



Sen. Don Harmon

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1 AMENDMENT TO SENATE BILL 1607

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1607, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Environmental Protection Act is amended by  
6 changing Sections 3.160, 21, 22.51, 31.1, and 42 and by adding  
7 Sections 3.202, 3.442, 22.51a, and 22.54 as follows:

8 (415 ILCS 5/3.160) (was 415 ILCS 5/3.78 and 3.78a)

9 Sec. 3.160. Construction or demolition debris.

10 (a) "General construction or demolition debris" means  
11 non-hazardous, uncontaminated materials resulting from the  
12 construction, remodeling, repair, and demolition of utilities,  
13 structures, and roads, limited to the following: bricks,  
14 concrete, and other masonry materials; soil; rock; wood,  
15 including non-hazardous painted, treated, and coated wood and  
16 wood products; wall coverings; plaster; drywall; plumbing

1 fixtures; non-asbestos insulation; roofing shingles and other  
2 roof coverings; reclaimed or other asphalt pavement; glass;  
3 plastics that are not sealed in a manner that conceals waste;  
4 electrical wiring and components containing no hazardous  
5 substances; and piping or metals incidental to any of those  
6 materials.

7 General construction or demolition debris does not include  
8 general fill ~~uncontaminated~~ soil generated during  
9 construction, remodeling, repair, and demolition of utilities,  
10 structures, and roads provided the general fill ~~uncontaminated~~  
11 soil is not commingled with any general construction or  
12 demolition debris or other waste.

13 To the extent allowed by federal law, uncontaminated  
14 concrete with protruding rebar shall be considered clean  
15 construction or demolition debris and shall not be considered  
16 "waste" if it is separated or processed and returned to the  
17 economic mainstream in the form of raw materials or products  
18 within 4 years of its generation, if it is not speculatively  
19 accumulated and, if used as a fill material, it is used in  
20 accordance with item (i) in subsection (b) of this Section.

21 (b) "Clean construction or demolition debris" ("CCDD")  
22 means uncontaminated broken concrete without protruding metal  
23 bars, bricks, rock, stone, or reclaimed or other asphalt  
24 pavement ~~, or soil~~ generated from construction or demolition  
25 activities; provided that concrete without protruding metal  
26 bars, bricks, rock, stone, or reclaimed or other asphalt

1 pavement that is generated from the construction or demolition  
2 of a road may be considered "clean construction or demolition  
3 debris" if it is uncontaminated except for pavement markings  
4 that conform to Illinois Department of Transportation  
5 specifications.

6 CCDD also includes general fill soil generated from  
7 construction or demolition activities that is mixed with broken  
8 concrete without protruding metal bars, bricks, rock, stone, or  
9 reclaimed asphalt pavement that is CCDD. CCDD ~~Clean~~  
10 ~~construction or demolition debris~~ does not include general fill  
11 ~~uncontaminated~~ soil generated during construction, remodeling,  
12 repair, and demolition of utilities, structures, and roads that  
13 ~~provided the uncontaminated soil~~ is not commingled with any  
14 CCDD ~~clean construction or demolition debris~~ or other waste.

15 To the extent allowed by federal law, CCDD ~~clean~~  
16 ~~construction or demolition debris~~ shall not be considered  
17 "waste" if it is (i) used as fill material outside of a setback  
18 zone if (1) the fill is placed no higher than the highest point  
19 of elevation existing prior to the filling immediately adjacent  
20 to the fill area, and (2) except as otherwise allowed under  
21 subdivision (f)(3) of Section 22.51 of this Act it is ~~if~~  
22 covered by sufficient general fill ~~uncontaminated~~ soil to  
23 support vegetation within 30 days of the completion of filling  
24 or is ~~if~~ covered by a road or structure and, (3) if used as fill  
25 material in a current or former quarry, mine, or other  
26 excavation, it is used in accordance with the requirements of

1 Sections 22.51 of this Act and rules adopted thereunder, or  
2 (ii) separated or processed and returned to the economic  
3 mainstream in the form of raw materials or products, if it is  
4 not speculatively accumulated and, if used as a fill material,  
5 it is used in accordance with item (i), or (iii) solely broken  
6 concrete without protruding metal bars used for erosion  
7 control, or (iv) generated from the construction or demolition  
8 of a building, road, or other structure and used to construct,  
9 on the site where the construction or demolition has taken  
10 place, a manmade functional structure not to exceed 20 feet  
11 above the highest point of elevation of the property  
12 immediately adjacent to the new manmade functional structure as  
13 that elevation existed prior to the creation of that new  
14 structure, provided that the structure shall be covered with  
15 sufficient general fill soil materials to sustain vegetation or  
16 by a road or structure, and further provided that no such  
17 structure shall be constructed within a home rule municipality  
18 with a population over 500,000 without the consent of the  
19 municipality.

20 For purposes of this subsection (b), reclaimed or other  
21 asphalt pavement shall not be considered speculatively  
22 accumulated if: (i) it is not commingled with any other clean  
23 construction or demolition debris or any waste; (ii) it is  
24 returned to the economic mainstream in the form of raw  
25 materials or products within 4 years after its generation;  
26 (iii) at least 25% of the total amount present at a site during

1 a calendar year is transported off of the site during the next  
2 calendar year; and (iv) if used as a fill material, it is used  
3 in accordance with item (i) of the second paragraph of this  
4 subsection (b).

5 (c) "Painted construction or demolition debris" means  
6 broken concrete without protruding metal bars, bricks, rock,  
7 stone, or reclaimed or other asphalt pavement generated from  
8 construction or demolition activities that contains paint but  
9 is otherwise uncontaminated. However, concrete without  
10 protruding metal bars, bricks, rock, stone, or reclaimed or  
11 other asphalt pavement that is generated from the construction  
12 or demolition of a road may be considered "clean construction  
13 or demolition debris" instead of "painted construction or  
14 demolition debris" if it is uncontaminated except for pavement  
15 markings that conform to Illinois Department of Transportation  
16 specifications.

17 (Source: P.A. 94-272, eff. 7-19-05; 95-121, eff. 8-13-07.)

18 (415 ILCS 5/3.202 new)

19 Sec. 3.202. General Fill Soil. For purposes of Sections  
20 3.160, 21, 22.51, and 22.51a of this Act, "General Fill Soil"  
21 means soil generated from construction or demolition  
22 activities that (i) does not exceed the most stringent Tier 1  
23 exposure route values adopted by the Board pursuant to Title  
24 XVII of this Act, as amended, (ii) based upon past and current  
25 land uses and reasonable inquiry, is not known or suspected to

1 contain a regulated substance or pesticide for which a Tier 1  
2 exposure route value has not been determined, and (iii) does  
3 not contain waste. For purposes of this definition, the most  
4 stringent Tier 1 exposure route values adopted by the Board  
5 pursuant to Title XVII of this Act shall be determined as  
6 follows:

7 (a) Except as otherwise provided in subsections (b)  
8 through (d) of this Section, the most stringent Tier 1  
9 exposure route values are the lowest of the following  
10 values for each chemical listed in 35 Ill. Adm. Code 742,  
11 Appendix B, as amended:

12 (1) The Ingestion Exposure Route-Specific Value  
13 for Soils listed in Table A of 35 Ill. Adm. Code 742,  
14 Appendix B;

15 (2) The Outdoor Inhalation Exposure Route-Specific  
16 Value for Soils listed in Table A of 35 Ill. Adm. Code  
17 742, Appendix B;

18 (3) The Class I Soil Component of the Groundwater  
19 Ingestion Exposure Route Value listed in Table A of 35  
20 Ill. Adm. Code 742, Appendix B;

21 (4) The Construction Worker Ingestion Exposure  
22 Route-Specific Value for Soils listed in Table B of 35  
23 Ill. Adm. Code 742, Appendix B;

24 (5) The Construction Worker Inhalation Exposure  
25 Route-Specific Value for Soils listed in Table B of 35  
26 Ill. Adm. Code 742, Appendix B; and

1           (6) Indoor inhalation exposure route values as may  
2           be established by the Board.

3           Location and other designations, such as residential  
4           and industrial/commercial designations, shall be ignored  
5           when comparing the values identified in this subsection  
6           (a). The lowest values shall be used regardless of  
7           designation.

8           (b) For inorganic chemicals, either the leachable  
9           value or the totals value set forth below can be used as  
10           the most stringent Tier 1 exposure route value.

11           (1) The leachable value for each inorganic  
12           chemical is the Class I Soil Component of the  
13           Groundwater Ingestion Exposure Route Value listed in  
14           Table A of 35 Ill. Adm. Code 742, Appendix B, as  
15           amended.

16           (2) The totals value for each inorganic chemical is  
17           the lowest of the following values, as amended:

18           (A) The Ingestion Exposure Route-Specific  
19           Value for Soils listed in Table A of 35 Ill. Adm.  
20           Code 742, Appendix B;

21           (B) The Outdoor Inhalation Exposure  
22           Route-Specific Value for Soils listed in Table A of  
23           35 Ill. Adm. Code 742, Appendix B;

24           (C) The Construction Worker Ingestion Exposure  
25           Route-Specific Value for Soils listed in Table B of  
26           35 Ill. Adm. Code 742, Appendix B;

1                   (D) The Construction Worker Inhalation  
2                   Exposure Route-Specific Value for Soils listed in  
3                   Table B of 35 Ill. Adm. Code 742, Appendix B;

4                   (E) The Class I pH Specific Soil Remediation  
5                   Objective listed in the column labeled "pH of 6.25  
6                   to 6.64" in Table C of 35 Ill. Adm. Code 742,  
7                   Appendix B; and

8                   (F) Indoor inhalation exposure route values as  
9                   may be established by the Board.

10                   Location and other designations, such as  
11                   residential or industrial/commercial designations,  
12                   shall be ignored when comparing the values identified  
13                   in this subdivision (b)(2) of this Section. The lowest  
14                   values shall be used for all soil regardless of  
15                   designation.

16                   (c) If a chemical's most stringent Tier 1 exposure  
17                   route value determined under subsections (a) and (b) of  
18                   this Section is less than the chemical's acceptable  
19                   detection limit (ADL) listed in 35 Ill. Adm. Code 742,  
20                   Appendix B, as amended, then the ADL shall serve as the  
21                   most stringent Tier 1 exposure route value.

