



Sen. James F. Clayborne Jr.

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09400SB2285sam001

LRB094 15461 RSP 56161 a

1 AMENDMENT TO SENATE BILL 2285

2 AMENDMENT NO. _____. Amend Senate Bill 2285 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended by
5 changing Sections 39 and 39.2 as follows:

6 (415 ILCS 5/39) (from Ch. 111 1/2, par. 1039)

7 (Text of Section before amendment by P.A. 94-725)

8 Sec. 39. Issuance of permits; procedures.

9 (a) When the Board has by regulation required a permit for
10 the construction, installation, or operation of any type of
11 facility, equipment, vehicle, vessel, or aircraft, the
12 applicant shall apply to the Agency for such permit and it
13 shall be the duty of the Agency to issue such a permit upon
14 proof by the applicant that the facility, equipment, vehicle,
15 vessel, or aircraft will not cause a violation of this Act or
16 of regulations hereunder. The Agency shall adopt such
17 procedures as are necessary to carry out its duties under this
18 Section. In making its determinations on permit applications
19 under this Section the Agency may consider prior adjudications
20 of noncompliance with this Act by the applicant that involved a
21 release of a contaminant into the environment. In granting
22 permits, the Agency may impose reasonable conditions
23 specifically related to the applicant's past compliance
24 history with this Act as necessary to correct, detect, or

1 prevent noncompliance. The Agency may impose such other
2 conditions as may be necessary to accomplish the purposes of
3 this Act, and as are not inconsistent with the regulations
4 promulgated by the Board hereunder. Except as otherwise
5 provided in this Act, a bond or other security shall not be
6 required as a condition for the issuance of a permit. If the
7 Agency denies any permit under this Section, the Agency shall
8 transmit to the applicant within the time limitations of this
9 Section specific, detailed statements as to the reasons the
10 permit application was denied. Such statements shall include,
11 but not be limited to the following:

12 (i) the Sections of this Act which may be violated if
13 the permit were granted;

14 (ii) the provision of the regulations, promulgated
15 under this Act, which may be violated if the permit were
16 granted;

17 (iii) the specific type of information, if any, which
18 the Agency deems the applicant did not provide the Agency;
19 and

20 (iv) a statement of specific reasons why the Act and
21 the regulations might not be met if the permit were
22 granted.

23 If there is no final action by the Agency within 90 days
24 after the filing of the application for permit, the applicant
25 may deem the permit issued; except that this time period shall
26 be extended to 180 days when (1) notice and opportunity for
27 public hearing are required by State or federal law or
28 regulation, (2) the application which was filed is for any
29 permit to develop a landfill subject to issuance pursuant to
30 this subsection, or (3) the application that was filed is for a
31 MSWLF unit required to issue public notice under subsection (p)
32 of Section 39. The 90-day and 180-day time periods for the
33 Agency to take final action do not apply to NPDES permit
34 applications under subsection (b) of this Section, to RCRA

1 permit applications under subsection (d) of this Section, or to
2 UIC permit applications under subsection (e) of this Section.

3 The Agency shall publish notice of all final permit
4 determinations for development permits for MSWLF units and for
5 significant permit modifications for lateral expansions for
6 existing MSWLF units one time in a newspaper of general
7 circulation in the county in which the unit is or is proposed
8 to be located.

9 After January 1, 1994 and until July 1, 1998, operating
10 permits issued under this Section by the Agency for sources of
11 air pollution permitted to emit less than 25 tons per year of
12 any combination of regulated air pollutants, as defined in
13 Section 39.5 of this Act, shall be required to be renewed only
14 upon written request by the Agency consistent with applicable
15 provisions of this Act and regulations promulgated hereunder.
16 Such operating permits shall expire 180 days after the date of
17 such a request. The Board shall revise its regulations for the
18 existing State air pollution operating permit program
19 consistent with this provision by January 1, 1994.

20 After June 30, 1998, operating permits issued under this
21 Section by the Agency for sources of air pollution that are not
22 subject to Section 39.5 of this Act and are not required to
23 have a federally enforceable State operating permit shall be
24 required to be renewed only upon written request by the Agency
25 consistent with applicable provisions of this Act and its
26 rules. Such operating permits shall expire 180 days after the
27 date of such a request. Before July 1, 1998, the Board shall
28 revise its rules for the existing State air pollution operating
29 permit program consistent with this paragraph and shall adopt
30 rules that require a source to demonstrate that it qualifies
31 for a permit under this paragraph.

32 (b) The Agency may issue NPDES permits exclusively under
33 this subsection for the discharge of contaminants from point
34 sources into navigable waters, all as defined in the Federal

1 Water Pollution Control Act, as now or hereafter amended,
2 within the jurisdiction of the State, or into any well.

3 All NPDES permits shall contain those terms and conditions,
4 including but not limited to schedules of compliance, which may
5 be required to accomplish the purposes and provisions of this
6 Act.

7 The Agency may issue general NPDES permits for discharges
8 from categories of point sources which are subject to the same
9 permit limitations and conditions. Such general permits may be
10 issued without individual applications and shall conform to
11 regulations promulgated under Section 402 of the Federal Water
12 Pollution Control Act, as now or hereafter amended.

13 The Agency may include, among such conditions, effluent
14 limitations and other requirements established under this Act,
15 Board regulations, the Federal Water Pollution Control Act, as
16 now or hereafter amended, and regulations pursuant thereto, and
17 schedules for achieving compliance therewith at the earliest
18 reasonable date.

19 The Agency shall adopt filing requirements and procedures
20 which are necessary and appropriate for the issuance of NPDES
21 permits, and which are consistent with the Act or regulations
22 adopted by the Board, and with the Federal Water Pollution
23 Control Act, as now or hereafter amended, and regulations
24 pursuant thereto.

25 The Agency, subject to any conditions which may be
26 prescribed by Board regulations, may issue NPDES permits to
27 allow discharges beyond deadlines established by this Act or by
28 regulations of the Board without the requirement of a variance,
29 subject to the Federal Water Pollution Control Act, as now or
30 hereafter amended, and regulations pursuant thereto.

31 (c) Except for those facilities owned or operated by
32 sanitary districts organized under the Metropolitan Water
33 Reclamation District Act, no permit for the development or
34 construction of a new pollution control facility may be granted

1 by the Agency unless the applicant submits proof to the Agency
2 that the location of the facility has been approved by the
3 County Board of the county if in an unincorporated area, or the
4 governing body of the municipality when in an incorporated
5 area, in which the facility is to be located in accordance with
6 Section 39.2 of this Act. For purposes of this subsection (c),
7 and for purposes of Section 39.2 of this Act, the appropriate
8 county board or governing body of the municipality shall be the
9 county board of the county or the governing body of the
10 municipality in which the facility is to be located as of the
11 date when the application for siting approval is filed.

12 In the event that siting approval granted pursuant to
13 Section 39.2 has been transferred to a subsequent owner or
14 operator, that subsequent owner or operator may apply to the
15 Agency for, and the Agency may grant, a development or
16 construction permit for the facility for which local siting
17 approval was granted. Upon application to the Agency for a
18 development or construction permit by that subsequent owner or
19 operator, the permit applicant shall cause written notice of
20 the permit application to be served upon the appropriate county
21 board or governing body of the municipality that granted siting
22 approval for that facility and upon any party to the siting
23 proceeding pursuant to which siting approval was granted. In
24 that event, the Agency shall conduct an evaluation of the
25 subsequent owner or operator's prior experience in waste
26 management operations in the manner conducted under subsection
27 (i) of Section 39 of this Act.

28 Beginning August 20, 1993, if the pollution control
29 facility consists of a hazardous or solid waste disposal
30 facility for which the proposed site is located in an
31 unincorporated area of a county with a population of less than
32 100,000 and includes all or a portion of a parcel of land that
33 was, on April 1, 1993, adjacent to a municipality having a
34 population of less than 5,000, then the local siting review

1 required under this subsection (c) in conjunction with any
2 permit applied for after that date shall be performed by the
3 governing body of that adjacent municipality rather than the
4 county board of the county in which the proposed site is
5 located; and for the purposes of that local siting review, any
6 references in this Act to the county board shall be deemed to
7 mean the governing body of that adjacent municipality;
8 provided, however, that the provisions of this paragraph shall
9 not apply to any proposed site which was, on April 1, 1993,
10 owned in whole or in part by another municipality.

