

1 AN ACT concerning environmental 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  
5 by changing Sections 57, 57.2, 57.7, 57.8, 57.10, 58.2, 58.6,  
6 58.7, and 58.11 as follows:

7 (415 ILCS 5/57)

8 Sec. 57. Intent and purpose. This Title shall be known  
9 and may be cited as the Leaking Underground Storage Tank  
10 Program (LUST). The purpose of this Title is, in accordance  
11 with the requirements of the Hazardous and Solid Waste  
12 Amendments of 1984 of the Resource Conservation and Recovery  
13 Act of 1976 and in accordance with the State's interest in  
14 the protection of Illinois' land and water resources: (1) to  
15 adopt procedures for the remediation of underground storage  
16 tank sites due to the release of petroleum and other  
17 substances regulated under this Title from certain  
18 underground storage tanks or related tank systems; (2) to  
19 establish and provide procedures for a Leaking Underground  
20 Storage Tank Program which will oversee and review any  
21 remediation required for leaking underground storage tanks,  
22 and administer the Underground Storage Tank Fund; (3) to  
23 establish an Underground Storage Tank Fund intended to be a  
24 State fund by which persons who qualify for access to the  
25 Underground Storage Tank Fund may satisfy the financial  
26 responsibility requirements under applicable State law and  
27 regulations; (4) to establish requirements for eligible  
28 owners and operators of underground storage tanks to seek  
29 payment for any costs associated with physical soil  
30 classification, groundwater investigation, site  
31 classification and corrective action from the Underground

1 Storage Tank Fund; and (5) to audit and approve corrective  
2 action efforts performed by Licensed Professional Engineers  
3 and Licensed Professional Geologists.

4 (Source: P.A. 91-357, eff. 7-29-99.)

5 (415 ILCS 5/57.2)

6 Sec. 57.2. Definitions. As used in this Title:

7 "Audit" means a systematic inspection or examination of  
8 plans, reports, records, or documents to determine the  
9 completeness and accuracy of the data and conclusions  
10 contained therein.

11 "Bodily injury" means bodily injury, sickness, or disease  
12 sustained by a person, including death at any time, resulting  
13 from a release of petroleum from an underground storage tank.

14 "Release" means any spilling, leaking, emitting,  
15 discharging, escaping, leaching or disposing of petroleum  
16 from an underground storage tank into groundwater, surface  
17 water or subsurface soils.

18 "Fill material" means non-native or disturbed materials  
19 used to bed and backfill around an underground storage tank.

20 "Fund" means the Underground Storage Tank Fund.

21 "Heating Oil" means petroleum that is No. 1, No. 2, No. 4  
22 - light, No. 4 - heavy, No. 5 - light, No. 5 - heavy or No. 6  
23 technical grades of fuel oil; and other residual fuel oils  
24 including Navy Special Fuel Oil and Bunker C.

25 "Indemnification" means indemnification of an owner or  
26 operator for the amount of any judgment entered against the  
27 owner or operator in a court of law, for the amount of any  
28 final order or determination made against the owner or  
29 operator by an agency of State government or any subdivision  
30 thereof, or for the amount of any settlement entered into by  
31 the owner or operator, if the judgment, order, determination,  
32 or settlement arises out of bodily injury or property damage  
33 suffered as a result of a release of petroleum from an

1 underground storage tank owned or operated by the owner or  
2 operator.

3 "Corrective action" means activities associated with  
4 compliance with the provisions of Sections 57.6 and 57.7 of  
5 this Title.

6 "Occurrence" means an accident, including continuous or  
7 repeated exposure to conditions, that results in a sudden or  
8 nonsudden release from an underground storage tank.

9 When used in connection with, or when otherwise relating  
10 to, underground storage tanks, the terms "facility", "owner",  
11 "operator", "underground storage tank", "(UST)", "petroleum"  
12 and "regulated substance" shall have the meanings ascribed to  
13 them in Subtitle I of the Hazardous and Solid Waste  
14 Amendments of 1984 (P.L. 98-616), of the Resource  
15 Conservation and Recovery Act of 1976 (P.L. 94-580); provided  
16 however that the term "underground storage tank" shall also  
17 mean an underground storage tank used exclusively to store  
18 heating oil for consumptive use on the premises where stored  
19 and which serves other than a farm or residential unit.

20 "Licensed Professional Engineer" means a person,  
21 corporation, or partnership licensed under the laws of the  
22 State of Illinois to practice professional engineering.

23 "Licensed Professional Geologist" means a person licensed  
24 under the laws of the State of Illinois to practice as a  
25 professional geologist.

26 "Site" means any single location, place, tract of land or  
27 parcel of property including contiguous property not  
28 separated by a public right-of-way.

29 "Physical soil classification" means verification that  
30 subsurface strata are as generally mapped in the publication  
31 Illinois Geological Survey Circular (1984) titled "Potential  
32 for Contamination of Shallow Aquifers in Illinois," by Berg,  
33 Richard C., et al. Such classification may include review of  
34 soil borings, well logs, physical soil analyses, regional

1 geologic maps, or other scientific publications.

2 "Property damage" means physical injury to, destruction  
3 of, or contamination of tangible property, including all  
4 resulting loss of use of that property; or loss of use of  
5 tangible property that is not physically injured, destroyed,  
6 or contaminated, but has been evacuated, withdrawn from use,  
7 or rendered inaccessible because of a release of petroleum  
8 from an underground storage tank.

9 "Class I Groundwater" means groundwater that meets the  
10 Class I: Potable Resource Groundwater criteria set forth in  
11 the Board regulations adopted pursuant to the Illinois  
12 Groundwater Protection Act.

13 "Class III Groundwater" means groundwater that meets the  
14 Class III: Special Resource Groundwater criteria set forth  
15 in the Board regulations adopted pursuant to the Illinois  
16 Groundwater Protection Act.

17 (Source: P.A. 88-496; 89-428, eff. 1-1-96; 89-457, eff.  
18 5-22-96.)

19 (415 ILCS 5/57.7)

20 Sec. 57.7. Leaking underground storage tanks; physical  
21 soil classification, groundwater investigation, site  
22 classification, and corrective action.

23 (a) Physical soil classification and groundwater  
24 investigation.

25 (1) Prior to conducting any physical soil  
26 classification and groundwater investigation activities  
27 required by statute or regulation, the owner or operator  
28 shall prepare and submit to the Agency for the Agency's  
29 approval or modification:

30 (A) a physical soil classification and  
31 groundwater investigation plan designed to  
32 determine site classification, in accordance  
33 with subsection (b) of this Section, as High

1 Priority, Low Priority, or No Further Action.

2 (B) a request for payment of costs  
3 associated with eligible early action costs as  
4 provided in Section 57.6(b). However, for  
5 purposes of payment for early action costs,  
6 fill materials shall not be removed in an  
7 amount in excess of 4 feet from the outside  
8 dimensions of the tank.

9 (2) If the owner or operator intends to seek  
10 payment from the Fund, prior to conducting any physical  
11 soil classification and groundwater investigation  
12 activities required by statute or regulation, the owner  
13 or operator shall submit to the Agency for the Agency's  
14 approval or modification a physical soil classification  
15 and groundwater investigation budget which includes, but  
16 is not limited to, an accounting of all costs associated  
17 with the implementation and completion of the physical  
18 soil classification and groundwater investigation plan.