22                   (d) The following applies for soil used as fill  
23                   material or cover material in Chicago, a Metropolitan Area,  
24                   or a Non-Metropolitan Area as defined in Table H of 35 Ill.  
25                   Adm. Code 742, Appendix A:

26                   (1) If a chemical's most stringent Tier 1 exposure



1           route value determined under subsections (a) through  
2           (c) of this Section is less than the chemical's lowest  
3           background concentration listed in Table H of 35 Ill.  
4           Adm. Code 742, Appendix A, as amended, then the  
5           chemical's lowest background concentration listed in  
6           Table H shall serve as the most stringent Tier 1  
7           exposure route value.

8           (2) For purposes of this subsection (d), the lowest  
9           background concentration listed in Table H shall be  
10           used, regardless of whether it is the background  
11           concentration listed for Chicago, a Metropolitan Area,  
12           or a Non-Metropolitan Area.

13           The most stringent Tier 1 exposure route values shall be  
14           determined solely from the values listed in 35 Ill. Adm. Code  
15           742, Appendix A and Appendix B as provided above. Except as  
16           provided in subsection (d) of this Section, background  
17           concentrations cannot be used. Other provisions of the Board's  
18           rules, such as those pertaining to the use of engineered  
19           barriers or institutional controls, cannot be used to exclude  
20           or otherwise alter exposure routes or exposure route values for  
21           purposes of determining the most stringent Tier 1 exposure  
22           route.

23           The Agency shall maintain on its website a list of the most  
24           stringent Tier 1 exposure route values adopted by the Board  
25           pursuant to Title XVII of this Act, as amended.

26           To the extent allowed by federal law, general fill soil is

1 not a waste.

2 (415 ILCS 5/3.442 new)

3 Sec. 3.442. Restricted Fill Soil. For purposes of Section  
4 22.51 of this Act, "restricted fill soil" means soil generated  
5 from construction or demolition activities that (i) does not  
6 exceed the Class I Soil Component of the Groundwater Ingestion  
7 Exposure Route Values listed in Table A of 35 Ill. Adm. Code  
8 742, Appendix B, as amended, (ii) based upon past and current  
9 land uses and reasonable inquiry, is not known or suspected to  
10 contain a regulated substance or pesticide that does not have a  
11 Class I Soil Component of the Groundwater Ingestion Exposure  
12 Route Value listed in Table A of 35 Ill. Adm. Code 742,  
13 Appendix B, as amended, and (iii) does not contain waste.  
14 General fill soil that is mixed with restricted fill soil shall  
15 be considered restricted fill soil.

16 (415 ILCS 5/21) (from Ch. 111 1/2, par. 1021)

17 Sec. 21. Prohibited acts. No person shall:

18 (a) Cause or allow the open dumping of any waste.

19 (b) Abandon, dump, or deposit any waste upon the public  
20 highways or other public property, except in a sanitary  
21 landfill approved by the Agency pursuant to regulations adopted  
22 by the Board.

23 (c) Abandon any vehicle in violation of the "Abandoned  
24 Vehicles Amendment to the Illinois Vehicle Code", as enacted by

1 the 76th General Assembly.

2 (d) Conduct any waste-storage, waste-treatment, or  
3 waste-disposal operation:

4 (1) without a permit granted by the Agency or in  
5 violation of any conditions imposed by such permit,  
6 including periodic reports and full access to adequate  
7 records and the inspection of facilities, as may be  
8 necessary to assure compliance with this Act and with  
9 regulations and standards adopted thereunder; provided,  
10 however, that, except for municipal solid waste landfill  
11 units that receive waste on or after October 9, 1993, no  
12 permit shall be required for (i) any person conducting a  
13 waste-storage, waste-treatment, or waste-disposal  
14 operation for wastes generated by such person's own  
15 activities which are stored, treated, or disposed within  
16 the site where such wastes are generated, or (ii) a  
17 facility located in a county with a population over 700,000  
18 as of January 1, 2000, operated and located in accordance  
19 with Section 22.38 of this Act, and used exclusively for  
20 the transfer, storage, or treatment of general  
21 construction or demolition debris;

22 (2) in violation of any regulations or standards  
23 adopted by the Board under this Act; or

24 (3) which receives waste after August 31, 1988, does  
25 not have a permit issued by the Agency, and is (i) a  
26 landfill used exclusively for the disposal of waste

1 generated at the site, (ii) a surface impoundment receiving  
2 special waste not listed in an NPDES permit, (iii) a waste  
3 pile in which the total volume of waste is greater than 100  
4 cubic yards or the waste is stored for over one year, or  
5 (iv) a land treatment facility receiving special waste  
6 generated at the site; without giving notice of the  
7 operation to the Agency by January 1, 1989, or 30 days  
8 after the date on which the operation commences, whichever  
9 is later, and every 3 years thereafter. The form for such  
10 notification shall be specified by the Agency, and shall be  
11 limited to information regarding: the name and address of  
12 the location of the operation; the type of operation; the  
13 types and amounts of waste stored, treated or disposed of  
14 on an annual basis; the remaining capacity of the  
15 operation; and the remaining expected life of the  
16 operation.

17 Item (3) of this subsection (d) shall not apply to any  
18 person engaged in agricultural activity who is disposing of a  
19 substance that constitutes solid waste, if the substance was  
20 acquired for use by that person on his own property, and the  
21 substance is disposed of on his own property in accordance with  
22 regulations or standards adopted by the Board.

23 This subsection (d) shall not apply to hazardous waste.

24 (e) Dispose, treat, store or abandon any waste, or  
25 transport any waste into this State for disposal, treatment,  
26 storage or abandonment, except at a site or facility which

1 meets the requirements of this Act and of regulations and  
2 standards thereunder.

3 (f) Conduct any hazardous waste-storage, hazardous  
4 waste-treatment or hazardous waste-disposal operation:

5 (1) without a RCRA permit for the site issued by the  
6 Agency under subsection (d) of Section 39 of this Act, or  
7 in violation of any condition imposed by such permit,  
8 including periodic reports and full access to adequate  
9 records and the inspection of facilities, as may be  
10 necessary to assure compliance with this Act and with  
11 regulations and standards adopted thereunder; or

12 (2) in violation of any regulations or standards  
13 adopted by the Board under this Act; or

14 (3) in violation of any RCRA permit filing requirement  
15 established under standards adopted by the Board under this  
16 Act; or

17 (4) in violation of any order adopted by the Board  
18 under this Act.

19 Notwithstanding the above, no RCRA permit shall be required  
20 under this subsection or subsection (d) of Section 39 of this  
21 Act for any person engaged in agricultural activity who is  
22 disposing of a substance which has been identified as a  
23 hazardous waste, and which has been designated by Board  
24 regulations as being subject to this exception, if the  
25 substance was acquired for use by that person on his own  
26 property and the substance is disposed of on his own property

1 in accordance with regulations or standards adopted by the  
2 Board.

3 (g) Conduct any hazardous waste-transportation operation:

4 (1) without registering with and obtaining a permit  
5 from the Agency in accordance with the Uniform Program  
6 implemented under subsection (1-5) of Section 22.2; or

7 (2) in violation of any regulations or standards  
8 adopted by the Board under this Act.

9 (h) Conduct any hazardous waste-recycling or hazardous  
10 waste-reclamation or hazardous waste-reuse operation in  
11 violation of any regulations, standards or permit requirements  
12 adopted by the Board under this Act.

13 (i) Conduct any process or engage in any act which produces  
14 hazardous waste in violation of any regulations or standards  
15 adopted by the Board under subsections (a) and (c) of Section  
16 22.4 of this Act.

17 (j) Conduct any special waste transportation operation in  
18 violation of any regulations, standards or permit requirements  
19 adopted by the Board under this Act. However, sludge from a  
20 water or sewage treatment plant owned and operated by a unit of  
21 local government which (1) is subject to a sludge management  
22 plan approved by the Agency or a permit granted by the Agency,  
23 and (2) has been tested and determined not to be a hazardous  
24 waste as required by applicable State and federal laws and  
25 regulations, may be transported in this State without a special  
26 waste hauling permit, and the preparation and carrying of a

1 manifest shall not be required for such sludge under the rules  
2 of the Pollution Control Board. The unit of local government  
3 which operates the treatment plant producing such sludge shall  
4 file a semiannual report with the Agency identifying the volume  
5 of such sludge transported during the reporting period, the  
6 hauler of the sludge, and the disposal sites to which it was  
7 transported. This subsection (j) shall not apply to hazardous  
8 waste.

9 (k) Fail or refuse to pay any fee imposed under this Act.

10 (l) Locate a hazardous waste disposal site above an active  
11 or inactive shaft or tunneled mine or within 2 miles of an  
12 active fault in the earth's crust. In counties of population  
13 less than 225,000 no hazardous waste disposal site shall be  
14 located (1) within 1 1/2 miles of the corporate limits as  
15 defined on June 30, 1978, of any municipality without the  
16 approval of the governing body of the municipality in an  
17 official action; or (2) within 1000 feet of an existing private  
18 well or the existing source of a public water supply measured  
19 from the boundary of the actual active permitted site and  
20 excluding existing private wells on the property of the permit  
21 applicant. The provisions of this subsection do not apply to  
22 publicly-owned sewage works or the disposal or utilization of  
23 sludge from publicly-owned sewage works.

24 (m) Transfer interest in any land which has been used as a  
25 hazardous waste disposal site without written notification to  
26 the Agency of the transfer and to the transferee of the

1 conditions imposed by the Agency upon its use under subsection  
2 (g) of Section 39.

3 (n) Use any land which has been used as a hazardous waste  
4 disposal site except in compliance with conditions imposed by  
5 the Agency under subsection (g) of Section 39.

6 (o) Conduct a sanitary landfill operation which is required  
7 to have a permit under subsection (d) of this Section, in a  
8 manner which results in any of the following conditions:

9 (1) refuse in standing or flowing waters;

10 (2) leachate flows entering waters of the State;

11 (3) leachate flows exiting the landfill confines (as  
12 determined by the boundaries established for the landfill  
13 by a permit issued by the Agency);

14 (4) open burning of refuse in violation of Section 9 of  
15 this Act;

16 (5) uncovered refuse remaining from any previous  
17 operating day or at the conclusion of any operating day,  
18 unless authorized by permit;

19 (6) failure to provide final cover within time limits  
20 established by Board regulations;

21 (7) acceptance of wastes without necessary permits;

22 (8) scavenging as defined by Board regulations;

23 (9) deposition of refuse in any unpermitted portion of  
24 the landfill;

25 (10) acceptance of a special waste without a required  
26 manifest;



1           (11) failure to submit reports required by permits or  
2 Board regulations;

3           (12) failure to collect and contain litter from the  
4 site by the end of each operating day;

5           (13) failure to submit any cost estimate for the site  
6 or any performance bond or other security for the site as  
7 required by this Act or Board rules.

