

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 9.1, 9.12, 39, 40, and 41 and by adding
6 Sections 3.298, 3.363, and 40.3 as follows:

7 (415 ILCS 5/3.298 new)

8 Sec. 3.298. Nonattainment new source review (NA NSR)
9 permit. "Nonattainment New Source Review permit" or "NA NSR
10 permit" means a permit or a portion of a permit for a new major
11 source or major modification that is issued by the Illinois
12 Environmental Protection Agency under the construction permit
13 program pursuant to subsection (c) of Section 9.1 that has been
14 approved by the United States Environmental Protection Agency
15 and incorporated into the Illinois State Implementation Plan to
16 implement the requirements of Section 173 of the Clean Air Act
17 and 40 CFR 51.165.

18 (415 ILCS 5/3.363 new)

19 Sec. 3.363. Prevention of significant deterioration (PSD)
20 permit. "Prevention of Significant Deterioration permit" or
21 "PSD permit" means a permit or the portion of a permit for a
22 new major source or major modification that is issued by the

1 Illinois Environmental Protection Agency under the
2 construction permit program pursuant to subsection (c) of
3 Section 9.1 that has been approved by the United States
4 Environmental Protection Agency and incorporated into the
5 Illinois State Implementation Plan to implement the
6 requirements of Section 165 of the Clean Air Act and 40 CFR
7 51.166.

8 (415 ILCS 5/9.1) (from Ch. 111 1/2, par. 1009.1)

9 Sec. 9.1. (a) The General Assembly finds that the federal
10 Clean Air Act, as amended, and regulations adopted pursuant
11 thereto establish complex and detailed provisions for
12 State-federal cooperation in the field of air pollution
13 control, provide for a Prevention of Significant Deterioration
14 program to regulate the issuance of preconstruction permits to
15 insure that economic growth will occur in a manner consistent
16 with the preservation of existing clean air resources, and also
17 provide for plan requirements for nonattainment areas to
18 regulate the construction, modification and operation of
19 sources of air pollution to insure that economic growth will
20 occur in a manner consistent with the goal of achieving the
21 national ambient air quality standards, and that the General
22 Assembly cannot conveniently or advantageously set forth in
23 this Act all the requirements of such federal Act or all
24 regulations which may be established thereunder.

25 It is the purpose of this Section to avoid the existence of

1 duplicative, overlapping or conflicting State and federal
2 regulatory systems.

3 (b) The provisions of Section 111 of the federal Clean Air
4 Act (42 USC 7411), as amended, relating to standards of
5 performance for new stationary sources, and Section 112 of the
6 federal Clean Air Act (42 USC 7412), as amended, relating to
7 the establishment of national emission standards for hazardous
8 air pollutants are applicable in this State and are enforceable
9 under this Act. Any such enforcement shall be stayed consistent
10 with any stay granted in any federal judicial action to review
11 such standards. Enforcement shall be consistent with the
12 results of any such judicial review.

13 (c) The Board shall ~~may~~ adopt regulations establishing
14 permit programs for PSD and NA NSR permits meeting the
15 respective requirements of Sections 165 and 173 of the Clean
16 Air Act (42 USC 7475 and 42 USC 7503) as amended. The Agency
17 may adopt procedures for the administration of such programs.

18 The regulations adopted by the Board to establish a PSD
19 permit program shall incorporate by reference, pursuant to
20 subsection (a) of Section 5-75 of the Illinois Administrative
21 Procedure Act, the provisions of 40 CFR 52.21, except for the
22 following subparts: (a)(1) Plan disapproval, (q) Public
23 participation, (s) Environmental impact statements, (t)
24 Disputed permits or redesignations and (u) Delegation of
25 authority; the Board may adopt more stringent or additional
26 provisions to the extent it deems appropriate. To the extent

1 that the provisions of 40 CFR 52.21 provide for the
2 Administrator to make various determinations and to take
3 certain actions, these provisions shall be modified to indicate
4 the Agency if appropriate. Nothing in this subsection shall be
5 construed to limit the right of any person to submit a proposal
6 to the Board or the authority of the Board to adopt elements of
7 a PSD permit program that are more stringent than those
8 contained in 40 CFR 52.21, pursuant to the rulemaking
9 requirements of Title VII of this Act and Section 5-35 of the
10 Illinois Administrative Procedure Act.

11 (d) No person shall:

12 (1) violate any provisions of Sections 111, 112, 165 or
13 173 of the Clean Air Act, as now or hereafter amended, or
14 federal regulations adopted pursuant thereto; or

15 (2) construct, install, modify or operate any
16 equipment, building, facility, source or installation
17 which is subject to regulation under Sections 111, 112, 165
18 or 173 of the Clean Air Act, as now or hereafter amended,
19 except in compliance with the requirements of such Sections
20 and federal regulations adopted pursuant thereto, and no
21 such action shall be undertaken (A) without a permit
22 granted by the Agency whenever a permit is required
23 pursuant to (i) this Act or Board regulations or (ii)
24 Section 111, 112, 165, or 173 of the Clean Air Act or
25 federal regulations adopted pursuant thereto or (B) in
26 violation of any conditions imposed by such permit. The

1 issuance or any ~~Any~~ denial of such a PSD permit or any
2 conditions imposed therein ~~in such a permit~~ shall be
3 reviewable by the Board in accordance with Section 40.3 ~~40~~
4 of this Act. Other permits addressed in this subsection (d)
5 shall be reviewable by the Board in accordance with Section
6 40 of this Act.

7 (e) The Board shall exempt from regulation under the State
8 Implementation Plan for ozone the volatile organic compounds
9 which have been determined by the U.S. Environmental Protection
10 Agency to be exempt from regulation under state implementation
11 plans for ozone due to negligible photochemical reactivity. In
12 accordance with subsection (b) of Section 7.2, the Board shall
13 adopt regulations identical in substance to the U.S.
14 Environmental Protection Agency exemptions or deletion of
15 exemptions published in policy statements on the control of
16 volatile organic compounds in the Federal Register by amending
17 the list of exemptions to the Board's definition of volatile
18 organic material found at 35 Ill. Adm. Code Part 211. The
19 provisions and requirements of Title VII of this Act shall not
20 apply to regulations adopted under this subsection. Section
21 5-35 of the Illinois Administrative Procedure Act, relating to
22 procedures for rulemaking, does not apply to regulations
23 adopted under this subsection. However, the Board shall provide
24 for notice, a hearing if required by the U.S. Environmental
25 Protection Agency, and public comment before adopted rules are
26 filed with the Secretary of State. The Board may consolidate

1 into a single rulemaking under this subsection all such federal
2 policy statements published in the Federal Register within a
3 period of time not to exceed 6 months.

4 (f) (Blank).

5 (Source: P.A. 97-95, eff. 7-12-11; 98-284, eff. 8-9-13.)

6 (415 ILCS 5/9.12)

7 Sec. 9.12. Construction permit fees for air pollution
8 sources.

9 (a) An applicant for a new or revised air pollution
10 construction permit shall pay a fee, as established in this
11 Section, to the Agency at the time that he or she submits the
12 application for a construction permit. Except as set forth
13 below, the fee for each activity or category listed in this
14 Section is separate and is cumulative with any other applicable
15 fee listed in this Section.

16 (b) The fee amounts in this subsection (b) apply to
17 construction permit applications relating to (i) a source
18 subject to Section 39.5 of this Act (the Clean Air Act Permit
19 Program); (ii) a source that, upon issuance of the requested
20 construction permit, will become a major source subject to
21 Section 39.5; or (iii) a source that has or will require a
22 federally enforceable State operating permit limiting its
23 potential to emit.