19 (3) Within 30 days of completion of the physical  
20 soil classification or groundwater investigation report  
21 the owner or operator shall submit to the Agency:

22 (A) all physical soil classification and  
23 groundwater investigation results; and

24 (B) a certification by a Licensed Professional  
25 Engineer or Licensed Professional Geologist of the  
26 site's classification as High Priority, Low  
27 Priority, or No Further Action in accordance with  
28 subsection (b) of this Section as High Priority, Low  
29 Priority, or No Further Action.

30 (b) Site Classification.

31 (1) After evaluation of the physical soil  
32 classification and groundwater investigation results,  
33 when required, and general site information, the site  
34 shall be classified as "No Further Action", "Low

1 Priority", or "High Priority" based on the requirements  
2 of this Section. Site classification shall be determined  
3 by a Licensed Professional Engineer or Licensed  
4 Professional Geologist in accordance with the  
5 requirements of this Title and the Licensed Professional  
6 Engineer or Licensed Professional Geologist shall submit  
7 a certification to the Agency of the site classification.  
8 The Agency has the authority to audit site  
9 classifications and reject or modify any site  
10 classification inconsistent with the requirements of this  
11 Title.

12 (2) Sites shall be classified as No Further Action  
13 if the criteria in subparagraph (A) are satisfied:

14 (A)(i) The site is located in an area  
15 designated D, E, F and G on the Illinois Geological  
16 Survey Circular (1984) titled "Potential for  
17 Contamination of Shallow Aquifers in Illinois," by  
18 Berg, Richard C., et al.;

19 (ii) A site evaluation under the direction of  
20 a Licensed Professional Engineer or Licensed  
21 Professional Geologist verifies the physical soil  
22 classification conditions are consistent with those  
23 indicated on the Illinois Geological Survey Circular  
24 (1984) titled "Potential for Contamination of  
25 Shallow Aquifers in Illinois," by Berg, Richard C.,  
26 et al.; and

27 (iii) The conditions identified in subsections  
28 (b) (3)(B), (C), (D), and (E) do not exist.

29 (B) Groundwater investigation monitoring may  
30 be required to confirm that a site meets the  
31 criteria of a No Further Action site. The Board  
32 shall adopt rules setting forth the criteria under  
33 which the Agency may exercise its discretionary  
34 authority to require investigations and the minimum

1 field requirements for conducting investigations.

2 (3) Sites shall be classified as High Priority if  
3 any of the following are met:

4 (A) The site is located in an area designated  
5 A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4,  
6 or C5 on the Illinois Geological Survey Circular  
7 (1984) titled "Potential for Contamination of  
8 Shallow Aquifers in Illinois," by Berg, Richard C.,  
9 et al.; a site evaluation under the direction of a  
10 Licensed Professional Engineer or Licensed  
11 Professional Geologist verifies the physical soil  
12 classifications conditions are consistent with those  
13 indicated on the Illinois Geological Survey Circular  
14 (1984) entitled "Potential for Contamination of  
15 Shallow Aquifers in Illinois," by Berg, Richard C.,  
16 et al.; and the results of the physical soil  
17 classification and groundwater investigation  
18 indicate that an applicable indicator contaminant  
19 groundwater quality standard or groundwater  
20 objective has been exceeded at the property boundary  
21 line or 200 feet from the excavation, whichever is  
22 less as a consequence of the underground storage  
23 tank release.

24 (B) The underground storage tank is within the  
25 minimum or maximum setback zone of a potable water  
26 supply well or regulated recharge area of a potable  
27 water supply well.

28 (C) There is evidence that, through natural or  
29 manmade pathways, migration of petroleum or vapors  
30 threaten human health or human safety or may cause  
31 explosions in basements, crawl spaces, utility  
32 conduits, storm or sanitary sewers, vaults or other  
33 confined spaces.

34 (D) Class III special resource groundwater

1 exists within 200 feet of the excavation.

2 (E) A surface water body is adversely affected  
3 by the presence of a visible sheen or free product  
4 layer as the result of an underground storage tank  
5 release.

6 (4) Sites shall be classified as Low Priority if  
7 all of the following are met:

8 (A) The site does not meet any of the criteria  
9 for classification as a High Priority Site.

10 (B) (i) The site is located in area designated  
11 A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4,  
12 C5 on the Illinois Geological Survey Circular (1984)  
13 entitled "Potential for Contamination of Shallow  
14 Aquifers in Illinois," by Berg, Richard C., et al.;  
15 and

16 (ii) a site evaluation under the direction of  
17 a Licensed Professional Engineer or Licensed  
18 Professional Geologist verifies the physical soil  
19 classification conditions are consistent with those  
20 indicated on the Illinois Geological Survey Circular  
21 (1984) titled "Potential for Contamination of  
22 Shallow Aquifers in Illinois," by Berg, Richard C.,  
23 et al.; and

24 (iii) the results of the physical soil  
25 classification and groundwater investigation do not  
26 indicate an applicable indicator contaminant  
27 groundwater quality standard or groundwater  
28 objective has been exceeded at the property boundary  
29 line or 200 feet from the underground storage tank,  
30 whichever is less.

31 (5) In the event the results of the physical soil  
32 classification and any required groundwater investigation  
33 reveal that the actual site geologic characteristics are  
34 different than those indicated by the Illinois Geological



1 Survey Circular (1984) titled "Potential for  
2 Contamination of Shallow Aquifers in Illinois" by Berg,  
3 Richard C., et al., classification of the site shall be  
4 determined using the actual site geologic  
5 characteristics.

6 (6) For purposes of physical soil classification,  
7 the Board is authorized to prescribe by regulation  
8 alternatives to use of the Illinois Geological Survey  
9 Circular (1984) titled "Potential for Contamination of  
10 Shallow Aquifers in Illinois" by Berg, Richard C., et al.

11 (c) Corrective Action.

12 (1) High Priority Site.

13 (A) Prior to performance of any corrective  
14 action, beyond that required by Section 57.6 and  
15 subsection (a) of Section 57.7 of this Act, the  
16 owner or operator shall prepare and submit to the  
17 Agency for the Agency's approval or modification a  
18 corrective action plan designed to mitigate any  
19 threat to human health, human safety or the  
20 environment resulting from the underground storage  
21 tank release.

22 (B) If the owner or operator intends to seek  
23 payment from the Fund, prior to performance of any  
24 corrective action beyond that required by Section  
25 57.6 and subsection (a) of Section 57.7, the owner  
26 or operator shall submit to the Agency for the  
27 Agency's approval or modification a corrective  
28 action plan budget which includes, but is not  
29 limited to, an accounting of all costs associated  
30 with the implementation and completion of the  
31 corrective action plan.

32 (C) The corrective action plan shall do all of  
33 the following:

34 (i) Provide that applicable indicator

1           contaminant groundwater quality standards or  
2           groundwater objectives will not be exceeded in  
3           groundwater at the property boundary line or  
4           200 feet from the excavation, whichever is  
5           less, or other level if approved by the Agency,  
6           for any contaminant identified in the  
7           groundwater investigation after complete  
8           performance of the corrective action plan.

