



Filed: 4/11/2005

09400SB0241sam003

LRB094 07834 RSP 44816 a

1 AMENDMENT TO SENATE BILL 241

2 AMENDMENT NO. _____. Amend Senate Bill 241, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Environmental Protection Act is amended by
6 changing Section 58.8, and by adding Sections 22.2d, 22.50, and
7 Title VI-D as follows:

8 (415 ILCS 5/22.2d new)

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

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

24 The intent of this Section is to provide the Director with

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

10 (b) In addition to any other action taken by federal,
11 State, or local government, when the Director determines that
12 there may be an imminent and substantial endangerment to the
13 public health or welfare or the environment as a result of a
14 release or substantial threat of a release of a hazardous
15 substance, pesticide, or petroleum, the Director may issue to
16 any person who is potentially liable under this Act for the
17 release or substantial threat of a release any order that may
18 be necessary to protect the public health and welfare and the
19 environment. In determining the presence of an imminent and
20 substantial endangerment, the Director shall consider: the
21 quantities of hazardous substances, pesticides, or petroleum
22 involved; the nature and degree of the hazard caused by the
23 hazardous substances, pesticides, or petroleum; and the
24 likelihood of human or environmental exposure.

25 (1) Any order issued under this Section shall require
26 response actions consistent with the federal regulations
27 and amendments thereto promulgated by the United States
28 Environmental Protection Agency to implement Section 105
29 of CERCLA, as amended, except that the remediation
30 objectives for response actions ordered under this Section
31 shall be determined in accordance with the risk-based
32 remediation objectives adopted by the Board under Title
33 XVII of this Act.

34 (2) Before the Director issues any order under this

1 Section, the Agency shall send a Special Notice Letter to
2 all persons identified by the Agency as potentially liable
3 under this Act for the release or threat of release. This
4 Special Notice Letter to the recipients shall include at a
5 minimum the following information:

6 (A) that the Agency believes the recipient may be
7 liable under the Act for responding to the release or
8 threat of a release;

9 (B) the reasons why the Agency believes the
10 recipient may be liable under the Act for the release
11 or threat of a release; and

12 (C) the period of time, not to exceed 30 days from
13 the date of issuance of the Special Notice Letter,
14 during which the Agency is ready to negotiate with the
15 recipient regarding their response to the release or
16 threat of a release.

17 In an effort to encourage the prompt negotiation of a
18 settlement agreement or an order on consent, the Director
19 shall not issue any unilateral order under this Section
20 during the period of time specified by the Agency in the
21 Special Notice Letter in accordance with item (2)(C) of
22 this subsection.

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

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

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

1 Reimbursement for costs associated with a release or threat
2 of a release of hazardous substance, pesticide, or
3 petroleum must be made from the Hazardous Waste Fund.

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

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

11 (A) either: (i) the petitioner is not liable under
12 this Act for the release or threat of a release to
13 which the relevant order applies or (ii) the only costs
14 for which the petitioner seeks reimbursement are costs
15 incurred by the petitioner in remediating the share of
16 a release or threat of a release for which a bankrupt
17 or insolvent party is in whole or in part liable under
18 this Act, the costs of the share are a fair and
19 accurate apportionment among the persons potentially
20 liable under this Act for the release or threat of a
21 release, and the bankrupt or insolvent party failed to
22 pay the costs of the share; and

23 (B) the petitioner's response actions were
24 consistent with the federal regulations and amendments
25 thereto promulgated by the Administrator of the United
26 States Environmental Protection Agency to implement
27 Section 105 of CERCLA, as amended, except that the
28 remediation objectives for response actions shall be
29 determined in accordance with the risk-based
30 remediation objectives adopted by the Board under
31 Title XVII of this Act; and

32 (C) the costs for which the petitioner seeks
33 reimbursement are reasonable in light of the action
34 required by the relevant order.

