

HB0789



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0789

Introduced 2/9/2009, by Rep. Robert Rita

SYNOPSIS AS INTRODUCED:

415 ILCS 5/22.15a

Amends the Environmental Protection Act. Provides that the open dumping cleanup program includes removal actions with respect to structures or vacant properties condemned by units of local government. Effective immediately.

LRB096 05803 JDS 15881 b

A BILL FOR

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 Section 22.15a as follows:

6 (415 ILCS 5/22.15a)

7 Sec. 22.15a. Open dumping cleanup program.

8 (a) Upon making a finding that (i) open dumping, (ii) a
9 structure condemned by a unit of local government, or (iii) a
10 vacant piece of property condemned by a unit of local
11 government poses a threat to the public health or to the
12 environment, the Agency may take whatever preventive or
13 corrective action is necessary or appropriate to end that
14 threat. ~~The This~~ preventive or corrective action may consist of
15 any or all of the following:

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

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

19 (3) Installing devices to monitor and control
20 groundwater and surface water contamination that is
21 related to waste at the site.

22 (4) Taking any other actions that are authorized by
23 Board regulations.

1 (b) Subject to the availability of appropriated funds, the
2 Agency may undertake a consensual removal action for the
3 removal of up to 20 cubic yards of waste, or, in the case of a
4 condemned structure, the entire mass of structural material
5 comprising the condemned structure, at no cost to the owner of
6 the property where the open dumping has occurred or on which
7 the condemned structure is located in accordance with the
8 following requirements:

9 (1) Actions under this subsection must be taken
10 pursuant to a written agreement between the Agency and the
11 owner of the property unless the property is condemned by a
12 unit of local government.

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

14 (A) that the owner relinquishes any claim of an
15 ownership interest in any waste that is removed and in
16 any proceeds from its sale;

17 (B) that waste will no longer be allowed to
18 accumulate at the site in a manner that constitutes
19 open dumping;

20 (C) that the owner will hold harmless the Agency
21 and any employee or contractor used by the Agency to
22 effect the removal for any damage to property incurred
23 during the course of action under this subsection,
24 except for damage incurred by gross negligence or
25 intentional misconduct; and

26 (D) any conditions imposed upon or assistance

1 required from the owner to assure that the waste is so
2 located or arranged as to facilitate its removal.

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

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

8 (c) The Agency may provide notice to the owner of property
9 where open dumping or condemnation has occurred whenever the
10 Agency finds that the open dumping or condemned structure poses
11 a threat to public health or the environment. The notice
12 provided by the Agency must include the identified preventive
13 or corrective action and must provide an opportunity for the
14 owner to perform the action.

15 (d) In accordance with constitutional limitations, the
16 Agency may enter, at all reasonable times, upon any private or
17 public property for the purpose of taking any preventive or
18 corrective action that is necessary and appropriate under this
19 Section whenever the Agency finds that the open dumping or the
20 condemned structure poses a threat to the public health or to
21 the environment.

22 (e) Notwithstanding any other provision or rule of law and
23 subject only to the defenses set forth in subsection (g) of
24 this Section, the following persons shall be liable for all
25 costs of corrective or preventive action incurred by the State
26 of Illinois as a result of actions taken under this Section

1 ~~open dumping~~, including the reasonable costs of collection:

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

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

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

8 (4) any person who open dumped at the property; ~~and~~

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

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

13 (f) Any person liable to the Agency for costs incurred
14 under subsection (e) of this Section may be liable to the State
15 of Illinois for punitive damages in an amount at least equal to
16 and not more than 3 times the costs incurred by the State if
17 that person failed, without sufficient cause, to take
18 preventive or corrective action under the notice issued under
19 subsection (c) of this Section.

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

24 (1) an act of God;

25 (2) an act of war; or

26 (3) an act or omission of a third party other than an

1 employee or agent and other than a person whose act or
2 omission occurs in connection with a contractual
3 relationship with the person otherwise liable. For the
4 purposes of this paragraph, "contractual relationship"
5 includes, but is not limited to, land contracts, deeds, and
6 other instruments transferring title or possession, unless
7 the real property upon which the open dumping occurred was
8 acquired by the defendant after the open dumping or
9 condemnation occurred and one or more of the following
10 circumstances is also established by a preponderance of the
11 evidence:

12 (A) at the time the defendant acquired the
13 property, the defendant did not know and had no reason
14 to know that any open dumping or condemnation had
15 occurred and the defendant undertook, at the time of
16 acquisition, all appropriate inquiries into the
17 previous ownership and uses of the property consistent
18 with good commercial or customary practice in an effort
19 to minimize liability;

20 (B) the defendant is a government entity that
21 acquired the property by escheat or through any other
22 involuntary transfer or acquisition, or through the
23 exercise of eminent domain authority by purchase or
24 condemnation; or

25 (C) the defendant acquired the property by
26 inheritance or bequest.

1 (h) Nothing in this Section shall affect or modify the
2 obligations or liability of any person under any other
3 provision of this Act, federal law, or State law, including the
4 common law, for injuries, damages, or losses resulting from the
5 circumstances leading to Agency action under this Section.

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

11 (j) Except for willful and wanton misconduct, neither the
12 State, the Director, nor any State employee shall be liable for
13 any damages or injuries arising out of or resulting from any
14 act or omission occurring under the provisions of Public Act
15 94-272 or this amendatory Act of the 96th ~~94th~~ General
16 Assembly.

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

- 20 (1) occurred on public land;
- 21 (2) occurred on a public right-of-way;
- 22 (3) occurred in a park or natural area;
- 23 (4) occurred in an environmental justice area;
- 24 (5) was caused or allowed by persons other than the
25 owner of the site;
- 26 (6) creates the potential for groundwater

1 contamination;

2 (7) creates the potential for surface water
3 contamination;

4 (8) creates the potential for disease vectors;

5 (9) creates a fire hazard; or

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

8 In taking preventive or corrective action under this
9 Section, the Agency shall not expend more than \$50,000 at any
10 single site in response to open dumping or a condemned
11 structure unless: (i) the Director determines that the open
12 dumping or condemned structure poses an imminent and
13 substantial endangerment to the public health or welfare or the
14 environment; or (ii) the General Assembly appropriates more
15 than \$50,000 for preventive or corrective action in response to
16 the open dumping or condemned structure, in which case the
17 Agency may spend the appropriated amount.

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

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