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LRB094 07834 RSP 41922 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 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 responsible party with respect to the release or threat of a
20 release or if the Director's decision in selecting the ordered
21 response action was arbitrary and capricious or was otherwise
22 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

1 106(a) of the Comprehensive Environmental Response,
2 Compensation, and Liability Act of 1980 (P.L. 96-510), as
3 amended ("CERCLA"), to allow reimbursement of response costs
4 analogous to the reimbursement of response costs allowed under
5 Section 106(b) of CERCLA, and to limit the review of orders
6 issued under this Section to the same extent that the review of
7 orders issued under Section 106 of CERCLA are limited by
8 Section 113(h) of CERCLA.

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

13 (c) In addition to any other action taken by federal,
14 State, or local government, when the Director determines that
15 there may be an imminent and substantial endangerment to the
16 public health or welfare or the environment as a result of a
17 release or substantial threat of a release of a hazardous
18 substance, pesticide, or petroleum, the Director may issue to a
19 potentially responsible party any order that may be necessary
20 to protect the public health and welfare and the environment
21 that requires response actions consistent with the following:

22 (1) for a release or threat of a release of a hazardous
23 substance, pesticide, or petroleum other than the release
24 or threat of a release of petroleum from an underground
25 storage tank subject to Title XVI of this Act, the federal
26 regulations and amendments thereto promulgated by the
27 United States Environmental Protection Agency to implement
28 Section 105 of CERCLA, as amended; and

29 (2) for a release or threat of a release from an
30 underground storage tank subject to Title XVI of this Act,
31 the requirements of Title XVI of this Act and the
32 regulations adopted thereto.

33 (d) Any person who, without sufficient cause, willfully
34 violates or fails or refuses to comply with any order issued

1 under subsection (c) of this Section is in violation of this
2 Act.

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

9 (1) The interest payable under this subsection accrues
10 on the amounts expended from the date of expenditure to the
11 date of payment of reimbursement at the rate set forth in
12 Section 3-2 of the Uniform Penalty and Interest Act.
13 Reimbursement for costs associated with a release or threat
14 of a release of hazardous substance, pesticide, or
15 petroleum other than the release or threat of a release of
16 petroleum from an underground storage tank subject to Title
17 XVI of this Act must be made from the Hazardous Waste Fund.
18 Reimbursement for costs associated with a release or threat
19 of a release from an underground storage tank subject to
20 Title XVI of this Act must be made from the Underground
21 Storage Tank Fund. Reimbursement from the Underground
22 Storage Tank Fund under this Section is not subject to the
23 requirements of Title XVI of this Act.

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

28 (3) Except as provided in item (4) of this subsection,
29 to obtain reimbursement, the petitioner must establish, by
30 a preponderance of the evidence, that (i) the petitioner is
31 not a responsible party with respect to the release or
32 threat of a release for which the relevant order was
33 issued, (ii) the petitioner's response actions were
34 consistent with the federal regulations and amendments

1 thereto promulgated by the Administrator of the United
2 States Environmental Protection Agency to implement
3 Section 105 of CERCLA, as amended, or the requirements of
4 Title XVI of this Act, as required under subsection (c) of
5 this Section, and (iii) the costs for which the petitioner
6 seeks reimbursement are reasonable in light of the action
7 required by the relevant order.

8 (4) A petitioner who is a responsible party with
9 respect to the release or threat of a release for which the
10 relevant order was issued may recover its reasonable costs
11 of response to the extent that it can demonstrate, on the
12 administrative record, that the Director's decision in
13 selecting the response action ordered was arbitrary and
14 capricious or was otherwise not in accordance with law.
15 Reimbursement awarded under this subsection (e)(4)
16 includes all reasonable response costs incurred by the
17 petitioner under the portions of the order found to be
18 arbitrary and capricious or otherwise not in accordance
19 with law.

20 (5) Reimbursement awarded by the Board under
21 subsections (e)(3) or (e)(4) of this Section may include
22 appropriate costs, fees, and other expenses incurred in
23 seeking reimbursement, including, but not limited to,
24 reasonable fees and expenses of attorneys.

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

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

31 (2) An action for reimbursement under subsection (e) of
32 this Section.