24 (1) Base fees for each construction permit application
25 shall be assessed as follows:

1 (A) If the construction permit application relates
2 to one or more new emission units or to a combination
3 of new and modified emission units, a fee of \$4,000 for
4 the first new emission unit and a fee of \$1,000 for
5 each additional new or modified emission unit;
6 provided that the total base fee under this subdivision
7 (A) shall not exceed \$10,000.

8 (B) If the construction permit application relates
9 to one or more modified emission units but not to any
10 new emission unit, a fee of \$2,000 for the first
11 modified emission unit and a fee of \$1,000 for each
12 additional modified emission unit; provided that the
13 total base fee under this subdivision (B) shall not
14 exceed \$5,000.

15 (2) Supplemental fees for each construction permit
16 application shall be assessed as follows:

17 (A) If, based on the construction permit
18 application, the source will be, but is not currently,
19 subject to Section 39.5 of this Act, a CAAPP entry fee
20 of \$5,000.

21 (B) If the construction permit application
22 involves (i) a new source or emission unit subject to
23 Section 39.2 of this Act, (ii) a commercial incinerator
24 or other municipal waste, hazardous waste, or waste
25 tire incinerator, (iii) a commercial power generator,
26 or (iv) one or more other emission units designated as

1 a complex source by Agency rulemaking, a fee of
2 \$25,000.

3 (C) If the construction permit application
4 involves an emissions netting exercise or reliance on a
5 contemporaneous emissions decrease for a pollutant to
6 avoid application of the ~~federal~~ PSD permit program (~~40~~
7 ~~CFR 52.21~~) or nonattainment new source review (~~35 Ill.~~
8 ~~Adm. Code 203~~), a fee of \$3,000 for each such
9 pollutant.

10 (D) If the construction permit application is for a
11 new major source subject to the ~~federal~~ PSD permit
12 program, a fee of \$12,000.

13 (E) If the construction permit application is for a
14 new major source subject to nonattainment new source
15 review, a fee of \$20,000.

16 (F) If the construction permit application is for a
17 major modification subject to the ~~federal~~ PSD permit
18 program, a fee of \$6,000.

19 (G) If the construction permit application is for a
20 major modification subject to nonattainment new source
21 review, a fee of \$12,000.

22 (H) (Blank).

23 (I) If the construction permit application review
24 involves a determination of the Maximum Achievable
25 Control Technology standard for a pollutant and the
26 project is not otherwise subject to BACT or LAER for a

1 related pollutant under the ~~federal~~ PSD permit program
2 or nonattainment new source review, a fee of \$5,000 per
3 unit for which a determination is requested or
4 otherwise required.

5 (J) (Blank).

6 (3) If a public hearing is held regarding the
7 construction permit application, an administrative fee of
8 \$10,000. This fee shall be submitted at the time the
9 applicant requests a public hearing or, if a public hearing
10 is not requested by the applicant, then within 30 days
11 after the applicant is informed by the Agency that a public
12 hearing will be held.

13 (c) The fee amounts in this subsection (c) apply to
14 construction permit applications relating to a source that,
15 upon issuance of the construction permit, will not (i) be or
16 become subject to Section 39.5 of this Act (the Clean Air Act
17 Permit Program) or (ii) have or require a federally enforceable
18 state operating permit limiting its potential to emit.

19 (1) Base fees for each construction permit application
20 shall be assessed as follows:

21 (A) For a construction permit application
22 involving a single new emission unit, a fee of \$500.

23 (B) For a construction permit application
24 involving more than one new emission unit, a fee of
25 \$1,000.

26 (C) For a construction permit application

1 involving no more than 2 modified emission units, a fee
2 of \$500.

3 (D) For a construction permit application
4 involving more than 2 modified emission units, a fee of
5 \$1,000.

6 (2) Supplemental fees for each construction permit
7 application shall be assessed as follows:

8 (A) If the source is a new source, i.e., does not
9 currently have an operating permit, an entry fee of
10 \$500;

11 (B) If the construction permit application
12 involves (i) a new source or emission unit subject to
13 Section 39.2 of this Act, (ii) a commercial incinerator
14 or a municipal waste, hazardous waste, or waste tire
15 incinerator, (iii) a commercial power generator, or
16 (iv) an emission unit designated as a complex source by
17 Agency rulemaking, a fee of \$15,000.

18 (3) If a public hearing is held regarding the
19 construction permit application, an administrative fee of
20 \$10,000. This fee shall be submitted at the time the
21 applicant requests a public hearing or, if a public hearing
22 is not requested by the applicant, then within 30 days
23 after the applicant is informed by the Agency that a public
24 hearing will be held.

25 (d) If no other fee is applicable under this Section, a
26 construction permit application addressing one or more of the

1 following shall be subject to a filing fee of \$500:

2 (1) A construction permit application to add or replace
3 a control device on a permitted emission unit.

4 (2) A construction permit application to conduct a
5 pilot project or trial burn for a permitted emission unit.

6 (3) A construction permit application for a land
7 remediation project.

8 (4) (Blank).

9 (5) A construction permit application to revise an
10 emissions testing methodology or the timing of required
11 emissions testing.

12 (6) A construction permit application that provides
13 for a change in the name, address, or phone number of any
14 person identified in the permit, or for a change in the
15 stated ownership or control, or for a similar minor
16 administrative permit change at the source.

17 (e) No fee shall be assessed for a request to correct an
18 issued permit that involves only an Agency error, if the
19 request is received within the deadline for a permit appeal to
20 the Pollution Control Board.

21 (f) The applicant for a new or revised air pollution
22 construction permit shall submit to the Agency, with the
23 construction permit application, both a certification of the
24 fee that he or she estimates to be due under this Section and
25 the fee itself.

26 (g) Notwithstanding the requirements of subsection (a) of

1 Section 39 of this Act, the application for an air pollution
2 construction permit shall not be deemed to be filed with the
3 Agency until the Agency receives the initial air pollution
4 construction permit application fee and the certified estimate
5 of the fee required by this Section. Unless the Agency has
6 received the initial air pollution construction permit
7 application fee and the certified estimate of the fee required
8 by this Section, the Agency is not required to review or
9 process the application.

10 (h) If the Agency determines at any time that a
11 construction permit application is subject to an additional fee
12 under this Section that the applicant has not submitted, the
13 Agency shall notify the applicant in writing of the amount due
14 under this Section. The applicant shall have 60 days to remit
15 the assessed fee to the Agency.

16 If the proper fee established under this Section is not
17 submitted within 60 days after the request for further
18 remittance:

19 (1) If the construction permit has not yet been issued,
20 the Agency is not required to further review or process,
21 and the provisions of subsection (a) of Section 39 of this
22 Act do not apply to, the application for a construction
23 permit until such time as the proper fee is remitted.

24 (2) If the construction permit has been issued, the
25 Agency may, upon written notice, immediately revoke the
26 construction permit.

1 The denial or revocation of a construction permit does not
2 excuse the applicant from the duty of paying the fees required
3 under this Section.

4 (i) The Agency may deny the issuance of a pending air
5 pollution construction permit or the subsequent operating
6 permit if the applicant has not paid the required fees by the
7 date required for issuance of the permit. The denial or
8 revocation of a permit for failure to pay a construction permit
9 fee is subject to review by the Board pursuant to the
10 provisions of subsection (a) of Section 40 of this Act.