11 In the case of a pollution control facility for which a
12 development permit was issued before November 12, 1981, if an
13 operating permit has not been issued by the Agency prior to
14 August 31, 1989 for any portion of the facility, then the
15 Agency may not issue or renew any development permit nor issue
16 an original operating permit for any portion of such facility
17 unless the applicant has submitted proof to the Agency that the
18 location of the facility has been approved by the appropriate
19 county board or municipal governing body pursuant to Section
20 39.2 of this Act.

21 After January 1, 1994, if a solid waste disposal facility,
22 any portion for which an operating permit has been issued by
23 the Agency, has not accepted waste disposal for 5 or more
24 consecutive calendar years, before that facility may accept
25 any new or additional waste for disposal, the owner and
26 operator must obtain a new operating permit under this Act for
27 that facility unless the owner and operator have applied to the
28 Agency for a permit authorizing the temporary suspension of
29 waste acceptance. The Agency may not issue a new operation
30 permit under this Act for the facility unless the applicant has
31 submitted proof to the Agency that the location of the facility
32 has been approved or re-approved by the appropriate county
33 board or municipal governing body under Section 39.2 of this
34 Act after the facility ceased accepting waste.

1 Except for those facilities owned or operated by sanitary
2 districts organized under the Metropolitan Water Reclamation
3 District Act, and except for new pollution control facilities
4 governed by Section 39.2, and except for fossil fuel mining
5 facilities, the granting of a permit under this Act shall not
6 relieve the applicant from meeting and securing all necessary
7 zoning approvals from the unit of government having zoning
8 jurisdiction over the proposed facility.

9 Before beginning construction on any new sewage treatment
10 plant or sludge drying site to be owned or operated by a
11 sanitary district organized under the Metropolitan Water
12 Reclamation District Act for which a new permit (rather than
13 the renewal or amendment of an existing permit) is required,
14 such sanitary district shall hold a public hearing within the
15 municipality within which the proposed facility is to be
16 located, or within the nearest community if the proposed
17 facility is to be located within an unincorporated area, at
18 which information concerning the proposed facility shall be
19 made available to the public, and members of the public shall
20 be given the opportunity to express their views concerning the
21 proposed facility.

22 The Agency may issue a permit for a municipal waste
23 transfer station without requiring approval pursuant to
24 Section 39.2 provided that the following demonstration is made:

25 (1) the municipal waste transfer station was in
26 existence on or before January 1, 1979 and was in
27 continuous operation from January 1, 1979 to January 1,
28 1993;

29 (2) the operator submitted a permit application to the
30 Agency to develop and operate the municipal waste transfer
31 station during April of 1994;

32 (3) the operator can demonstrate that the county board
33 of the county, if the municipal waste transfer station is
34 in an unincorporated area, or the governing body of the

1 municipality, if the station is in an incorporated area,
2 does not object to resumption of the operation of the
3 station; and

4 (4) the site has local zoning approval.

5 (d) The Agency may issue RCRA permits exclusively under
6 this subsection to persons owning or operating a facility for
7 the treatment, storage, or disposal of hazardous waste as
8 defined under this Act.

9 All RCRA permits shall contain those terms and conditions,
10 including but not limited to schedules of compliance, which may
11 be required to accomplish the purposes and provisions of this
12 Act. The Agency may include among such conditions standards and
13 other requirements established under this Act, Board
14 regulations, the Resource Conservation and Recovery Act of 1976
15 (P.L. 94-580), as amended, and regulations pursuant thereto,
16 and may include schedules for achieving compliance therewith as
17 soon as possible. The Agency shall require that a performance
18 bond or other security be provided as a condition for the
19 issuance of a RCRA permit.

20 In the case of a permit to operate a hazardous waste or PCB
21 incinerator as defined in subsection (k) of Section 44, the
22 Agency shall require, as a condition of the permit, that the
23 operator of the facility perform such analyses of the waste to
24 be incinerated as may be necessary and appropriate to ensure
25 the safe operation of the incinerator.

26 The Agency shall adopt filing requirements and procedures
27 which are necessary and appropriate for the issuance of RCRA
28 permits, and which are consistent with the Act or regulations
29 adopted by the Board, and with the Resource Conservation and
30 Recovery Act of 1976 (P.L. 94-580), as amended, and regulations
31 pursuant thereto.

32 The applicant shall make available to the public for
33 inspection all documents submitted by the applicant to the
34 Agency in furtherance of an application, with the exception of

1 trade secrets, at the office of the county board or governing
2 body of the municipality. Such documents may be copied upon
3 payment of the actual cost of reproduction during regular
4 business hours of the local office. The Agency shall issue a
5 written statement concurrent with its grant or denial of the
6 permit explaining the basis for its decision.

7 (e) The Agency may issue UIC permits exclusively under this
8 subsection to persons owning or operating a facility for the
9 underground injection of contaminants as defined under this
10 Act.

11 All UIC permits shall contain those terms and conditions,
12 including but not limited to schedules of compliance, which may
13 be required to accomplish the purposes and provisions of this
14 Act. The Agency may include among such conditions standards and
15 other requirements established under this Act, Board
16 regulations, the Safe Drinking Water Act (P.L. 93-523), as
17 amended, and regulations pursuant thereto, and may include
18 schedules for achieving compliance therewith. The Agency shall
19 require that a performance bond or other security be provided
20 as a condition for the issuance of a UIC permit.

21 The Agency shall adopt filing requirements and procedures
22 which are necessary and appropriate for the issuance of UIC
23 permits, and which are consistent with the Act or regulations
24 adopted by the Board, and with the Safe Drinking Water Act
25 (P.L. 93-523), as amended, and regulations pursuant thereto.

26 The applicant shall make available to the public for
27 inspection, all documents submitted by the applicant to the
28 Agency in furtherance of an application, with the exception of
29 trade secrets, at the office of the county board or governing
30 body of the municipality. Such documents may be copied upon
31 payment of the actual cost of reproduction during regular
32 business hours of the local office. The Agency shall issue a
33 written statement concurrent with its grant or denial of the
34 permit explaining the basis for its decision.

1 (f) In making any determination pursuant to Section 9.1 of
2 this Act:

3 (1) The Agency shall have authority to make the
4 determination of any question required to be determined by
5 the Clean Air Act, as now or hereafter amended, this Act,
6 or the regulations of the Board, including the
7 determination of the Lowest Achievable Emission Rate,
8 Maximum Achievable Control Technology, or Best Available
9 Control Technology, consistent with the Board's
10 regulations, if any.

11 (2) The Agency shall, after conferring with the
12 applicant, give written notice to the applicant of its
13 proposed decision on the application including the terms
14 and conditions of the permit to be issued and the facts,
15 conduct or other basis upon which the Agency will rely to
16 support its proposed action.

17 (3) Following such notice, the Agency shall give the
18 applicant an opportunity for a hearing in accordance with
19 the provisions of Sections 10-25 through 10-60 of the
20 Illinois Administrative Procedure Act.

21 (g) The Agency shall include as conditions upon all permits
22 issued for hazardous waste disposal sites such restrictions
23 upon the future use of such sites as are reasonably necessary
24 to protect public health and the environment, including
25 permanent prohibition of the use of such sites for purposes
26 which may create an unreasonable risk of injury to human health
27 or to the environment. After administrative and judicial
28 challenges to such restrictions have been exhausted, the Agency
29 shall file such restrictions of record in the Office of the
30 Recorder of the county in which the hazardous waste disposal
31 site is located.

