



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB2501

Introduced 1/18/2006, by Sen. Gary Forby

#### SYNOPSIS AS INTRODUCED:

415 ILCS 5/39  
415 ILCS 5/39.2

from Ch. 111 1/2, par. 1039  
from Ch. 111 1/2, par. 1039.2

Amends the Environmental Protection Act. Provides that on and after the effective date of this amendatory Act no permit for the development or construction of a new municipal solid waste landfill unit may be granted by the Agency for municipal solid waste landfill located within 6 miles of a public airport that is primarily served by general aviation aircraft and regularly scheduled flights of aircraft designed for 60 passengers or less. Prohibits a county board or the governing body of the municipality from approving a request for siting approval of a municipal solid waste landfill meeting similar location requirements. Effective immediately.

LRB094 17802 RSP 53101 b

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

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

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

7 Sec. 39. Issuance of permits; procedures.

8 (a) When the Board has by regulation required a permit for  
9 the construction, installation, or operation of any type of  
10 facility, equipment, vehicle, vessel, or aircraft, the  
11 applicant shall apply to the Agency for such permit and it  
12 shall be the duty of the Agency to issue such a permit upon  
13 proof by the applicant that the facility, equipment, vehicle,  
14 vessel, or aircraft will not cause a violation of this Act or  
15 of regulations hereunder. The Agency shall adopt such  
16 procedures as are necessary to carry out its duties under this  
17 Section. In making its determinations on permit applications  
18 under this Section the Agency may consider prior adjudications  
19 of noncompliance with this Act by the applicant that involved a  
20 release of a contaminant into the environment. In granting  
21 permits, the Agency may impose reasonable conditions  
22 specifically related to the applicant's past compliance  
23 history with this Act as necessary to correct, detect, or  
24 prevent noncompliance. The Agency may impose such other  
25 conditions as may be necessary to accomplish the purposes of  
26 this Act, and as are not inconsistent with the regulations  
27 promulgated by the Board hereunder. Except as otherwise  
28 provided in this Act, a bond or other security shall not be  
29 required as a condition for the issuance of a permit. If the  
30 Agency denies any permit under this Section, the Agency shall  
31 transmit to the applicant within the time limitations of this  
32 Section specific, detailed statements as to the reasons the

1 permit application was denied. Such statements shall include,  
2 but not be limited to the following:

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

5 (ii) the provision of the regulations, promulgated  
6 under this Act, which may be violated if the permit were  
7 granted;

8 (iii) the specific type of information, if any, which  
9 the Agency deems the applicant did not provide the Agency;  
10 and

11 (iv) a statement of specific reasons why the Act and  
12 the regulations might not be met if the permit were  
13 granted.

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

28 The Agency shall publish notice of all final permit  
29 determinations for development permits for MSWLF units and for  
30 significant permit modifications for lateral expansions for  
31 existing MSWLF units one time in a newspaper of general  
32 circulation in the county in which the unit is or is proposed  
33 to be located.

34 After January 1, 1994 and until July 1, 1998, operating  
35 permits issued under this Section by the Agency for sources of  
36 air pollution permitted to emit less than 25 tons per year of

1 any combination of regulated air pollutants, as defined in  
2 Section 39.5 of this Act, shall be required to be renewed only  
3 upon written request by the Agency consistent with applicable  
4 provisions of this Act and regulations promulgated hereunder.  
5 Such operating permits shall expire 180 days after the date of  
6 such a request. The Board shall revise its regulations for the  
7 existing State air pollution operating permit program  
8 consistent with this provision by January 1, 1994.

9 After June 30, 1998, operating permits issued under this  
10 Section by the Agency for sources of air pollution that are not  
11 subject to Section 39.5 of this Act and are not required to  
12 have a federally enforceable State operating permit shall be  
13 required to be renewed only upon written request by the Agency  
14 consistent with applicable provisions of this Act and its  
15 rules. Such operating permits shall expire 180 days after the  
16 date of such a request. Before July 1, 1998, the Board shall  
17 revise its rules for the existing State air pollution operating  
18 permit program consistent with this paragraph and shall adopt  
19 rules that require a source to demonstrate that it qualifies  
20 for a permit under this paragraph.

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

26 All NPDES permits shall contain those terms and conditions,  
27 including but not limited to schedules of compliance, which may  
28 be required to accomplish the purposes and provisions of this  
29 Act.

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

36 The Agency may include, among such conditions, effluent

1 limitations and other requirements established under this Act,  
2 Board regulations, the Federal Water Pollution Control Act, as  
3 now or hereafter amended, and regulations pursuant thereto, and  
4 schedules for achieving compliance therewith at the earliest  
5 reasonable date.

