



State Government Administration Committee

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09500HB1467ham001

LRB095 09436 CMK 34122 a

1 AMENDMENT TO HOUSE BILL 1467

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1467 by replacing  
3 the title with the following:

4 "AN ACT concerning safety."; and

5 by replacing everything after the enacting clause with the  
6 following:

7 "Section 5. The Environmental Protection Act is amended by  
8 changing Section 22.15a as follows:

9 (415 ILCS 5/22.15a)

10 Sec. 22.15a. Open dumping cleanup program.

11 (a) Upon making a finding that (i) open dumping, (ii) a  
12 structure condemned by a unit of local government, or (iii) a  
13 vacant piece of property condemned by a unit of local  
14 government poses a threat to the public health or to the  
15 environment, the Agency may take whatever preventive or

1 corrective action is necessary or appropriate to end that  
2 threat. ~~The This~~ preventive or corrective action may consist of  
3 any or all of the following:

4 (1) Removing waste or structures from the site.

5 (2) Removing soil and water contamination that is  
6 related to waste at the site.

7 (3) Installing devices to monitor and control  
8 groundwater and surface water contamination that is  
9 related to waste at the site.

10 (4) Taking any other actions that are authorized by  
11 Board regulations.

12 (b) Subject to the availability of appropriated funds, the  
13 Agency may undertake a consensual removal action for the  
14 removal of up to 20 cubic yards of waste, or, in the case of a  
15 condemned structure, the entire mass of structural material  
16 comprising the condemned structure, at no cost to the owner of  
17 the property where the open dumping has occurred or on which  
18 the condemned structure is located in accordance with the  
19 following requirements:

20 (1) Actions under this subsection must be taken  
21 pursuant to a written agreement between the Agency and the  
22 owner of the property unless the property is condemned by a  
23 unit of local government.

24 (2) The written agreement must at a minimum specify:

25 (A) that the owner relinquishes any claim of an  
26 ownership interest in any waste that is removed and in

1 any proceeds from its sale;

2 (B) that waste will no longer be allowed to  
3 accumulate at the site in a manner that constitutes  
4 open dumping;

5 (C) that the owner will hold harmless the Agency  
6 and any employee or contractor used by the Agency to  
7 effect the removal for any damage to property incurred  
8 during the course of action under this subsection,  
9 except for damage incurred by gross negligence or  
10 intentional misconduct; and

11 (D) any conditions imposed upon or assistance  
12 required from the owner to assure that the waste is so  
13 located or arranged as to facilitate its removal.

14 (3) The Agency may establish by rule the conditions and  
15 priorities for the removal of waste or structures under  
16 this subsection (b).

17 (4) The Agency must prescribe the form of written  
18 agreements under this subsection (b).

19 (c) The Agency may provide notice to the owner of property  
20 where open dumping or condemnation has occurred whenever the  
21 Agency finds that the open dumping or condemned structure poses  
22 a threat to public health or the environment. The notice  
23 provided by the Agency must include the identified preventive  
24 or corrective action and must provide an opportunity for the  
25 owner to perform the action.

26 (d) In accordance with constitutional limitations, the

1 Agency may enter, at all reasonable times, upon any private or  
2 public property for the purpose of taking any preventive or  
3 corrective action that is necessary and appropriate under this  
4 Section whenever the Agency finds that the open dumping or the  
5 condemned structure poses a threat to the public health or to  
6 the environment.

7 (e) Notwithstanding any other provision or rule of law and  
8 subject only to the defenses set forth in subsection (g) of  
9 this Section, the following persons shall be liable for all  
10 costs of corrective or preventive action incurred by the State  
11 of Illinois as a result of actions taken under this Section  
12 ~~open dumping~~, including the reasonable costs of collection:

13 (1) any person with an ownership interest in property  
14 where open dumping has occurred;

15 (2) any person with an ownership or leasehold interest  
16 in the property at the time the open dumping occurred;

17 (3) any person who transported waste that was open  
18 dumped at the property; ~~and~~

19 (4) any person who open dumped at the property; and -

20 (5) any person who owns a condemned structure that is  
21 treated under subsection (b) of this Section.