8           The prohibitions specified in this subsection (o) shall be  
9 enforceable by the Agency either by administrative citation  
10 under Section 31.1 of this Act or as otherwise provided by this  
11 Act. The specific prohibitions in this subsection do not limit  
12 the power of the Board to establish regulations or standards  
13 applicable to sanitary landfills.

14           (p) In violation of subdivision (a) of this Section, cause  
15 or allow the open dumping of any waste in a manner which  
16 results in any of the following occurrences at the dump site:

17           (1) litter;

18           (2) scavenging;

19           (3) open burning;

20           (4) deposition of waste in standing or flowing waters;

21           (5) proliferation of disease vectors;

22           (6) standing or flowing liquid discharge from the dump  
23 site;

24           (7) deposition of:

25           (i) general construction or demolition debris as  
26 defined in Section 3.160(a) of this Act; or

1           (ii) clean construction or demolition debris as  
2           defined in Section 3.160(b) of this Act.

3           The prohibitions specified in this subsection (p) shall be  
4           enforceable by the Agency either by administrative citation  
5           under Section 31.1 of this Act or as otherwise provided by this  
6           Act. The specific prohibitions in this subsection do not limit  
7           the power of the Board to establish regulations or standards  
8           applicable to open dumping.

9           (q) Conduct a landscape waste composting operation without  
10          an Agency permit, provided, however, that no permit shall be  
11          required for any person:

12           (1) conducting a landscape waste composting operation  
13          for landscape wastes generated by such person's own  
14          activities which are stored, treated or disposed of within  
15          the site where such wastes are generated; or

16           (2) applying landscape waste or composted landscape  
17          waste at agronomic rates; or

18           (3) operating a landscape waste composting facility on  
19          a farm, if the facility meets all of the following  
20          criteria:

21           (A) the composting facility is operated by the  
22          farmer on property on which the composting material is  
23          utilized, and the composting facility constitutes no  
24          more than 2% of the property's total acreage, except  
25          that the Agency may allow a higher percentage for  
26          individual sites where the owner or operator has

1 demonstrated to the Agency that the site's soil  
2 characteristics or crop needs require a higher rate;

3 (B) the property on which the composting facility  
4 is located, and any associated property on which the  
5 compost is used, is principally and diligently devoted  
6 to the production of agricultural crops and is not  
7 owned, leased or otherwise controlled by any waste  
8 hauler or generator of nonagricultural compost  
9 materials, and the operator of the composting facility  
10 is not an employee, partner, shareholder, or in any way  
11 connected with or controlled by any such waste hauler  
12 or generator;

13 (C) all compost generated by the composting  
14 facility is applied at agronomic rates and used as  
15 mulch, fertilizer or soil conditioner on land actually  
16 farmed by the person operating the composting  
17 facility, and the finished compost is not stored at the  
18 composting site for a period longer than 18 months  
19 prior to its application as mulch, fertilizer, or soil  
20 conditioner;

21 (D) the owner or operator, by January 1, 1990 (or  
22 the January 1 following commencement of operation,  
23 whichever is later) and January 1 of each year  
24 thereafter, (i) registers the site with the Agency,  
25 (ii) reports to the Agency on the volume of composting  
26 material received and used at the site, (iii) certifies

1 to the Agency that the site complies with the  
2 requirements set forth in subparagraphs (A), (B) and  
3 (C) of this paragraph (q) (3), and (iv) certifies to the  
4 Agency that all composting material was placed more  
5 than 200 feet from the nearest potable water supply  
6 well, was placed outside the boundary of the 10-year  
7 floodplain or on a part of the site that is  
8 floodproofed, was placed at least 1/4 mile from the  
9 nearest residence (other than a residence located on  
10 the same property as the facility) and there are not  
11 more than 10 occupied non-farm residences within 1/2  
12 mile of the boundaries of the site on the date of  
13 application, and was placed more than 5 feet above the  
14 water table.

15 For the purposes of this subsection (q), "agronomic rates"  
16 means the application of not more than 20 tons per acre per  
17 year, except that the Agency may allow a higher rate for  
18 individual sites where the owner or operator has demonstrated  
19 to the Agency that the site's soil characteristics or crop  
20 needs require a higher rate.

21 (r) Cause or allow the storage or disposal of coal  
22 combustion waste unless:

23 (1) such waste is stored or disposed of at a site or  
24 facility for which a permit has been obtained or is not  
25 otherwise required under subsection (d) of this Section; or

26 (2) such waste is stored or disposed of as a part of

1 the design and reclamation of a site or facility which is  
2 an abandoned mine site in accordance with the Abandoned  
3 Mined Lands and Water Reclamation Act; or

4 (3) such waste is stored or disposed of at a site or  
5 facility which is operating under NPDES and Subtitle D  
6 permits issued by the Agency pursuant to regulations  
7 adopted by the Board for mine-related water pollution and  
8 permits issued pursuant to the Federal Surface Mining  
9 Control and Reclamation Act of 1977 (P.L. 95-87) or the  
10 rules and regulations thereunder or any law or rule or  
11 regulation adopted by the State of Illinois pursuant  
12 thereto, and the owner or operator of the facility agrees  
13 to accept the waste; and either

14 (i) such waste is stored or disposed of in  
15 accordance with requirements applicable to refuse  
16 disposal under regulations adopted by the Board for  
17 mine-related water pollution and pursuant to NPDES and  
18 Subtitle D permits issued by the Agency under such  
19 regulations; or

20 (ii) the owner or operator of the facility  
21 demonstrates all of the following to the Agency, and  
22 the facility is operated in accordance with the  
23 demonstration as approved by the Agency: (1) the  
24 disposal area will be covered in a manner that will  
25 support continuous vegetation, (2) the facility will  
26 be adequately protected from wind and water erosion,

1           (3) the pH will be maintained so as to prevent  
2           excessive leaching of metal ions, and (4) adequate  
3           containment or other measures will be provided to  
4           protect surface water and groundwater from  
5           contamination at levels prohibited by this Act, the  
6           Illinois Groundwater Protection Act, or regulations  
7           adopted pursuant thereto.

8           Notwithstanding any other provision of this Title, the  
9           disposal of coal combustion waste pursuant to item (2) or (3)  
10          of this subdivision (r) shall be exempt from the other  
11          provisions of this Title V, and notwithstanding the provisions  
12          of Title X of this Act, the Agency is authorized to grant  
13          experimental permits which include provision for the disposal  
14          of wastes from the combustion of coal and other materials  
15          pursuant to items (2) and (3) of this subdivision (r).

16          (s) After April 1, 1989, offer for transportation,  
17          transport, deliver, receive or accept special waste for which a  
18          manifest is required, unless the manifest indicates that the  
19          fee required under Section 22.8 of this Act has been paid.

20          (t) Cause or allow a lateral expansion of a municipal solid  
21          waste landfill unit on or after October 9, 1993, without a  
22          permit modification, granted by the Agency, that authorizes the  
23          lateral expansion.

24          (u) Conduct any vegetable by-product treatment, storage,  
25          disposal or transportation operation in violation of any  
26          regulation, standards or permit requirements adopted by the

1 Board under this Act. However, no permit shall be required  
2 under this Title V for the land application of vegetable  
3 by-products conducted pursuant to Agency permit issued under  
4 Title III of this Act to the generator of the vegetable  
5 by-products. In addition, vegetable by-products may be  
6 transported in this State without a special waste hauling  
7 permit, and without the preparation and carrying of a manifest.

8 (v) (Blank).

9 (w) Conduct any generation, transportation, or recycling  
10 of construction or demolition debris, clean or general, or  
11 painted construction or demolition debris or general fill  
12 ~~uncontaminated~~ soil or restricted fill soil that is generated  
13 during construction, remodeling, repair, and demolition of  
14 utilities, structures, and roads that is not commingled with  
15 any waste, without the maintenance of documentation  
16 identifying the hauler, generator, place of origin of the  
17 debris or soil, the weight or volume of the debris or soil, and  
18 the location, owner, and operator of the facility where the  
19 debris or soil was transferred, disposed, recycled, or treated.  
20 This documentation must be maintained by the generator,  
21 transporter, or recycler for 3 years. This subsection (w) shall  
22 not apply to (1) a permitted pollution control facility that  
23 transfers or accepts construction or demolition debris, clean  
24 or general, or painted construction or demolition debris or  
25 general fill soil or restricted fill ~~uncontaminated~~ soil for  
26 final disposal, recycling, or treatment, (2) a public utility

1 (as that term is defined in the Public Utilities Act) or a  
2 municipal utility, (3) the Illinois Department of  
3 Transportation, ~~or~~ (4) a municipality or a county highway  
4 department, with the exception of any municipality or county  
5 highway department located within a county having a population  
6 of over 3,000,000 inhabitants or located in a county that is  
7 contiguous to a county having a population of over 3,000,000  
8 inhabitants, or (5) the Illinois State Toll Highway Authority;  
9 but it shall apply to an entity that contracts with a public  
10 utility, a municipal utility, the Illinois Department of  
11 Transportation, the Illinois State Toll Highway Authority or a  
12 municipality or a county highway department. The terms  
13 "generation" and "recycling" as used in this subsection do not  
14 apply to clean construction or demolition debris when (i) used  
15 as fill material below grade outside of a setback zone if  
16 covered by sufficient general fill ~~uncontaminated~~ soil to  
17 support vegetation within 30 days of the completion of filling  
18 or if covered by a road or structure, (ii) solely broken  
19 concrete without protruding metal bars is used for erosion  
20 control, or (iii) milled asphalt or crushed concrete is used as  
21 aggregate in construction of the shoulder of a roadway. The  
22 terms "generation" and "recycling", as used in this subsection,  
23 do not apply to general fill ~~uncontaminated~~ soil that is not  
24 commingled with any waste when (i) used as fill material below  
25 grade or contoured to grade, or (ii) used at the site of  
26 generation.



1 (Source: P.A. 93-179, eff. 7-11-03; 94-94, eff. 7-1-05.)