9           (ii) Provide that Class III special  
10          resource groundwater quality standards for  
11          Class III special resource groundwater within  
12          200 feet of the excavation will not be exceeded  
13          as a result of the underground storage tank  
14          release for any indicator contaminant  
15          identified in the groundwater investigation  
16          after complete performance of the corrective  
17          action plan.

18          (iii) Remediate threats due to the  
19          presence or migration, through natural or  
20          manmade pathways, of petroleum in  
21          concentrations sufficient to harm human health  
22          or human safety or to cause explosions in  
23          basements, crawl spaces, utility conduits,  
24          storm or sanitary sewers, vaults or other  
25          confined spaces.

26          (iv) Remediate threats to a potable water  
27          supply.

28          (v) Remediate threats to a surface water  
29          body.

30          (D) Within 30 days of completion of the  
31          corrective action, the owner or operator shall  
32          submit to the Agency such a completion report that  
33          includes a description of the corrective action plan  
34          and a description of the corrective action work

1 performed and all analytical or sampling results  
2 derived from performance of the corrective action  
3 plan.

4 (E) The Agency shall issue to the owner or  
5 operator a no further remediation letter in  
6 accordance with Section 57.10 if all of the  
7 following are met:

- 8 (i) The corrective action completion  
9 report demonstrates that: (a) applicable  
10 indicator contaminant groundwater quality  
11 standards or groundwater objectives are not  
12 exceeded at the property boundary line or 200  
13 feet from the excavation, whichever is less, as  
14 a result of the underground storage tank  
15 release for any indicator contaminant  
16 identified in the groundwater investigation;  
17 (b) Class III special use resource groundwater  
18 quality standards, for Class III special use  
19 resource groundwater within 200 feet of the  
20 underground storage tank, are not exceeded as a  
21 result of the underground storage tank release  
22 for any contaminant identified in the  
23 groundwater investigation; (c) the underground  
24 storage tank release does not threaten human  
25 health or human safety due to the presence or  
26 migration, through natural or manmade pathways,  
27 of petroleum or hazardous substances in  
28 concentrations sufficient to harm human health  
29 or human safety or to cause explosions in  
30 basements, crawl spaces, utility conduits,  
31 storm or sanitary sewers, vaults or other  
32 confined spaces; (d) the underground storage  
33 tank release does not threaten any surface  
34 water body; and (e) the underground storage

1 tank release does not threaten any potable  
2 water supply.

3 (ii) The owner or operator submits to the  
4 Agency a certification from a Licensed  
5 Professional Engineer or Licensed Professional  
6 Geologist that the work described in the  
7 approved corrective action plan has been  
8 completed and that the information presented in  
9 the corrective action completion report is  
10 accurate and complete.

11 (2) Low Priority Site.

12 (A) Corrective action at a low priority site  
13 must include groundwater monitoring consistent with  
14 part (B) of this paragraph (2).

15 (B) Prior to implementation of groundwater  
16 monitoring, the owner or operator shall prepare and  
17 submit to the Agency a groundwater monitoring plan  
18 and, if the owner or operator intends to seek  
19 payment under this Title, an associated budget which  
20 includes, at a minimum, all of the following:

21 (i) Placement of groundwater monitoring  
22 wells at the property line, or at 200 feet from  
23 the excavation which ever is closer, designed  
24 to provide the greatest likelihood of detecting  
25 migration of groundwater contamination.

26 (ii) Quarterly groundwater sampling for a  
27 period of one year, semi-annual sampling for  
28 the second year and annual groundwater sampling  
29 for one subsequent year for all indicator  
30 contaminants identified during the groundwater  
31 investigation.

32 (iii) The annual submittal to the Agency  
33 of a summary of groundwater sampling results.

34 (C) If at any time groundwater sampling

1 results indicate a confirmed exceedence of  
2 applicable indicator contaminant groundwater quality  
3 standards or groundwater objectives as a result of  
4 the underground storage tank release, the site may  
5 be reclassified as a High Priority Site by the  
6 Agency at any time before the Agency's final  
7 approval of a Low Priority groundwater monitoring  
8 completion report. Agency review and approval shall  
9 be in accordance with paragraph (4) of subsection  
10 (c) of this Section. If the owner or operator elects  
11 to appeal an Agency action to disapprove, modify, or  
12 reject by operation of law a Low Priority  
13 groundwater monitoring completion report, the Agency  
14 shall indicate to the Board in conjunction with such  
15 appeal whether it intends to reclassify the site as  
16 High Priority. If a site is reclassified as a High  
17 Priority Site, the owner or operator shall submit a  
18 corrective action plan and budget to the Agency  
19 within 120 days of the confirmed exceedence and  
20 shall initiate compliance with all corrective action  
21 requirements for a High Priority Site.

22 (D) If, throughout the implementation of the  
23 groundwater monitoring plan, the groundwater  
24 sampling results do not confirm an exceedence of  
25 applicable indicator contaminant groundwater quality  
26 standards or groundwater objectives as a result of  
27 the underground storage tank release, the owner or  
28 operator shall submit to the Agency a certification  
29 of a Licensed Professional Engineer or Licensed  
30 Professional Geologist so stating.

31 (E) Unless the Agency takes action under  
32 subsection (b)(2)(C) to reclassify a site as high  
33 priority, upon receipt of a certification by a  
34 Licensed Professional Engineer or Licensed

1           Professional Geologist submitted pursuant to  
2 paragraph (2) of subsection (c) of this Section, the  
3 Agency shall issue to the owner or operator a no  
4 further remediation letter in accordance with  
5 Section 57.10.

6           (3) No Further Action Site.

7           (A) No Further Action sites require no  
8 remediation beyond that required in Section 57.6 and  
9 subsection (a) of this Section if the owner or  
10 operator has submitted to the Agency a certification  
11 by a Licensed Professional Engineer or License  
12 Professional Geologist that the site meets all of  
13 the criteria for classification as No Further Action  
14 in subsection (b) of this Section.

15           (B) Unless the Agency takes action to reject  
16 or modify a site classification under subsection (b)  
17 of this Section or the site classification is  
18 rejected by operation of law under item (4)(B) of  
19 subsection (c) of this Section, upon receipt of a  
20 certification by a Licensed Professional Engineer or  
21 Licensed Professional Geologist submitted pursuant  
22 to part (A) of paragraph (3) of subsection (c) of  
23 this Section, the Agency shall issue to the owner or  
24 operator a no further remediation letter in  
25 accordance with Section 57.10.

26           (4) Agency review and approval.

27           (A) Agency approval of any plan and associated  
28 budget, as described in this item (4), shall be  
29 considered final approval for purposes of seeking  
30 and obtaining payment from the Underground Storage  
31 Tank Fund if the costs associated with the  
32 completion of any such plan are less than or equal  
33 to the amounts approved in such budget.

34           (B) In the event the Agency fails to approve,

1 disapprove, or modify any plan or report submitted  
2 pursuant to this Title in writing within 120 days of  
3 the receipt by the Agency, the plan or report shall  
4 be considered to be rejected by operation of law for  
5 purposes of this Title and rejected for purposes of  
6 payment from the Leaking Underground Storage Tank  
7 Fund.