22 Any moneys received by the Agency under this subsection (e)  
23 must be deposited into the Subtitle D Management Fund.

24 (f) Any person liable to the Agency for costs incurred  
25 under subsection (e) of this Section may be liable to the State  
26 of Illinois for punitive damages in an amount at least equal to

1 and not more than 3 times the costs incurred by the State if  
2 that person failed, without sufficient cause, to take  
3 preventive or corrective action under the notice issued under  
4 subsection (c) of this Section.

5 (g) There shall be no liability under subsection (e) of  
6 this Section for a person otherwise liable who can establish by  
7 a preponderance of the evidence that the hazard created by the  
8 open dumping or condemned structure was caused solely by:

9 (1) an act of God;

10 (2) an act of war; or

11 (3) an act or omission of a third party other than an  
12 employee or agent and other than a person whose act or  
13 omission occurs in connection with a contractual  
14 relationship with the person otherwise liable. For the  
15 purposes of this paragraph, "contractual relationship"  
16 includes, but is not limited to, land contracts, deeds, and  
17 other instruments transferring title or possession, unless  
18 the real property upon which the open dumping occurred was  
19 acquired by the defendant after the open dumping or  
20 condemnation occurred and one or more of the following  
21 circumstances is also established by a preponderance of the  
22 evidence:

23 (A) at the time the defendant acquired the  
24 property, the defendant did not know and had no reason  
25 to know that any open dumping or condemnation had  
26 occurred and the defendant undertook, at the time of

1 acquisition, all appropriate inquiries into the  
2 previous ownership and uses of the property consistent  
3 with good commercial or customary practice in an effort  
4 to minimize liability;

5 (B) the defendant is a government entity that  
6 acquired the property by escheat or through any other  
7 involuntary transfer or acquisition, or through the  
8 exercise of eminent domain authority by purchase or  
9 condemnation; or

10 (C) the defendant acquired the property by  
11 inheritance or bequest.

12 (h) Nothing in this Section shall affect or modify the  
13 obligations or liability of any person under any other  
14 provision of this Act, federal law, or State law, including the  
15 common law, for injuries, damages, or losses resulting from the  
16 circumstances leading to Agency action under this Section.

17 (i) The costs and damages provided for in this Section may  
18 be imposed by the Board in an action brought before the Board  
19 in accordance with Title VIII of this Act, except that  
20 subsection (c) of Section 33 of this Act shall not apply to any  
21 such action.

22 (j) Except for willful and wanton misconduct, neither the  
23 State, the Director, nor any State employee shall be liable for  
24 any damages or injuries arising out of or resulting from any  
25 act or omission occurring under the provisions of Public Act  
26 94-272 or this amendatory Act of the 95th ~~94th~~ General

1 Assembly.

2 (k) Before taking preventive or corrective action under  
3 this Section, the Agency shall consider whether the open  
4 dumping or conditions giving rise to the condemnation:

5 (1) occurred on public land;

6 (2) occurred on a public right-of-way;

7 (3) occurred in a park or natural area;

8 (4) occurred in an environmental justice area;

9 (5) was caused or allowed by persons other than the  
10 owner of the site;

11 (6) creates the potential for groundwater  
12 contamination;

13 (7) creates the potential for surface water  
14 contamination;

15 (8) creates the potential for disease vectors;

16 (9) creates a fire hazard; or

17 (10) preventive or corrective action by the Agency has  
18 been requested by a unit of local government.

19 In taking preventive or corrective action under this  
20 Section, the Agency shall not expend more than \$50,000 at any  
21 single site in response to open dumping or a condemned  
22 structure unless: (i) the Director determines that the open  
23 dumping or condemned structure poses an imminent and  
24 substantial endangerment to the public health or welfare or the  
25 environment; or (ii) the General Assembly appropriates more  
26 than \$50,000 for preventive or corrective action in response to

1 the open dumping or condemned structure, in which case the  
2 Agency may spend the appropriated amount.

3 (Source: P.A. 94-272, eff. 7-19-05.)

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