2 (415 ILCS 5/22.51)

3 Sec. 22.51. Clean Construction or Demolition Debris Fill  
4 Operations.

5 (a) No person shall conduct any CCDD ~~clean construction or~~  
6 ~~demolition debris~~ fill operation in violation of this Act or  
7 any regulations or standards adopted by the Board.

8 (b) (1) (A) Beginning July 19, 2005 ~~30 days after the~~  
9 ~~effective date of this amendatory Act of the 94th General~~  
10 ~~Assembly~~ but prior to July 1, 2008, no person shall use CCDD  
11 ~~clean construction or demolition debris~~ as fill material in a  
12 current or former quarry, mine, or other excavation, unless  
13 they have applied for an interim authorization from the Agency  
14 for the CCDD ~~clean construction or demolition debris~~ fill  
15 operation.

16 (B) The Agency shall approve an interim authorization upon  
17 its receipt of a written application for the interim  
18 authorization that is signed by the site owner and the site  
19 operator, or their duly authorized agent, and that contains the  
20 following information: (i) the location of the site where the  
21 CCDD ~~clean construction or demolition debris~~ fill operation is  
22 taking place, (ii) the name and address of the site owner,  
23 (iii) the name and address of the site operator, and (iv) the  
24 types and amounts of CCDD ~~clean construction or demolition~~  
25 ~~debris~~ being used as fill material at the site.

1           (C) The Agency may deny an interim authorization if the  
2 site owner or the site operator, or their duly authorized  
3 agent, fails to provide to the Agency the information listed in  
4 subsection (b) (1) (B) of this Section. Any denial of an interim  
5 authorization shall be subject to appeal to the Board in  
6 accordance with the procedures of Section 40 of this Act.

7           (D) No person shall use CCDD ~~clean construction or~~  
8 ~~demolition debris~~ as fill material in a current or former  
9 quarry, mine, or other excavation for which the Agency has  
10 denied interim authorization under subsection (b) (1) (C) of  
11 this Section. The Board may stay the prohibition of this  
12 subsection (D) during the pendency of an appeal of the Agency's  
13 denial of the interim authorization brought under subsection  
14 (b) (1) (C) of this Section.

15           (2) Beginning September 1, 2006, owners and operators of  
16 CCDD ~~clean construction or demolition debris~~ fill operations  
17 shall, in accordance with a schedule prescribed by the Agency,  
18 submit to the Agency applications for the permits required  
19 under this Section. The Agency shall notify owners and  
20 operators in writing of the due date for their permit  
21 application. The due date shall be no less than 90 days after  
22 the date of the Agency's written notification. Owners and  
23 operators who do not receive a written notification from the  
24 Agency by October 1, 2007, shall submit a permit application to  
25 the Agency by January 1, 2008. The interim authorization of  
26 owners and operators who fail to submit a permit application to

1 the Agency by the permit application's due date shall terminate  
2 on (i) the due date established by the Agency if the owner or  
3 operator received a written notification from the Agency prior  
4 to October 1, 2007, or (ii) or January 1, 2008, if the owner or  
5 operator did not receive a written notification from the Agency  
6 by October 1, 2007.

7 (3) On and after July 1, 2008, no person shall use CCDD  
8 ~~clean construction or demolition debris~~ as fill material in a  
9 current or former quarry, mine, or other excavation (i) without  
10 a permit granted by the Agency for the clean construction or  
11 demolition debris fill operation or in violation of any  
12 conditions imposed by such permit, including periodic reports  
13 and full access to adequate records and the inspection of  
14 facilities, as may be necessary to assure compliance with this  
15 Act and with Board regulations and standards adopted under this  
16 Act; or (ii) in violation of any regulations or standards  
17 adopted by the Board under this Act.

18 No person shall use restricted fill soil or painted  
19 construction or demolition debris as fill material in a current  
20 or former quarry, mine, or other excavation (i) without a  
21 permit granted by the Agency or in violation of any conditions  
22 imposed by such permit, including periodic reports and full  
23 access to adequate records and the inspection of facilities, as  
24 may be necessary to assure compliance with this Act and with  
25 Board regulations and standards adopted under this Act; or (ii)  
26 in violation of any rules or standards adopted by the Board

1 under this Act.

2 (A) Owners and operators of clean construction or  
3 demolition debris fill operations with a permit issued prior to  
4 the effective date of this amendatory Act of the 96th General  
5 Assembly must, in accordance with a schedule prescribed by the  
6 Agency, submit an application for a permit modification to make  
7 the permit consistent with the requirements of this Section.  
8 The Agency shall notify owners and operators in writing of the  
9 due date for the application. The due date shall be no less  
10 than 90 days after the date of the Agency's written  
11 notification. Owners and operators who do not receive a written  
12 notification from the Agency by April 1, 2010, shall submit  
13 their application for permit modification by July 1, 2010.  
14 Owners and operators seeking a modification that includes the  
15 use of restricted fill soil or painted construction or  
16 demolition debris as fill material may submit their application  
17 for modification prior to the dates set forth in this paragraph  
18 or the schedule prescribed by the Agency. Until a permit  
19 modification is issued, persons required to submit an  
20 application for a permit modification must operate their clean  
21 construction or demolition debris fill operation in accordance  
22 with the requirements of their permit as modified by the  
23 requirements of this Act and Board rules adopted hereunder;  
24 provided that until a permit modification is issued no person  
25 shall use restricted fill soil or painted construction or  
26 demolition debris as fill material without interim

1 authorization under subdivision (b) (3) (B) of this Section.

2 (B) Prior to January 1, 2011, owners and operators of clean  
3 construction or demolition debris fill operations that are  
4 required under subdivision (b) (3) (A) of this Section to submit  
5 an application for a permit modification may use restricted  
6 fill soil or painted construction or demolition debris as fill  
7 material at the clean construction or demolition debris fill  
8 operation if they obtain interim authorization under this  
9 subdivision (b) (3) (B). Within 30 days after receipt of a  
10 complete application for interim authorization that includes  
11 the following information, the Agency shall approve interim  
12 authorization: (i) the owner and the operator of the clean  
13 construction or demolition debris fill operation, (ii) the name  
14 of the clean construction or demolition debris fill operation  
15 and its location, (iii) a copy of the recorded land use  
16 restriction required under subdivision (d) (1) of this Section  
17 and proof of its recording, and (iv) the signatures of the  
18 owner and the operator or their duly authorized agents. The  
19 application for interim authorization must be submitted on a  
20 form and in a format prescribed by the Agency. Persons using  
21 restricted fill soil or painted construction or demolition  
22 debris as fill material under an interim authorization must  
23 comply with the requirements of subdivisions (d) (1) through  
24 (d) (5) of this Section. The interim authorization shall expire  
25 60 days after the date the Agency approves the application for  
26 interim authorization unless, within those 60 days, the owner

1 or operator submits an application for a permit modification  
2 that includes the use of restricted fill soil or painted  
3 construction or demolition debris as fill material. If the  
4 application for permit modification is submitted within those  
5 60 days, the interim authorization shall expire on the date the  
6 Agency issues its final decision on the application for a  
7 permit modification or, if the Agency's decision is appealed,  
8 the date of final disposition of the appeal.

9 (C) Beginning January 1, 2011, no person required under  
10 subdivision (b) (3) (A) of this Section to submit an application  
11 for a permit modification shall operate a clean construction or  
12 demolition debris fill operation without a permit modification  
13 granted by the Agency that is consistent with the requirements  
14 of this Section.

15 (4) This subsection (b) does not apply to:

16 (A) the use of CCDD, restricted fill soil, or painted  
17 construction or demolition debris ~~clean construction or~~  
18 ~~demolition debris~~ as fill material in a current or former  
19 quarry, mine, or other excavation located on the site where  
20 the clean construction or demolition debris was generated;

21 (B) the use of CCDD ~~clean construction or demolition~~  
22 ~~debris~~ as fill material in an excavation other than a  
23 current or former quarry or mine if this use complies with  
24 Illinois Department of Transportation specifications; or

25 (C) current or former quarries, mines, and other  
26 excavations that do not use CCDD, restricted fill soil, or

1        painted construction or demolition debris ~~clean~~  
2        ~~construction or demolition debris~~ as fill material.

3        (c) In accordance with Title VII of this Act, the Board may  
4        adopt regulations to promote the purposes of this Section. The  
5        Agency shall consult with the mining and construction  
6        industries during the development of any regulations to promote  
7        the purposes of this Section.

8            (1) No later than December 15, 2005, the Agency shall  
9            propose to the Board, and no later than September 1, 2006,  
10          the Board shall adopt, regulations for the use of CCDD  
11          ~~clean construction or demolition debris~~ as fill material in  
12          current and former quarries, mines, and other excavations.  
13          Such regulations shall include, but shall not be limited  
14          to, standards for CCDD ~~clean construction or demolition~~  
15          ~~debris~~ fill operations and the submission and review of  
16          permits required under this Section.

17          (2) Until the Board adopts rules under subsection  
18          (c)(1) of this Section, all persons using clean  
19          construction or demolition debris as fill material in a  
20          current or former quarry, mine, or other excavation shall:

21            (A) Assure that only CCDD ~~clean construction or~~  
22            ~~demolition debris~~ is being used as fill material by  
23            screening each truckload of material received using a  
24            device approved by the Agency that detects volatile  
25            organic compounds. Such devices may include, but are  
26            not limited to, photo ionization detectors. All

1 screening devices shall be operated and maintained in  
2 accordance with manufacturer's specifications.  
3 Unacceptable fill material shall be rejected from the  
4 site; and

5 (B) Retain for a minimum of 3 years the following  
6 information:

7 (i) The name of the hauler, the name of the  
8 generator, and place of origin of the debris or  
9 soil;

10 (ii) The approximate weight or volume of the  
11 debris or soil; and

12 (iii) The date the debris or soil was received.

13 (d) To the extent allowed by federal law, the Agency shall,  
14 in a permit or a permit modification granted under this  
15 Section, and in accordance with Sections 39 and 40 of this Act,  
16 authorize the use of restricted fill soil and painted  
17 construction or demolition debris as fill material at a clean  
18 construction or demolition debris fill operation if the  
19 requirements of this subsection (d) are met. To the extent  
20 allowed by federal law, restricted fill soil and painted  
21 construction or demolition debris used as fill material in  
22 accordance with the permit and this Section are not waste.