32 (h) A hazardous waste stream may not be deposited in a
33 permitted hazardous waste site unless specific authorization
34 is obtained from the Agency by the generator and disposal site

1 owner and operator for the deposit of that specific hazardous
2 waste stream. The Agency may grant specific authorization for
3 disposal of hazardous waste streams only after the generator
4 has reasonably demonstrated that, considering technological
5 feasibility and economic reasonableness, the hazardous waste
6 cannot be reasonably recycled for reuse, nor incinerated or
7 chemically, physically or biologically treated so as to
8 neutralize the hazardous waste and render it nonhazardous. In
9 granting authorization under this Section, the Agency may
10 impose such conditions as may be necessary to accomplish the
11 purposes of the Act and are consistent with this Act and
12 regulations promulgated by the Board hereunder. If the Agency
13 refuses to grant authorization under this Section, the
14 applicant may appeal as if the Agency refused to grant a
15 permit, pursuant to the provisions of subsection (a) of Section
16 40 of this Act. For purposes of this subsection (h), the term
17 "generator" has the meaning given in Section 3.205 of this Act,
18 unless: (1) the hazardous waste is treated, incinerated, or
19 partially recycled for reuse prior to disposal, in which case
20 the last person who treats, incinerates, or partially recycles
21 the hazardous waste prior to disposal is the generator; or (2)
22 the hazardous waste is from a response action, in which case
23 the person performing the response action is the generator.
24 This subsection (h) does not apply to any hazardous waste that
25 is restricted from land disposal under 35 Ill. Adm. Code 728.

26 (i) Before issuing any RCRA permit, any permit for a waste
27 storage site, sanitary landfill, waste disposal site, waste
28 transfer station, waste treatment facility, waste incinerator,
29 or any waste-transportation operation, or any permit for a
30 clean construction or demolition debris fill operation, the
31 Agency shall conduct an evaluation of the prospective owner's
32 or operator's prior experience in waste management operations.
33 The Agency may deny such a permit if the prospective owner or
34 operator or any employee or officer of the prospective owner or

1 operator has a history of:

2 (1) repeated violations of federal, State, or local
3 laws, regulations, standards, or ordinances in the
4 operation of waste management facilities or sites; or

5 (2) conviction in this or another State of any crime
6 which is a felony under the laws of this State, or
7 conviction of a felony in a federal court; or

8 (3) proof of gross carelessness or incompetence in
9 handling, storing, processing, transporting or disposing
10 of waste.

11 (i-5) Before issuing any permit or approving any interim
12 authorization for a clean construction or demolition debris
13 fill operation in which any ownership interest is transferred
14 between January 1, 2005, and the effective date of the
15 prohibition set forth in Section 22.52 of this Act, the Agency
16 shall conduct an evaluation of the operation if any previous
17 activities at the site or facility may have caused or allowed
18 contamination of the site. It shall be the responsibility of
19 the owner or operator seeking the permit or interim
20 authorization to provide to the Agency all of the information
21 necessary for the Agency to conduct its evaluation. The Agency
22 may deny a permit or interim authorization if previous
23 activities at the site may have caused or allowed contamination
24 at the site, unless such contamination is authorized under any
25 permit issued by the Agency.

26 (j) The issuance under this Act of a permit to engage in
27 the surface mining of any resources other than fossil fuels
28 shall not relieve the permittee from its duty to comply with
29 any applicable local law regulating the commencement, location
30 or operation of surface mining facilities.

31 (k) A development permit issued under subsection (a) of
32 Section 39 for any facility or site which is required to have a
33 permit under subsection (d) of Section 21 shall expire at the
34 end of 2 calendar years from the date upon which it was issued,

1 unless within that period the applicant has taken action to
2 develop the facility or the site. In the event that review of
3 the conditions of the development permit is sought pursuant to
4 Section 40 or 41, or permittee is prevented from commencing
5 development of the facility or site by any other litigation
6 beyond the permittee's control, such two-year period shall be
7 deemed to begin on the date upon which such review process or
8 litigation is concluded.

9 (l) No permit shall be issued by the Agency under this Act
10 for construction or operation of any facility or site located
11 within the boundaries of any setback zone established pursuant
12 to this Act, where such construction or operation is
13 prohibited.

14 (m) The Agency may issue permits to persons owning or
15 operating a facility for composting landscape waste. In
16 granting such permits, the Agency may impose such conditions as
17 may be necessary to accomplish the purposes of this Act, and as
18 are not inconsistent with applicable regulations promulgated
19 by the Board. Except as otherwise provided in this Act, a bond
20 or other security shall not be required as a condition for the
21 issuance of a permit. If the Agency denies any permit pursuant
22 to this subsection, the Agency shall transmit to the applicant
23 within the time limitations of this subsection specific,
24 detailed statements as to the reasons the permit application
25 was denied. Such statements shall include but not be limited to
26 the following:

27 (1) the Sections of this Act that may be violated if
28 the permit were granted;

29 (2) the specific regulations promulgated pursuant to
30 this Act that may be violated if the permit were granted;

31 (3) the specific information, if any, the Agency deems
32 the applicant did not provide in its application to the
33 Agency; and

34 (4) a statement of specific reasons why the Act and the

1 regulations might be violated if the permit were granted.

2 If no final action is taken by the Agency within 90 days
3 after the filing of the application for permit, the applicant
4 may deem the permit issued. Any applicant for a permit may
5 waive the 90 day limitation by filing a written statement with
6 the Agency.

7 The Agency shall issue permits for such facilities upon
8 receipt of an application that includes a legal description of
9 the site, a topographic map of the site drawn to the scale of
10 200 feet to the inch or larger, a description of the operation,
11 including the area served, an estimate of the volume of
12 materials to be processed, and documentation that:

13 (1) the facility includes a setback of at least 200
14 feet from the nearest potable water supply well;

15 (2) the facility is located outside the boundary of the
16 10-year floodplain or the site will be floodproofed;

17 (3) the facility is located so as to minimize
18 incompatibility with the character of the surrounding
19 area, including at least a 200 foot setback from any
20 residence, and in the case of a facility that is developed
21 or the permitted composting area of which is expanded after
22 November 17, 1991, the composting area is located at least
23 1/8 mile from the nearest residence (other than a residence
24 located on the same property as the facility);

25 (4) the design of the facility will prevent any compost
26 material from being placed within 5 feet of the water
27 table, will adequately control runoff from the site, and
28 will collect and manage any leachate that is generated on
29 the site;

30 (5) the operation of the facility will include
31 appropriate dust and odor control measures, limitations on
32 operating hours, appropriate noise control measures for
33 shredding, chipping and similar equipment, management
34 procedures for composting, containment and disposal of

1 non-compostable wastes, procedures to be used for
2 terminating operations at the site, and recordkeeping
3 sufficient to document the amount of materials received,
4 composted and otherwise disposed of; and

5 (6) the operation will be conducted in accordance with
6 any applicable rules adopted by the Board.

7 The Agency shall issue renewable permits of not longer than
8 10 years in duration for the composting of landscape wastes, as
9 defined in Section 3.155 of this Act, based on the above
10 requirements.

11 The operator of any facility permitted under this
12 subsection (m) must submit a written annual statement to the
13 Agency on or before April 1 of each year that includes an
14 estimate of the amount of material, in tons, received for
15 composting.

16 (n) The Agency shall issue permits jointly with the
17 Department of Transportation for the dredging or deposit of
18 material in Lake Michigan in accordance with Section 18 of the
19 Rivers, Lakes, and Streams Act.

20 (o) (Blank.)

21 (p) (1) Any person submitting an application for a permit
22 for a new MSWLF unit or for a lateral expansion under
23 subsection (t) of Section 21 of this Act for an existing MSWLF
24 unit that has not received and is not subject to local siting
25 approval under Section 39.2 of this Act shall publish notice of
26 the application in a newspaper of general circulation in the
27 county in which the MSWLF unit is or is proposed to be located.
28 The notice must be published at least 15 days before submission
29 of the permit application to the Agency. The notice shall state
30 the name and address of the applicant, the location of the
31 MSWLF unit or proposed MSWLF unit, the nature and size of the
32 MSWLF unit or proposed MSWLF unit, the nature of the activity
33 proposed, the probable life of the proposed activity, the date
34 the permit application will be submitted, and a statement that

1 persons may file written comments with the Agency concerning
2 the permit application within 30 days after the filing of the
3 permit application unless the time period to submit comments is
4 extended by the Agency.

