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LRB094 07834 RSP 46358 a

1 AMENDMENT TO SENATE BILL 241

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 241 by replacing  
3 everything after the enacting clause with the following:

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

1 notice under Section 25d-3(a) of this Act, the Director may  
2 issue to any person who is potentially liable under this Act  
3 for the release or substantial threat of release any order that  
4 may be necessary to protect the public health and welfare and  
5 the environment.

6 (1) Any order issued under this Section shall require  
7 response actions consistent with the federal regulations  
8 and amendments thereto promulgated by the United States  
9 Environmental Protection Agency to implement Section 105  
10 of CERCLA, as amended, except that the remediation  
11 objectives for response actions ordered under this Section  
12 shall be determined in accordance with the risk-based  
13 remediation objectives adopted by the Board under Title  
14 XVII of this Act.

15 (2) Before the Director issues any order under this  
16 Section, the Agency shall send a Special Notice Letter to  
17 all persons identified by the Agency as potentially liable  
18 under this Act for the release or threat of release. This  
19 Special Notice Letter to the recipients shall include at a  
20 minimum the following information:

21 (A) that the Agency believes the recipient may be  
22 liable under the Act for responding to the release or  
23 threat of a release;

24 (B) the reasons why the Agency believes the  
25 recipient may be liable under the Act for the release  
26 or threat of a release; and

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

32 (3) To encourage the prompt negotiation of a settlement  
33 agreement or an order on consent with a recipient of a  
34 Special Notice Letter required under this Section, the

1       Director shall not issue any unilateral order under this  
2       Section to the recipient during the 30 days immediately  
3       following the date of issuance of the Special Notice  
4       Letter.

5       (c) (1) The recipient of a unilateral order issued by the  
6       Director under this Section may petition the Board for a  
7       hearing on the order within 35 days after being served with the  
8       order. The Board shall take final action on the petition within  
9       60 days after the date the petition is filed with the Board  
10      unless all parties to the proceeding agree to the extension. If  
11      necessary to expedite the hearing and decision, the Board may  
12      hold special meetings of the Board and may provide for  
13      alternative public notice of the hearing and meeting, other  
14      than as otherwise required by law. In any hearing on the order  
15      the Agency shall have the burden of proof to establish that the  
16      petitioner is liable under this Act for the release or threat  
17      of release and that the actions required by the order are  
18      consistent with the requirements of subsection (b)(1) of this  
19      Section. The Board shall sustain the order if the petitioner is  
20      liable under this Act for the release or threat of release and  
21      to the extent the actions ordered are consistent with the  
22      requirements of subsection (b)(1) of this Section and are not  
23      otherwise unreasonable under the circumstances.

24      (A) The order issued by the Agency shall remain in full  
25      force and effect pending the Board's final action on the  
26      petition for review of the order, provided that the Board  
27      may grant a stay of all or a portion of the order if it  
28      finds that (i) there is a substantial likelihood that the  
29      petitioner is not liable under this Act for the release or  
30      threat of release or (ii) there is a substantial likelihood  
31      that the actions required by the order are not consistent  
32      with the requirements of subsection (b)(1) of this Section  
33      and that the harm to the public from a stay of the order  
34      will be outweighed by the harm to the petitioner if a stay

1 is not granted. Any stay granted by the Board under this  
2 subsection (c)(1)(A) shall expire upon the Board's  
3 issuance of its final action on the petition for review of  
4 the order.

5 (B) If the Board finds that the petitioner is not  
6 liable under this Act for the release or threat of release  
7 it may authorize the payment of (i) all reasonable response  
8 costs incurred by the petitioner to comply with the order  
9 if it finds the petitioner's actions were consistent with  
10 the requirements of subsection (b)(1) of this Section and  
11 (ii) the petitioner's reasonable and appropriate costs,  
12 fees, and expenses incurred in petitioning the Board for  
13 review of the order, including, but not limited to,  
14 reasonable attorneys' fees and expenses.

15 (2) Any party to a Board hearing under this subsection (c)  
16 may obtain judicial review, by filing a petition for review  
17 within 35 days from the date that a copy of the Board's final  
18 action sought to be reviewed was served upon the party affected  
19 by the final Board action complained of, under the provisions  
20 of the Administrative Review Law and the rules adopted pursuant  
21 thereto, except that the review shall be afforded in the  
22 appellate court for the district in which the cause of action  
23 arose and not in the circuit court. The appellate court shall  
24 retain jurisdiction during the pendency of any further action  
25 conducted by the Board under an order by the appellate court.  
26 The appellate court shall have jurisdiction to review all  
27 issues of law and fact presented upon appeal.