8 (i) For purposes of those plans as  
9 identified in subparagraph (E) of this  
10 subsection (c)(4), the Agency's review may be  
11 an audit procedure. Such review or audit shall  
12 be consistent with the procedure for such  
13 review or audit as promulgated by the Board  
14 under item (7) of subsection (b) of Section  
15 57.14. The Agency has the authority to  
16 establish an auditing program to verify  
17 compliance of such plans with the provisions of  
18 this Title.

19 (ii) For purposes of those plans  
20 submitted pursuant to Part (E) (iii) of this  
21 paragraph (4) for which payment from the Fund  
22 is not being sought, the Agency need not take  
23 action on such plan until 120 days after it  
24 receives the corrective action completion  
25 report required under Section 57(c)(1)(D). In  
26 the event the Agency approved the plan, it  
27 shall proceed under the provisions of Section  
28 57(c)(4).

29 (C) In approving any plan submitted pursuant  
30 to Part (E) of this paragraph (4), the Agency shall  
31 determine, by a procedure promulgated by the Board  
32 under item (7) of subsection (b) of Section 57.14,  
33 that the costs associated with the plan are  
34 reasonable, will be incurred in the performance of

1 corrective action, and will not be used for  
2 corrective action activities in excess of those  
3 required to meet the minimum requirements of this  
4 title.

5 (D) For any plan or report received after the  
6 effective date of this amendatory Act of 1993, any  
7 action by the Agency to disapprove or modify a plan  
8 submitted pursuant to this Title shall be provided  
9 to the owner or operator in writing within 120 days  
10 of the receipt by the Agency or, in the case of a  
11 corrective action plan for which payment is not  
12 being sought, within 120 days of receipt of the  
13 corrective action completion report, and shall be  
14 accompanied by:

15 (i) an explanation of the Sections of  
16 this Act which may be violated if the plans  
17 were approved;

18 (ii) an explanation of the provisions of  
19 the regulations, promulgated under this Act,  
20 which may be violated if the plan were  
21 approved;

22 (iii) an explanation of the specific type  
23 of information, if any, which the Agency deems  
24 the applicant did not provide the Agency; and

25 (iv) a statement of specific reasons why  
26 the Act and the regulations might not be met if  
27 the plan were approved.

28 Any action by the Agency to disapprove or  
29 modify a plan or report or the rejection of any plan  
30 or report by operation of law shall be subject to  
31 appeal to the Board in accordance with the  
32 procedures of Section 40. If the owner or operator  
33 elects to incorporate modifications required by the  
34 Agency rather than appeal, an amended plan shall be



1 submitted to the Agency within 35 days of receipt of  
2 the Agency's written notification.

3 (E) For purposes of this Title, the term  
4 "plan" shall include:

5 (i) Any physical soil classification and  
6 groundwater investigation plan submitted  
7 pursuant to item (1)(A) of subsection (a) of  
8 this Section, or budget under item (2) of  
9 subsection (a) of this Section;

10 (ii) Any groundwater monitoring plan or  
11 budget submitted pursuant to subsection  
12 (c)(2)(B) of this Section;

13 (iii) Any corrective action plan  
14 submitted pursuant to subsection (c)(1)(A) of  
15 this Section; or

16 (iv) Any corrective action plan budget  
17 submitted pursuant to subsection (c)(1)(B) of  
18 this Section.

19 (d) For purposes of this Title, the term "indicator  
20 contaminant" shall mean, unless and until the Board  
21 promulgates regulations to the contrary, the following: (i)  
22 if an underground storage tank contains gasoline, the  
23 indicator parameter shall be BTEX and Benzene; (ii) if the  
24 tank contained petroleum products consisting of middle  
25 distillate or heavy ends, then the indicator parameter shall  
26 be determined by a scan of PNA's taken from the location  
27 where contamination is most likely to be present; and (iii)  
28 if the tank contained used oil, then the indicator  
29 contaminant shall be those chemical constituents which  
30 indicate the type of petroleum stored in an underground  
31 storage tank. All references in this Title to groundwater  
32 objectives shall mean Class I groundwater standards or  
33 objectives as applicable.

34 (e) (1) Notwithstanding the provisions of this Section,

1 an owner or operator may proceed to conduct physical soil  
2 classification, groundwater investigation, site  
3 classification or other corrective action prior to the  
4 submittal or approval of an otherwise required plan. If  
5 the owner or operator elects to so proceed, an applicable  
6 plan shall be filed with the Agency at any time. Such  
7 plan shall detail the steps taken to determine the type  
8 of corrective action which was necessary at the site  
9 along with the corrective action taken or to be taken, in  
10 addition to costs associated with activities to date and  
11 anticipated costs.

12 (2) Upon receipt of a plan submitted after  
13 activities have commenced at a site, the Agency shall  
14 proceed to review in the same manner as required under  
15 this Title. In the event the Agency disapproves all or  
16 part of the costs, the owner or operator may appeal such  
17 decision to the Board. The owner or operator shall not  
18 be eligible to be reimbursed for such disapproved costs  
19 unless and until the Board determines that such costs  
20 were eligible for payment.

21 (Source: P.A. 88-496; 88-668, eff. 9-16-94; 89-428, eff.  
22 1-1-96; 89-457, eff. 5-22-96.)

23 (415 ILCS 5/57.8)  
24 Sec. 57.8. Underground Storage Tank Fund; payment;  
25 options for State payment; deferred correction election to  
26 commence corrective action upon availability of funds. If an  
27 owner or operator is eligible to access the Underground  
28 Storage Tank Fund pursuant to an Office of State Fire Marshal  
29 eligibility/deductible final determination letter issued in  
30 accordance with Section 57.9, the owner or operator may  
31 submit a complete application for final or partial payment to  
32 the Agency for activities taken in response to a confirmed  
33 release. An owner or operator may submit a request for

1 partial or final payment regarding a site no more frequently  
2 than once every 90 days.

3 (a) Payment after completion of corrective action  
4 measures. The owner or operator may submit an application for  
5 payment for activities performed at a site after completion  
6 of the requirements of Sections 57.6 and 57.7, or after  
7 completion of any other required activities at the  
8 underground storage tank site.

9 (1) In the case of any approved plan and budget for  
10 which payment is being sought, the Agency shall make a  
11 payment determination within 120 days of receipt of the  
12 application. Such determination shall be considered a  
13 final decision. The Agency's review shall be limited to  
14 generally accepted auditing and accounting practices. In  
15 no case shall the Agency conduct additional review of any  
16 plan which was completed within the budget, beyond  
17 auditing for adherence to the corrective action measures  
18 in the proposal. If the Agency fails to approve the  
19 payment application within 120 days, such application  
20 shall be deemed approved by operation of law and the  
21 Agency shall proceed to reimburse the owner or operator  
22 the amount requested in the payment application.  
23 However, in no event shall the Agency reimburse the owner  
24 or operator an amount greater than the amount approved in  
25 the plan.

26 (2) If sufficient funds are available in the  
27 Underground Storage Tank Fund, the Agency shall, within  
28 60 days, forward to the Office of the State Comptroller a  
29 voucher in the amount approved under the payment  
30 application.