11 (j) If the owner or operator undertakes construction
12 without obtaining an air pollution construction permit, the fee
13 under this Section is still required. Payment of the required
14 fee does not preclude the Agency or the Attorney General or
15 other authorized persons from pursuing enforcement against the
16 applicant for failure to have an air pollution construction
17 permit prior to commencing construction.

18 (k) If an air pollution construction permittee makes a fee
19 payment under this Section from an account with insufficient
20 funds to cover the amount of the fee payment, the Agency shall
21 notify the permittee of the failure to pay the fee. If the
22 permittee fails to pay the fee within 60 days after such
23 notification, the Agency may, by written notice, immediately
24 revoke the air pollution construction permit. Failure of the
25 Agency to notify the permittee of the permittee's failure to
26 make payment does not excuse or alter the duty of the permittee

1 to comply with the provisions of this Section.

2 (l) The Agency may establish procedures for the collection
3 of air pollution construction permit fees.

4 (m) Fees collected pursuant to this Section shall be
5 deposited into the Environmental Protection Permit and
6 Inspection Fund.

7 (Source: P.A. 97-95, eff. 7-12-11.)

8 (415 ILCS 5/39) (from Ch. 111 1/2, par. 1039)

9 Sec. 39. Issuance of permits; procedures.

10 (a) When the Board has by regulation required a permit for
11 the construction, installation, or operation of any type of
12 facility, equipment, vehicle, vessel, or aircraft, the
13 applicant shall apply to the Agency for such permit and it
14 shall be the duty of the Agency to issue such a permit upon
15 proof by the applicant that the facility, equipment, vehicle,
16 vessel, or aircraft will not cause a violation of this Act or
17 of regulations hereunder. The Agency shall adopt such
18 procedures as are necessary to carry out its duties under this
19 Section. In making its determinations on permit applications
20 under this Section the Agency may consider prior adjudications
21 of noncompliance with this Act by the applicant that involved a
22 release of a contaminant into the environment. In granting
23 permits, the Agency may impose reasonable conditions
24 specifically related to the applicant's past compliance
25 history with this Act as necessary to correct, detect, or

1 prevent noncompliance. The Agency may impose such other
2 conditions as may be necessary to accomplish the purposes of
3 this Act, and as are not inconsistent with the regulations
4 promulgated by the Board hereunder. Except as otherwise
5 provided in this Act, a bond or other security shall not be
6 required as a condition for the issuance of a permit. If the
7 Agency denies any permit under this Section, the Agency shall
8 transmit to the applicant within the time limitations of this
9 Section specific, detailed statements as to the reasons the
10 permit application was denied. Such statements shall include,
11 but not be limited to the following:

12 (i) the Sections of this Act which may be violated if
13 the permit were granted;

14 (ii) the provision of the regulations, promulgated
15 under this Act, which may be violated if the permit were
16 granted;

17 (iii) the specific type of information, if any, which
18 the Agency deems the applicant did not provide the Agency;
19 and

20 (iv) a statement of specific reasons why the Act and
21 the regulations might not be met if the permit were
22 granted.

23 If there is no final action by the Agency within 90 days
24 after the filing of the application for permit, the applicant
25 may deem the permit issued; except that this time period shall
26 be extended to 180 days when (1) notice and opportunity for

1 public hearing are required by State or federal law or
2 regulation, (2) the application which was filed is for any
3 permit to develop a landfill subject to issuance pursuant to
4 this subsection, or (3) the application that was filed is for a
5 MSWLF unit required to issue public notice under subsection (p)
6 of Section 39. The 90-day and 180-day time periods for the
7 Agency to take final action do not apply to NPDES permit
8 applications under subsection (b) of this Section, to RCRA
9 permit applications under subsection (d) of this Section, or to
10 UIC permit applications under subsection (e) of this Section.

11 The Agency shall publish notice of all final permit
12 determinations for development permits for MSWLF units and for
13 significant permit modifications for lateral expansions for
14 existing MSWLF units one time in a newspaper of general
15 circulation in the county in which the unit is or is proposed
16 to be located.

17 After January 1, 1994 and until July 1, 1998, operating
18 permits issued under this Section by the Agency for sources of
19 air pollution permitted to emit less than 25 tons per year of
20 any combination of regulated air pollutants, as defined in
21 Section 39.5 of this Act, shall be required to be renewed only
22 upon written request by the Agency consistent with applicable
23 provisions of this Act and regulations promulgated hereunder.
24 Such operating permits shall expire 180 days after the date of
25 such a request. The Board shall revise its regulations for the
26 existing State air pollution operating permit program

1 consistent with this provision by January 1, 1994.

2 After June 30, 1998, operating permits issued under this
3 Section by the Agency for sources of air pollution that are not
4 subject to Section 39.5 of this Act and are not required to
5 have a federally enforceable State operating permit shall be
6 required to be renewed only upon written request by the Agency
7 consistent with applicable provisions of this Act and its
8 rules. Such operating permits shall expire 180 days after the
9 date of such a request. Before July 1, 1998, the Board shall
10 revise its rules for the existing State air pollution operating
11 permit program consistent with this paragraph and shall adopt
12 rules that require a source to demonstrate that it qualifies
13 for a permit under this paragraph.

14 (b) The Agency may issue NPDES permits exclusively under
15 this subsection for the discharge of contaminants from point
16 sources into navigable waters, all as defined in the Federal
17 Water Pollution Control Act, as now or hereafter amended,
18 within the jurisdiction of the State, or into any well.

19 All NPDES permits shall contain those terms and conditions,
20 including but not limited to schedules of compliance, which may
21 be required to accomplish the purposes and provisions of this
22 Act.

23 The Agency may issue general NPDES permits for discharges
24 from categories of point sources which are subject to the same
25 permit limitations and conditions. Such general permits may be
26 issued without individual applications and shall conform to

1 regulations promulgated under Section 402 of the Federal Water
2 Pollution Control Act, as now or hereafter amended.

3 The Agency may include, among such conditions, effluent
4 limitations and other requirements established under this Act,
5 Board regulations, the Federal Water Pollution Control Act, as
6 now or hereafter amended, and regulations pursuant thereto, and
7 schedules for achieving compliance therewith at the earliest
8 reasonable date.

9 The Agency shall adopt filing requirements and procedures
10 which are necessary and appropriate for the issuance of NPDES
11 permits, and which are consistent with the Act or regulations
12 adopted by the Board, and with the Federal Water Pollution
13 Control Act, as now or hereafter amended, and regulations
14 pursuant thereto.

15 The Agency, subject to any conditions which may be
16 prescribed by Board regulations, may issue NPDES permits to
17 allow discharges beyond deadlines established by this Act or by
18 regulations of the Board without the requirement of a variance,
19 subject to the Federal Water Pollution Control Act, as now or
20 hereafter amended, and regulations pursuant thereto.

21 (c) Except for those facilities owned or operated by
22 sanitary districts organized under the Metropolitan Water
23 Reclamation District Act, no permit for the development or
24 construction of a new pollution control facility may be granted
25 by the Agency unless the applicant submits proof to the Agency
26 that the location of the facility has been approved by the

1 County Board of the county if in an unincorporated area, or the
2 governing body of the municipality when in an incorporated
3 area, in which the facility is to be located in accordance with
4 Section 39.2 of this Act. For purposes of this subsection (c),
5 and for purposes of Section 39.2 of this Act, the appropriate
6 county board or governing body of the municipality shall be the
7 county board of the county or the governing body of the
8 municipality in which the facility is to be located as of the
9 date when the application for siting approval is filed.