5 When a permit applicant submits information to the Agency
6 to supplement a permit application being reviewed by the
7 Agency, the applicant shall not be required to reissue the
8 notice under this subsection.

9 (2) The Agency shall accept written comments concerning the
10 permit application that are postmarked no later than 30 days
11 after the filing of the permit application, unless the time
12 period to accept comments is extended by the Agency.

13 (3) Each applicant for a permit described in part (1) of
14 this subsection shall file a copy of the permit application
15 with the county board or governing body of the municipality in
16 which the MSWLF unit is or is proposed to be located at the
17 same time the application is submitted to the Agency. The
18 permit application filed with the county board or governing
19 body of the municipality shall include all documents submitted
20 to or to be submitted to the Agency, except trade secrets as
21 determined under Section 7.1 of this Act. The permit
22 application and other documents on file with the county board
23 or governing body of the municipality shall be made available
24 for public inspection during regular business hours at the
25 office of the county board or the governing body of the
26 municipality and may be copied upon payment of the actual cost
27 of reproduction.

28 (Source: P.A. 93-575, eff. 1-1-04; 94-272, eff. 7-19-05.)

29 (Text of Section after amendment by P.A. 94-725)

30 Sec. 39. Issuance of permits; procedures.

31 (a) When the Board has by regulation required a permit for
32 the construction, installation, or operation of any type of
33 facility, equipment, vehicle, vessel, or aircraft, the

1 applicant shall apply to the Agency for such permit and it
2 shall be the duty of the Agency to issue such a permit upon
3 proof by the applicant that the facility, equipment, vehicle,
4 vessel, or aircraft will not cause a violation of this Act or
5 of regulations hereunder. The Agency shall adopt such
6 procedures as are necessary to carry out its duties under this
7 Section. In making its determinations on permit applications
8 under this Section the Agency may consider prior adjudications
9 of noncompliance with this Act by the applicant that involved a
10 release of a contaminant into the environment. In granting
11 permits, the Agency may impose reasonable conditions
12 specifically related to the applicant's past compliance
13 history with this Act as necessary to correct, detect, or
14 prevent noncompliance. The Agency may impose such other
15 conditions as may be necessary to accomplish the purposes of
16 this Act, and as are not inconsistent with the regulations
17 promulgated by the Board hereunder. Except as otherwise
18 provided in this Act, a bond or other security shall not be
19 required as a condition for the issuance of a permit. If the
20 Agency denies any permit under this Section, the Agency shall
21 transmit to the applicant within the time limitations of this
22 Section specific, detailed statements as to the reasons the
23 permit application was denied. Such statements shall include,
24 but not be limited to the following:

25 (i) the Sections of this Act which may be violated if
26 the permit were granted;

27 (ii) the provision of the regulations, promulgated
28 under this Act, which may be violated if the permit were
29 granted;

30 (iii) the specific type of information, if any, which
31 the Agency deems the applicant did not provide the Agency;
32 and

33 (iv) a statement of specific reasons why the Act and
34 the regulations might not be met if the permit were

1 granted.

2 If there is no final action by the Agency within 90 days
3 after the filing of the application for permit, the applicant
4 may deem the permit issued; except that this time period shall
5 be extended to 180 days when (1) notice and opportunity for
6 public hearing are required by State or federal law or
7 regulation, (2) the application which was filed is for any
8 permit to develop a landfill subject to issuance pursuant to
9 this subsection, or (3) the application that was filed is for a
10 MSWLF unit required to issue public notice under subsection (p)
11 of Section 39. The 90-day and 180-day time periods for the
12 Agency to take final action do not apply to NPDES permit
13 applications under subsection (b) of this Section, to RCRA
14 permit applications under subsection (d) of this Section, or to
15 UIC permit applications under subsection (e) of this Section.

16 The Agency shall publish notice of all final permit
17 determinations for development permits for MSWLF units and for
18 significant permit modifications for lateral expansions for
19 existing MSWLF units one time in a newspaper of general
20 circulation in the county in which the unit is or is proposed
21 to be located.

22 After January 1, 1994 and until July 1, 1998, operating
23 permits issued under this Section by the Agency for sources of
24 air pollution permitted to emit less than 25 tons per year of
25 any combination of regulated air pollutants, as defined in
26 Section 39.5 of this Act, shall be required to be renewed only
27 upon written request by the Agency consistent with applicable
28 provisions of this Act and regulations promulgated hereunder.
29 Such operating permits shall expire 180 days after the date of
30 such a request. The Board shall revise its regulations for the
31 existing State air pollution operating permit program
32 consistent with this provision by January 1, 1994.

33 After June 30, 1998, operating permits issued under this
34 Section by the Agency for sources of air pollution that are not

1 subject to Section 39.5 of this Act and are not required to
2 have a federally enforceable State operating permit shall be
3 required to be renewed only upon written request by the Agency
4 consistent with applicable provisions of this Act and its
5 rules. Such operating permits shall expire 180 days after the
6 date of such a request. Before July 1, 1998, the Board shall
7 revise its rules for the existing State air pollution operating
8 permit program consistent with this paragraph and shall adopt
9 rules that require a source to demonstrate that it qualifies
10 for a permit under this paragraph.

11 (b) The Agency may issue NPDES permits exclusively under
12 this subsection for the discharge of contaminants from point
13 sources into navigable waters, all as defined in the Federal
14 Water Pollution Control Act, as now or hereafter amended,
15 within the jurisdiction of the State, or into any well.

16 All NPDES permits shall contain those terms and conditions,
17 including but not limited to schedules of compliance, which may
18 be required to accomplish the purposes and provisions of this
19 Act.

20 The Agency may issue general NPDES permits for discharges
21 from categories of point sources which are subject to the same
22 permit limitations and conditions. Such general permits may be
23 issued without individual applications and shall conform to
24 regulations promulgated under Section 402 of the Federal Water
25 Pollution Control Act, as now or hereafter amended.

26 The Agency may include, among such conditions, effluent
27 limitations and other requirements established under this Act,
28 Board regulations, the Federal Water Pollution Control Act, as
29 now or hereafter amended, and regulations pursuant thereto, and
30 schedules for achieving compliance therewith at the earliest
31 reasonable date.

32 The Agency shall adopt filing requirements and procedures
33 which are necessary and appropriate for the issuance of NPDES
34 permits, and which are consistent with the Act or regulations

1 adopted by the Board, and with the Federal Water Pollution
2 Control Act, as now or hereafter amended, and regulations
3 pursuant thereto.

4 The Agency, subject to any conditions which may be
5 prescribed by Board regulations, may issue NPDES permits to
6 allow discharges beyond deadlines established by this Act or by
7 regulations of the Board without the requirement of a variance,
8 subject to the Federal Water Pollution Control Act, as now or
9 hereafter amended, and regulations pursuant thereto.

10 (c) Except for those facilities owned or operated by
11 sanitary districts organized under the Metropolitan Water
12 Reclamation District Act, no permit for the development or
13 construction of a new pollution control facility may be granted
14 by the Agency unless the applicant submits proof to the Agency
15 that the location of the facility has been approved by the
16 County Board of the county if in an unincorporated area, or the
17 governing body of the municipality when in an incorporated
18 area, in which the facility is to be located in accordance with
19 Section 39.2 of this Act. For purposes of this subsection (c),
20 and for purposes of Section 39.2 of this Act, the appropriate
21 county board or governing body of the municipality shall be the
22 county board of the county or the governing body of the
23 municipality in which the facility is to be located as of the
24 date when the application for siting approval is filed.

