

HB3371



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3371

Introduced 2/24/2011, by Rep. Mike Fortner

SYNOPSIS AS INTRODUCED:

415 ILCS 5/22.51
415 ILCS 5/22.51a

Amends the Environmental Protection Act. Authorizes owners and operators of clean construction and demolition debris soil fill operations, as well as the owners and operators of uncontaminated soil fill operations, to meet a certification requirement by, among other things, certifying that the soil was removed from a public highway right-of-way and is presumed to be uncontaminated soil. Effective immediately.

LRB097 10931 JDS 51492 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 changing Sections 22.51 and 22.51a as follows:

6 (415 ILCS 5/22.51)

7 Sec. 22.51. Clean Construction or Demolition Debris Fill
8 Operations.

9 (a) No person shall conduct any clean construction or
10 demolition debris fill operation in violation of this Act or
11 any regulations or standards adopted by the Board.

12 (b) (1) (A) Beginning August 18, 2005 but prior to July 1,
13 2008, no person shall use clean construction or demolition
14 debris as fill material in a current or former quarry, mine, or
15 other excavation, unless they have applied for an interim
16 authorization from the Agency for the clean construction or
17 demolition debris fill operation.

18 (B) The Agency shall approve an interim authorization upon
19 its receipt of a written application for the interim
20 authorization that is signed by the site owner and the site
21 operator, or their duly authorized agent, and that contains the
22 following information: (i) the location of the site where the
23 clean construction or demolition debris fill operation is

1 taking place, (ii) the name and address of the site owner,
2 (iii) the name and address of the site operator, and (iv) the
3 types and amounts of clean construction or demolition debris
4 being used as fill material at the site.

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

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

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

1 receive a written notification from the Agency by October 1,
2 2007, shall submit a permit application to the Agency by
3 January 1, 2008. The interim authorization of owners and
4 operators who fail to submit a permit application to the Agency
5 by the permit application's due date shall terminate on (i) the
6 due date established by the Agency if the owner or operator
7 received a written notification from the Agency prior to
8 October 1, 2007, or (ii) or January 1, 2008, if the owner or
9 operator did not receive a written notification from the Agency
10 by October 1, 2007.

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

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

23 (A) the use of clean construction or demolition debris
24 as fill material in a current or former quarry, mine, or
25 other excavation located on the site where the clean
26 construction or demolition debris was generated;

1 (B) the use of clean construction or demolition debris
2 as fill material in an excavation other than a current or
3 former quarry or mine if this use complies with Illinois
4 Department of Transportation specifications; or

5 (C) current or former quarries, mines, and other
6 excavations that do not use clean construction or
7 demolition debris as fill material.

8 (c) In accordance with Title VII of this Act, the Board may
9 adopt regulations to promote the purposes of this Section. The
10 Agency shall consult with the mining and construction
11 industries during the development of any regulations to promote
12 the purposes of this Section.

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

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

26 (A) Assure that only clean construction or

1 demolition debris is being used as fill material by
2 screening each truckload of material received using a
3 device approved by the Agency that detects volatile
4 organic compounds. Such devices may include, but are
5 not limited to, photo ionization detectors. All
6 screening devices shall be operated and maintained in
7 accordance with manufacturer's specifications.
8 Unacceptable fill material shall be rejected from the
9 site; and

10 (B) Retain for a minimum of 3 years the following
11 information:

12 (i) The name of the hauler, the name of the
13 generator, and place of origin of the debris or
14 soil;

15 (ii) The approximate weight or volume of the
16 debris or soil; and

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

18 (d) This Section applies only to clean construction or
19 demolition debris that is not considered "waste" as provided in
20 Section 3.160 of this Act.

21 (e) For purposes of this Section:

22 (1) The term "operator" means a person responsible for
23 the operation and maintenance of a clean construction or
24 demolition debris fill operation.

25 (2) The term "owner" means a person who has any direct
26 or indirect interest in a clean construction or demolition

1 debris fill operation or in land on which a person operates
2 and maintains a clean construction or demolition debris
3 fill operation. A "direct or indirect interest" does not
4 include the ownership of publicly traded stock. The "owner"
5 is the "operator" if there is no other person who is
6 operating and maintaining a clean construction or
7 demolition debris fill operation.

8 (3) The term "clean construction or demolition debris
9 fill operation" means a current or former quarry, mine, or
10 other excavation where clean construction or demolition
11 debris is used as fill material.

12 (4) The term "uncontaminated soil" shall have the same
13 meaning as uncontaminated soil under Section 3.160 of this
14 Act.

15 (f) (1) No later than one year after the effective date of
16 this amendatory Act of the 96th General Assembly, the Agency
17 shall propose to the Board, and, no later than one year after
18 the Board's receipt of the Agency's proposal, the Board shall
19 adopt, rules for the use of clean construction or demolition
20 debris and uncontaminated soil as fill material at clean
21 construction or demolition debris fill operations. The rules
22 must include standards and procedures necessary to protect
23 groundwater, which may include, but shall not be limited to,
24 the following: requirements regarding testing and
25 certification of soil used as fill material, surface water
26 runoff, liners or other protective barriers, monitoring

1 (including, but not limited to, groundwater monitoring),
2 corrective action, recordkeeping, reporting, closure and
3 post-closure care, financial assurance, post-closure land use
4 controls, location standards, and the modification of existing
5 permits to conform to the requirements of this Act and Board
6 rules. The rules may also include limits on the use of
7 recyclable concrete and asphalt as fill material at clean
8 construction or demolition debris fill operations, taking into
9 account factors such as technical feasibility, economic
10 reasonableness, and the availability of markets for such
11 materials.