6 The Agency shall adopt filing requirements and procedures  
7 which are necessary and appropriate for the issuance of NPDES  
8 permits, and which are consistent with the Act or regulations  
9 adopted by the Board, and with the Federal Water Pollution  
10 Control Act, as now or hereafter amended, and regulations  
11 pursuant thereto.

12 The Agency, subject to any conditions which may be  
13 prescribed by Board regulations, may issue NPDES permits to  
14 allow discharges beyond deadlines established by this Act or by  
15 regulations of the Board without the requirement of a variance,  
16 subject to the Federal Water Pollution Control Act, as now or  
17 hereafter amended, and regulations pursuant thereto.

18 (c) Except for those facilities owned or operated by  
19 sanitary districts organized under the Metropolitan Water  
20 Reclamation District Act, no permit for the development or  
21 construction of a new pollution control facility may be granted  
22 by the Agency unless the applicant submits proof to the Agency  
23 that the location of the facility has been approved by the  
24 County Board of the county if in an unincorporated area, or the  
25 governing body of the municipality when in an incorporated  
26 area, in which the facility is to be located in accordance with  
27 Section 39.2 of this Act.

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

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

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

25 In the case of a pollution control facility for which a  
26 development permit was issued before November 12, 1981, if an  
27 operating permit has not been issued by the Agency prior to  
28 August 31, 1989 for any portion of the facility, then the  
29 Agency may not issue or renew any development permit nor issue  
30 an original operating permit for any portion of such facility  
31 unless the applicant has submitted proof to the Agency that the  
32 location of the facility has been approved by the appropriate  
33 county board or municipal governing body pursuant to Section  
34 39.2 of this Act.

35 After January 1, 1994, if a solid waste disposal facility,  
36 any portion for which an operating permit has been issued by

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

13 Notwithstanding any other provision of this Section, on and  
14 after the effective date of this amendatory Act of the 94th  
15 General Assembly no permit for the development or construction  
16 of a new municipal solid waste landfill may be granted by the  
17 Agency for a municipal solid waste landfill located within 6  
18 miles of a public airport that is primarily served by general  
19 aviation aircraft and regularly scheduled flights of aircraft  
20 designed for 60 passengers or less.

21 Except for those facilities owned or operated by sanitary  
22 districts organized under the Metropolitan Water Reclamation  
23 District Act, and except for new pollution control facilities  
24 governed by Section 39.2, and except for fossil fuel mining  
25 facilities, the granting of a permit under this Act shall not  
26 relieve the applicant from meeting and securing all necessary  
27 zoning approvals from the unit of government having zoning  
28 jurisdiction over the proposed facility.

29 Before beginning construction on any new sewage treatment  
30 plant or sludge drying site to be owned or operated by a  
31 sanitary district organized under the Metropolitan Water  
32 Reclamation District Act for which a new permit (rather than  
33 the renewal or amendment of an existing permit) is required,  
34 such sanitary district shall hold a public hearing within the  
35 municipality within which the proposed facility is to be  
36 located, or within the nearest community if the proposed

1 facility is to be located within an unincorporated area, at  
2 which information concerning the proposed facility shall be  
3 made available to the public, and members of the public shall  
4 be given the opportunity to express their views concerning the  
5 proposed facility.

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

9 (1) the municipal waste transfer station was in  
10 existence on or before January 1, 1979 and was in  
11 continuous operation from January 1, 1979 to January 1,  
12 1993;

13 (2) the operator submitted a permit application to the  
14 Agency to develop and operate the municipal waste transfer  
15 station during April of 1994;

16 (3) the operator can demonstrate that the county board  
17 of the county, if the municipal waste transfer station is  
18 in an unincorporated area, or the governing body of the  
19 municipality, if the station is in an incorporated area,  
20 does not object to resumption of the operation of the  
21 station; and

22 (4) the site has local zoning approval.

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

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



1 issuance of a RCRA permit.

2 In the case of a permit to operate a hazardous waste or PCB  
3 incinerator as defined in subsection (k) of Section 44, the  
4 Agency shall require, as a condition of the permit, that the  
5 operator of the facility perform such analyses of the waste to  
6 be incinerated as may be necessary and appropriate to ensure  
7 the safe operation of the incinerator.

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

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

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

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

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

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

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

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

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

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

35 (g) The Agency shall include as conditions upon all permits  
36 issued for hazardous waste disposal sites such restrictions

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

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

1 is restricted from land disposal under 35 Ill. Adm. Code 728.