25 In the event that siting approval granted pursuant to
26 Section 39.2 has been transferred to a subsequent owner or
27 operator, that subsequent owner or operator may apply to the
28 Agency for, and the Agency may grant, a development or
29 construction permit for the facility for which local siting
30 approval was granted. Upon application to the Agency for a
31 development or construction permit by that subsequent owner or
32 operator, the permit applicant shall cause written notice of
33 the permit application to be served upon the appropriate county
34 board or governing body of the municipality that granted siting

1 approval for that facility and upon any party to the siting
2 proceeding pursuant to which siting approval was granted. In
3 that event, the Agency shall conduct an evaluation of the
4 subsequent owner or operator's prior experience in waste
5 management operations in the manner conducted under subsection
6 (i) of Section 39 of this Act.

7 Beginning August 20, 1993, if the pollution control
8 facility consists of a hazardous or solid waste disposal
9 facility for which the proposed site is located in an
10 unincorporated area of a county with a population of less than
11 100,000 and includes all or a portion of a parcel of land that
12 was, on April 1, 1993, adjacent to a municipality having a
13 population of less than 5,000, then the local siting review
14 required under this subsection (c) in conjunction with any
15 permit applied for after that date shall be performed by the
16 governing body of that adjacent municipality rather than the
17 county board of the county in which the proposed site is
18 located; and for the purposes of that local siting review, any
19 references in this Act to the county board shall be deemed to
20 mean the governing body of that adjacent municipality;
21 provided, however, that the provisions of this paragraph shall
22 not apply to any proposed site which was, on April 1, 1993,
23 owned in whole or in part by another municipality.

24 In the case of a pollution control facility for which a
25 development permit was issued before November 12, 1981, if an
26 operating permit has not been issued by the Agency prior to
27 August 31, 1989 for any portion of the facility, then the
28 Agency may not issue or renew any development permit nor issue
29 an original operating permit for any portion of such facility
30 unless the applicant has submitted proof to the Agency that the
31 location of the facility has been approved by the appropriate
32 county board or municipal governing body pursuant to Section
33 39.2 of this Act.

34 After January 1, 1994, if a solid waste disposal facility,

1 any portion for which an operating permit has been issued by
2 the Agency, has not accepted waste disposal for 5 or more
3 consecutive calendars years, before that facility may accept
4 any new or additional waste for disposal, the owner and
5 operator must obtain a new operating permit under this Act for
6 that facility unless the owner and operator have applied to the
7 Agency for a permit authorizing the temporary suspension of
8 waste acceptance. The Agency may not issue a new operation
9 permit under this Act for the facility unless the applicant has
10 submitted proof to the Agency that the location of the facility
11 has been approved or re-approved by the appropriate county
12 board or municipal governing body under Section 39.2 of this
13 Act after the facility ceased accepting waste.

14 Except for those facilities owned or operated by sanitary
15 districts organized under the Metropolitan Water Reclamation
16 District Act, and except for new pollution control facilities
17 governed by Section 39.2, and except for fossil fuel mining
18 facilities, the granting of a permit under this Act shall not
19 relieve the applicant from meeting and securing all necessary
20 zoning approvals from the unit of government having zoning
21 jurisdiction over the proposed facility.

22 Before beginning construction on any new sewage treatment
23 plant or sludge drying site to be owned or operated by a
24 sanitary district organized under the Metropolitan Water
25 Reclamation District Act for which a new permit (rather than
26 the renewal or amendment of an existing permit) is required,
27 such sanitary district shall hold a public hearing within the
28 municipality within which the proposed facility is to be
29 located, or within the nearest community if the proposed
30 facility is to be located within an unincorporated area, at
31 which information concerning the proposed facility shall be
32 made available to the public, and members of the public shall
33 be given the opportunity to express their views concerning the
34 proposed facility.

1 The Agency may issue a permit for a municipal waste
2 transfer station without requiring approval pursuant to
3 Section 39.2 provided that the following demonstration is made:

4 (1) the municipal waste transfer station was in
5 existence on or before January 1, 1979 and was in
6 continuous operation from January 1, 1979 to January 1,
7 1993;

8 (2) the operator submitted a permit application to the
9 Agency to develop and operate the municipal waste transfer
10 station during April of 1994;

11 (3) the operator can demonstrate that the county board
12 of the county, if the municipal waste transfer station is
13 in an unincorporated area, or the governing body of the
14 municipality, if the station is in an incorporated area,
15 does not object to resumption of the operation of the
16 station; and

17 (4) the site has local zoning approval.

18 (d) The Agency may issue RCRA permits exclusively under
19 this subsection to persons owning or operating a facility for
20 the treatment, storage, or disposal of hazardous waste as
21 defined under this Act.

22 All RCRA permits shall contain those terms and conditions,
23 including but not limited to schedules of compliance, which may
24 be required to accomplish the purposes and provisions of this
25 Act. The Agency may include among such conditions standards and
26 other requirements established under this Act, Board
27 regulations, the Resource Conservation and Recovery Act of 1976
28 (P.L. 94-580), as amended, and regulations pursuant thereto,
29 and may include schedules for achieving compliance therewith as
30 soon as possible. The Agency shall require that a performance
31 bond or other security be provided as a condition for the
32 issuance of a RCRA permit.

33 In the case of a permit to operate a hazardous waste or PCB
34 incinerator as defined in subsection (k) of Section 44, the

1 Agency shall require, as a condition of the permit, that the
2 operator of the facility perform such analyses of the waste to
3 be incinerated as may be necessary and appropriate to ensure
4 the safe operation of the incinerator.

5 The Agency shall adopt filing requirements and procedures
6 which are necessary and appropriate for the issuance of RCRA
7 permits, and which are consistent with the Act or regulations
8 adopted by the Board, and with the Resource Conservation and
9 Recovery Act of 1976 (P.L. 94-580), as amended, and regulations
10 pursuant thereto.

11 The applicant shall make available to the public for
12 inspection all documents submitted by the applicant to the
13 Agency in furtherance of an application, with the exception of
14 trade secrets, at the office of the county board or governing
15 body of the municipality. Such documents may be copied upon
16 payment of the actual cost of reproduction during regular
17 business hours of the local office. The Agency shall issue a
18 written statement concurrent with its grant or denial of the
19 permit explaining the basis for its decision.

20 (e) The Agency may issue UIC permits exclusively under this
21 subsection to persons owning or operating a facility for the
22 underground injection of contaminants as defined under this
23 Act.

24 All UIC permits shall contain those terms and conditions,
25 including but not limited to schedules of compliance, which may
26 be required to accomplish the purposes and provisions of this
27 Act. The Agency may include among such conditions standards and
28 other requirements established under this Act, Board
29 regulations, the Safe Drinking Water Act (P.L. 93-523), as
30 amended, and regulations pursuant thereto, and may include
31 schedules for achieving compliance therewith. The Agency shall
32 require that a performance bond or other security be provided
33 as a condition for the issuance of a UIC permit.

34 The Agency shall adopt filing requirements and procedures

1 which are necessary and appropriate for the issuance of UIC
2 permits, and which are consistent with the Act or regulations
3 adopted by the Board, and with the Safe Drinking Water Act
4 (P.L. 93-523), as amended, and regulations pursuant thereto.

5 The applicant shall make available to the public for
6 inspection, all documents submitted by the applicant to the
7 Agency in furtherance of an application, with the exception of
8 trade secrets, at the office of the county board or governing
9 body of the municipality. Such documents may be copied upon
10 payment of the actual cost of reproduction during regular
11 business hours of the local office. The Agency shall issue a
12 written statement concurrent with its grant or denial of the
13 permit explaining the basis for its decision.

14 (f) In making any determination pursuant to Section 9.1 of
15 this Act:

16 (1) The Agency shall have authority to make the
17 determination of any question required to be determined by
18 the Clean Air Act, as now or hereafter amended, this Act,
19 or the regulations of the Board, including the
20 determination of the Lowest Achievable Emission Rate,
21 Maximum Achievable Control Technology, or Best Available
22 Control Technology, consistent with the Board's
23 regulations, if any.

24 (2) The Agency shall, after conferring with the
25 applicant, give written notice to the applicant of its
26 proposed decision on the application including the terms
27 and conditions of the permit to be issued and the facts,
28 conduct or other basis upon which the Agency will rely to
29 support its proposed action.