10 In the event that siting approval granted pursuant to
11 Section 39.2 has been transferred to a subsequent owner or
12 operator, that subsequent owner or operator may apply to the
13 Agency for, and the Agency may grant, a development or
14 construction permit for the facility for which local siting
15 approval was granted. Upon application to the Agency for a
16 development or construction permit by that subsequent owner or
17 operator, the permit applicant shall cause written notice of
18 the permit application to be served upon the appropriate county
19 board or governing body of the municipality that granted siting
20 approval for that facility and upon any party to the siting
21 proceeding pursuant to which siting approval was granted. In
22 that event, the Agency shall conduct an evaluation of the
23 subsequent owner or operator's prior experience in waste
24 management operations in the manner conducted under subsection
25 (i) of Section 39 of this Act.

26 Beginning August 20, 1993, if the pollution control

1 facility consists of a hazardous or solid waste disposal
2 facility for which the proposed site is located in an
3 unincorporated area of a county with a population of less than
4 100,000 and includes all or a portion of a parcel of land that
5 was, on April 1, 1993, adjacent to a municipality having a
6 population of less than 5,000, then the local siting review
7 required under this subsection (c) in conjunction with any
8 permit applied for after that date shall be performed by the
9 governing body of that adjacent municipality rather than the
10 county board of the county in which the proposed site is
11 located; and for the purposes of that local siting review, any
12 references in this Act to the county board shall be deemed to
13 mean the governing body of that adjacent municipality;
14 provided, however, that the provisions of this paragraph shall
15 not apply to any proposed site which was, on April 1, 1993,
16 owned in whole or in part by another municipality.

17 In the case of a pollution control facility for which a
18 development permit was issued before November 12, 1981, if an
19 operating permit has not been issued by the Agency prior to
20 August 31, 1989 for any portion of the facility, then the
21 Agency may not issue or renew any development permit nor issue
22 an original operating permit for any portion of such facility
23 unless the applicant has submitted proof to the Agency that the
24 location of the facility has been approved by the appropriate
25 county board or municipal governing body pursuant to Section
26 39.2 of this Act.

1 After January 1, 1994, if a solid waste disposal facility,
2 any portion for which an operating permit has been issued by
3 the Agency, has not accepted waste disposal for 5 or more
4 consecutive calendars years, before that facility may accept
5 any new or additional waste for disposal, the owner and
6 operator must obtain a new operating permit under this Act for
7 that facility unless the owner and operator have applied to the
8 Agency for a permit authorizing the temporary suspension of
9 waste acceptance. The Agency may not issue a new operation
10 permit under this Act for the facility unless the applicant has
11 submitted proof to the Agency that the location of the facility
12 has been approved or re-approved by the appropriate county
13 board or municipal governing body under Section 39.2 of this
14 Act after the facility ceased accepting waste.

15 Except for those facilities owned or operated by sanitary
16 districts organized under the Metropolitan Water Reclamation
17 District Act, and except for new pollution control facilities
18 governed by Section 39.2, and except for fossil fuel mining
19 facilities, the granting of a permit under this Act shall not
20 relieve the applicant from meeting and securing all necessary
21 zoning approvals from the unit of government having zoning
22 jurisdiction over the proposed facility.

23 Before beginning construction on any new sewage treatment
24 plant or sludge drying site to be owned or operated by a
25 sanitary district organized under the Metropolitan Water
26 Reclamation District Act for which a new permit (rather than

1 the renewal or amendment of an existing permit) is required,
2 such sanitary district shall hold a public hearing within the
3 municipality within which the proposed facility is to be
4 located, or within the nearest community if the proposed
5 facility is to be located within an unincorporated area, at
6 which information concerning the proposed facility shall be
7 made available to the public, and members of the public shall
8 be given the opportunity to express their views concerning the
9 proposed facility.

10 The Agency may issue a permit for a municipal waste
11 transfer station without requiring approval pursuant to
12 Section 39.2 provided that the following demonstration is made:

13 (1) the municipal waste transfer station was in
14 existence on or before January 1, 1979 and was in
15 continuous operation from January 1, 1979 to January 1,
16 1993;

17 (2) the operator submitted a permit application to the
18 Agency to develop and operate the municipal waste transfer
19 station during April of 1994;

20 (3) the operator can demonstrate that the county board
21 of the county, if the municipal waste transfer station is
22 in an unincorporated area, or the governing body of the
23 municipality, if the station is in an incorporated area,
24 does not object to resumption of the operation of the
25 station; and

26 (4) the site has local zoning approval.

1 (d) The Agency may issue RCRA permits exclusively under
2 this subsection to persons owning or operating a facility for
3 the treatment, storage, or disposal of hazardous waste as
4 defined under this Act.

5 All RCRA permits shall contain those terms and conditions,
6 including but not limited to schedules of compliance, which may
7 be required to accomplish the purposes and provisions of this
8 Act. The Agency may include among such conditions standards and
9 other requirements established under this Act, Board
10 regulations, the Resource Conservation and Recovery Act of 1976
11 (P.L. 94-580), as amended, and regulations pursuant thereto,
12 and may include schedules for achieving compliance therewith as
13 soon as possible. The Agency shall require that a performance
14 bond or other security be provided as a condition for the
15 issuance of a RCRA permit.

16 In the case of a permit to operate a hazardous waste or PCB
17 incinerator as defined in subsection (k) of Section 44, the
18 Agency shall require, as a condition of the permit, that the
19 operator of the facility perform such analyses of the waste to
20 be incinerated as may be necessary and appropriate to ensure
21 the safe operation of the incinerator.

22 The Agency shall adopt filing requirements and procedures
23 which are necessary and appropriate for the issuance of RCRA
24 permits, and which are consistent with the Act or regulations
25 adopted by the Board, and with the Resource Conservation and
26 Recovery Act of 1976 (P.L. 94-580), as amended, and regulations

1 pursuant thereto.

2 The applicant shall make available to the public for
3 inspection all documents submitted by the applicant to the
4 Agency in furtherance of an application, with the exception of
5 trade secrets, at the office of the county board or governing
6 body of the municipality. Such documents may be copied upon
7 payment of the actual cost of reproduction during regular
8 business hours of the local office. The Agency shall issue a
9 written statement concurrent with its grant or denial of the
10 permit explaining the basis for its decision.

11 (e) The Agency may issue UIC permits exclusively under this
12 subsection to persons owning or operating a facility for the
13 underground injection of contaminants as defined under this
14 Act.

15 All UIC permits shall contain those terms and conditions,
16 including but not limited to schedules of compliance, which may
17 be required to accomplish the purposes and provisions of this
18 Act. The Agency may include among such conditions standards and
19 other requirements established under this Act, Board
20 regulations, the Safe Drinking Water Act (P.L. 93-523), as
21 amended, and regulations pursuant thereto, and may include
22 schedules for achieving compliance therewith. The Agency shall
23 require that a performance bond or other security be provided
24 as a condition for the issuance of a UIC permit.

25 The Agency shall adopt filing requirements and procedures
26 which are necessary and appropriate for the issuance of UIC

1 permits, and which are consistent with the Act or regulations
2 adopted by the Board, and with the Safe Drinking Water Act
3 (P.L. 93-523), as amended, and regulations pursuant thereto.

4 The applicant shall make available to the public for
5 inspection, all documents submitted by the applicant to the
6 Agency in furtherance of an application, with the exception of
7 trade secrets, at the office of the county board or governing
8 body of the municipality. Such documents may be copied upon
9 payment of the actual cost of reproduction during regular
10 business hours of the local office. The Agency shall issue a
11 written statement concurrent with its grant or denial of the
12 permit explaining the basis for its decision.