12 (2) Until the effective date of the Board rules adopted
13 under subdivision (f)(1) of this Section, and in addition to
14 any other requirements, owners and operators of clean
15 construction or demolition debris fill operations must do all
16 of the following in subdivisions (f)(2)(A) through (f)(2)(D) of
17 this Section for all clean construction or demolition debris
18 and uncontaminated soil accepted for use as fill material. The
19 requirements in subdivisions (f)(2)(A) through (f)(2)(D) of
20 this Section shall not limit any rules adopted by the Board.

21 (A) Document the following information for each load of
22 clean construction or demolition debris or uncontaminated
23 soil received: (i) the name of the hauler, the address of
24 the site of origin, and the owner and the operator of the
25 site of origin of the clean construction or demolition
26 debris or uncontaminated soil, (ii) the weight or volume of

1 the clean construction or demolition debris or
2 uncontaminated soil, and (iii) the date the clean
3 construction or demolition debris or uncontaminated soil
4 was received.

5 (B) For all soil, obtain either (i) a certification
6 from the owner or operator of the site from which the soil
7 was removed that the site has never been used for
8 commercial or industrial purposes and is presumed to be
9 uncontaminated soil, ~~or~~ (ii) a certification from a
10 licensed Professional Engineer that the soil is
11 uncontaminated soil, or (iii) a certification from the
12 owner or operator that the soil was removed from a public
13 highway right-of-way and is presumed to be uncontaminated
14 soil. Certifications required under this subdivision
15 (f) (2) (B) must be on forms and in a format prescribed by
16 the Agency.

17 (C) Confirm that the clean construction or demolition
18 debris or uncontaminated soil was not removed from a site
19 as part of a cleanup or removal of contaminants, including,
20 but not limited to, activities conducted under the
21 Comprehensive Environmental Response, Compensation, and
22 Liability Act of 1980, as amended; as part of a Closure or
23 Corrective Action under the Resource Conservation and
24 Recovery Act, as amended; or under an Agency remediation
25 program, such as the Leaking Underground Storage Tank
26 Program or Site Remediation Program, but excluding sites

1 subject to Section 58.16 of this Act where there is no
2 presence or likely presence of a release or a substantial
3 threat of a release of a regulated substance at, on, or
4 from the real property.

5 (D) Document all activities required under subdivision
6 (f)(2) of this Section. Documentation of any chemical
7 analysis must include, but is not limited to, (i) a copy of
8 the lab analysis, (ii) accreditation status of the
9 laboratory performing the analysis, and (iii)
10 certification by an authorized agent of the laboratory that
11 the analysis has been performed in accordance with the
12 Agency's rules for the accreditation of environmental
13 laboratories and the scope of accreditation.

14 (3) Owners and operators of clean construction or
15 demolition debris fill operations must maintain all
16 documentation required under subdivision (f)(2) of this
17 Section for a minimum of 3 years following the receipt of each
18 load of clean construction or demolition debris or
19 uncontaminated soil, except that documentation relating to an
20 appeal, litigation, or other disputed claim must be maintained
21 until at least 3 years after the date of the final disposition
22 of the appeal, litigation, or other disputed claim. Copies of
23 the documentation must be made available to the Agency and to
24 units of local government for inspection and copying during
25 normal business hours. The Agency may prescribe forms and
26 formats for the documentation required under subdivision

1 (f) (2) of this Section.

2 Chemical analysis conducted under subdivision (f) (2) of
3 this Section must be conducted in accordance with the
4 requirements of 35 Ill. Adm. Code 742, as amended, and "Test
5 Methods for Evaluating Solid Waste, Physical/Chemical
6 Methods", USEPA Publication No. SW-846, as amended.

7 (g) (1) No person shall use soil other than uncontaminated
8 soil as fill material at a clean construction or demolition
9 debris fill operation.

10 (2) No person shall use construction or demolition debris
11 other than clean construction or demolition debris as fill
12 material at a clean construction or demolition debris fill
13 operation.

14 (Source: P.A. 96-1416, eff. 7-30-10.)

15 (415 ILCS 5/22.51a)

16 Sec. 22.51a. Uncontaminated Soil Fill Operations.

17 (a) For purposes of this Section:

18 (1) The term "uncontaminated soil" shall have the same
19 meaning as uncontaminated soil under Section 3.160 of this
20 Act.

21 (2) The term "uncontaminated soil fill operation"
22 means a current or former quarry, mine, or other excavation
23 where uncontaminated soil is used as fill material, but
24 does not include a clean construction or demolition debris
25 fill operation.