31 (3) In the case of insufficient funds, the Agency  
32 shall form a priority list for payment and shall notify  
33 persons in such priority list monthly of the availability  
34 of funds and when payment shall be made. Payment shall

1 be made to the owner or operator at such time as  
2 sufficient funds become available for the costs  
3 associated with corrective action and costs expended for  
4 activities performed where no proposal is required, if  
5 applicable. Such priority list shall be available to any  
6 owner or operator upon request. Priority for payment  
7 shall be determined by the date the Agency receives a  
8 complete request for partial or final payment. Upon  
9 receipt of notification from the Agency that the  
10 requirements of this Title have been met, the Comptroller  
11 shall make payment to the owner or operator of the amount  
12 approved by the Agency, if sufficient money exists in the  
13 Fund. If there is insufficient money in the Fund, then  
14 payment shall not be made. If the owner or operator  
15 appeals a final Agency payment determination and it is  
16 determined that the owner or operator is eligible for  
17 payment or additional payment, the priority date for the  
18 payment or additional payment shall be the same as the  
19 priority date assigned to the original request for  
20 partial or final payment.

21 (4) Any deductible, as determined pursuant to the  
22 Office of the State Fire Marshal's eligibility and  
23 deductibility final determination in accordance with  
24 Section 57.9, shall be subtracted from any payment  
25 invoice paid to an eligible owner or operator. Only one  
26 deductible shall apply per underground storage tank site.

27 (5) In the event that costs are or will be incurred  
28 in addition to those approved by the Agency, or after  
29 payment, the owner or operator may submit successive  
30 plans containing amended budgets. The requirements of  
31 Section 57.7 shall apply to any amended plans.

32 (6) For purposes of this Section, a complete  
33 application shall consist of:

34 (A) A certification from a Licensed

1 Professional Engineer or Licensed Professional  
2 Geologist as required under this Title and  
3 acknowledged by the owner or operator.

4 (B) A statement of the amount approved in the  
5 plan and the amount actually sought for payment  
6 along with a certified statement that the amount so  
7 sought shall be expended in conformance with the  
8 approved budget.

9 (C) A copy of the Office of the State Fire  
10 Marshal's eligibility and deductibility  
11 determination.

12 (D) Proof that approval of the payment  
13 requested will not result in the limitations set  
14 forth in subsection (g) of this Section being  
15 exceeded.

16 (E) A federal taxpayer identification number  
17 and legal status disclosure certification on a form  
18 prescribed and provided by the Agency.

19 (b) Commencement of corrective action upon availability  
20 of funds. The Board shall adopt regulations setting forth  
21 procedures based on risk to human health or the environment  
22 under which the owner or operator who has received approval  
23 for any budget plan submitted pursuant to Section 57.7, and  
24 who is eligible for payment from the Underground Storage Tank  
25 Fund pursuant to an Office of the State Fire Marshal  
26 eligibility and deductibility determination, may elect to  
27 defer site classification, low priority groundwater  
28 monitoring, or remediation activities until funds are  
29 available in an amount equal to the amount approved in the  
30 budget plan. The regulations shall establish criteria based  
31 on risk to human health or the environment to be used for  
32 determining on a site-by-site basis whether deferral is  
33 appropriate. The regulations also shall establish the  
34 minimum investigatory requirements for determining whether

1 the risk based criteria are present at a site considering  
 2 deferral and procedures for the notification of owners or  
 3 operators of insufficient funds, Agency review of request for  
 4 deferral, notification of Agency final decisions, returning  
 5 deferred sites to active status, and earmarking of funds for  
 6 payment.

7 (c) When the owner or operator requests indemnification  
 8 for payment of costs incurred as a result of a release of  
 9 petroleum from an underground storage tank, if the owner or  
 10 operator has satisfied the requirements of subsection (a) of  
 11 this Section, the Agency shall forward a copy of the request  
 12 to the Attorney General. The Attorney General shall review  
 13 and approve the request for indemnification if:

14 (1) there is a legally enforceable judgment entered  
 15 against the owner or operator and such judgment was  
 16 entered due to harm caused by a release of petroleum from  
 17 an underground storage tank and such judgment was not  
 18 entered as a result of fraud; or

19 (2) a settlement with a third party due to a  
 20 release of petroleum from an underground storage tank is  
 21 reasonable.

22 (d) Notwithstanding any other provision of this Title,  
 23 the Agency shall not approve payment to an owner or operator  
 24 from the Fund for costs of corrective action or  
 25 indemnification incurred during a calendar year in excess of  
 26 the following aggregate amounts based on the number of  
 27 petroleum underground storage tanks owned or operated by such  
 28 owner or operator in Illinois.

Amount	Number of Tanks
\$1,000,000.....	fewer than 101
\$2,000,000.....	101 or more

32 (1) Costs incurred in excess of the aggregate  
 33 amounts set forth in paragraph (1) of this subsection  
 34 shall not be eligible for payment in subsequent years.

1           (2) For purposes of this subsection, requests  
 2 submitted by any of the agencies, departments, boards,  
 3 committees or commissions of the State of Illinois shall  
 4 be acted upon as claims from a single owner or operator.

5           (3) For purposes of this subsection, owner or  
 6 operator includes (i) any subsidiary, parent, or joint  
 7 stock company of the owner or operator and (ii) any  
 8 company owned by any parent, subsidiary, or joint stock  
 9 company of the owner or operator.

10          (e) Costs of corrective action or indemnification  
 11 incurred by an owner or operator which have been paid to an  
 12 owner or operator under a policy of insurance, another  
 13 written agreement, or a court order are not eligible for  
 14 payment under this Section. An owner or operator who  
 15 receives payment under a policy of insurance, another written  
 16 agreement, or a court order shall reimburse the State to the  
 17 extent such payment covers costs for which payment was  
 18 received from the Fund. Any monies received by the State  
 19 under this subsection (e) shall be deposited into the Fund.

20          (f) Until the Board adopts regulations pursuant to  
 21 Section 57.14, handling charges are eligible for payment only  
 22 if they are equal to or less than the amount determined by  
 23 the following table:

Subcontract or field	Eligible Handling Charges
Purchase Cost	as a Percentage of Cost
\$0 - \$5,000.....	12%
\$5,001 - \$15,000.....	\$600+10% of amt. over \$5,000
\$15,001 - \$50,000.....	\$1600+8% of amt. over \$15,000
\$50,001 - \$100,000.....	\$4400+5% of amt. over \$50,000
\$100,001 - \$1,000,000.....	\$6900+2% of amt. over \$100,000

31          (g) The Agency shall not approve any payment from the  
 32 Fund to pay an owner or operator:

33           (1) for costs of corrective action incurred by such  
 34 owner or operator in an amount in excess of \$1,000,000

1 per occurrence; and

2 (2) for costs of indemnification of such owner or  
3 operator in an amount in excess of \$1,000,000 per  
4 occurrence.

5 (h) Payment of any amount from the Fund for corrective  
6 action or indemnification shall be subject to the State  
7 acquiring by subrogation the rights of any owner, operator,  
8 or other person to recover the costs of corrective action or  
9 indemnification for which the Fund has compensated such  
10 owner, operator, or person from the person responsible or  
11 liable for the release.