28 (A) The order issued by the Agency shall remain in full  
29 force and effect pending the appellate court's ruling on  
30 the order, provided that the appellate court may grant a  
31 stay of all or a portion of the order if it finds that (i)  
32 there is a substantial likelihood that the petitioner is  
33 not liable under this Act for the release or threat of  
34 release or (ii) there is a substantial likelihood that the

1 actions required by the order are not consistent with the  
2 requirements of subsection (b) (1) of this Section and that  
3 the harm to the public from a stay of the order will be  
4 outweighed by the harm to the petitioner if a stay is not  
5 granted. Any stay granted by the appellate court under this  
6 subsection (c) (2) (A) shall expire upon the issuance of the  
7 appellate court's ruling on the appeal of the Board's final  
8 action.

9 (B) If the appellate court finds that the petitioner is  
10 not liable under this Act for the release or threat of  
11 release it may authorize the payment of (i) all reasonable  
12 response costs incurred by the petitioner to comply with  
13 the order if it finds that the petitioner's actions were  
14 consistent with the requirements of subsection (b) (1) of  
15 this Section and (ii) the petitioner's reasonable and  
16 appropriate costs, fees, and expenses incurred in  
17 petitioning the Appellate Court for review of the order,  
18 including, but not limited to, reasonable attorneys' fees  
19 and expenses.

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

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

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

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

1           (A) the only costs for which the petitioner seeks  
2           reimbursement are costs incurred by the petitioner in  
3           remediating the share of a release or threat of a  
4           release for which a bankrupt or insolvent party is  
5           liable under this Act, the costs of the share are a  
6           fair and accurate apportionment among the persons  
7           potentially liable under this Act for the release or  
8           threat of a release, and the bankrupt or insolvent  
9           party failed to 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) Reimbursement awarded by the Board under item (3)  
23           of subsection (d) may include appropriate costs, fees, and  
24           other expenses incurred in petitioning the Director or  
25           Board for reimbursement under subsection (d), including,  
26           but not limited to, reasonable fees and expenses of  
27           attorneys.

28           (5) Costs paid to a petitioner under a policy of  
29           insurance, another written agreement, or a court order are  
30           not eligible for payment under this subsection (d). A  
31           petitioner who receives payment under a policy of  
32           insurance, another written agreement, or a court order  
33           shall reimburse the State to the extent that such payment  
34           covers costs for which payment was received under this

1       subsection (d). Any monies received by the State under this  
2       item (5) shall be deposited into the Hazardous Waste Fund.

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

7       (f) Except as provided in subsection (g) of this Section,  
8       any person may seek contribution from any other person who is  
9       liable for the costs of response actions under this Section. In  
10       resolving contribution claims, the Board or court may allocate  
11       response costs among liable parties using such equitable  
12       factors as the court determines are appropriate.

13       (g) A person who has complied with an order under this  
14       Section and has resolved their liability under this Act with  
15       respect to the release or threat of a release shall not be  
16       liable for claims for contribution relating to the release or  
17       threat of a release.

18       (h) The provisions of Section 58.9 of this Act do not apply  
19       to any action taken under this Section.

20       (i) This Section does not apply to releases or threats of  
21       releases from underground storage tanks subject to Title XVI of  
22       this Act. Orders issued by the Agency in response to such  
23       releases or threats of releases shall be issued under Section  
24       57.12(d) of this Act instead of this Section, and the costs of  
25       complying with said orders shall be reimbursed in accordance  
26       with Title XVI of this Act instead of this Section.

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

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

32       (415 ILCS 5/22.50 new)

33       Sec. 22.50. Compliance with land use limitations. No

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

16 (415 ILCS 5/Title VI-D heading new)

17 TITLE VI-D. RIGHT-TO-KNOW

18 (415 ILCS 5/25d-1 new)

19 Sec. 25d-1. Definitions. For the purposes of this Title,  
20 the terms "community water system", "non-community water  
21 system", "potable", "private water system", and "semi-private  
22 water system" have the meanings ascribed to them in the  
23 Illinois Groundwater Protection Act.

24 (415 ILCS 5/25d-2 new)

25 Sec. 25d-2. Contaminant evaluation. The Agency shall  
26 evaluate releases of contaminants whenever it determines that  
27 the extent of soil or groundwater contamination may extend  
28 beyond the boundary of the site where the release occurred. The  
29 Agency shall take appropriate actions in response to the  
30 release, which may include, but shall not be limited to, public  
31 notices, investigations, administrative orders under Sections



1 22.2d or 57.12(d) of this Act, and enforcement referrals.  
2 Except as provided in Section 25d-3 of this Act, for releases  
3 undergoing investigation or remediation under Agency oversight  
4 the Agency may determine that no further action is necessary to  
5 comply with this Section.