23 (1) Before restricted fill soil is used as fill  
24 material at the clean construction or demolition debris  
25 fill operation: (i) a land use restriction that restricts  
26 property use to industrial or commercial uses must be



1 recorded in the chain of title for the property on which  
2 the clean construction or demolition debris fill operation  
3 is located and (ii) proof of the recording must be  
4 submitted to the Agency. Upon closure of the clean  
5 construction or demolition debris fill operation, the land  
6 use restriction may be removed if the site is entered into  
7 the Agency's Site Remediation Program and, pursuant to  
8 procedures adopted by the Board, the site is demonstrated  
9 to meet the Tier 1 residential remediation objectives  
10 adopted by the Board pursuant to Title XVII of this Act.

11 (2) The owner or operator of the clean construction or  
12 demolition debris fill operation must develop and  
13 implement a closure and post-closure care plan that  
14 includes, but is not limited to, the following:

15 (i) covering all restricted fill soil and painted  
16 construction or demolition debris with a minimum of 10  
17 feet of general fill soil, or an engineered barrier  
18 approved by the Agency in a permit granted under this  
19 Section, within 180 days after completion of filling or  
20 as approved by the Agency;

21 (ii) for all buildings at the site on or after  
22 completion of filling, the installation and  
23 maintenance of building control technologies as  
24 approved by the Agency in accordance with Title XVII of  
25 this Act and rules adopted thereunder to prevent indoor  
26 inhalation exposures.

1           (3) Painted construction or demolition debris shall  
2           not be used as fill material unless chemical analysis  
3           demonstrates that the paint does not exceed the Class I  
4           Soil Component of the Groundwater Ingestion Exposure Route  
5           Values listed in Table A of 35 Ill. Adm. Code 742, Appendix  
6           B, as amended. Chemical analysis is not required for  
7           pavement markings that conform to Illinois Department of  
8           Transportation specifications.

9           (4) The owner or operator of the CCDD fill operation  
10          must develop and implement a Receipt Control and Screening  
11          Plan that includes, but is not limited to, the following:

12                   (A) Documentation from the owner or operator  
13                   of the site where the restricted fill soil, general  
14                   fill soil, painted construction or demolition  
15                   debris, or clean construction or demolition debris  
16                   was removed that contains the following  
17                   information for each load received: (i) location  
18                   of the removal site, (ii) the owner of the removal  
19                   site, (iii) the site operator or general  
20                   contractor responsible for removal, and (iv) the  
21                   hauler of the load.

22                   (B) For all soil, either (i) a certification  
23                   from the owner or operator of the site from which  
24                   the soil was removed that the site has never been  
25                   used for commercial or industrial purposes or (ii)  
26                   a certification from a Licensed Professional

1 Engineer that the soil is restricted fill soil or  
2 general fill soil. Certifications required under  
3 subdivision (d)(4)(B) of this Section must be on  
4 forms and in a format prescribed by the Agency.

5 (C) Chemical analysis of paint on painted  
6 construction or demolition debris to confirm that  
7 the paint does not exceed the Class I Soil  
8 Component of the groundwater Ingestion Exposure  
9 Route Values listed in Table A of 35 Ill. Adm. Code  
10 742, Appendix B, as amended. Chemical analysis is  
11 not required for pavement markings that conform to  
12 Illinois Department of Transportation  
13 specifications.

14 (D) A visual inspection to confirm that only  
15 restricted fill soil, painted construction or  
16 demolition debris, clean construction or  
17 demolition debris, or general fill soil is being  
18 accepted for use as fill.

19 (E) Screening of the soil with a photo  
20 ionization detector or a flame ionization  
21 detector, in accordance with procedures approved  
22 by the Agency in the CCDD fill operation permit, to  
23 confirm that the soil is consistent with the  
24 definitions of restricted fill soil or general  
25 fill soil and any chemical analysis used to  
26 determine that the soil is restricted fill soil or

1           general fill soil.

2           (F) Confirmation that the soil was not removed  
3           from a site as a part of a cleanup or removal of  
4           contaminants, including, but not limited to,  
5           activities conducted under the Comprehensive  
6           Environmental Response, Compensation, and  
7           Liability Act of 1980, as amended; as a part of a  
8           Closure or Corrective Action under the Resource  
9           Conservation and Recovery Act, as amended; or  
10           under an Agency remediation program, such as the  
11           Leaking Underground Storage Tank Program or Site  
12           Remediation Program, but excluding sites subject  
13           to Section 58.16 of this Act where there is no  
14           presence or likely presence of a release or a  
15           substantial threat of a release of a regulated  
16           substance at, on, to, or from the real property.

17           (G) Documentation of all activities conducted  
18           under the Receipt Control and Screening Plan.  
19           Documentation of any chemical analysis must  
20           include, but is not limited to, (i) a copy of the  
21           lab analysis, (ii) accreditation status of the  
22           laboratory performing the analysis, and (iii)  
23           certification by an authorized agent of the  
24           laboratory that the analysis has been performed in  
25           accordance with the Agency's rules for the  
26           accreditation of environmental laboratories and

1           the scope of accreditation. Documentation must be  
2           submitted on forms and in a format prescribed by  
3           the Agency.

4           (5) The owner or operator of the CCDD fill operation  
5           must develop and implement a Testing and Sampling Plan  
6           which ensures that soil used as fill does not exceed the  
7           Class I Soil Component of the Groundwater Ingestion  
8           Exposure Route Values listed in Table A of 35 Ill. Adm.  
9           Code 742, Appendix B, as amended. The Testing and Sampling  
10          Plan must include, but is not limited to, the following:

11           (A) For every 500 cubic yards of soil used as  
12           fill, a minimum of one representative soil sample  
13           must be screened with an X-ray Fluorescence  
14           Spectroscopy instrument in accordance with  
15           procedures approved by the Agency in the CCDD fill  
16           operation permit. Soil samples must be screened  
17           after the soil is placed as fill at the site. If a  
18           screening sample indicates that soil may exceed  
19           the Class I Soil Component of the Groundwater  
20           Ingestion Exposure Route Values listed in Table A  
21           of 35 Ill. Adm. Code 742, Appendix B, as amended,  
22           then additional representative soil samples must  
23           be collected and analyzed by a laboratory for all  
24           of the chemicals listed in Table A of 35 Ill. Adm.  
25           Code 742, Appendix B, as amended, to determine  
26           whether the soil exceeds the Class I Soil Component

1           of the Groundwater Ingestion Exposure Route Values  
2           listed in Table A of 35 Ill. Adm. Code 742,  
3           Appendix B, as amended. All soil that exceeds the  
4           Class I Soil Component of the Groundwater  
5           Ingestion Exposure Route Values listed in Table A  
6           of 35 Ill. Adm. Code 742, Appendix B, as amended,  
7           must be removed and disposed of at a landfill.

8           (B) In addition to the screening and sampling  
9           required under subdivision (d)(5)(A) of this  
10           Section, for every 2,500 cubic yards of soil used  
11           as fill a minimum of one representative soil sample  
12           must be collected and analyzed by a laboratory for  
13           all of the chemicals listed in Table A of 35 Ill.  
14           Adm. Code 742, Appendix B, as amended, to determine  
15           whether the soil exceeds the Class I Soil Component  
16           of the Groundwater Ingestion Exposure Route Values  
17           listed in Table A of 35 Ill. Adm. Code 742,  
18           Appendix B, as amended. The samples may be combined  
19           into composite samples as approved by the Agency in  
20           the CCDD fill operation permit. Copies of the  
21           laboratory analytical results must be submitted to  
22           the Agency at least quarterly. The results must be  
23           submitted in a form and manner prescribed by the  
24           Agency. All soil that exceeds the Class I Soil  
25           Component of the Groundwater Ingestion Exposure  
26           Route Values listed in Table A of 35 Ill. Adm. Code

1                   742, Appendix B, as amended, must be removed and  
2                   disposed at a landfill.

3           ~~(d) This Section applies only to clean construction or~~  
4           ~~demolition debris that is not considered "waste" as provided in~~  
5           ~~Section 3.160 of this Act.~~

6           (e) For purposes of this Section ~~a clean construction or~~  
7           ~~demolition debris fill operation:~~

8                   (1) The term "operator" means a person responsible for  
9                   the operation and maintenance of a CCDD ~~clean construction~~  
10                   ~~or demolition debris~~ fill operation.

11                   (2) The term "owner" means a person who has any direct  
12                   or indirect interest in a CCDD ~~clean construction or~~  
13                   ~~demolition debris~~ fill operation or in land on which a  
14                   person operates and maintains a CCDD ~~clean construction or~~  
15                   ~~demolition debris~~ fill operation. A "direct or indirect  
16                   interest" does not include the ownership of publicly traded  
17                   stock. The "owner" is the "operator" if there is no other  
18                   person who is operating and maintaining a CCDD ~~clean~~  
19                   ~~construction or demolition debris~~ fill operation.

20                   (3) The term "clean construction or demolition debris  
21                   fill operation" means a current or former quarry, mine, or  
22                   other excavation where clean construction or demolition  
23                   debris is used as fill material.

24                   (4) The term "other excavation" does not include holes,  
25                   trenches, or similar earth removal created as part of  
26                   normal construction, removal, or maintenance of a

1 structure, utility, or transportation infrastructure.

2 (f) Owners and operators of CCDD fill operations that are  
3 not permitted under subsection (d) of this Section to use  
4 restricted fill soil or painted construction or demolition  
5 debris as fill material must do all of the following:

6 (1) Develop and implement a Receipt Control and  
7 Screening Plan that includes, but is not limited to, the  
8 following:

9 (A) Documentation from the owner or operator of the  
10 site where the general fill soil or clean construction  
11 or demolition debris was removed that contains the  
12 following information for each load received: (i)  
13 location of the removal site; (ii) the owner of the  
14 removal site; (iii) the site operator or general  
15 contractor responsible for removal; and (iv) the  
16 hauler of the load.

17 (B) For all soil, either (i) a certification from  
18 the owner or operator of the site from which the soil  
19 was removed that the site has never been used for  
20 commercial or industrial purposes and is presumed to be  
21 general fill soil, or (ii) a certification from a  
22 Licensed Professional Engineer that the soil is  
23 general fill soil. Certifications required under  
24 subdivision (f) (1) (B) of this Section must be on forms  
25 and in a format prescribed by the Agency.

26 (C) A visual inspection to confirm that only clean



1           construction or demolition debris or general fill soil  
2           is being accepted for use as fill.