12 (i) If the Agency refuses to pay or authorizes only a  
13 partial payment, the affected owner or operator may petition  
14 the Board for a hearing in the manner provided for the review  
15 of permit decisions in Section 40 of this Act.

16 (j) Costs of corrective action or indemnification  
17 incurred by an owner or operator prior to July 28, 1989,  
18 shall not be eligible for payment or reimbursement under this  
19 Section.

20 (k) The Agency shall not pay costs of corrective action  
21 or indemnification incurred before providing notification of  
22 the release of petroleum in accordance with the provisions of  
23 this Title.

24 (l) Corrective action does not include legal defense  
25 costs. Legal defense costs include legal costs for seeking  
26 payment under this Title unless the owner or operator  
27 prevails before the Board in which case the Board may  
28 authorize payment of legal fees.

29 (m) The Agency may apportion payment of costs for plans  
30 submitted under Section 57.7(c)(4)(E)(iii) if:

31 (1) the owner or operator was deemed eligible to  
32 access the Fund for payment of corrective action costs  
33 for some, but not all, of the underground storage tanks  
34 at the site; and



1           (2) the owner or operator failed to justify all  
2 costs attributable to each underground storage tank at  
3 the site.

4 (Source: P.A. 91-357, eff. 7-29-99.)

5 (415 ILCS 5/57.10)

6 Sec. 57.10. Professional Engineer or Professional  
7 Geologist certification; presumptions against liability.

8 (a) Within 120 days of the Agency's receipt of a No  
9 Further Action site classification report, a Low Priority  
10 groundwater monitoring report, or a High Priority corrective  
11 action completion report, the Agency shall issue to the owner  
12 or operator a "no further remediation letter" unless the  
13 Agency has requested a modification, issued a rejection under  
14 subsection (d) of this Section, or the report has been  
15 rejected by operation of law.

16 (b) By certifying such a statement, a Licensed  
17 Professional Engineer or Licensed Professional Geologist  
18 shall in no way be liable thereon, unless the engineer or  
19 geologist gave such certification despite his or her actual  
20 knowledge that the performed measures were not in compliance  
21 with applicable statutory or regulatory requirements or any  
22 plan submitted to the Agency.

23 (c) The Agency's issuance of a no further remediation  
24 letter shall signify, based on the certification of the  
25 Licensed Professional Engineer or Licensed Professional  
26 Geologist, that:

27 (1) all statutory and regulatory corrective  
28 action requirements applicable to the occurrence have  
29 been complied with;

30 (2) all corrective action concerning the  
31 remediation of the occurrence has been completed; and

32 (3) no further corrective action concerning the  
33 occurrence is necessary for the protection of human

1 health, safety and the environment.

2 (d) The no further remediation letter issued under this  
3 Section shall apply in favor of the following parties:

4 (1) The owner or operator to whom the letter was  
5 issued.

6 (2) Any parent corporation or subsidiary of such  
7 owner or operator.

8 (3) Any co-owner or co-operator, either by joint  
9 tenancy, right-of-survivorship, or any other party  
10 sharing a legal relationship with the owner or operator  
11 to whom the letter is issued.

12 (4) Any holder of a beneficial interest of a land  
13 trust or inter vivos trust whether revocable or  
14 irrevocable.

15 (5) Any mortgagee or trustee of a deed of trust of  
16 such owner or operator.

17 (6) Any successor-in-interest of such owner or  
18 operator.

19 (7) Any transferee of such owner or operator  
20 whether the transfer was by sale, bankruptcy proceeding,  
21 partition, dissolution of marriage, settlement or  
22 adjudication of any civil action, charitable gift, or  
23 bequest.

24 (8) Any heir or devisee or such owner or operator.

25 (e) If the Agency notifies the owner or operator that  
26 the "no further remediation" letter has been rejected, the  
27 grounds for such rejection shall be described in the notice.  
28 Such a decision shall be a final determination which may be  
29 appealed by the owner or operator.

30 (f) The Board shall adopt rules setting forth the  
31 criteria under which the Agency may require an owner or  
32 operator to conduct further investigation or remediation  
33 related to a release for which a no further remediation  
34 letter has been issued.

1 (g) Holders of security interests in sites subject to  
2 the requirements of this Title XVI shall be entitled to the  
3 same protections and subject to the same responsibilities  
4 provided under general regulations promulgated under Subtitle  
5 I of the Hazardous and Solid Waste Amendments of 1984 (P.L.  
6 98-616) of the Resource Conservation and Recovery Act of 1976  
7 (P.L. 94-580).  
8 (Source: P.A. 88-496; 89-428, eff. 1-1-96; 89-457, eff.  
9 5-22-96.)

10 (415 ILCS 5/58.2)

11 Sec. 58.2. Definitions. The following words and phrases  
12 when used in this Title shall have the meanings given to them  
13 in this Section unless the context clearly indicates  
14 otherwise:

15 "Agrichemical facility" means a site on which  
16 agricultural pesticides are stored or handled, or both, in  
17 preparation for end use, or distributed. The term does not  
18 include basic manufacturing facility sites.

19 "ASTM" means the American Society for Testing and  
20 Materials.

21 "Area background" means concentrations of regulated  
22 substances that are consistently present in the environment  
23 in the vicinity of a site that are the result of natural  
24 conditions or human activities, and not the result solely of  
25 releases at the site.

26 "Brownfields site" or "brownfields" means a parcel of  
27 real property, or a portion of the parcel, that has actual or  
28 perceived contamination and an active potential for  
29 redevelopment.

30 "Class I groundwater" means groundwater that meets the  
31 Class I Potable Resource groundwater criteria set forth in  
32 the Board rules adopted under the Illinois Groundwater  
33 Protection Act.

1 "Class III groundwater" means groundwater that meets the  
2 Class III Special Resource Groundwater criteria set forth in  
3 the Board rules adopted under the Illinois Groundwater  
4 Protection Act.

5 "Carcinogen" means a contaminant that is classified as a  
6 Category A1 or A2 Carcinogen by the American Conference of  
7 Governmental Industrial Hygienists; or a Category 1 or 2A/2B  
8 Carcinogen by the World Health Organizations International  
9 Agency for Research on Cancer; or a "Human Carcinogen" or  
10 "Anticipated Human Carcinogen" by the United States  
11 Department of Health and Human Service National Toxicological  
12 Program; or a Category A or B1/B2 Carcinogen by the United  
13 States Environmental Protection Agency in Integrated Risk  
14 Information System or a Final Rule issued in a Federal  
15 Register notice by the USEPA as of the effective date of this  
16 amendatory Act of 1995.

17 "Licensed Professional Engineer" (LPE) means a person,  
18 corporation, or partnership licensed under the laws of this  
19 State to practice professional engineering.

20 "Licensed Professional Geologist" means a person licensed  
21 under the laws of the State of Illinois to practice as a  
22 professional geologist.

23 "RELPEG" means a Licensed Professional Engineer or a  
24 Licensed Professional Geologist engaged in review and  
25 evaluation under this Title.

26 "Man-made pathway" means constructed routes that may  
27 allow for the transport of regulated substances including,  
28 but not limited to, sewers, utility lines, utility vaults,  
29 building foundations, basements, crawl spaces, drainage  
30 ditches, or previously excavated and filled areas.