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

12 (1) repeated violations of federal, State, or local  
13 laws, regulations, standards, or ordinances in the  
14 operation of waste management facilities or sites; or

15 (2) conviction in this or another State of any crime  
16 which is a felony under the laws of this State, or  
17 conviction of a felony in a federal court; or

18 (3) proof of gross carelessness or incompetence in  
19 handling, storing, processing, transporting or disposing  
20 of waste.

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

36 (j) The issuance under this Act of a permit to engage in

1 the surface mining of any resources other than fossil fuels  
2 shall not relieve the permittee from its duty to comply with  
3 any applicable local law regulating the commencement, location  
4 or operation of surface mining facilities.

5 (k) A development permit issued under subsection (a) of  
6 Section 39 for any facility or site which is required to have a  
7 permit under subsection (d) of Section 21 shall expire at the  
8 end of 2 calendar years from the date upon which it was issued,  
9 unless within that period the applicant has taken action to  
10 develop the facility or the site. In the event that review of  
11 the conditions of the development permit is sought pursuant to  
12 Section 40 or 41, or permittee is prevented from commencing  
13 development of the facility or site by any other litigation  
14 beyond the permittee's control, such two-year period shall be  
15 deemed to begin on the date upon which such review process or  
16 litigation is concluded.

17 (l) No permit shall be issued by the Agency under this Act  
18 for construction or operation of any facility or site located  
19 within the boundaries of any setback zone established pursuant  
20 to this Act, where such construction or operation is  
21 prohibited.

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

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

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

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

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

8           If no final action is taken by the Agency within 90 days  
9 after the filing of the application for permit, the applicant  
10 may deem the permit issued. Any applicant for a permit may  
11 waive the 90 day limitation by filing a written statement with  
12 the Agency.

13           The Agency shall issue permits for such facilities upon  
14 receipt of an application that includes a legal description of  
15 the site, a topographic map of the site drawn to the scale of  
16 200 feet to the inch or larger, a description of the operation,  
17 including the area served, an estimate of the volume of  
18 materials to be processed, and documentation that:

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

21           (2) the facility is located outside the boundary of the  
22 10-year floodplain or the site will be floodproofed;

23           (3) the facility is located so as to minimize  
24 incompatibility with the character of the surrounding  
25 area, including at least a 200 foot setback from any  
26 residence, and in the case of a facility that is developed  
27 or the permitted composting area of which is expanded after  
28 November 17, 1991, the composting area is located at least  
29 1/8 mile from the nearest residence (other than a residence  
30 located on the same property as the facility);

31           (4) the design of the facility will prevent any compost  
32 material from being placed within 5 feet of the water  
33 table, will adequately control runoff from the site, and  
34 will collect and manage any leachate that is generated on  
35 the site;

36           (5) the operation of the facility will include

1 appropriate dust and odor control measures, limitations on  
2 operating hours, appropriate noise control measures for  
3 shredding, chipping and similar equipment, management  
4 procedures for composting, containment and disposal of  
5 non-compostable wastes, procedures to be used for  
6 terminating operations at the site, and recordkeeping  
7 sufficient to document the amount of materials received,  
8 composted and otherwise disposed of; and

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

11 The Agency shall issue renewable permits of not longer than  
12 10 years in duration for the composting of landscape wastes, as  
13 defined in Section 3.155 of this Act, based on the above  
14 requirements.

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

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

24 (o) (Blank.)

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

1 proposed, the probable life of the proposed activity, the date  
2 the permit application will be submitted, and a statement that  
3 persons may file written comments with the Agency concerning  
4 the permit application within 30 days after the filing of the  
5 permit application unless the time period to submit comments is  
6 extended by the Agency.

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

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

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

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

31 (415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

32 Sec. 39.2. Local siting review.

33 (a) The county board of the county or the governing body of  
34 the municipality, as determined by paragraph (c) of Section 39  
35 of this Act, shall approve or disapprove the request for local



1 siting approval for each pollution control facility which is  
2 subject to such review. An applicant for local siting approval  
3 shall submit sufficient details describing the proposed  
4 facility to demonstrate compliance, and local siting approval  
5 shall be granted only if the proposed facility meets the  
6 following criteria:

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

9 (ii) the facility is so designed, located and proposed  
10 to be operated that the public health, safety and welfare  
11 will be protected;

12 (iii) the facility is located so as to minimize  
13 incompatibility with the character of the surrounding area  
14 and to minimize the effect on the value of the surrounding  
15 property;