13 (f) In making any determination pursuant to Section 9.1 of
14 this Act:

15 (1) The Agency shall have authority to make the
16 determination of any question required to be determined by
17 the Clean Air Act, as now or hereafter amended, this Act,
18 or the regulations of the Board, including the
19 determination of the Lowest Achievable Emission Rate,
20 Maximum Achievable Control Technology, or Best Available
21 Control Technology, consistent with the Board's
22 regulations, if any.

23 (2) The Agency shall adopt requirements as necessary to
24 implement public participation procedures, including, but
25 not limited to, public notice, comment, and an opportunity
26 for hearing, which must accompany the processing of

1 applications for PSD permits. The Agency shall briefly
2 describe and respond to all significant comments on the
3 draft permit raised during the public comment period or
4 during any hearing. The Agency may group related comments
5 together and provide one unified response for each issue
6 raised.

7 (3) Any complete permit application submitted to the
8 Agency under this subsection for a PSD permit shall be
9 granted or denied by the Agency not later than one year
10 after the filing of such completed application.

11 (4) ~~(2)~~ The Agency shall, after conferring with the
12 applicant, give written notice to the applicant of its
13 proposed decision on the application including the terms
14 and conditions of the permit to be issued and the facts,
15 conduct or other basis upon which the Agency will rely to
16 support its proposed action.

17 ~~(3) Following such notice, the Agency shall give the~~
18 ~~applicant an opportunity for a hearing in accordance with~~
19 ~~the provisions of Sections 10-25 through 10-60 of the~~
20 ~~Illinois Administrative Procedure Act.~~

21 (g) The Agency shall include as conditions upon all permits
22 issued for hazardous waste disposal sites such restrictions
23 upon the future use of such sites as are reasonably necessary
24 to protect public health and the environment, including
25 permanent prohibition of the use of such sites for purposes
26 which may create an unreasonable risk of injury to human health

1 or to the environment. After administrative and judicial
2 challenges to such restrictions have been exhausted, the Agency
3 shall file such restrictions of record in the Office of the
4 Recorder of the county in which the hazardous waste disposal
5 site is located.

6 (h) A hazardous waste stream may not be deposited in a
7 permitted hazardous waste site unless specific authorization
8 is obtained from the Agency by the generator and disposal site
9 owner and operator for the deposit of that specific hazardous
10 waste stream. The Agency may grant specific authorization for
11 disposal of hazardous waste streams only after the generator
12 has reasonably demonstrated that, considering technological
13 feasibility and economic reasonableness, the hazardous waste
14 cannot be reasonably recycled for reuse, nor incinerated or
15 chemically, physically or biologically treated so as to
16 neutralize the hazardous waste and render it nonhazardous. In
17 granting authorization under this Section, the Agency may
18 impose such conditions as may be necessary to accomplish the
19 purposes of the Act and are consistent with this Act and
20 regulations promulgated by the Board hereunder. If the Agency
21 refuses to grant authorization under this Section, the
22 applicant may appeal as if the Agency refused to grant a
23 permit, pursuant to the provisions of subsection (a) of Section
24 40 of this Act. For purposes of this subsection (h), the term
25 "generator" has the meaning given in Section 3.205 of this Act,
26 unless: (1) the hazardous waste is treated, incinerated, or

1 partially recycled for reuse prior to disposal, in which case
2 the last person who treats, incinerates, or partially recycles
3 the hazardous waste prior to disposal is the generator; or (2)
4 the hazardous waste is from a response action, in which case
5 the person performing the response action is the generator.
6 This subsection (h) does not apply to any hazardous waste that
7 is restricted from land disposal under 35 Ill. Adm. Code 728.

8 (i) Before issuing any RCRA permit, any permit for a waste
9 storage site, sanitary landfill, waste disposal site, waste
10 transfer station, waste treatment facility, waste incinerator,
11 or any waste-transportation operation, or any permit or interim
12 authorization for a clean construction or demolition debris
13 fill operation, the Agency shall conduct an evaluation of the
14 prospective owner's or operator's prior experience in waste
15 management operations and clean construction or demolition
16 debris fill operations. The Agency may deny such a permit, or
17 deny or revoke interim authorization, if the prospective owner
18 or operator or any employee or officer of the prospective owner
19 or operator has a history of:

20 (1) repeated violations of federal, State, or local
21 laws, regulations, standards, or ordinances in the
22 operation of waste management facilities or sites or clean
23 construction or demolition debris fill operation
24 facilities or sites; or

25 (2) conviction in this or another State of any crime
26 which is a felony under the laws of this State, or

1 conviction of a felony in a federal court; or conviction in
2 this or another state or federal court of any of the
3 following crimes: forgery, official misconduct, bribery,
4 perjury, or knowingly submitting false information under
5 any environmental law, regulation, or permit term or
6 condition; or

7 (3) proof of gross carelessness or incompetence in
8 handling, storing, processing, transporting or disposing
9 of waste or clean construction or demolition debris, or
10 proof of gross carelessness or incompetence in using clean
11 construction or demolition debris as fill.

12 (i-5) Before issuing any permit or approving any interim
13 authorization for a clean construction or demolition debris
14 fill operation in which any ownership interest is transferred
15 between January 1, 2005, and the effective date of the
16 prohibition set forth in Section 22.52 of this Act, the Agency
17 shall conduct an evaluation of the operation if any previous
18 activities at the site or facility may have caused or allowed
19 contamination of the site. It shall be the responsibility of
20 the owner or operator seeking the permit or interim
21 authorization to provide to the Agency all of the information
22 necessary for the Agency to conduct its evaluation. The Agency
23 may deny a permit or interim authorization if previous
24 activities at the site may have caused or allowed contamination
25 at the site, unless such contamination is authorized under any
26 permit issued by the Agency.

1 (j) The issuance under this Act of a permit to engage in
2 the surface mining of any resources other than fossil fuels
3 shall not relieve the permittee from its duty to comply with
4 any applicable local law regulating the commencement, location
5 or operation of surface mining facilities.

6 (k) A development permit issued under subsection (a) of
7 Section 39 for any facility or site which is required to have a
8 permit under subsection (d) of Section 21 shall expire at the
9 end of 2 calendar years from the date upon which it was issued,
10 unless within that period the applicant has taken action to
11 develop the facility or the site. In the event that review of
12 the conditions of the development permit is sought pursuant to
13 Section 40 or 41, or permittee is prevented from commencing
14 development of the facility or site by any other litigation
15 beyond the permittee's control, such two-year period shall be
16 deemed to begin on the date upon which such review process or
17 litigation is concluded.

18 (l) No permit shall be issued by the Agency under this Act
19 for construction or operation of any facility or site located
20 within the boundaries of any setback zone established pursuant
21 to this Act, where such construction or operation is
22 prohibited.

23 (m) The Agency may issue permits to persons owning or
24 operating a facility for composting landscape waste. In
25 granting such permits, the Agency may impose such conditions as
26 may be necessary to accomplish the purposes of this Act, and as

1 are not inconsistent with applicable regulations promulgated
2 by the Board. Except as otherwise provided in this Act, a bond
3 or other security shall not be required as a condition for the
4 issuance of a permit. If the Agency denies any permit pursuant
5 to this subsection, the Agency shall transmit to the applicant
6 within the time limitations of this subsection specific,
7 detailed statements as to the reasons the permit application
8 was denied. Such statements shall include but not be limited to
9 the following:

10 (1) the Sections of this Act that may be violated if
11 the permit were granted;

12 (2) the specific regulations promulgated pursuant to
13 this Act that may be violated if the permit were granted;

14 (3) the specific information, if any, the Agency deems
15 the applicant did not provide in its application to the
16 Agency; and

17 (4) a statement of specific reasons why the Act and the
18 regulations might be violated if the permit were granted.