30 (3) Following such notice, the Agency shall give the
31 applicant an opportunity for a hearing in accordance with
32 the provisions of Sections 10-25 through 10-60 of the
33 Illinois Administrative Procedure Act.

34 (g) The Agency shall include as conditions upon all permits

1 issued for hazardous waste disposal sites such restrictions
2 upon the future use of such sites as are reasonably necessary
3 to protect public health and the environment, including
4 permanent prohibition of the use of such sites for purposes
5 which may create an unreasonable risk of injury to human health
6 or to the environment. After administrative and judicial
7 challenges to such restrictions have been exhausted, the Agency
8 shall file such restrictions of record in the Office of the
9 Recorder of the county in which the hazardous waste disposal
10 site is located.

11 (h) A hazardous waste stream may not be deposited in a
12 permitted hazardous waste site unless specific authorization
13 is obtained from the Agency by the generator and disposal site
14 owner and operator for the deposit of that specific hazardous
15 waste stream. The Agency may grant specific authorization for
16 disposal of hazardous waste streams only after the generator
17 has reasonably demonstrated that, considering technological
18 feasibility and economic reasonableness, the hazardous waste
19 cannot be reasonably recycled for reuse, nor incinerated or
20 chemically, physically or biologically treated so as to
21 neutralize the hazardous waste and render it nonhazardous. In
22 granting authorization under this Section, the Agency may
23 impose such conditions as may be necessary to accomplish the
24 purposes of the Act and are consistent with this Act and
25 regulations promulgated by the Board hereunder. If the Agency
26 refuses to grant authorization under this Section, the
27 applicant may appeal as if the Agency refused to grant a
28 permit, pursuant to the provisions of subsection (a) of Section
29 40 of this Act. For purposes of this subsection (h), the term
30 "generator" has the meaning given in Section 3.205 of this Act,
31 unless: (1) the hazardous waste is treated, incinerated, or
32 partially recycled for reuse prior to disposal, in which case
33 the last person who treats, incinerates, or partially recycles
34 the hazardous waste prior to disposal is the generator; or (2)

1 the hazardous waste is from a response action, in which case
2 the person performing the response action is the generator.
3 This subsection (h) does not apply to any hazardous waste that
4 is restricted from land disposal under 35 Ill. Adm. Code 728.

5 (i) Before issuing any RCRA permit, any permit for a waste
6 storage site, sanitary landfill, waste disposal site, waste
7 transfer station, waste treatment facility, waste incinerator,
8 or any waste-transportation operation, or any permit or interim
9 authorization for a clean construction or demolition debris
10 fill operation, the Agency shall conduct an evaluation of the
11 prospective owner's or operator's prior experience in waste
12 management operations and clean construction or demolition
13 debris fill operations. The Agency may deny such a permit, or
14 deny or revoke interim authorization, if the prospective owner
15 or operator or any employee or officer of the prospective owner
16 or operator has a history of:

17 (1) repeated violations of federal, State, or local
18 laws, regulations, standards, or ordinances in the
19 operation of waste management facilities or sites or clean
20 construction or demolition debris fill operation
21 facilities or sites; or

22 (2) conviction in this or another State of any crime
23 which is a felony under the laws of this State, or
24 conviction of a felony in a federal court; or conviction in
25 this or another state or federal court of any of the
26 following crimes: forgery, official misconduct, bribery,
27 perjury, or knowingly submitting false information under
28 any environmental law, regulation, or permit term or
29 condition; or

30 (3) proof of gross carelessness or incompetence in
31 handling, storing, processing, transporting or disposing
32 of waste or clean construction or demolition debris, or
33 proof of gross carelessness or incompetence in using clean
34 construction or demolition debris as fill.

1 (i-5) Before issuing any permit or approving any interim
2 authorization for a clean construction or demolition debris
3 fill operation in which any ownership interest is transferred
4 between January 1, 2005, and the effective date of the
5 prohibition set forth in Section 22.52 of this Act, the Agency
6 shall conduct an evaluation of the operation if any previous
7 activities at the site or facility may have caused or allowed
8 contamination of the site. It shall be the responsibility of
9 the owner or operator seeking the permit or interim
10 authorization to provide to the Agency all of the information
11 necessary for the Agency to conduct its evaluation. The Agency
12 may deny a permit or interim authorization if previous
13 activities at the site may have caused or allowed contamination
14 at the site, unless such contamination is authorized under any
15 permit issued by the Agency.

16 (j) The issuance under this Act of a permit to engage in
17 the surface mining of any resources other than fossil fuels
18 shall not relieve the permittee from its duty to comply with
19 any applicable local law regulating the commencement, location
20 or operation of surface mining facilities.

21 (k) A development permit issued under subsection (a) of
22 Section 39 for any facility or site which is required to have a
23 permit under subsection (d) of Section 21 shall expire at the
24 end of 2 calendar years from the date upon which it was issued,
25 unless within that period the applicant has taken action to
26 develop the facility or the site. In the event that review of
27 the conditions of the development permit is sought pursuant to
28 Section 40 or 41, or permittee is prevented from commencing
29 development of the facility or site by any other litigation
30 beyond the permittee's control, such two-year period shall be
31 deemed to begin on the date upon which such review process or
32 litigation is concluded.

33 (l) No permit shall be issued by the Agency under this Act
34 for construction or operation of any facility or site located

1 within the boundaries of any setback zone established pursuant
2 to this Act, where such construction or operation is
3 prohibited.

4 (m) The Agency may issue permits to persons owning or
5 operating a facility for composting landscape waste. In
6 granting such permits, the Agency may impose such conditions as
7 may be necessary to accomplish the purposes of this Act, and as
8 are not inconsistent with applicable regulations promulgated
9 by the Board. Except as otherwise provided in this Act, a bond
10 or other security shall not be required as a condition for the
11 issuance of a permit. If the Agency denies any permit pursuant
12 to this subsection, the Agency shall transmit to the applicant
13 within the time limitations of this subsection specific,
14 detailed statements as to the reasons the permit application
15 was denied. Such statements shall include but not be limited to
16 the following:

17 (1) the Sections of this Act that may be violated if
18 the permit were granted;

19 (2) the specific regulations promulgated pursuant to
20 this Act that may be violated if the permit were granted;

21 (3) the specific information, if any, the Agency deems
22 the applicant did not provide in its application to the
23 Agency; and

24 (4) a statement of specific reasons why the Act and the
25 regulations might be violated if the permit were granted.

26 If no final action is taken by the Agency within 90 days
27 after the filing of the application for permit, the applicant
28 may deem the permit issued. Any applicant for a permit may
29 waive the 90 day limitation by filing a written statement with
30 the Agency.

31 The Agency shall issue permits for such facilities upon
32 receipt of an application that includes a legal description of
33 the site, a topographic map of the site drawn to the scale of
34 200 feet to the inch or larger, a description of the operation,

1 including the area served, an estimate of the volume of
2 materials to be processed, and documentation that:

3 (1) the facility includes a setback of at least 200
4 feet from the nearest potable water supply well;

5 (2) the facility is located outside the boundary of the
6 10-year floodplain or the site will be floodproofed;

7 (3) the facility is located so as to minimize
8 incompatibility with the character of the surrounding
9 area, including at least a 200 foot setback from any
10 residence, and in the case of a facility that is developed
11 or the permitted composting area of which is expanded after
12 November 17, 1991, the composting area is located at least
13 1/8 mile from the nearest residence (other than a residence
14 located on the same property as the facility);

15 (4) the design of the facility will prevent any compost
16 material from being placed within 5 feet of the water
17 table, will adequately control runoff from the site, and
18 will collect and manage any leachate that is generated on
19 the site;

20 (5) the operation of the facility will include
21 appropriate dust and odor control measures, limitations on
22 operating hours, appropriate noise control measures for
23 shredding, chipping and similar equipment, management
24 procedures for composting, containment and disposal of
25 non-compostable wastes, procedures to be used for
26 terminating operations at the site, and recordkeeping
27 sufficient to document the amount of materials received,
28 composted and otherwise disposed of; and

29 (6) the operation will be conducted in accordance with
30 any applicable rules adopted by the Board.