6 (415 ILCS 5/25d-3 new)

7 Sec. 25d-3. Notices.

8 (a) Beginning January 1, 2006, if the Agency determines  
9 that:

10 (1) Soil contamination beyond the boundary of the site  
11 where the release occurred poses a threat of exposure to  
12 the public above the appropriate Tier 1 remediation  
13 objectives, based on the current use of the off-site  
14 property, adopted by the Board under Title XVII of this  
15 Act, the Agency shall give notice of the threat to the  
16 owner of the contaminated property; or

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

22 (A) for any private, semi-private, or non-community  
23 water system, the owners of the properties served by  
24 the system; and

25 (B) for any community water system, the owners and  
26 operators of the system.

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

31 (b) Beginning January 1, 2006, if any of the following  
32 actions occur: (i) the Agency refers a matter for enforcement  
33 under Section 43(a) of this Act; (ii) the Agency issues a seal

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

17 (c) The methods by which the Agency gives the notices  
18 required under this Section shall be determined in consultation  
19 with members of the public and appropriate members of the  
20 regulated community and may include, but shall not be limited  
21 to, personal notification, public meetings, signs, electronic  
22 notification, and print media. For sites at which a responsible  
23 party has implemented a community relations plan, the Agency  
24 may allow the responsible party to provide Agency-approved  
25 notices in lieu of the notices required to be given by the  
26 Agency. Notices issued under this Section may contain the  
27 following information:

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

30 (2) the identification of the contaminant released or  
31 suspected to have been released;

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

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

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

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

9           (d) Any person who is a responsible party with respect to  
10          the release or substantial threat of release for which notice  
11          is given under this Section is liable for all reasonable costs  
12          incurred by the State in giving the notice. All moneys received  
13          by the State under this subsection (d) for costs related to  
14          releases and substantial threats of releases of hazardous  
15          substances, pesticides, and petroleum other than releases and  
16          substantial threats of releases of petroleum from underground  
17          storage tanks subject to Title XVI of this Act must be  
18          deposited in and used for purposes consistent with the  
19          Hazardous Waste Fund. All moneys received by the State under  
20          this subsection (d) for costs related to releases and  
21          substantial threats of releases of petroleum from underground  
22          storage tanks subject to Title XVI of this Act must be  
23          deposited in and used for purposes consistent with the  
24          Underground Storage Tank Fund.

25           (415 ILCS 5/25d-4 new)

26          Sec. 25d-4. Agency authority. Whenever the Agency  
27          determines that a public notice should be issued under this  
28          Title, the Agency has the authority to issue an information  
29          demand letter to the owner or operator of the site or facility  
30          where the release occurred or is suspected to have occurred  
31          that requires the owner or operator to provide the Agency with  
32          the information necessary, to the extent practicable, to give  
33          the notices required under Section 25d-3 of this Title. In the

1 case of a release or suspected release from an underground  
2 storage tank subject to Title XVI of this Act, the Agency has  
3 the authority to issue such a letter to the owner or operator  
4 of the underground storage tank. Within 30 days after the  
5 issuance of a letter under this Section, or within a greater  
6 period specified by the Agency, the person who receives the  
7 letter shall provide the Agency with the required information.  
8 Any person who, without sufficient cause, willfully violates,  
9 or fails or refuses to comply with, any letter issued under  
10 this Section is in violation of this Act.

11 (415 ILCS 5/25d-5 new)

12 Sec. 25d-5. Contamination information. Beginning July 1,  
13 2006, the Agency shall make all of the following information  
14 available on the Internet:

15 (i) Copies of all notifications given under Section  
16 25d-3 of this Section. The copies must be indexed and the  
17 index shall, at a minimum, be searchable by notification  
18 date, zip code, site or facility name, and geographic  
19 location.

20 (ii) Appropriate Agency databases containing  
21 information about releases or suspected releases of  
22 contaminants in the State. The databases must, at a  
23 minimum, be searchable by notification date, zip code, site  
24 or facility name, and geographic location.

25 (iii) Links to appropriate USEPA databases containing  
26 information about releases or suspected releases of  
27 contaminants in the State.

28 (415 ILCS 5/25d-6 new)

29 Sec. 25d-6. Agency coordination. Beginning January 1,  
30 2006, the Agency shall coordinate with the Department of Public  
31 Health to provide training to regional and local health  
32 department staff on the use of the information posted on the

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

8 (415 ILCS 5/25d-7 new)

9 Sec. 25d-7. Rulemaking.

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

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

1 this Title.

2 (415 ILCS 5/25d-8 new)

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

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

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

13 (415 ILCS 5/25d-10 new)

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

18 (415 ILCS 5/58.8)

19 Sec. 58.8. Duty to record.

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

28 (b) A No Further Remediation Letter shall not become  
29 effective until officially recorded in accordance with  
30 subsection (a) of this Section. The RA shall obtain and submit

1 to the Agency a certified copy of the No Further Remediation  
2 Letter as recorded.

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

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

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

19 Section 99. Effective date. This Act takes effect upon  
20 becoming law.".