



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2034

Introduced 2/20/2009, by Sen. Susan Garrett

SYNOPSIS AS INTRODUCED:

415 ILCS 5/22.54 new

Amends the Environmental Protection Act. Authorizes the Environmental Protection Agency ("the Agency") to make written determinations that certain materials that would otherwise be required to be managed as waste may be managed as non-waste if those materials are used beneficially and in a manner that is protective of human health and the environment. Requires applicants for beneficial use determinations to demonstrate that (i) the chemical and physical properties of the material are comparable to similar commercially available materials, (ii) the market demand for the material meets certain requirements, (iii) the material is legitimately beneficially used, (iv) the management and use of the material will not cause, threaten, or allow the release of any contaminant into the environment, except as authorized by law, and (v) the management and use of the material otherwise protects human health and safety and the environment. Authorizes applicants to seek review of the Agency's written decisions to disapprove of an application for a determination or to approve of it with conditions. Requires determinations to be effective for a period approved by the Agency, but that period may not exceed 5 years. Authorizes certain materials to maintain their non-waste status after the effective period of the determination under certain conditions. Prohibits recipients of a determination from managing or using the material that is the subject of the determination in violation of the determination or any conditions imposed by it, unless the material is managed as waste. Makes this Section inapplicable to certain types of materials. Defines "commercially available material" and "commercially available product". Effective immediately.

LRB096 03540 JDS 14503 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

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

4 Section 5. The Environmental Protection Act is amended by
5 adding Section 22.54 as follows:

6 (415 ILCS 5/22.54 new)

7 Sec. 22.54. Beneficial Use Determinations. The purpose of
8 this Section is to allow the Agency to determine that a
9 material otherwise required to be managed as waste may be
10 managed as non-waste if that material is used beneficially and
11 in a manner that is protective of human health and the
12 environment.

13 (a) To the extent allowed by federal law, the Agency may,
14 upon the request of an applicant, make a written determination
15 that a material is used beneficially (rather than discarded)
16 and, therefore, not a waste if the applicant demonstrates all
17 of the following:

18 (1) The chemical and physical properties of the
19 material are comparable to similar commercially available
20 materials.

21 (2) The market demand for the material is such that all
22 of the following requirements are met:

23 (A) The material will be used within a reasonable

1 time.

2 (B) The material's storage prior to use will be
3 minimized.

4 (C) The material will not be abandoned.

5 (3) The material is legitimately beneficially used.

6 For the purposes of this item (3) of subsection (a) of this
7 Section, a material is "legitimately beneficially used" if
8 the applicant demonstrates all of the following:

9 (A) The material is managed separately from waste,
10 as a valuable material, and in a manner that maintains
11 its beneficial usefulness, including, but not limited
12 to, storing in a manner that minimizes the material's
13 loss and maintains its beneficial usefulness.

14 (B) The material is used as an effective substitute
15 for a similar commercially available material. For the
16 purposes of this paragraph (B) of item (3) of
17 subsection (a) of this Section, a material is "used as
18 an effective substitute for a commercially available
19 material" if the applicant demonstrates one or more of
20 the following:

21 (i) The material is used as a valuable raw
22 material or ingredient to produce a legitimate end
23 product.

24 (ii) The material is used directly as a
25 legitimate end product in place of a similar
26 commercially available product.

1 (iii) The material replaces a catalyst or
2 carrier to produce a legitimate end product.

3 The applicant's demonstration under this paragraph
4 (B) of item (3) of subsection (a) of this Section must
5 include, but is not limited to, a description of the
6 use of the material, a description of the use of the
7 legitimate end product, and a demonstration that the
8 use of the material is comparable to the use of similar
9 commercially available products.

10 (C) The Applicant demonstrates all of the
11 following:

12 (i) The material is used under paragraph (B) of
13 item (3) of subsection (a) of this Section within a
14 reasonable time.

15 (ii) The material's storage prior to use is
16 minimized.

17 (iii) The material is not abandoned.

18 (4) The management and use of the material will not
19 cause, threaten, or allow the release of any contaminant
20 into the environment, except as authorized by law.

21 (5) The management and use of the material otherwise
22 protects human health and safety and the environment.

23 (b) Applications for beneficial use determinations must be
24 submitted on forms and in a format prescribed by the Agency.
25 Agency approval, approval with conditions, or disapproval of an
26 application for a beneficial use determination must be in

1 writing. Approvals with conditions and disapprovals of
2 applications for a beneficial use determination must include
3 the Agency's reasons for the conditions or disapproval, and
4 they are subject to review under Section 40 of this Act.

5 (c) Beneficial use determinations shall be effective for a
6 period approved by the Agency, but that period may not exceed 5
7 years. Material that is beneficially used (i) in accordance
8 with a beneficial use determination, (ii) during the effective
9 period of the beneficial use determination, and (iii) by the
10 recipient of a beneficial use determination shall maintain its
11 non-waste status after the effective period of the beneficial
12 use determination unless its use no longer complies with the
13 terms of the beneficial use determination or the material
14 otherwise becomes waste.

15 (d) No recipient of a beneficial use determination shall
16 manage or use the material that is the subject of the
17 determination in violation of the determination or any
18 conditions in the determination, unless the material is managed
19 as waste.

20 (e) A beneficial use determination shall terminate by
21 operation of law if, due to a change in law, it conflicts with
22 the law; however, the recipient of the determination may apply
23 for a new beneficial use determination that is consistent with
24 the law as amended.

25 (f) This Section does not apply to hazardous waste, coal
26 combustion waste, coal combustion by-product, sludge applied

1 to the land, potentially infectious medical waste, or used oil.

2 (g) This Section does not apply to material that is burned
3 for energy recovery, that is used to produce a fuel, or that is
4 otherwise contained in a fuel.

5 (h) This Section does not apply to waste from the steel and
6 foundry industries that is (i) classified as beneficially
7 usable waste under Board rules and (ii) beneficially used in
8 accordance with Board rules governing the management of
9 beneficially usable waste from the steel and foundry
10 industries. This Section does apply to other beneficial uses of
11 waste from the steel and foundry industries, including, but not
12 limited to, waste that is classified as beneficially usable
13 waste but not used in accordance with the Board's rules
14 governing the management of beneficially usable waste from the
15 steel and foundry industries. No person shall use iron slags,
16 steelmaking slags, or foundry sands for land reclamation
17 purposes unless they have obtained a beneficial use
18 determination for such use under this Section.

19 (i) For purposes of this Section, the term "commercially
20 available material" means virgin material that (i) meets
21 industry standards for a specific use and (ii) is normally sold
22 for such use. For purposes of this Section, the term
23 "commercially available product" means a product made of virgin
24 material that (i) meets industry standards for a specific use
25 and (ii) is normally sold for such use.

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.