.

1       Sec. 25d-4. Agency authority. Whenever the Agency  
2 determines that a public notice should be issued under this  
3 Title, the Agency has the authority to issue an information  
4 demand letter to the owner or operator of the site or facility  
5 where the release occurred or is suspected to have occurred  
6 that requires the owner or operator to provide the Agency with  
7 the information necessary, to the extent practicable, to give  
8 the notices required under Section 25d-3 of this Title. In the  
9 case of a release or suspected release from an underground  
10 storage tank subject to Title XVI of this Act, the Agency has  
11 the authority to issue such a letter to the owner or operator  
12 of the underground storage tank. Within 30 days after the  
13 issuance of a letter under this Section, or within a greater  
14 period specified by the Agency, the person who receives the  
15 letter shall provide the Agency with the required information.  
16 Any person who, without sufficient cause, willfully violates,  
17 or fails or refuses to comply with, any letter issued under  
18 this Section is in violation of this Act.

19           (415 ILCS 5/25d-5 new)

20       Sec. 25d-5. Contamination information. Beginning July 1,  
21 2006, the Agency shall make all of the following information  
22 available on the Internet:

23           (i) Copies of all notifications given under Section  
24 25d-3 of this Section. The copies must be indexed and the  
25 index shall, at a minimum, be searchable by notification  
26 date, zip code, site or facility name, and geographic  
27 location.

28           (ii) Appropriate Agency databases containing  
29 information about releases or suspected releases of  
30 contaminants in the State. The databases must, at a  
31 minimum, be searchable by notification date, zip code, site  
32 or facility name, and geographic location.

33           (iii) Links to appropriate USEPA databases containing  
34 information about releases or suspected releases of  
35 contaminants in the State.

1 (415 ILCS 5/25d-6 new)

2 Sec. 25d-6. Agency coordination. Beginning January 1,  
3 2006, the Agency shall coordinate with the Department of Public  
4 Health to provide training to regional and local health  
5 department staff on the use of the information posted on the  
6 Internet under Section 25d-5 of this Title. Also beginning  
7 January 1, 2006, the Agency shall coordinate with the  
8 Department of Public Health to provide training to licensed  
9 water well drillers on the use of the information posted on the  
10 Internet under Section 25d-5 of this Title in relation to the  
11 location and installation of new wells serving private,  
12 semi-private, and non-community water systems.

13 (415 ILCS 5/25d-7 new)

14 Sec. 25d-7. Rulemaking.

15 (a) Within 180 days after the effective date of this  
16 amendatory Act of the 94th General Assembly, the Agency shall  
17 evaluate the Board's rules and propose amendments to the rules  
18 as necessary to require potable water supply well surveys and  
19 community relations activities where such surveys and  
20 activities are appropriate in response to releases of  
21 contaminants that have impacted or that may impact offsite  
22 potable water supply wells. Within 240 days after receiving the  
23 Agency's proposal, the Board shall amend its rules as necessary  
24 to require potable water supply well surveys and community  
25 relations activities where such surveys and activities are  
26 appropriate in response to releases of contaminants that have  
27 impacted or that may impact offsite potable water supply wells.  
28 Community relations activities required by the Board shall  
29 include, but shall not be limited to, submitting a community  
30 relations plan for Agency approval, maintaining a public  
31 information repository that contains timely information about  
32 the actions being taken in response to a release, and  
33 maintaining dialogue with the community through means such as  
34 public meetings, fact sheets, and community advisory groups.

1       (b) The Agency shall adopt rules setting forth costs for  
2 which persons may be liable to the State under Section 25d-3(d)  
3 of this Act. In addition, the Agency shall have the authority  
4 to adopt other rules as necessary for the administration of  
5 this Title.

6           (415 ILCS 5/25d-8 new)

7       Sec. 25d-8. Liability. Except for willful and wanton  
8 misconduct, neither the State, the Director, nor any State  
9 employee shall be liable for any damages or injuries arising  
10 out of or resulting from any act or omission occurring under  
11 this amendatory Act of the 94th General Assembly.

12           (415 ILCS 5/25d-9 new)

13       Sec. 25d-9. Admissibility. The Agency's giving of notice or  
14 failure to give notice under Section 25d-3 of this Title shall  
15 not be admissible for any purpose in any administrative or  
16 judicial proceeding.

17           (415 ILCS 5/25d-10 new)

18       Sec. 25d-10. Avoiding duplication. The Agency shall take  
19 whatever steps it deems necessary to eliminate the potential  
20 for duplicative notices required by this Title and Section 9.1  
21 of the Illinois Groundwater Protection Act.

22           (415 ILCS 5/58.8)

23       Sec. 58.8. Duty to record.

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

32       (b) A No Further Remediation Letter shall not become

1 effective until officially recorded in accordance with  
2 subsection (a) of this Section. The RA shall obtain and submit  
3 to the Agency a certified copy of the No Further Remediation  
4 Letter as recorded.

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

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

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

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