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

1 (415 ILCS 5/22.50 new)

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

18 (415 ILCS 5/Title VI-D heading new)

19 TITLE VI-D. RIGHT-TO-KNOW

20 (415 ILCS 5/25d-1 new)

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

26 (415 ILCS 5/25d-2 new)

27 Sec. 25d-2. Contaminant evaluation committee. Beginning
28 January 1, 2006, the Agency shall establish, internally within
29 the Agency, a contaminant evaluation committee to evaluate
30 releases of contaminants. The committee shall perform this

1 evaluation whenever the Agency suspects or confirms that the
2 actual or modeled extent of soil or groundwater contamination
3 extends beyond the boundary of the site where the release
4 occurred. The committee shall recommend appropriate Agency
5 actions in response to the release, which may include, but
6 shall not be limited to, public notices, investigations,
7 administrative orders, and enforcement referrals.

8 (415 ILCS 5/25d-3 new)

9 Sec. 25d-3. Committee action.

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

12 (1) Soil contamination poses a threat of exposure to
13 the public above the Tier 1 residential remediation
14 objectives 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 committee'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. Within 30 days after a
9 request by the Agency, the appropriate officials of the county
10 in which the property is located must provide to the Agency the
11 names and addresses of all property owners to whom the Agency
12 is required to give notice under this subsection (b).

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

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

19 (2) the identification of the contaminant released or
20 suspected to have been released;

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

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

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

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

32 (d) Any person who is a responsible party with respect to
33 the release or substantial threat of release for which notice
34 is given under this Section is liable for all costs incurred by

1 the State in giving the notice. All moneys received by the
2 State under this subsection (d) must be deposited in the
3 Hazardous Waste Fund.

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

5 Sec. 25d-4. Agency authority. Whenever there is a release
6 or suspected release of a contaminant, the Agency has the
7 authority to issue an order to the owner or operator of the
8 site or facility where the release occurred or is suspected to
9 have occurred that requires the owner or operator to provide
10 the Agency with the information necessary to give the notices
11 required under Section 25d-3 of this Title. In the case of a
12 release or suspected release from an underground storage tank
13 subject to Title XVI of this Act, the Agency has the authority
14 to issue such an order to the owner or operator of the
15 underground storage tank. Any person who, without sufficient
16 cause, willfully violates, or fails or refuses to comply with,
17 any order issued under this Section is in violation of this
18 Act.

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

20 Sec. 25d-5. Right-to-Know Committee. Beginning January 1,
21 2006, the Agency shall establish a committee known as the
22 Right-to-Know Committee. The Right-to-Know Committee shall be
23 composed of the following persons and shall be chaired by the
24 Director or the Director's designee: representatives of the
25 Agency, representatives of the Illinois Department of Public
26 Health, representatives of the Interagency Coordinating
27 Committee on Groundwater established in the Groundwater
28 Protection Act, representatives of the Groundwater Advisory
29 Council established in the Groundwater Protection Act,
30 representatives of priority groundwater protection regional
31 planning committees established under Section 17.2 of this Act,
32 and up to 3 individuals appointed by the Director who are

1 owners of properties served by private, semi-private, or
2 non-community drinking water systems that have been impacted by
3 a release of a contaminant. The Right-to-Know Committee, in
4 consultation with the Agency, shall evaluate and recommend
5 appropriate and effective methods of providing the notices
6 required under Section 25d-3 of this Title. The methods of
7 notification evaluated by the Right-to-Know Committee shall
8 include, but shall not be limited to, the following:

- 9 (a) personal notification;
10 (b) public meetings;
11 (c) signs;
12 (d) electronic notification; and
13 (e) print media.

14 (415 ILCS 5/25d-6 new)

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

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

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

28 (iii) Links to appropriate USEPA databases containing
29 information about releases or suspected releases of
30 contaminants in the State.

31 (415 ILCS 5/25d-7 new)

32 Sec. 25d-7. Agency coordination. Beginning January 1,

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

11 (415 ILCS 5/25d-8 new)

12 Sec. 25d-8. Amendment. Within 180 days after the effective
13 date of this amendatory Act of the 94th General Assembly, the
14 Agency shall evaluate the Board's rules and propose amendments
15 to the rules as necessary to require potable water supply well
16 surveys and community relations activities where such surveys
17 and activities are appropriate in response to releases of
18 contaminants that have impacted or that may impact offsite
19 potable water supply wells. Within 180 days after receiving the
20 Agency's proposal, the Board shall amend its rules as necessary
21 to require potable water supply well surveys and community
22 relations activities where such surveys and activities are
23 appropriate in response to releases of contaminants that have
24 impacted or that may impact offsite potable water supply wells.
25 Community relations activities required by the Board shall
26 include, but shall not be limited to, submitting a community
27 relations plan for Agency approval, maintaining a public
28 information repository that contains timely information about
29 the actions being taken in response to a release, and
30 maintaining dialogue with the community through means such as
31 public meetings, fact sheets, and community advisory groups.