3           (D) Screening of the soil with a photo ionization  
4           detector or a flame ionization detector, in accordance  
5           with procedures approved by the Agency in the CCDD fill  
6           operation permit, to confirm that the soil is  
7           consistent with the definition of general fill soil and  
8           any chemical analysis used to determine that the soil  
9           is general fill soil.

10           (E) Confirmation that the soil was not removed from  
11           a site as a part of a cleanup or removal of  
12           contaminants, including, but not limited to,  
13           activities conducted under the Comprehensive  
14           Environmental Response, Compensation, and Liability  
15           Act of 1980, as amended; as a part of a Closure or  
16           Corrective Action under the Resource Conservation and  
17           Recovery Act, as amended; or under an Agency  
18           remediation program, such as the Leaking Underground  
19           Storage Tank Program or Site Remediation Program, but  
20           excluding sites subject to Section 58.16 of this Act  
21           where there is no presence or likely presence of a  
22           release or a substantial threat of a release of a  
23           regulated substance at, on, to, or from the real  
24           property.

25           (F) Documentation of all activities conducted  
26           under the Receipt Control and Screening Plan.

1           Documentation of any chemical analysis must include,  
2           but is not limited to, (i) a copy of the lab analysis,  
3           (ii) accreditation status of the laboratory performing  
4           the analysis, and (iii) certification by an authorized  
5           agent of the laboratory that the analysis has been  
6           performed in accordance with the Agency's rules for the  
7           accreditation of environmental laboratories and the  
8           scope of accreditation. Documentation must be  
9           submitted on forms and in a format prescribed by the  
10           Agency.

11           (2) Develop and implement a Testing and Sampling Plan  
12           which ensures that soil used as fill does not exceed the  
13           most stringent Tier 1 exposure route values adopted by the  
14           Board under Title XVII of this Act. The most stringent Tier  
15           1 exposure route values adopted by the Board under Title  
16           XVII of this Act shall be determined in the manner set  
17           forth in the definition of general fill soil under Section  
18           3.508 of this Act. The Testing and Sampling Plan must  
19           include, but is not limited to, all of the following:

20           (A) For every 2,500 cubic yards of soil used as  
21           fill, a minimum of one representative soil sample must  
22           be collected and analyzed by a laboratory for all of  
23           the chemicals listed in Table A of 35 Ill. Adm. Code  
24           742, Appendix B, as amended to determine whether the  
25           soil exceeds the most stringent Tier 1 exposure route  
26           values adopted by the Board under Title XVII of this

1           Act. The samples may be combined into composite samples  
2           as approved by the Agency in the CCDD fill operation  
3           permit. Copies of the laboratory analytical results  
4           must be submitted to the Agency in a form and manner to  
5           be determined by the Agency at least quarterly. The  
6           results must be submitted in a form and manner  
7           prescribed by the Agency.

8           (B) All soil that exceeds the most stringent Tier 1  
9           exposure route values adopted by the Board under Title  
10          XVII of this Act must be removed and disposed at a  
11          landfill.

12          (3) A closure and post-closure care plan that includes,  
13          but is not limited to, covering, within 90 days after  
14          completion of the filling or as approved by the Agency, all  
15          clean construction or demolition debris with a minimum of 3  
16          feet of general fill soil, a road, pavement, or structure.

17          (g) Owners and operators of clean construction or  
18          demolition debris fill operations must maintain all  
19          documentation required under this Section until at least 3  
20          years after the date of receipt of the restricted fill soil,  
21          painted construction or demolition debris, clean construction  
22          or demolition debris, or general fill soil, except that  
23          documentation relating to an appeal, litigation, or other  
24          disputed claim must be maintained until at least 3 years after  
25          the date of the final disposition of the appeal, litigation, or  
26          other disputed claim. Copies of the documentation must be made

1 available to the Agency for inspection and copying during  
2 normal business hours.

3 Chemical analysis conducted under this Section must be  
4 conducted in accordance with the requirements of 35 Ill. Adm.  
5 Code 742 and "Test Methods for Evaluating Solid Waste,  
6 Physical/Chemical Methods", USEPA Publication No. SW-846, as  
7 amended.

8 (h) Except at CCDD fill operations permitted under  
9 subsection (d) of this Section to use restricted fill soil as  
10 fill material, no person shall use soil other than general fill  
11 soil as fill material at a CCDD fill operation. At CCDD fill  
12 operations permitted under subsection (d) of this Section to  
13 use restricted fill soil as fill material, no person shall use  
14 soil other than restricted fill soil or general fill soil as  
15 fill material.

16 (h-5) Except at CCDD fill operations permitted under  
17 subsection (d) of this Section to use painted construction or  
18 demolition debris as fill material, no person shall use  
19 construction or demolition debris other than clean  
20 construction or demolition debris as fill material at a CCDD  
21 fill operation. At CCDD fill operations permitted under  
22 subsection (d) of this Section to use painted construction or  
23 demolition debris as fill material, no person shall use  
24 construction or demolition debris other than painted  
25 construction or demolition debris or clean construction or  
26 demolition debris as fill material.

1       (i) No person shall use, or cause or allow the use of, any  
2 site on which a land use restriction has been recorded under  
3 subdivision (d)(1) of this Section in a manner that is  
4 inconsistent with the land use restriction unless the land use  
5 restriction has been removed in accordance with subdivision  
6 (d)(1) of this Section.

7       (j) After completion of filling at a CCDD fill operation  
8 where restricted fill soil has been used as fill material, no  
9 person shall occupy, or cause or allow the occupancy, of any  
10 building at the site unless the building control technologies  
11 required under subdivision (d)(2) of this Section have been  
12 installed and are maintained. No person shall perform any  
13 activity that disturbs the building controls technologies  
14 unless the site is entered into the Agency's Site Remediation  
15 Program and the activity is approved by the Agency as  
16 consistent with Title XVII of this Act and rules adopted  
17 thereunder.

18       (l) No person other than the State of Illinois, its  
19 agencies and institutions, or a unit of local government shall  
20 use restricted fill soil or painted construction or demolition  
21 debris as fill material in a current or former quarry, mine, or  
22 other excavation unless that person has posted with the Agency  
23 a performance bond or other security for the purpose of  
24 insuring (i) closure of the site in accordance with this  
25 Section and its regulations and (ii) completion of corrective  
26 action remedies required under this Act and its regulations.

1 The amount of the performance bond or other security shall be  
2 directly related to the design and volume of the site. The cost  
3 estimate for the performance bond or other security shall be  
4 calculated using a period of time not to exceed 30 years beyond  
5 closure and may be a shorter period as may be approved or  
6 required by the Agency. Cost estimates shall be in current  
7 dollars. Any moneys forfeited to the State from any performance  
8 bond or other security required under this subsection shall be  
9 placed in the Landfill Closure and Post-Closure Fund and shall,  
10 upon approval by the Governor and the Director, be used by and  
11 under the direction of the Agency for the purposes for which  
12 such performance bond or other security was issued.

13 The Agency is authorized to enter into such contracts and  
14 agreements as it may deem necessary to carry out the purposes  
15 of this Section. Neither the State, nor the Director, nor any  
16 State employee is liable for any damages or injuries arising  
17 out of or resulting from any action taken under this Section.  
18 Nothing in this Section shall bar a cause of action by the  
19 State for any other penalty or relief provided by this Act or  
20 any other law.

21 The Agency has the authority to approve or disapprove any  
22 performance bond or other security posted under this subsection  
23 (l). Any person whose performance bond or other security is  
24 disapproved by the Agency may contest the disapproval as a  
25 permit denial appeal under Section 40 of this Act.

26 (m) The Agency may establish the procedures it deems

1 necessary to implement and execute its responsibilities under  
2 this Section.

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

4 (415 ILCS 5/22.51a new)

5 Sec. 22.51a. Soil Fill Operations. This Section applies to  
6 persons using soil as fill material at a soil fill operation.

7 (a) For purposes of this Section:

8 (1) The term "soil fill operation" means a current or  
9 former quarry, mine, or other excavation, other than a  
10 clean construction or demolition debris fill operation as  
11 defined in subdivision (e) (3) of Section 22.51 of this Act,  
12 where soil is used as fill material.

13 (2) The term "other excavation" does not include holes,  
14 trenches, or similar earth removal created as part of  
15 normal construction, removal, or maintenance of a  
16 structure, utility, or transportation infrastructure.

17 (b) No person shall:

18 (1) Use soil as fill material at a soil fill operation  
19 unless the requirements of this Section are met.

20 (2) Use soil other than general fill soil as fill  
21 material at a soil fill operation.

22 (3) Use construction or demolition debris, including,  
23 but not limited to, painted construction or demolition  
24 debris and clean construction or demolition debris, as fill  
25 material at a soil fill operation.

1       (c) On and after January 1, 2010, no person shall use soil  
2 as fill material at a soil fill operation unless the owner or  
3 operator of the soil fill operation has notified the Agency of  
4 the soil fill operation. The notice must be submitted on forms  
5 and in a format prescribed by the Agency.

6       (d) Owners and operators of soil fill operations must do  
7 all of the following:

8           (1) Develop and implement a Receipt Control and  
9 Screening Plan that includes, but is not limited to, the  
10 following:

11           (A) For all soil, either (i) a certification from  
12 the owner or operator of the site from which the soil  
13 was removed that the site has never been used for  
14 commercial or industrial purposes or (ii) a  
15 certification from a Licensed Professional Engineer  
16 that the soil is general fill soil. Certifications  
17 required under this subdivision (d)(1)(A) of this  
18 Section must be on forms and in format prescribed by  
19 the Agency.

20           (B) A visual inspection to confirm that only  
21 general fill soil is being accepted for use as fill.

22           (C) Screening of the soil with a photo ionization  
23 detector or a flame ionization detector to confirm that  
24 the soil is consistent with the definition of general  
25 fill soil and any chemical analysis used to determine  
26 that the soil is general fill soil.



1           (D) Confirmation that the soil was not removed from  
2 a site as a part of the cleanup or removal of  
3 contaminants, including, but not limited to,  
4 activities conducted under the Comprehensive  
5 Environmental Response, Compensation, and Liability  
6 Act of 1980, as amended; as a part of a Closure or  
7 Corrective Action under the Resource Conservation and  
8 Recovery Act, as amended; or under an Agency  
9 remediation program, such as the Leaking Underground  
10 Storage Tank Program or Site Remediation Program, but  
11 excluding sites subject to Section 58.16 of this Act  
12 where there is no presence or likely presence of a  
13 release or a substantial threat of a release of a  
14 regulated substance at, on, to, or from the real  
15 property.