31 The Agency shall issue renewable permits of not longer than
32 10 years in duration for the composting of landscape wastes, as
33 defined in Section 3.155 of this Act, based on the above
34 requirements.

1 The operator of any facility permitted under this
2 subsection (m) must submit a written annual statement to the
3 Agency on or before April 1 of each year that includes an
4 estimate of the amount of material, in tons, received for
5 composting.

6 (n) The Agency shall issue permits jointly with the
7 Department of Transportation for the dredging or deposit of
8 material in Lake Michigan in accordance with Section 18 of the
9 Rivers, Lakes, and Streams Act.

10 (o) (Blank.)

11 (p) (1) Any person submitting an application for a permit
12 for a new MSWLF unit or for a lateral expansion under
13 subsection (t) of Section 21 of this Act for an existing MSWLF
14 unit that has not received and is not subject to local siting
15 approval under Section 39.2 of this Act shall publish notice of
16 the application in a newspaper of general circulation in the
17 county in which the MSWLF unit is or is proposed to be located.
18 The notice must be published at least 15 days before submission
19 of the permit application to the Agency. The notice shall state
20 the name and address of the applicant, the location of the
21 MSWLF unit or proposed MSWLF unit, the nature and size of the
22 MSWLF unit or proposed MSWLF unit, the nature of the activity
23 proposed, the probable life of the proposed activity, the date
24 the permit application will be submitted, and a statement that
25 persons may file written comments with the Agency concerning
26 the permit application within 30 days after the filing of the
27 permit application unless the time period to submit comments is
28 extended by the Agency.

29 When a permit applicant submits information to the Agency
30 to supplement a permit application being reviewed by the
31 Agency, the applicant shall not be required to reissue the
32 notice under this subsection.

33 (2) The Agency shall accept written comments concerning the
34 permit application that are postmarked no later than 30 days

1 after the filing of the permit application, unless the time
2 period to accept comments is extended by the Agency.

3 (3) Each applicant for a permit described in part (1) of
4 this subsection shall file a copy of the permit application
5 with the county board or governing body of the municipality in
6 which the MSWLF unit is or is proposed to be located at the
7 same time the application is submitted to the Agency. The
8 permit application filed with the county board or governing
9 body of the municipality shall include all documents submitted
10 to or to be submitted to the Agency, except trade secrets as
11 determined under Section 7.1 of this Act. The permit
12 application and other documents on file with the county board
13 or governing body of the municipality shall be made available
14 for public inspection during regular business hours at the
15 office of the county board or the governing body of the
16 municipality and may be copied upon payment of the actual cost
17 of reproduction.

18 (Source: P.A. 93-575, eff. 1-1-04; 94-272, eff. 7-19-05;
19 94-725, eff. 6-1-06.)

20 (415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

21 Sec. 39.2. Local siting review.

22 (a) The county board of the county or the governing body of
23 the municipality, as determined by paragraph (c) of Section 39
24 of this Act, shall approve or disapprove the request for local
25 siting approval for each pollution control facility which is
26 subject to such review. An applicant for local siting approval
27 shall submit sufficient details describing the proposed
28 facility to demonstrate compliance, and local siting approval
29 shall be granted only if the proposed facility meets the
30 following criteria:

31 (i) the facility is necessary to accommodate the waste
32 needs of the area it is intended to serve;

33 (ii) the facility is so designed, located and proposed

1 to be operated that the public health, safety and welfare
2 will be protected;

3 (iii) the facility is located so as to minimize
4 incompatibility with the character of the surrounding area
5 and to minimize the effect on the value of the surrounding
6 property;

7 (iv) (A) for a facility other than a sanitary landfill
8 or waste disposal site, the facility is located outside the
9 boundary of the 100 year flood plain or the site is
10 flood-proofed; (B) for a facility that is a sanitary
11 landfill or waste disposal site, the facility is located
12 outside the boundary of the 100-year floodplain, or if the
13 facility is a facility described in subsection (b)(3) of
14 Section 22.19a, the site is flood-proofed;

15 (v) the plan of operations for the facility is designed
16 to minimize the danger to the surrounding area from fire,
17 spills, or other operational accidents;

18 (vi) the traffic patterns to or from the facility are
19 so designed as to minimize the impact on existing traffic
20 flows;

21 (vii) if the facility will be treating, storing or
22 disposing of hazardous waste, an emergency response plan
23 exists for the facility which includes notification,
24 containment and evacuation procedures to be used in case of
25 an accidental release;

26 (viii) if the facility is to be located in a county
27 where the county board has adopted a solid waste management
28 plan consistent with the planning requirements of the Local
29 Solid Waste Disposal Act or the Solid Waste Planning and
30 Recycling Act, the facility is consistent with that plan;
31 for purposes of this criterion (viii), the "solid waste
32 management plan" means the plan that is in effect as of the
33 date the application for siting approval is filed; and

34 (ix) if the facility will be located within a regulated

1 recharge area, any applicable requirements specified by
2 the Board for such areas have been met.

3 The county board or the governing body of the municipality
4 may also consider as evidence the previous operating experience
5 and past record of convictions or admissions of violations of
6 the applicant (and any subsidiary or parent corporation) in the
7 field of solid waste management when considering criteria (ii)
8 and (v) under this Section.

9 If the facility is subject to the location restrictions in
10 Section 22.14 of this Act, compliance with that Section shall
11 be determined as of the date the application for siting
12 approval is filed.

13 (b) No later than 14 days before the date on which the
14 county board or governing body of the municipality receives a
15 request for site approval, the applicant shall cause written
16 notice of such request to be served either in person or by
17 registered mail, return receipt requested, on the owners of all
18 property within the subject area not solely owned by the
19 applicant, and on the owners of all property within 250 feet in
20 each direction of the lot line of the subject property, said
21 owners being such persons or entities which appear from the
22 authentic tax records of the County in which such facility is
23 to be located; provided, that the number of all feet occupied
24 by all public roads, streets, alleys and other public ways
25 shall be excluded in computing the 250 feet requirement;
26 provided further, that in no event shall this requirement
27 exceed 400 feet, including public streets, alleys and other
28 public ways.

29 Such written notice shall also be served upon members of
30 the General Assembly from the legislative district in which the
31 proposed facility is located and shall be published in a
32 newspaper of general circulation published in the county in
33 which the site is located.

34 Such notice shall state the name and address of the

1 applicant, the location of the proposed site, the nature and
2 size of the development, the nature of the activity proposed,
3 the probable life of the proposed activity, the date when the
4 request for site approval will be submitted, and a description
5 of the right of persons to comment on such request as hereafter
6 provided.

7 (c) An applicant shall file a copy of its request with the
8 county board of the county or the governing body of the
9 municipality in which the proposed site is located. The request
10 shall include (i) the substance of the applicant's proposal and
11 (ii) all documents, if any, submitted as of that date to the
12 Agency pertaining to the proposed facility, except trade
13 secrets as determined under Section 7.1 of this Act. All such
14 documents or other materials on file with the county board or
15 governing body of the municipality shall be made available for
16 public inspection at the office of the county board or the
17 governing body of the municipality and may be copied upon
18 payment of the actual cost of reproduction.

19 Any person may file written comment with the county board
20 or governing body of the municipality concerning the
21 appropriateness of the proposed site for its intended purpose.
22 The county board or governing body of the municipality shall
23 consider any comment received or postmarked not later than 30
24 days after the date of the last public hearing.