1 (4) A petitioner who is liable under this Act for the
2 release or threat of a release to which the relevant order
3 applies may recover its reasonable costs of response to the
4 extent that it can demonstrate, on the administrative
5 record, that the Director's decision in selecting the
6 response action ordered was arbitrary and capricious or was
7 otherwise not in accordance with law. Reimbursement
8 awarded under this item (4) includes all reasonable
9 response costs incurred by the petitioner under the
10 portions of the order found to be arbitrary and capricious
11 or otherwise not in accordance with law.

12 (5) Reimbursement awarded by the Board under item (3)
13 or (4) of subsection (d) may include appropriate costs,
14 fees, and other expenses incurred in petitioning the
15 Director or Board for reimbursement under subsection (d),
16 including, but not limited to, reasonable fees and expenses
17 of attorneys.

18 (6) Costs paid to a petitioner under a policy of
19 insurance, another written agreement, or a court order are
20 not eligible for payment under this subsection (d). A
21 petitioner who receives payment under a policy of
22 insurance, another written agreement, or a court order
23 shall reimburse the State to the extent that such payment
24 covers costs for which payment was received under this
25 subsection (d). Any monies received by the State under this
26 item (6) shall be deposited into the Hazardous Waste Fund.

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

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

32 (2) An action for reimbursement under subsection (d) of
33 this Section.

34 (f) Except as provided in subsection (g) of this Section,

1 any person may seek contribution from any other person who is
2 liable for the costs of response actions under this Section. In
3 resolving contribution claims, the Board or court may allocate
4 response costs among liable parties using such equitable
5 factors as the court determines are appropriate.

6 (g) A person who has complied with an order under this
7 Section and has resolved their liability under this Act with
8 respect to the release or threat of a release shall not be
9 liable for claims for contribution relating to the release or
10 threat of a release.

11 (h) This Section does not apply to releases or threats of
12 releases from underground storage tanks subject to Title XVI of
13 this Act. Orders issued by the Agency in response to such
14 releases or threats of releases shall be issued under Section
15 57.12(d) of this Act instead of this Section, and the costs of
16 complying with said orders shall be reimbursed in accordance
17 with Title XVI of this Act instead of this Section.

18 (i) The Agency may adopt rules as necessary for the
19 implementation of this Section. The Agency shall consult with
20 affected members of the public during the development of any
21 such rules.

22 (415 ILCS 5/22.50 new)

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

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

6 (415 ILCS 5/Title VI-D heading new)

7 TITLE VI-D. RIGHT-TO-KNOW

8 (415 ILCS 5/25d-1 new)

9 Sec. 25d-1. Definitions. For the purposes of this Title,
10 the terms "community water system", "non-community water
11 system", "potable", "private water system", and "semi-private
12 water system" have the meanings ascribed to them in the
13 Illinois Groundwater Protection Act.

14 (415 ILCS 5/25d-2 new)

15 Sec. 25d-2. Contaminant evaluation committee. Beginning
16 January 1, 2006, the Agency shall establish, internally within
17 the Agency, a contaminant evaluation committee to evaluate
18 releases of contaminants. The committee shall perform this
19 evaluation whenever the Agency determines that the extent of
20 soil or groundwater contamination may extend beyond the
21 boundary of the site where the release occurred. The committee
22 shall recommend appropriate Agency actions in response to the
23 release, which may include, but shall not be limited to, public
24 notices, investigations, administrative orders under Sections
25 22.2d or 57.12(d) of this Act, and enforcement referrals.

26 (415 ILCS 5/25d-3 new)

27 Sec. 25d-3. Committee action.

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

30 (1) Soil contamination beyond the boundary of the site

1 where the release occurred poses a threat of exposure to
2 the public above the Tier 1 residential remediation
3 objectives adopted by the Board under Title XVII of this
4 Act, the Agency shall give notice of the threat to the
5 owner of the contaminated property; or

6 (2) Groundwater contamination poses a threat of
7 exposure to the public above the Class I groundwater
8 quality standards adopted by the Board under this Act and
9 the Groundwater Protection Act, the Agency shall give
10 notice of the threat to the following:

11 (A) for any private, semi-private, or non-community
12 water system, the owners of the properties served by
13 the system; and

14 (B) for any community water system, the owners and
15 operators of the system.