16           (E) Documentation of all activities conducted  
17 under the Receipt Control and Screening Plan.  
18 Documentation of any chemical analysis must include,  
19 but is not limited to, (i) a copy of the lab analysis,  
20 (ii) accreditation status of the laboratory performing  
21 the analysis, and (iii) certification by an authorized  
22 agent of the laboratory that the analysis has been  
23 performed in accordance with the Agency's rules for the  
24 accreditation of environmental laboratories and the  
25 scope of accreditation. Documentation must be  
26 submitted on forms and in a format prescribed by the

1           Agency.

2           (2) Develop and implement a Testing and Sampling Plan  
3           which ensures that soil used as fill does not exceed the  
4           most stringent Tier 1 exposure route values adopted by the  
5           Board under Title XVII of this Act. The most stringent Tier  
6           1 exposure route values adopted by the Board under Title  
7           XVII of this Act shall be determined in the manner set  
8           forth in the definition of general fill soil under Section  
9           3.508 of this Act. The Testing and Sampling Plan must  
10          include, but is not limited to, the following:

11           (A) For every 5,000 cubic yards of soil used as  
12           fill, a minimum of one representative soil sample must  
13           be collected and analyzed by a laboratory for all of  
14           the chemicals listed in Table A of 35 Ill. Adm. Code  
15           742, Appendix B, as amended to determine whether the  
16           soil exceeds the most stringent Tier 1 exposure route  
17           values adopted by the Board under Title XVII of this  
18           Act. The samples may be combined into composite samples  
19           as approved by the Agency. Copies of the laboratory  
20           analytical results must be submitted to the Agency at  
21           least quarterly. The results must be submitted in a  
22           form and manner prescribed by the Agency.

23           (B) All soil that exceeds the most stringent Tier 1  
24           exposure route values adopted by the Board under Title  
25           XVII of this Act must be removed and disposed of at a  
26           landfill.

1       (e) Owners and operators of soil fill operations must  
2 maintain all documentation required under this Section until at  
3 least 3 years after the date of receipt of the soil, except  
4 that documentation relating to an appeal, litigation, or other  
5 disputed claim must be maintained until at least 3 years after  
6 the date of the final disposition of the appeal, litigation, or  
7 other disputed claim. Copies of the documentation must be made  
8 available to the Agency for inspection and copying during  
9 normal business hours.

10       Chemical analysis conducted under this Section must be  
11 conducted in accordance with the requirements of 35 Ill. Adm.  
12 Code 742, as amended, and "Test Methods for Evaluating Solid  
13 Waste, Physical/Chemical Methods", USEPA Publication No.  
14 SW-846, as amended.

15       (415 ILCS 5/22.54 new)

16       Sec. 22.54. Intergovernmental agreements. Notwithstanding  
17 any other provisions of this Act, to the extent allowed by  
18 federal law the Agency may, through intergovernmental  
19 agreements, authorize reuse of soil and clean construction or  
20 demolition debris by State agencies, or by counties with a  
21 population of 3,000,000 or more, or by units of local  
22 government located in a county with a population of 3,000,000  
23 or more, as long as the reuse is protective of human health and  
24 the environment.

25       To the extent allowed by federal law, no permit is required

1 for the reuse of soil or clean construction or demolition  
2 debris under agreements entered into under this Section. To the  
3 extent allowed by federal law, soil and clean construction or  
4 demolition debris reused under agreements entered into under  
5 this Section are not waste. Intergovernmental Agreements are  
6 not required for the purpose of reuse of general fill soil or  
7 for the purpose of reuse of soil or clean construction or  
8 demolition debris on the site from which it was removed.

9 (415 ILCS 5/31.1) (from Ch. 111 1/2, par. 1031.1)

10 Sec. 31.1. Administrative citation.

11 (a) The prohibitions specified in subsections (o) and (p)  
12 of Section 21 and in Sections 22.51 and 22.51a of this Act  
13 shall be enforceable either by administrative citation under  
14 this Section or as otherwise provided by this Act.

15 (b) Whenever Agency personnel or personnel of a unit of  
16 local government to which the Agency has delegated its  
17 functions pursuant to subsection (r) of Section 4 of this Act,  
18 on the basis of direct observation, determine that any person  
19 has violated any provision of subsection (o) or (p) of Section  
20 21 or any provision of Section 22.51 or 22.51a of this Act, the  
21 Agency or such unit of local government may issue and serve an  
22 administrative citation upon such person within not more than  
23 60 days after the date of the observed violation. Each such  
24 citation issued shall be served upon the person named therein  
25 or such person's authorized agent for service of process, and

1 shall include the following information:

2 (1) a statement specifying the provisions of  
3 subsection (o) or (p) of Section 21 or the provisions of  
4 Section 22.51 or 22.51a of which the person was observed to  
5 be in violation;

6 (2) a copy of the inspection report in which the Agency  
7 or local government recorded the violation, which report  
8 shall include the date and time of inspection, and weather  
9 conditions prevailing during the inspection;

10 (3) the penalty imposed by subdivision (b)(4) ~~or~~  
11 (b)(4-5), or (b)(6) of Section 42 for such violation;

12 (4) instructions for contesting the administrative  
13 citation findings pursuant to this Section, including  
14 notification that the person has 35 days within which to  
15 file a petition for review before the Board to contest the  
16 administrative citation; and

17 (5) an affidavit by the personnel observing the  
18 violation, attesting to their material actions and  
19 observations.

20 (c) The Agency or unit of local government shall file a  
21 copy of each administrative citation served under subsection  
22 (b) of this Section with the Board no later than 10 days after  
23 the date of service.

24 (d) (1) If the person named in the administrative citation  
25 fails to petition the Board for review within 35 days from the  
26 date of service, the Board shall adopt a final order, which

1 shall include the administrative citation and findings of  
2 violation as alleged in the citation, and shall impose the  
3 penalty specified in subdivision (b) (4) ~~, or (b) (4-5)~~, or (b) (6)  
4 of Section 42.

5 (2) If a petition for review is filed before the Board to  
6 contest an administrative citation issued under subsection (b)  
7 of this Section, the Agency or unit of local government shall  
8 appear as a complainant at a hearing before the Board to be  
9 conducted pursuant to Section 32 of this Act at a time not less  
10 than 21 days after notice of such hearing has been sent by the  
11 Board to the Agency or unit of local government and the person  
12 named in the citation. In such hearings, the burden of proof  
13 shall be on the Agency or unit of local government. If, based  
14 on the record, the Board finds that the alleged violation  
15 occurred, it shall adopt a final order which shall include the  
16 administrative citation and findings of violation as alleged in  
17 the citation, and shall impose the penalty specified in  
18 subdivision (b) (4) ~~, or (b) (4-5)~~, or (b) (6) of Section 42.  
19 However, if the Board finds that the person appealing the  
20 citation has shown that the violation resulted from  
21 uncontrollable circumstances, the Board shall adopt a final  
22 order which makes no finding of violation and which imposes no  
23 penalty.

24 (e) Sections 10-25 through 10-60 of the Illinois  
25 Administrative Procedure Act shall not apply to any  
26 administrative citation issued under subsection (b) of this

1 Section.

2 (f) The other provisions of this Section shall not apply to  
3 a sanitary landfill operated by a unit of local government  
4 solely for the purpose of disposing of water and sewage  
5 treatment plant sludges, including necessary stabilizing  
6 materials.

7 (g) All final orders issued and entered by the Board  
8 pursuant to this Section shall be enforceable by injunction,  
9 mandamus or other appropriate remedy, in accordance with  
10 Section 42 of this Act.

11 (Source: P.A. 92-16, eff. 6-28-01.)

12 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

13 Sec. 42. Civil penalties.

14 (a) Except as provided in this Section, any person that  
15 violates any provision of this Act or any regulation adopted by  
16 the Board, or any permit or term or condition thereof, or that  
17 violates any order of the Board pursuant to this Act, shall be  
18 liable for a civil penalty of not to exceed \$50,000 for the  
19 violation and an additional civil penalty of not to exceed  
20 \$10,000 for each day during which the violation continues; such  
21 penalties may, upon order of the Board or a court of competent  
22 jurisdiction, be made payable to the Environmental Protection  
23 Trust Fund, to be used in accordance with the provisions of the  
24 Environmental Protection Trust Fund Act.

25 (b) Notwithstanding the provisions of subsection (a) of

1 this Section:

2 (1) Any person that violates Section 12(f) of this Act  
3 or any NPDES permit or term or condition thereof, or any  
4 filing requirement, regulation or order relating to the  
5 NPDES permit program, shall be liable to a civil penalty of  
6 not to exceed \$10,000 per day of violation.

7 (2) Any person that violates Section 12(g) of this Act  
8 or any UIC permit or term or condition thereof, or any  
9 filing requirement, regulation or order relating to the  
10 State UIC program for all wells, except Class II wells as  
11 defined by the Board under this Act, shall be liable to a  
12 civil penalty not to exceed \$2,500 per day of violation;  
13 provided, however, that any person who commits such  
14 violations relating to the State UIC program for Class II  
15 wells, as defined by the Board under this Act, shall be  
16 liable to a civil penalty of not to exceed \$10,000 for the  
17 violation and an additional civil penalty of not to exceed  
18 \$1,000 for each day during which the violation continues.

19 (3) Any person that violates Sections 21(f), 21(g),  
20 21(h) or 21(i) of this Act, or any RCRA permit or term or  
21 condition thereof, or any filing requirement, regulation  
22 or order relating to the State RCRA program, shall be  
23 liable to a civil penalty of not to exceed \$25,000 per day  
24 of violation.

25 (4) In an administrative citation action under Section  
26 31.1 of this Act, any person found to have violated any



1 provision of subsection (o) of Section 21 of this Act shall  
2 pay a civil penalty of \$500 for each violation of each such  
3 provision, plus any hearing costs incurred by the Board and  
4 the Agency. Such penalties shall be made payable to the  
5 Environmental Protection Trust Fund, to be used in  
6 accordance with the provisions of the Environmental  
7 Protection Trust Fund Act; except that if a unit of local  
8 government issued the administrative citation, 50% of the  
9 civil penalty shall be payable to the unit of local  
10 government.