25 (d) At least one public hearing is to be held by the county
26 board or governing body of the municipality no sooner than 90
27 days but no later than 120 days after the date on which it
28 received the request for site approval. No later than 14 days
29 prior to such hearing, notice shall be published in a newspaper
30 of general circulation published in the county of the proposed
31 site, and delivered by certified mail to all members of the
32 General Assembly from the district in which the proposed site
33 is located, to the governing authority of every municipality
34 contiguous to the proposed site or contiguous to the

1 municipality in which the proposed site is to be located, to
2 the county board of the county where the proposed site is to be
3 located, if the proposed site is located within the boundaries
4 of a municipality, and to the Agency. Members or
5 representatives of the governing authority of a municipality
6 contiguous to the proposed site or contiguous to the
7 municipality in which the proposed site is to be located and,
8 if the proposed site is located in a municipality, members or
9 representatives of the county board of a county in which the
10 proposed site is to be located may appear at and participate in
11 public hearings held pursuant to this Section. The public
12 hearing shall develop a record sufficient to form the basis of
13 appeal of the decision in accordance with Section 40.1 of this
14 Act. The fact that a member of the county board or governing
15 body of the municipality has publicly expressed an opinion on
16 an issue related to a site review proceeding shall not preclude
17 the member from taking part in the proceeding and voting on the
18 issue.

19 (e) Decisions of the county board or governing body of the
20 municipality are to be in writing, specifying the reasons for
21 the decision, such reasons to be in conformance with subsection
22 (a) of this Section. In granting approval for a site the county
23 board or governing body of the municipality may impose such
24 conditions as may be reasonable and necessary to accomplish the
25 purposes of this Section and as are not inconsistent with
26 regulations promulgated by the Board. Such decision shall be
27 available for public inspection at the office of the county
28 board or governing body of the municipality and may be copied
29 upon payment of the actual cost of reproduction. If there is no
30 final action by the county board or governing body of the
31 municipality within 180 days after the date on which it
32 received the request for site approval, the applicant may deem
33 the request approved.

34 At any time prior to completion by the applicant of the

1 presentation of the applicant's factual evidence and an
2 opportunity for cross-questioning by the county board or
3 governing body of the municipality and any participants, the
4 applicant may file not more than one amended application upon
5 payment of additional fees pursuant to subsection (k); in which
6 case the time limitation for final action set forth in this
7 subsection (e) shall be extended for an additional period of 90
8 days.

9 If, prior to making a final local siting decision, a county
10 board or governing body of a municipality has negotiated and
11 entered into a host agreement with the local siting applicant,
12 the terms and conditions of the host agreement, whether written
13 or oral, shall be disclosed and made a part of the hearing
14 record for that local siting proceeding. In the case of an oral
15 agreement, the disclosure shall be made in the form of a
16 written summary jointly prepared and submitted by the county
17 board or governing body of the municipality and the siting
18 applicant and shall describe the terms and conditions of the
19 oral agreement.

20 (e-5) Siting approval obtained pursuant to this Section is
21 transferable and may be transferred to a subsequent owner or
22 operator. In the event that siting approval has been
23 transferred to a subsequent owner or operator, that subsequent
24 owner or operator assumes and takes subject to any and all
25 conditions imposed upon the prior owner or operator by the
26 county board of the county or governing body of the
27 municipality pursuant to subsection (e). However, any such
28 conditions imposed pursuant to this Section may be modified by
29 agreement between the subsequent owner or operator and the
30 appropriate county board or governing body. Further, in the
31 event that siting approval obtained pursuant to this Section
32 has been transferred to a subsequent owner or operator, that
33 subsequent owner or operator assumes all rights and obligations
34 and takes the facility subject to any and all terms and

1 conditions of any existing host agreement between the prior
2 owner or operator and the appropriate county board or governing
3 body.

4 (f) A local siting approval granted under this Section
5 shall expire at the end of 2 calendar years from the date upon
6 which it was granted, unless the local siting approval granted
7 under this Section is for a sanitary landfill operation, in
8 which case the approval shall expire at the end of 3 calendar
9 years from the date upon which it was granted, and unless
10 within that period the applicant has made application to the
11 Agency for a permit to develop the site. In the event that the
12 local siting decision has been appealed, such expiration period
13 shall be deemed to begin on the date upon which the appeal
14 process is concluded.

15 Except as otherwise provided in this subsection, upon the
16 expiration of a development permit under subsection (k) of
17 Section 39, any associated local siting approval granted for
18 the facility under this Section shall also expire.

19 If a first development permit for a municipal waste
20 incineration facility expires under subsection (k) of Section
21 39 after September 30, 1989 due to circumstances beyond the
22 control of the applicant, any associated local siting approval
23 granted for the facility under this Section may be used to
24 fulfill the local siting approval requirement upon application
25 for a second development permit for the same site, provided
26 that the proposal in the new application is materially the
27 same, with respect to the criteria in subsection (a) of this
28 Section, as the proposal that received the original siting
29 approval, and application for the second development permit is
30 made before January 1, 1990.

31 (g) The siting approval procedures, criteria and appeal
32 procedures provided for in this Act for new pollution control
33 facilities shall be the exclusive siting procedures and rules
34 and appeal procedures for facilities subject to such

1 procedures. Local zoning or other local land use requirements
2 shall not be applicable to such siting decisions.

3 (h) Nothing in this Section shall apply to any existing or
4 new pollution control facility located within the corporate
5 limits of a municipality with a population of over 1,000,000.

6 (i) (Blank.)

7 The Board shall adopt regulations establishing the
8 geologic and hydrologic siting criteria necessary to protect
9 usable groundwater resources which are to be followed by the
10 Agency in its review of permit applications for new pollution
11 control facilities. Such regulations, insofar as they apply to
12 new pollution control facilities authorized to store, treat or
13 dispose of any hazardous waste, shall be at least as stringent
14 as the requirements of the Resource Conservation and Recovery
15 Act and any State or federal regulations adopted pursuant
16 thereto.

17 (j) Any new pollution control facility which has never
18 obtained local siting approval under the provisions of this
19 Section shall be required to obtain such approval after a final
20 decision on an appeal of a permit denial.

21 (k) A county board or governing body of a municipality may
22 charge applicants for siting review under this Section a
23 reasonable fee to cover the reasonable and necessary costs
24 incurred by such county or municipality in the siting review
25 process.

26 (l) The governing Authority as determined by subsection (c)
27 of Section 39 of this Act may request the Department of
28 Transportation to perform traffic impact studies of proposed or
29 potential locations for required pollution control facilities.

30 (m) An applicant may not file a request for local siting
31 approval which is substantially the same as a request which was
32 disapproved pursuant to a finding against the applicant under
33 any of criteria (i) through (ix) of subsection (a) of this
34 Section within the preceding 2 years.

1 (n) In any review proceeding of a decision of the county
2 board or governing body of a municipality made pursuant to the
3 local siting review process, the petitioner in the review
4 proceeding shall pay to the county or municipality the cost of
5 preparing and certifying the record of proceedings. Should the
6 petitioner in the review proceeding fail to make payment, the
7 provisions of Section 3-109 of the Code of Civil Procedure
8 shall apply.

9 In the event the petitioner is a citizens' group that
10 participated in the siting proceeding and is so located as to
11 be affected by the proposed facility, such petitioner shall be
12 exempt from paying the costs of preparing and certifying the
13 record.

14 (o) Notwithstanding any other provision of this Section, a
15 transfer station used exclusively for landscape waste, where
16 landscape waste is held no longer than 24 hours from the time
17 it was received, is not subject to the requirements of local
18 siting approval under this Section, but is subject only to
19 local zoning approval.

20 (Source: P.A. 94-591, eff. 8-15-05.)

21 (415 ILCS 115/Act rep.)

22 Section 10. The Illinois Pollution Prevention Act is
23 repealed.

24 Section 95. No acceleration or delay. Where this Act makes
25 changes in a statute that is represented in this Act by text
26 that is not yet or no longer in effect (for example, a Section
27 represented by multiple versions), the use of that text does
28 not accelerate or delay the taking effect of (i) the changes
29 made by this Act or (ii) provisions derived from any other
30 Public Act.

31 Section 97. Applicability. The changes made by Section 5 of

1 this amendatory Act of the 94th General Assembly apply only to
2 siting applications filed on or after the effective date of
3 this amendatory Act.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law."