31 "Municipality" means an incorporated city, village, or  
32 town in this State. "Municipality" does not mean a township,  
33 town when that term is used as the equivalent of a township,  
34 incorporated town that has superseded a civil township,

1 county, or school district, park district, sanitary district,  
2 or similar governmental district.

3 "Natural pathway" means natural routes for the transport  
4 of regulated substances including, but not limited to, soil,  
5 groundwater, sand seams and lenses, and gravel seams and  
6 lenses.

7 "Person" means individual, trust, firm, joint stock  
8 company, joint venture, consortium, commercial entity,  
9 corporation (including a government corporation),  
10 partnership, association, State, municipality, commission,  
11 political subdivision of a State, or any interstate body  
12 including the United States Government and each department,  
13 agency, and instrumentality of the United States.

14 "Regulated substance" means any hazardous substance as  
15 defined under Section 101(14) of the Comprehensive  
16 Environmental Response, Compensation, and Liability Act of  
17 1980 (P.L. 96-510) and petroleum products including crude oil  
18 or any fraction thereof, natural gas, natural gas liquids,  
19 liquefied natural gas, or synthetic gas usable for fuel (or  
20 mixtures of natural gas and such synthetic gas).

21 "Remedial action" means activities associated with  
22 compliance with the provisions of Sections 58.6 and 58.7.

23 "Remediation Applicant" (RA) means any person seeking to  
24 perform or performing investigative or remedial activities  
25 under this Title, including the owner or operator of the site  
26 or persons authorized by law or consent to act on behalf of  
27 or in lieu of the owner or operator of the site.

28 "Remediation costs" means reasonable costs paid for  
29 investigating and remediating regulated substances of concern  
30 consistent with the remedy selected for a site. For purposes  
31 of Section 58.14, "remediation costs" shall not include costs  
32 incurred prior to January 1, 1998, costs incurred after the  
33 issuance of a No Further Remediation Letter under Section  
34 58.10 of this Act, or costs incurred more than 12 months

1 prior to acceptance into the Site Remediation Program.

2 "Residential property" means any real property that is  
3 used for habitation by individuals and other property uses  
4 defined by Board rules such as education, health care, child  
5 care and related uses.

6 "Site" means any single location, place, tract of land or  
7 parcel of property, or portion thereof, including contiguous  
8 property separated by a public right-of-way.

9 "Regulated substance of concern" means any contaminant  
10 that is expected to be present at the site based upon past  
11 and current land uses and associated releases that are known  
12 to the Remediation Applicant based upon reasonable inquiry.

13 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96;  
14 90-123, eff. 7-21-97.)

15 (415 ILCS 5/58.6)

16 Sec. 58.6. Remedial investigations and reports.

17 (a) Any RA who proceeds under this Title may elect to  
18 seek review and approval for any of the remediation  
19 objectives provided in Section 58.5 for any or all regulated  
20 substances of concern. The RA shall conduct investigations  
21 and remedial activities for regulated substances of concern  
22 and prepare plans and reports in accordance with this Section  
23 and rules adopted hereunder. The RA shall submit the plans  
24 and reports for review and approval in accordance with  
25 Section 58.7. All investigations, plans, and reports  
26 conducted or prepared under this Section shall be under the  
27 supervision of a Licensed Professional Engineer (LPE) or  
28 Licensed Professional Geologist in accordance with the  
29 requirements of this Title.

30 (b) (1) Site investigation and Site Investigation  
31 Report. The RA shall conduct a site investigation to  
32 determine the significant physical features of the site  
33 and vicinity that may affect contaminant transport and

1 risk to human health, safety, and the environment and to  
2 determine the nature, concentration, direction and rate  
3 of movement, and extent of the contamination at the site.

4 (2) The RA shall compile the results of the  
5 investigations into a Site Investigation Report. At a  
6 minimum, the reports shall include the following, as  
7 applicable:

8 (A) Executive summary;

9 (B) Site history;

10 (C) Site-specific sampling methods and  
11 results;

12 (D) Documentation of field activities,  
13 including quality assurance project plan;

14 (E) Interpretation of results; and

15 (F) Conclusions.

16 (c) Remediation Objectives Report.

17 (1) If a RA elects to determine remediation  
18 objectives appropriate for the site using the Tier II or  
19 Tier III procedures under subsection (d) of Section  
20 58.5, the RA shall develop such remediation objectives  
21 based on site-specific information. In support of such  
22 remediation objectives, the RA shall prepare a  
23 Remediation Objectives Report demonstrating how the  
24 site-specific objectives were calculated or otherwise  
25 determined.

26 (2) If a RA elects to determine remediation  
27 objectives appropriate for the site using the area  
28 background procedures under subsection (b) of Section  
29 58.5, the RA shall develop such remediation objectives  
30 based on site-specific literature review, sampling  
31 protocol, or appropriate statistical methods in  
32 accordance with Board rules. In support of such  
33 remediation objectives, the RA shall prepare a  
34 Remediation Objectives Report demonstrating how the area

1 background remediation objectives were determined.

2 (d) Remedial Action Plan. If the approved remediation  
3 objectives for any regulated substance established under  
4 Section 58.5 are less than the levels existing at the site  
5 prior to any remedial action, the RA shall prepare a Remedial  
6 Action Plan. The Remedial Action Plan shall describe the  
7 selected remedy and evaluate its ability and effectiveness to  
8 achieve the remediation objectives approved for the site. At  
9 a minimum, the reports shall include the following, as  
10 applicable:

- 11 (1) Executive summary;
- 12 (2) Statement of remediation objectives;
- 13 (3) Remedial technologies selected;
- 14 (4) Confirmation sampling plan;
- 15 (5) Current and projected future use of the  
16 property; and
- 17 (6) Applicable preventive, engineering, and  
18 institutional controls including long-term reliability,  
19 operating, and maintenance plans, and monitoring  
20 procedures.

21 (e) Remedial Action Completion Report.

22 (1) Upon completion of the Remedial Action Plan,  
23 the RA shall prepare a Remedial Action Completion Report.  
24 The report shall demonstrate whether the remedial action  
25 was completed in accordance with the approved Remedial  
26 Action Plan and whether the remediation objectives, as  
27 well as any other requirements of the plan, have been  
28 attained.

29 (2) If the approved remediation objectives for the  
30 regulated substances of concern established under Section  
31 58.5 are equal to or above the levels existing at the  
32 site prior to any remedial action, notification and  
33 documentation of such shall constitute the entire  
34 Remedial Action Completion Report for purposes of this



1 Title.

2 (f) Ability to proceed. The RA may elect to prepare and  
3 submit for review and approval any and all reports or plans  
4 required under the provisions of this Section individually,  
5 following completion of each such activity; concurrently,  
6 following completion of all activities; or in any other  
7 combination. In any event, the review and approval process  
8 shall proceed in accordance with Section 58.7 and rules  
9 adopted thereunder.

10 (g) Nothing in this Section shall prevent an RA from  
11 implementing or conducting an interim or any other remedial  
12 measure prior to election to proceed under Section 58.6.