11 (4-5) In an administrative citation action under  
12 Section 31.1 of this Act, any person found to have violated  
13 any provision of subsection (p) of Section 21 of this Act  
14 shall pay a civil penalty of \$1,500 for each violation of  
15 each such provision, plus any hearing costs incurred by the  
16 Board and the Agency, except that the civil penalty amount  
17 shall be \$3,000 for each violation of any provision of  
18 subsection (p) of Section 21 that is the person's second or  
19 subsequent adjudication violation of that provision. The  
20 penalties shall be deposited into the Environmental  
21 Protection Trust Fund, to be used in accordance with the  
22 provisions of the Environmental Protection Trust Fund Act;  
23 except that if a unit of local government issued the  
24 administrative citation, 50% of the civil penalty shall be  
25 payable to the unit of local government.

26 (5) Any person who violates subsection 6 of Section

1 39.5 of this Act or any CAAPP permit, or term or condition  
2 thereof, or any fee or filing requirement, or any duty to  
3 allow or carry out inspection, entry or monitoring  
4 activities, or any regulation or order relating to the  
5 CAAPP shall be liable for a civil penalty not to exceed  
6 \$10,000 per day of violation.

7 (6) In an administrative citation action under Section  
8 31.1 of this Act, any person without a permit issued under  
9 Section 22.51 of this Act that is found to have violated  
10 any provision of Section 22.51 of this Act shall pay a  
11 civil penalty of \$1,500 for each violation of each  
12 provision, plus any hearing costs incurred by the Board and  
13 the Agency, except that the civil penalty amount shall be  
14 \$3,000 for each violation of any provision of Section 22.51  
15 that is the person's second or subsequent adjudicated  
16 violation of that provision. Any person with a permit  
17 issued under Section 22.51 of this Act that is found to  
18 have violated any provision of Section 22.51 or the permit,  
19 or any person that is found to have violated Section 22.51a  
20 of this Act, shall pay a civil penalty of \$1,000 for each  
21 violation of each provision, plus any hearing costs  
22 incurred by the Board and the Agency, except that the civil  
23 penalty amount shall be \$2,000 for each violation of any  
24 provision of Section 22.51, the permit, or Section 22.51a,  
25 that is the person's second or subsequent adjudicated  
26 violation of that provision. The penalties shall be

1       deposited into the Environmental Protection Trust Fund, to  
2       be used in accordance with the provisions of the  
3       Environmental Protection Trust Fund Act; except that if a  
4       delegated unit of local government issued the  
5       administrative citation, 50% of the civil penalty shall be  
6       payable to the unit of local government.

7       (b.5) In lieu of the penalties set forth in subsections (a)  
8       and (b) of this Section, any person who fails to file, in a  
9       timely manner, toxic chemical release forms with the Agency  
10      pursuant to Section 25b-2 of this Act shall be liable for a  
11      civil penalty of \$100 per day for each day the forms are late,  
12      not to exceed a maximum total penalty of \$6,000. This daily  
13      penalty shall begin accruing on the thirty-first day after the  
14      date that the person receives the warning notice issued by the  
15      Agency pursuant to Section 25b-6 of this Act; and the penalty  
16      shall be paid to the Agency. The daily accrual of penalties  
17      shall cease as of January 1 of the following year. All  
18      penalties collected by the Agency pursuant to this subsection  
19      shall be deposited into the Environmental Protection Permit and  
20      Inspection Fund.

21      (c) Any person that violates this Act, any rule or  
22      regulation adopted under this Act, any permit or term or  
23      condition of a permit, or any Board order and causes the death  
24      of fish or aquatic life shall, in addition to the other  
25      penalties provided by this Act, be liable to pay to the State  
26      an additional sum for the reasonable value of the fish or

1 aquatic life destroyed. Any money so recovered shall be placed  
2 in the Wildlife and Fish Fund in the State Treasury.

3 (d) The penalties provided for in this Section may be  
4 recovered in a civil action.

5 (e) The State's Attorney of the county in which the  
6 violation occurred, or the Attorney General, may, at the  
7 request of the Agency or on his own motion, institute a civil  
8 action for an injunction, prohibitory or mandatory, to restrain  
9 violations of this Act, any rule or regulation adopted under  
10 this Act, any permit or term or condition of a permit, or any  
11 Board order, or to require such other actions as may be  
12 necessary to address violations of this Act, any rule or  
13 regulation adopted under this Act, any permit or term or  
14 condition of a permit, or any Board order.

15 (f) The State's Attorney of the county in which the  
16 violation occurred, or the Attorney General, shall bring such  
17 actions in the name of the people of the State of Illinois.  
18 Without limiting any other authority which may exist for the  
19 awarding of attorney's fees and costs, the Board or a court of  
20 competent jurisdiction may award costs and reasonable  
21 attorney's fees, including the reasonable costs of expert  
22 witnesses and consultants, to the State's Attorney or the  
23 Attorney General in a case where he has prevailed against a  
24 person who has committed a wilful, knowing or repeated  
25 violation of this Act, any rule or regulation adopted under  
26 this Act, any permit or term or condition of a permit, or any

1 Board order.

2 Any funds collected under this subsection (f) in which the  
3 Attorney General has prevailed shall be deposited in the  
4 Hazardous Waste Fund created in Section 22.2 of this Act. Any  
5 funds collected under this subsection (f) in which a State's  
6 Attorney has prevailed shall be retained by the county in which  
7 he serves.

8 (g) All final orders imposing civil penalties pursuant to  
9 this Section shall prescribe the time for payment of such  
10 penalties. If any such penalty is not paid within the time  
11 prescribed, interest on such penalty at the rate set forth in  
12 subsection (a) of Section 1003 of the Illinois Income Tax Act,  
13 shall be paid for the period from the date payment is due until  
14 the date payment is received. However, if the time for payment  
15 is stayed during the pendency of an appeal, interest shall not  
16 accrue during such stay.

17 (h) In determining the appropriate civil penalty to be  
18 imposed under subdivisions (a), (b) (1), (b) (2), (b) (3), or  
19 (b) (5) of this Section, the Board is authorized to consider any  
20 matters of record in mitigation or aggravation of penalty,  
21 including but not limited to the following factors:

22 (1) the duration and gravity of the violation;

23 (2) the presence or absence of due diligence on the  
24 part of the respondent in attempting to comply with  
25 requirements of this Act and regulations thereunder or to  
26 secure relief therefrom as provided by this Act;

1           (3) any economic benefits accrued by the respondent  
2 because of delay in compliance with requirements, in which  
3 case the economic benefits shall be determined by the  
4 lowest cost alternative for achieving compliance;

5           (4) the amount of monetary penalty which will serve to  
6 deter further violations by the respondent and to otherwise  
7 aid in enhancing voluntary compliance with this Act by the  
8 respondent and other persons similarly subject to the Act;

9           (5) the number, proximity in time, and gravity of  
10 previously adjudicated violations of this Act by the  
11 respondent;

12           (6) whether the respondent voluntarily self-disclosed,  
13 in accordance with subsection (i) of this Section, the  
14 non-compliance to the Agency; and

15           (7) whether the respondent has agreed to undertake a  
16 "supplemental environmental project," which means an  
17 environmentally beneficial project that a respondent  
18 agrees to undertake in settlement of an enforcement action  
19 brought under this Act, but which the respondent is not  
20 otherwise legally required to perform.

21           In determining the appropriate civil penalty to be imposed  
22 under subsection (a) or paragraph (1), (2), (3), or (5) of  
23 subsection (b) of this Section, the Board shall ensure, in all  
24 cases, that the penalty is at least as great as the economic  
25 benefits, if any, accrued by the respondent as a result of the  
26 violation, unless the Board finds that imposition of such

1 penalty would result in an arbitrary or unreasonable financial  
2 hardship. However, such civil penalty may be off-set in whole  
3 or in part pursuant to a supplemental environmental project  
4 agreed to by the complainant and the respondent.

5 (i) A person who voluntarily self-discloses non-compliance  
6 to the Agency, of which the Agency had been unaware, is  
7 entitled to a 100% reduction in the portion of the penalty that  
8 is not based on the economic benefit of non-compliance if the  
9 person can establish the following:

10 (1) that the non-compliance was discovered through an  
11 environmental audit or a compliance management system  
12 documented by the regulated entity as reflecting the  
13 regulated entity's due diligence in preventing, detecting,  
14 and correcting violations;

15 (2) that the non-compliance was disclosed in writing  
16 within 30 days of the date on which the person discovered  
17 it;

18 (3) that the non-compliance was discovered and  
19 disclosed prior to:

20 (i) the commencement of an Agency inspection,  
21 investigation, or request for information;

22 (ii) notice of a citizen suit;

23 (iii) the filing of a complaint by a citizen, the  
24 Illinois Attorney General, or the State's Attorney of  
25 the county in which the violation occurred;

26 (iv) the reporting of the non-compliance by an

1 employee of the person without that person's  
2 knowledge; or

3 (v) imminent discovery of the non-compliance by  
4 the Agency;

5 (4) that the non-compliance is being corrected and any  
6 environmental harm is being remediated in a timely fashion;

7 (5) that the person agrees to prevent a recurrence of  
8 the non-compliance;

9 (6) that no related non-compliance events have  
10 occurred in the past 3 years at the same facility or in the  
11 past 5 years as part of a pattern at multiple facilities  
12 owned or operated by the person;

13 (7) that the non-compliance did not result in serious  
14 actual harm or present an imminent and substantial  
15 endangerment to human health or the environment or violate  
16 the specific terms of any judicial or administrative order  
17 or consent agreement;

18 (8) that the person cooperates as reasonably requested  
19 by the Agency after the disclosure; and

20 (9) that the non-compliance was identified voluntarily  
21 and not through a monitoring, sampling, or auditing  
22 procedure that is required by statute, rule, permit,  
23 judicial or administrative order, or consent agreement.

24 If a person can establish all of the elements under this  
25 subsection except the element set forth in paragraph (1) of  
26 this subsection, the person is entitled to a 75% reduction in



1 the portion of the penalty that is not based upon the economic  
2 benefit of non-compliance.

3 (j) In addition to an other remedy or penalty that may  
4 apply, whether civil or criminal, any person who violates  
5 Section 22.52 of this Act shall be liable for an additional  
6 civil penalty of up to 3 times the gross amount of any  
7 pecuniary gain resulting from the violation.

8 (Source: P.A. 94-272, eff. 7-19-05; 94-580, eff. 8-12-05;  
9 95-331, eff. 8-21-07.)

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law."