1 (b) No person shall use soil other than uncontaminated soil
2 as fill material at an uncontaminated soil fill operation.

3 (c) Owners and operators of uncontaminated soil fill
4 operations must register the fill operations with the Agency.
5 Uncontaminated soil fill operations that received
6 uncontaminated soil prior to the effective date of this
7 amendatory Act of the 96th General Assembly must be registered
8 with the Agency no later than March 31, 2011. Uncontaminated
9 soil fill operations that first receive uncontaminated soil on
10 or after the effective date of this amendatory Act of the 96th
11 General Assembly must be registered with the Agency prior to
12 the receipt of any uncontaminated soil. Registrations must be
13 submitted on forms and in a format prescribed by the Agency.

14 (d) (1) No later than one year after the effective date of
15 this amendatory Act of the 96th General Assembly, the Agency
16 shall propose to the Board, and, no later than one year after
17 the Board's receipt of the Agency's proposal, the Board shall
18 adopt, rules for the use of uncontaminated soil as fill
19 material at uncontaminated soil fill operations. The rules must
20 include standards and procedures necessary to protect
21 groundwater, which shall include, but shall not be limited to,
22 testing and certification of soil used as fill material and
23 requirements for recordkeeping.

24 (2) Until the effective date of the Board rules adopted
25 under subdivision (d) (1) of this Section, owners and operators
26 of uncontaminated soil fill operations must do all of the

1 following in subdivisions (d) (2) (A) through (d) (2) (F) of this
2 Section for all uncontaminated soil accepted for use as fill
3 material. The requirements in subdivisions (d) (2) (A) through
4 (d) (2) (F) of this Section shall not limit any rules adopted by
5 the Board.

6 (A) Document the following information for each load of
7 uncontaminated soil received: (i) the name of the hauler,
8 the address of the site of origin, and the owner and the
9 operator of the site of origin of the uncontaminated soil,
10 (ii) the weight or volume of the uncontaminated soil, and
11 (iii) the date the uncontaminated soil was received.

12 (B) Obtain either (i) a certification from the owner or
13 operator of the site from which the soil was removed that
14 the site has never been used for commercial or industrial
15 purposes and is presumed to be uncontaminated soil, ~~or~~ (ii)
16 a certification from a licensed Professional Engineer that
17 the soil is uncontaminated soil, or (iii) a certification
18 from the owner or operator that the soil was removed from a
19 public highway right-of-way and is presumed to be
20 uncontaminated soil. Certifications required under this
21 subdivision (d) (2) (B) must be on forms and in a format
22 prescribed by the Agency .

23 (C) Confirm that the uncontaminated soil was not
24 removed from a site as part of a cleanup or removal of
25 contaminants, including, but not limited to, activities
26 conducted under the Comprehensive Environmental Response,

1 Compensation, and Liability Act of 1980, as amended; as
2 part of a Closure or Corrective Action under the Resource
3 Conservation and Recovery Act, as amended; or under an
4 Agency remediation program, such as the Leaking
5 Underground Storage Tank Program or Site Remediation
6 Program, but excluding sites subject to Section 58.16 of
7 this Act where there is no presence or likely presence of a
8 release or a substantial threat of a release of a regulated
9 substance at, on, or from the real property.

10 (D) Visually inspect each load to confirm that only
11 uncontaminated soil is being accepted for use as fill
12 material.

13 (E) Screen each load of uncontaminated soil using a
14 device that is approved by the Agency and detects volatile
15 organic compounds. Such a device may include, but is not
16 limited to, a photo ionization detector or a flame
17 ionization detector. All screening devices shall be
18 operated and maintained in accordance with the
19 manufacturer's specifications. Unacceptable soil must be
20 rejected from the fill operation.

21 (F) Document all activities required under subdivision
22 (d)(2) of this Section. Documentation of any chemical
23 analysis must include, but is not limited to, (i) a copy of
24 the lab analysis, (ii) accreditation status of the
25 laboratory performing the analysis, and (iii)
26 certification by an authorized agent of the laboratory that

1 the analysis has been performed in accordance with the
2 Agency's rules for the accreditation of environmental
3 laboratories and the scope of accreditation.

4 (3) Owners and operators of uncontaminated soil fill
5 operations must maintain all documentation required under
6 subdivision (d)(2) of this Section for a minimum of 3 years
7 following the receipt of each load of uncontaminated soil,
8 except that documentation relating to an appeal, litigation, or
9 other disputed claim must be maintained until at least 3 years
10 after the date of the final disposition of the appeal,
11 litigation, or other disputed claim. Copies of the
12 documentation must be made available to the Agency and to units
13 of local government for inspection and copying during normal
14 business hours. The Agency may prescribe forms and formats for
15 the documentation required under subdivision (d)(2) of this
16 Section.

17 Chemical analysis conducted under subdivision (d)(2) of
18 this Section must be conducted in accordance with the
19 requirements of 35 Ill. Adm. Code 742, as amended, and "Test
20 Methods for Evaluating Solid Waste, Physical/Chemical
21 Methods", USEPA Publication No. SW-846, as amended.

22 (Source: P.A. 96-1416, eff. 7-30-10.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.