19 If no final action is taken by the Agency within 90 days
20 after the filing of the application for permit, the applicant
21 may deem the permit issued. Any applicant for a permit may
22 waive the 90 day limitation by filing a written statement with
23 the Agency.

24 The Agency shall issue permits for such facilities upon
25 receipt of an application that includes a legal description of
26 the site, a topographic map of the site drawn to the scale of

1 200 feet to the inch or larger, a description of the operation,
2 including the area served, an estimate of the volume of
3 materials to be processed, and documentation that:

4 (1) the facility includes a setback of at least 200
5 feet from the nearest potable water supply well;

6 (2) the facility is located outside the boundary of the
7 10-year floodplain or the site will be floodproofed;

8 (3) the facility is located so as to minimize
9 incompatibility with the character of the surrounding
10 area, including at least a 200 foot setback from any
11 residence, and in the case of a facility that is developed
12 or the permitted composting area of which is expanded after
13 November 17, 1991, the composting area is located at least
14 1/8 mile from the nearest residence (other than a residence
15 located on the same property as the facility);

16 (4) the design of the facility will prevent any compost
17 material from being placed within 5 feet of the water
18 table, will adequately control runoff from the site, and
19 will collect and manage any leachate that is generated on
20 the site;

21 (5) the operation of the facility will include
22 appropriate dust and odor control measures, limitations on
23 operating hours, appropriate noise control measures for
24 shredding, chipping and similar equipment, management
25 procedures for composting, containment and disposal of
26 non-compostable wastes, procedures to be used for

1 terminating operations at the site, and recordkeeping
2 sufficient to document the amount of materials received,
3 composted and otherwise disposed of; and

4 (6) the operation will be conducted in accordance with
5 any applicable rules adopted by the Board.

6 The Agency shall issue renewable permits of not longer than
7 10 years in duration for the composting of landscape wastes, as
8 defined in Section 3.155 of this Act, based on the above
9 requirements.

10 The operator of any facility permitted under this
11 subsection (m) must submit a written annual statement to the
12 Agency on or before April 1 of each year that includes an
13 estimate of the amount of material, in tons, received for
14 composting.

15 (n) The Agency shall issue permits jointly with the
16 Department of Transportation for the dredging or deposit of
17 material in Lake Michigan in accordance with Section 18 of the
18 Rivers, Lakes, and Streams Act.

19 (o) (Blank.)

20 (p) (1) Any person submitting an application for a permit
21 for a new MSWLF unit or for a lateral expansion under
22 subsection (t) of Section 21 of this Act for an existing MSWLF
23 unit that has not received and is not subject to local siting
24 approval under Section 39.2 of this Act shall publish notice of
25 the application in a newspaper of general circulation in the
26 county in which the MSWLF unit is or is proposed to be located.

1 The notice must be published at least 15 days before submission
2 of the permit application to the Agency. The notice shall state
3 the name and address of the applicant, the location of the
4 MSWLF unit or proposed MSWLF unit, the nature and size of the
5 MSWLF unit or proposed MSWLF unit, the nature of the activity
6 proposed, the probable life of the proposed activity, the date
7 the permit application will be submitted, and a statement that
8 persons may file written comments with the Agency concerning
9 the permit application within 30 days after the filing of the
10 permit application unless the time period to submit comments is
11 extended by the Agency.

12 When a permit applicant submits information to the Agency
13 to supplement a permit application being reviewed by the
14 Agency, the applicant shall not be required to reissue the
15 notice under this subsection.

16 (2) The Agency shall accept written comments concerning the
17 permit application that are postmarked no later than 30 days
18 after the filing of the permit application, unless the time
19 period to accept comments is extended by the Agency.

20 (3) Each applicant for a permit described in part (1) of
21 this subsection shall file a copy of the permit application
22 with the county board or governing body of the municipality in
23 which the MSWLF unit is or is proposed to be located at the
24 same time the application is submitted to the Agency. The
25 permit application filed with the county board or governing
26 body of the municipality shall include all documents submitted

1 to or to be submitted to the Agency, except trade secrets as
2 determined under Section 7.1 of this Act. The permit
3 application and other documents on file with the county board
4 or governing body of the municipality shall be made available
5 for public inspection during regular business hours at the
6 office of the county board or the governing body of the
7 municipality and may be copied upon payment of the actual cost
8 of reproduction.

9 (q) Within 6 months after the effective date of this
10 amendatory Act of the 97th General Assembly, the Agency, in
11 consultation with the regulated community, shall develop a web
12 portal to be posted on its website for the purpose of enhancing
13 review and promoting timely issuance of permits required by
14 this Act. At a minimum, the Agency shall make the following
15 information available on the web portal:

16 (1) Checklists and guidance relating to the completion
17 of permit applications, developed pursuant to subsection
18 (s) of this Section, which may include, but are not limited
19 to, existing instructions for completing the applications
20 and examples of complete applications. As the Agency
21 develops new checklists and develops guidance, it shall
22 supplement the web portal with those materials.

23 (2) Within 2 years after the effective date of this
24 amendatory Act of the 97th General Assembly, permit
25 application forms or portions of permit applications that
26 can be completed and saved electronically, and submitted to

1 the Agency electronically with digital signatures.

2 (3) Within 2 years after the effective date of this
3 amendatory Act of the 97th General Assembly, an online
4 tracking system where an applicant may review the status of
5 its pending application, including the name and contact
6 information of the permit analyst assigned to the
7 application. Until the online tracking system has been
8 developed, the Agency shall post on its website semi-annual
9 permitting efficiency tracking reports that include
10 statistics on the timeframes for Agency action on the
11 following types of permits received after the effective
12 date of this amendatory Act of the 97th General Assembly:
13 air construction permits, new NPDES permits and associated
14 water construction permits, and modifications of major
15 NPDES permits and associated water construction permits.
16 The reports must be posted by February 1 and August 1 each
17 year and shall include:

18 (A) the number of applications received for each
19 type of permit, the number of applications on which the
20 Agency has taken action, and the number of applications
21 still pending; and

22 (B) for those applications where the Agency has not
23 taken action in accordance with the timeframes set
24 forth in this Act, the date the application was
25 received and the reasons for any delays, which may
26 include, but shall not be limited to, (i) the

1 application being inadequate or incomplete, (ii)
2 scientific or technical disagreements with the
3 applicant, USEPA, or other local, state, or federal
4 agencies involved in the permitting approval process,
5 (iii) public opposition to the permit, or (iv) Agency
6 staffing shortages. To the extent practicable, the
7 tracking report shall provide approximate dates when
8 cause for delay was identified by the Agency, when the
9 Agency informed the applicant of the problem leading to
10 the delay, and when the applicant remedied the reason
11 for the delay.

12 (r) Upon the request of the applicant, the Agency shall
13 notify the applicant of the permit analyst assigned to the
14 application upon its receipt.

15 (s) The Agency is authorized to prepare and distribute
16 guidance documents relating to its administration of this
17 Section and procedural rules implementing this Section.
18 Guidance documents prepared under this subsection shall not be
19 considered rules and shall not be subject to the Illinois
20 Administrative Procedure Act. Such guidance shall not be
21 binding on any party.