32 (415 ILCS 5/25d-9 new)

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

6 (415 ILCS 5/25d-10 new)

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

11 (415 ILCS 5/58.8)

12 Sec. 58.8. Duty to record.

13 (a) The RA receiving a No Further Remediation Letter from
14 the Agency pursuant to Section 58.10, shall submit the letter
15 to the Office of the Recorder or the Registrar of Titles of the
16 county in which the site is located within 45 days of receipt
17 of the letter. The Office of the Recorder or the Registrar of
18 Titles shall accept and record that letter in accordance with
19 Illinois law so that it forms a permanent part of the chain of
20 title for the site.

21 (b) A No Further Remediation Letter shall not become
22 effective until officially recorded in accordance with
23 subsection (a) of this Section. The RA shall obtain and submit
24 to the Agency a certified copy of the No Further Remediation
25 Letter as recorded.

26 (c) (Blank). At no time shall any site for which a land use
27 limitation has been imposed as a result of remediation
28 activities under this Title be used in a manner inconsistent
29 with the land use limitation unless further investigation or
30 remedial action has been conducted that documents the
31 attainment of objectives appropriate for the new land use and a
32 new No Further Remediation Letter obtained and recorded in

1 ~~accordance with this Title.~~

2 (d) In the event that a No Further Remediation Letter
3 issues by operation of law pursuant to Section 58.10, the RA
4 may, for purposes of this Section, file an affidavit stating
5 that the letter issued by operation of law. Upon receipt of the
6 No Further Remediation Letter from the Agency, the RA shall
7 comply with the requirements of subsections (a) and (b) of this
8 Section.

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

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

12 (415 ILCS 55/4) (from Ch. 111 1/2, par. 7454)

13 Sec. 4. (a) There shall be established within State
14 government an interagency committee which shall be known as the
15 Interagency Coordinating Committee on Groundwater. The
16 Committee shall be composed of the Director, or his designee,
17 of the following agencies:

18 (1) The Illinois Environmental Protection Agency, who
19 shall chair the Committee.

20 (2) The Illinois Department of Natural Resources.

21 (3) The Illinois Department of Public Health.

22 (4) The Office of Mines and Minerals within the
23 Department of Natural Resources.

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

25 (6) The Division of Water Resources of the Department
26 of Natural Resources.

27 (7) The Illinois Department of Agriculture.

28 (8) The Illinois Emergency Management Agency.

29 (9) The Illinois Department of Nuclear Safety.

30 (10) The Illinois Department of Commerce and Economic
31 Opportunity ~~Community Affairs~~.

32 (b) The Committee shall meet not less than twice each

1 calendar year and shall:

2 (1) Review and coordinate the State's policy on
3 groundwater protection.

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

6 (3) Review and evaluate the status of the State's
7 efforts to improve the quality of the groundwater and of
8 the State enforcement efforts for protection of the
9 groundwater and make recommendations on improving the
10 State efforts to protect the groundwater.

11 (4) Recommend procedures for better coordination among
12 State groundwater programs and with local programs related
13 to groundwater protection.

14 (5) Review and recommend procedures to coordinate the
15 State's response to specific incidents of groundwater
16 pollution and coordinate dissemination of information
17 between agencies responsible for the State's response.

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

20 (7) Review, coordinate and evaluate groundwater data
21 collection and analysis.

22 (8) Beginning on January 1, 1990, report biennially to
23 the Governor and the General Assembly on groundwater
24 quality, quantity, and the State's enforcement efforts.
25 Beginning January 1, 2006, the Committee's biennial report
26 shall also include, with input from the Groundwater
27 Advisory Council established under Section 5 of this Act,
28 the priority groundwater protection regional planning
29 committees established pursuant to Section 17.2 of the
30 Environmental Protection Act, and the Right-to-Know
31 Committee established pursuant to Section 25d-5 of the
32 Environmental Protection Act, information on the
33 implementation of this amendatory Act of the 94th General
34 Assembly.

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

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

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

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

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