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

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

1 owners being the persons or entities that appear from the
2 authentic tax records of the county.

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

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

9 (2) the identification of the contaminant released or
10 suspected to have been released;

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

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

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

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

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

1 storage tanks subject to Title XVI of this Act must be
2 deposited in and used for purposes consistent with the
3 Underground Storage Tank Fund.

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

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

23 (415 ILCS 5/25d-5 new)

24 Sec. 25d-5. Right-to-Know Committee. Beginning January 1,
25 2006, the Agency shall establish a committee known as the
26 Right-to-Know Committee. The Right-to-Know Committee shall be
27 composed of the following persons and shall be chaired by the
28 Director or the Director's designee: representatives of the
29 Agency, representatives of the Illinois Department of Public
30 Health, representatives of the Interagency Coordinating
31 Committee on Groundwater established in the Groundwater
32 Protection Act, representatives of the Groundwater Advisory

1 Council established in the Groundwater Protection Act,
2 representatives of priority groundwater protection regional
3 planning committees established under Section 17.2 of this Act,
4 and up to 3 individuals appointed by the Director who are
5 owners of properties served by private, semi-private, or
6 non-community drinking water systems that have been impacted by
7 a release of a contaminant. The Right-to-Know Committee, in
8 consultation with the Agency, shall evaluate and recommend
9 appropriate and effective methods of providing the notices
10 required under Section 25d-3 of this Title. The methods of
11 notification evaluated by the Right-to-Know Committee shall
12 include, but shall not be limited to, the following:

- 13 (a) personal notification;
14 (b) public meetings;
15 (c) signs;
16 (d) electronic notification; and
17 (e) print media.

18 (415 ILCS 5/25d-6 new)

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

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

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

32 (iii) Links to appropriate USEPA databases containing
33 information about releases or suspected releases of

1 contaminants in the State.

2 (415 ILCS 5/25d-7 new)

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

14 (415 ILCS 5/25d-8 new)

15 Sec. 25d-8. Amendment. Within 180 days after the effective
16 date of this amendatory Act of the 94th General Assembly, the
17 Agency shall evaluate the Board's rules and propose amendments
18 to the rules as necessary to require potable water supply well
19 surveys and community relations activities where such surveys
20 and 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

1 maintaining dialogue with the community through means such as
2 public meetings, fact sheets, and community advisory groups.

3 (415 ILCS 5/25d-9 new)

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

9 (415 ILCS 5/25d-10 new)

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

14 (415 ILCS 5/58.8)

15 Sec. 58.8. Duty to record.

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

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

29 (c) (Blank). ~~At no time shall any site for which a land use~~
30 ~~limitation has been imposed as a result of remediation~~
31 ~~activities under this Title be used in a manner inconsistent~~

1 ~~with the land use limitation unless further investigation or~~
2 ~~remedial action has been conducted that documents the~~
3 ~~attainment of objectives appropriate for the new land use and a~~
4 ~~new No Further Remediation Letter obtained and recorded in~~
5 ~~accordance with this Title.~~

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

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

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

16 (415 ILCS 55/4) (from Ch. 111 1/2, par. 7454)

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

22 (1) The Illinois Environmental Protection Agency, who
23 shall chair the Committee.

24 (2) The Illinois Department of Natural Resources.

25 (3) The Illinois Department of Public Health.

26 (4) The Office of Mines and Minerals within the
27 Department of Natural Resources.

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

29 (6) The Division of Water Resources of the Department
30 of Natural Resources.

31 (7) The Illinois Department of Agriculture.

32 (8) The Illinois Emergency Management Agency.

1 (9) The Illinois Department of Nuclear Safety.

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

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

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

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

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

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

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

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

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

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

1 Committee established pursuant to Section 25d-5 of the
2 Environmental Protection Act, information on the
3 implementation of this amendatory Act of the 94th General
4 Assembly.

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

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

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

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

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".