22 (t) Except as otherwise prohibited by federal law or
23 regulation, any person submitting an application for a permit
24 may include with the application suggested permit language for
25 Agency consideration. The Agency is not obligated to use the
26 suggested language or any portion thereof in its permitting

1 decision. If requested by the permit applicant, the Agency
2 shall meet with the applicant to discuss the suggested
3 language.

4 (u) If requested by the permit applicant, the Agency shall
5 provide the permit applicant with a copy of the draft permit
6 prior to any public review period.

7 (v) If requested by the permit applicant, the Agency shall
8 provide the permit applicant with a copy of the final permit
9 prior to its issuance.

10 (w) An air pollution permit shall not be required due to
11 emissions of greenhouse gases, as specified by Section 9.15 of
12 this Act.

13 (x) If, before the expiration of a State operating permit
14 that is issued pursuant to subsection (a) of this Section and
15 contains federally enforceable conditions limiting the
16 potential to emit of the source to a level below the major
17 source threshold for that source so as to exclude the source
18 from the Clean Air Act Permit Program, the Agency receives a
19 complete application for the renewal of that permit, then all
20 of the terms and conditions of the permit shall remain in
21 effect until final administrative action has been taken on the
22 application for the renewal of the permit.

23 (Source: P.A. 97-95, eff. 7-12-11; 98-284, eff. 8-9-13.)

24 (415 ILCS 5/40) (from Ch. 111 1/2, par. 1040)

25 Sec. 40. Appeal of permit denial.

1 (a) (1) If the Agency refuses to grant or grants with
2 conditions a permit under Section 39 of this Act, the applicant
3 may, within 35 days after the date on which the Agency served
4 its decision on the applicant, petition for a hearing before
5 the Board to contest the decision of the Agency. However, the
6 35-day period for petitioning for a hearing may be extended for
7 an additional period of time not to exceed 90 days by written
8 notice provided to the Board from the applicant and the Agency
9 within the initial appeal period. The Board shall give 21 day
10 notice to any person in the county where is located the
11 facility in issue who has requested notice of enforcement
12 proceedings and to each member of the General Assembly in whose
13 legislative district that installation or property is located;
14 and shall publish that 21 day notice in a newspaper of general
15 circulation in that county. The Agency shall appear as
16 respondent in such hearing. At such hearing the rules
17 prescribed in Section 32 and subsection (a) of Section 33 of
18 this Act shall apply, and the burden of proof shall be on the
19 petitioner. If, however, the Agency issues an NPDES permit that
20 imposes limits which are based upon a criterion or denies a
21 permit based upon application of a criterion, then the Agency
22 shall have the burden of going forward with the basis for the
23 derivation of those limits or criterion which were derived
24 under the Board's rules.

25 (2) Except as provided in paragraph (a) (3), if there is no
26 final action by the Board within 120 days after the date on

1 which it received the petition, the petitioner may deem the
2 permit issued under this Act, provided, however, that that
3 period of 120 days shall not run for any period of time, not to
4 exceed 30 days, during which the Board is without sufficient
5 membership to constitute the quorum required by subsection (a)
6 of Section 5 of this Act, and provided further that such 120
7 day period shall not be stayed for lack of quorum beyond 30
8 days regardless of whether the lack of quorum exists at the
9 beginning of such 120 day period or occurs during the running
10 of such 120 day period.

11 (3) Paragraph (a) (2) shall not apply to any permit which is
12 subject to subsection (b), (d) or (e) of Section 39. If there
13 is no final action by the Board within 120 days after the date
14 on which it received the petition, the petitioner shall be
15 entitled to an Appellate Court order pursuant to subsection (d)
16 of Section 41 of this Act.

17 (b) If the Agency grants a RCRA permit for a hazardous
18 waste disposal site, a third party, other than the permit
19 applicant or Agency, may, within 35 days after the date on
20 which the Agency issued its decision, petition the Board for a
21 hearing to contest the issuance of the permit. Unless the Board
22 determines that such petition is duplicative or frivolous, or
23 that the petitioner is so located as to not be affected by the
24 permitted facility, the Board shall hear the petition in
25 accordance with the terms of subsection (a) of this Section and
26 its procedural rules governing denial appeals, such hearing to

1 be based exclusively on the record before the Agency. The
2 burden of proof shall be on the petitioner. The Agency and the
3 permit applicant shall be named co-respondents.

4 The provisions of this subsection do not apply to the
5 granting of permits issued for the disposal or utilization of
6 sludge from publicly-owned sewage works.

7 (c) Any party to an Agency proceeding conducted pursuant to
8 Section 39.3 of this Act may petition as of right to the Board
9 for review of the Agency's decision within 35 days from the
10 date of issuance of the Agency's decision, provided that such
11 appeal is not duplicative or frivolous. However, the 35-day
12 period for petitioning for a hearing may be extended by the
13 applicant for a period of time not to exceed 90 days by written
14 notice provided to the Board from the applicant and the Agency
15 within the initial appeal period. If another person with
16 standing to appeal wishes to obtain an extension, there must be
17 a written notice provided to the Board by that person, the
18 Agency, and the applicant, within the initial appeal period.
19 The decision of the Board shall be based exclusively on the
20 record compiled in the Agency proceeding. In other respects the
21 Board's review shall be conducted in accordance with subsection
22 (a) of this Section and the Board's procedural rules governing
23 permit denial appeals.

24 (d) In reviewing the denial or any condition of a NA NSR
25 permit issued by the Agency pursuant to rules and regulations
26 adopted under subsection (c) of Section 9.1 of this Act, the

1 decision of the Board shall be based exclusively on the record
2 before the Agency including the record of the hearing, if any,
3 ~~held pursuant to paragraph (f)(3) of Section 39~~ unless the
4 parties agree to supplement the record. The Board shall, if it
5 finds the Agency is in error, make a final determination as to
6 the substantive limitations of the permit including a final
7 determination of Lowest Achievable Emission Rate ~~or Best~~
8 ~~Available Control Technology~~.

9 (e) (1) If the Agency grants or denies a permit under
10 subsection (b) of Section 39 of this Act, a third party,
11 other than the permit applicant or Agency, may petition the
12 Board within 35 days from the date of issuance of the
13 Agency's decision, for a hearing to contest the decision of
14 the Agency.

15 (2) A petitioner shall include the following within a
16 petition submitted under subdivision (1) of this
17 subsection:

18 (A) a demonstration that the petitioner raised the
19 issues contained within the petition during the public
20 notice period or during the public hearing on the NPDES
21 permit application, if a public hearing was held; and

22 (B) a demonstration that the petitioner is so
23 situated as to be affected by the permitted facility.

24 (3) If the Board determines that the petition is not
25 duplicative or frivolous and contains a satisfactory
26 demonstration under subdivision (2) of this subsection,

1 the Board shall hear the petition (i) in accordance with
2 the terms of subsection (a) of this Section and its
3 procedural rules governing permit denial appeals and (ii)
4 exclusively on the basis of the record before the Agency.
5 The burden of proof shall be on the petitioner. The Agency
6 and permit applicant shall be named co-respondents.

7 (f) Any person who files a petition to contest the issuance
8 of a permit by the Agency shall pay a filing fee.

9 (Source: P.A. 92-574, eff. 6-26-02.)