16 (iv) (A) for a facility other than a sanitary landfill  
17 or waste disposal site, the facility is located outside the  
18 boundary of the 100 year flood plain or the site is  
19 flood-proofed; (B) for a facility that is a sanitary  
20 landfill or waste disposal site, the facility is located  
21 outside the boundary of the 100-year floodplain, or if the  
22 facility is a facility described in subsection (b)(3) of  
23 Section 22.19a, the site is flood-proofed;

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

27 (vi) the traffic patterns to or from the facility are  
28 so designed as to minimize the impact on existing traffic  
29 flows;

30 (vii) if the facility will be treating, storing or  
31 disposing of hazardous waste, an emergency response plan  
32 exists for the facility which includes notification,  
33 containment and evacuation procedures to be used in case of  
34 an accidental release;

35 (viii) if the facility is to be located in a county  
36 where the county board has adopted a solid waste management

1 plan consistent with the planning requirements of the Local  
2 Solid Waste Disposal Act or the Solid Waste Planning and  
3 Recycling Act, the facility is consistent with that plan;  
4 for purposes of this criterion (viii), the "solid waste  
5 management plan" means the plan that is in effect as of the  
6 date the application for siting approval is filed; and

7 (ix) if the facility will be located within a regulated  
8 recharge area, any applicable requirements specified by  
9 the Board for such areas have been met.

10 The county board or the governing body of the municipality  
11 may also consider as evidence the previous operating experience  
12 and past record of convictions or admissions of violations of  
13 the applicant (and any subsidiary or parent corporation) in the  
14 field of solid waste management when considering criteria (ii)  
15 and (v) under this Section.

16 The county board or the governing body of the municipality  
17 shall not approve a request for siting approval of a municipal  
18 solid waste landfill under this Section when the proposed  
19 location of that landfill is within 6 miles of a public airport  
20 that is primarily served by general aviation aircraft and  
21 regularly scheduled flights of aircraft designed for 60  
22 passengers or less.

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

1 exceed 400 feet, including public streets, alleys and other  
2 public ways.

3 Such written notice shall also be served upon members of  
4 the General Assembly from the legislative district in which the  
5 proposed facility is located and shall be published in a  
6 newspaper of general circulation published in the county in  
7 which the site is located.

8 Such notice shall state the name and address of the  
9 applicant, the location of the proposed site, the nature and  
10 size of the development, the nature of the activity proposed,  
11 the probable life of the proposed activity, the date when the  
12 request for site approval will be submitted, and a description  
13 of the right of persons to comment on such request as hereafter  
14 provided.

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

27 Any person may file written comment with the county board  
28 or governing body of the municipality concerning the  
29 appropriateness of the proposed site for its intended purpose.  
30 The county board or governing body of the municipality shall  
31 consider any comment received or postmarked not later than 30  
32 days after the date of the last public hearing.

33 (d) At least one public hearing is to be held by the county  
34 board or governing body of the municipality no sooner than 90  
35 days but no later than 120 days after the date on which it  
36 received the request for site approval. No later than 14 days

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

25 (e) Decisions of the county board or governing body of the  
26 municipality are to be in writing, specifying the reasons for  
27 the decision, such reasons to be in conformance with subsection  
28 (a) of this Section. In granting approval for a site the county  
29 board or governing body of the municipality may impose such  
30 conditions as may be reasonable and necessary to accomplish the  
31 purposes of this Section and as are not inconsistent with  
32 regulations promulgated by the Board. Such decision shall be  
33 available for public inspection at the office of the county  
34 board or governing body of the municipality and may be copied  
35 upon payment of the actual cost of reproduction. If there is no  
36 final action by the county board or governing body of the

1 municipality within 180 days after the date on which it  
2 received the request for site approval, the applicant may deem  
3 the request approved.

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

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

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

1 subsequent owner or operator assumes all rights and obligations  
2 and takes the facility subject to any and all terms and  
3 conditions of any existing host agreement between the prior  
4 owner or operator and the appropriate county board or governing  
5 body.

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

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

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

33 (g) The siting approval procedures, criteria and appeal  
34 procedures provided for in this Act for new pollution control  
35 facilities shall be the exclusive siting procedures and rules  
36 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.

35 (n) In any review proceeding of a decision of the county  
36 board or governing body of a municipality made pursuant to the

1 local siting review process, the petitioner in the review  
2 proceeding shall pay to the county or municipality the cost of  
3 preparing and certifying the record of proceedings. Should the  
4 petitioner in the review proceeding fail to make payment, the  
5 provisions of Section 3-109 of the Code of Civil Procedure  
6 shall apply.

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

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

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

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