10 (415 ILCS 5/40.3 new)

11 Sec. 40.3. Review process for PSD permits.

12 (a) (1) Subsection (a) of Section 40 does not apply to any
13 PSD permit that is subject to subsection (c) of Section 9.1 of
14 this Act. If the Agency refused to grant or grants with
15 conditions a PSD permit, the applicant may, within 35 days
16 after final permit action, petition for a hearing before the
17 Board to contest the decision of the Agency. If the Agency
18 fails to act on an application for a PSD permit within the time
19 frame specified in paragraph (3) of subsection (f) of Section
20 39 of this Act, the applicant may, before the Agency denies or
21 issues the final permit, petition for a hearing before the
22 Board to compel the Agency to act on the application in a time
23 that is deemed reasonable.

24 (2) Any person who participated in the public comment
25 process and is either aggrieved or has an interest that is or

1 may be adversely affected by the PSD permit may, within 35 days
2 after final permit action, petition for a hearing before the
3 Board to contest the decision of the Agency. If the petitioner
4 failed to participate in the public comment process, the person
5 may still petition for a hearing, but only upon issues where
6 the final permit conditions reflect changes from the proposed
7 draft permit.

8 The petition shall: (i) include such facts as necessary to
9 demonstrate that the petitioner is aggrieved or has an interest
10 that is or may be adversely affected; (ii) state the issues
11 proposed for review, citing to the record where those issues
12 were raised or explaining why such issues were not required to
13 be raised during the public comment process; and (iii) explain
14 why the Agency's previous response, if any, to those issues is
15 (A) clearly erroneous or (B) an exercise of discretion or an
16 important policy consideration that the Board should, in its
17 discretion, review.

18 The Board shall hold a hearing upon a petition to contest
19 the decision of the Agency under this paragraph (a) (2) unless
20 the request is determined by the Board to be frivolous or to
21 lack facially adequate factual statements required in this
22 paragraph (a) (2).

23 The Agency shall appear as respondent in any hearing
24 pursuant to this subsection (a). At such hearing the rules
25 prescribed in Section 32 and subsection (a) of Section 33 of
26 this Act shall apply, and the burden of proof shall be on the

1 petitioner.

2 (b) If there is no final action by the Board within 120
3 days after the date on which it received the petition, the PSD
4 permit shall not be deemed issued; rather, any party shall be
5 entitled to an Appellate Court order pursuant to subsection (d)
6 of Section 41 of this Act. This period of 120 days shall not
7 run for any period of time, not to exceed 30 days, during which
8 the Board is without sufficient membership to constitute the
9 quorum required by subsection (a) of Section 5 of this Act. The
10 120-day period shall not be stayed for lack of quorum beyond 30
11 days, regardless of whether the lack of quorum exists at the
12 beginning of the 120-day period or occurs during the running of
13 the 120-day period.

14 (c) Any person who files a petition to contest the final
15 permit action by the Agency under this Section shall pay the
16 filing fee for petitions for review of permit set forth in
17 Section 7.5.

18 (d)(1) In reviewing the denial or any condition of a PSD
19 permit issued by the Agency pursuant to rules adopted under
20 subsection (c) of Section 9.1 of this Act, the decision of the
21 Board shall be based exclusively on the record before the
22 Agency unless the parties agree to supplement the record.

23 (2) If requested by the applicant, the Board may stay the
24 effectiveness of any final Agency action on a PSD permit
25 application identified in subsection (f) of Section 39 of this
26 Act during the pendency of the review process. In such cases,

1 the Board shall stay the effectiveness of all the contested
2 conditions of the PSD permit and may stay the effectiveness of
3 any or all uncontested conditions only if the Board determines
4 that the uncontested conditions would be affected by its review
5 of contested conditions. Any stays granted by the Board shall
6 be deemed effective upon the date of final Agency action
7 appealed by the applicant under this subsection (d). Subsection
8 (b) of Section 10-65 of the Illinois Administrative Procedure
9 Act shall not apply to actions under this subsection (d).

10 (3) If requested by a party other than the applicant, the
11 Board may stay the effectiveness of any final Agency action on
12 a PSD permit application identified in subsection (f) of
13 Section 39 of this Act during the pendency of the review
14 process. In such cases, the Board may stay the effectiveness of
15 all the contested conditions of the PSD permit and may stay the
16 effectiveness of any or all uncontested conditions only if the
17 Board determines that the uncontested conditions would be
18 affected by its review of contested conditions. The party
19 requesting the stay has the burden of demonstrating the
20 following: (i) that an immediate stay is required in order to
21 preserve the status quo without endangering the public, (ii)
22 that it is not contrary to public policy, and (iii) that there
23 is a reasonable likelihood of success on the merits. Any stays
24 granted by the Board shall be deemed effective upon the date of
25 final Agency action appealed under this subsection (d) and
26 shall remain in effect until a decision is issued by the Board

1 on the petition. Subsection (b) of Section 10-65 of the
2 Illinois Administrative Procedure Act shall not apply to
3 actions under this paragraph.

4 (415 ILCS 5/41) (from Ch. 111 1/2, par. 1041)

5 Sec. 41. Judicial review.

6 (a) Any party to a Board hearing, any person who filed a
7 complaint on which a hearing was denied, any person who has
8 been denied a variance or permit under this Act, any party
9 adversely affected by a final order or determination of the
10 Board, and any person who participated in the public comment
11 process under subsection (8) of Section 39.5 of this Act may
12 obtain judicial review, by filing a petition for review within
13 35 days from the date that a copy of the order or other final
14 action sought to be reviewed was served upon the party affected
15 by the order or other final Board action complained of, under
16 the provisions of the Administrative Review Law, as amended and
17 the rules adopted pursuant thereto, except that review shall be
18 afforded directly in the Appellate Court for the District in
19 which the cause of action arose and not in the Circuit Court.
20 Review of any rule or regulation promulgated by the Board shall
21 not be limited by this section but may also be had as provided
22 in Section 29 of this Act.

23 (b) Any final order of the Board under this Act shall be
24 based solely on the evidence in the record of the particular
25 proceeding involved, and any such final order for permit

1 appeals, enforcement actions and variance proceedings, shall
2 be invalid if it is against the manifest weight of the
3 evidence. Notwithstanding this subsection, the Board may
4 include such conditions in granting a variance and may adopt
5 such rules and regulations as the policies of this Act may
6 require. If an objection is made to a variance condition, the
7 board shall reconsider the condition within not more than 75
8 days from the date of the objection.

9 (c) No challenge to the validity of a Board order shall be
10 made in any enforcement proceeding under Title XII of this Act
11 as to any issue that could have been raised in a timely
12 petition for review under this Section.

13 (d) If there is no final action by the Board within 120
14 days on a request for a variance which is subject to subsection
15 (c) of Section 38 or a permit appeal which is subject to
16 paragraph (a) (3) of Section 40 or paragraph (d) of Section
17 40.2 or Section 40.3, the petitioner shall be entitled to an
18 Appellate Court order under this subsection. If a hearing is
19 required under this Act and was not held by the Board, the
20 Appellate Court shall order the Board to conduct such a
21 hearing, and to make a decision within 90 days from the date of
22 the order. If a hearing was held by the Board, or if a hearing
23 is not required under this Act and was not held by the Board,
24 the Appellate Court shall order the Board to make a decision
25 within 90 days from the date of the order.

26 The Appellate Court shall retain jurisdiction during the

1 pendency of any further action conducted by the Board under an
2 order by the Appellate Court. The Appellate Court shall have
3 jurisdiction to review all issues of law and fact presented
4 upon appeal.

5 (Source: P.A. 87-1213; 88-1; 88-464; 88-670, eff. 12-2-94.)