13 (h) In accordance with Section 58.11, the Agency shall  
14 propose and the Board shall adopt rules to carry out the  
15 purposes of this Section.

16 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96.)

17 (415 ILCS 5/58.7)

18 Sec. 58.7. Review and approvals.

19 (a) Requirements. All plans and reports that are  
20 submitted pursuant to this Title shall be submitted for  
21 review or approval in accordance with this Section.

22 (b) Review and evaluation by the Agency.

23 (1) Except for sites excluded under subdivision (a)  
24 (2) of Section 58.1, the Agency shall, subject to  
25 available resources, agree to provide review and  
26 evaluation services for activities carried out pursuant  
27 to this Title for which the RA requested the services in  
28 writing. As a condition for providing such services, the  
29 Agency may require that the RA for a site:

30 (A) Conform with the procedures of this Title;

31 (B) Allow for or otherwise arrange site visits  
32 or other site evaluation by the Agency when so  
33 requested;

1 (C) Agree to perform the work plan as approved  
2 under this Title;

3 (D) Agree to pay any reasonable costs incurred  
4 and documented by the Agency in providing such  
5 services;

6 (E) Make an advance partial payment to the  
7 Agency for such anticipated services in an amount,  
8 acceptable to the Agency, but not to exceed \$5,000  
9 or one-half of the total anticipated costs of the  
10 Agency, whichever sum is less; and

11 (F) Demonstrate, if necessary, authority to  
12 act on behalf of or in lieu of the owner or  
13 operator.

14 (2) Any moneys received by the State for costs  
15 incurred by the Agency in performing review or evaluation  
16 services for actions conducted pursuant to this Title  
17 shall be deposited in the Hazardous Waste Fund.

18 (3) An RA requesting services under subdivision (b)  
19 (1) of this Section may, at any time, notify the Agency,  
20 in writing, that Agency services previously requested are  
21 no longer wanted. Within 180 days after receipt of the  
22 notice, the Agency shall provide the RA with a final  
23 invoice for services provided until the date of such  
24 notifications.

25 (4) The Agency may invoice or otherwise request or  
26 demand payment from a RA for costs incurred by the Agency  
27 in performing review or evaluation services for actions  
28 by the RA at sites only if:

29 (A) The Agency has incurred costs in  
30 performing response actions, other than review or  
31 evaluation services, due to the failure of the RA to  
32 take response action in accordance with a notice  
33 issued pursuant to this Act;

34 (B) The RA has agreed in writing to the

1 payment of such costs;

2 (C) The RA has been ordered to pay such costs  
3 by the Board or a court of competent jurisdiction  
4 pursuant to this Act; or

5 (D) The RA has requested or has consented to  
6 Agency review or evaluation services under  
7 subdivision (b) (1) of this Section.

8 (5) The Agency may, subject to available resources,  
9 agree to provide review and evaluation services for  
10 response actions if there is a written agreement among  
11 parties to a legal action or if a notice to perform a  
12 response action has been issued by the Agency.

13 (c) Review and evaluation by a Licensed Professional  
14 Engineer or Licensed Professional Geologist. A RA may elect  
15 to contract with a Licensed Professional Engineer or Licensed  
16 Professional Geologist who will perform review and evaluation  
17 services on behalf of and under the direction of the Agency  
18 relative to the site activities.

19 (1) Prior to entering into the contract with the  
20 RELPEG Review---and--Evaluation--Licensed--Professional  
21 Engineer-(REBPE), the RA shall notify the Agency of the  
22 RELPEG REBPE to be selected. The Agency and the RA shall  
23 discuss the potential terms of the contract.

24 (2) At a minimum, the contract with the RELPEG  
25 REBPE shall provide that the RELPEG REBPE will submit  
26 any reports directly to the Agency, will take his or her  
27 directions for work assignments from the Agency, and will  
28 perform the assigned work on behalf of the Agency.

29 (3) Reasonable costs incurred by the Agency shall  
30 be paid by the RA directly to the Agency in accordance  
31 with the terms of the review and evaluation services  
32 agreement entered into under subdivision (b) (1) of  
33 Section 58.7.

34 (4) In no event shall the RELPEG REBPE acting on

1           behalf of the Agency be an employee of the RA or the  
2           owner or operator of the site or be an employee of any  
3           other person the RA has contracted to provide services  
4           relative to the site.

5           (d) Review and approval. All reviews required under  
6           this Title shall be carried out by the Agency or a RELPEG  
7           RELPE, both under the direction of a Licensed Professional  
8           Engineer or Licensed Professional Geologist.

9           (1) All review activities conducted by the Agency  
10          or a RELPEG RELPE shall be carried out in conformance  
11          with this Title and rules promulgated under Section  
12          58.11.

13          (2) Specific plans, reports, and activities which  
14          the Agency or a RELPEG RELPE may review include:

15                 (A) Site Investigation Reports and related  
16                 activities;

17                 (B) Remediation Objectives Reports;

18                 (C) Remedial Action Plans and related  
19                 activities; and

20                 (D) Remedial Action Completion Reports and  
21                 related activities.

22          (3) Only the Agency shall have the authority to  
23          approve, disapprove, or approve with conditions a plan  
24          or report as a result of the review process including  
25          those plans and reports reviewed by a RELPEG RELPE. If  
26          the Agency disapproves a plan or report or approves a  
27          plan or report with conditions, the written notification  
28          required by subdivision (d) (4) of this Section shall  
29          contain the following information, as applicable:

30                 (A) An explanation of the Sections of this  
31                 Title that may be violated if the plan or report was  
32                 approved;

33                 (B) An explanation of the provisions of the  
34                 rules promulgated under this Title that may be

1 violated if the plan or report was approved;

2 (C) An explanation of the specific type of  
3 information, if any, that the Agency deems the  
4 applicant did not provide the Agency;

5 (D) A statement of specific reasons why the  
6 Title and regulations might not be met if the plan  
7 or report were approved; and

8 (E) An explanation of the reasons for  
9 conditions if conditions are required.

10 (4) Upon approving, disapproving, or approving with  
11 conditions a plan or report, the Agency shall notify the  
12 RA in writing of its decision. In the case of approval  
13 or approval with conditions of a Remedial Action  
14 Completion Report, the Agency shall prepare a No Further  
15 Remediation Letter that meets the requirements of Section  
16 58.10 and send a copy of the letter to the RA.

17 (5) All reviews undertaken by the Agency or a  
18 RELPEG RELPE shall be completed and the decisions  
19 communicated to the RA within 60 days of the request for  
20 review or approval. The RA may waive the deadline upon a  
21 request from the Agency. If the Agency disapproves or  
22 approves with conditions a plan or report or fails to  
23 issue a final decision within the 60 day period and the  
24 RA has not agreed to a waiver of the deadline, the RA  
25 may, within 35 days, file an appeal to the Board.  
26 Appeals to the Board shall be in the manner provided for  
27 the review of permit decisions in Section 40 of this Act.

28 (e) Standard of review. In making determinations, the  
29 following factors, and additional factors as may be adopted  
30 by the Board in accordance with Section 58.11, shall be  
31 considered by the Agency when reviewing or approving plans,  
32 reports, and related activities, or the RELPEG RELPE, when  
33 reviewing plans, reports, and related activities:

34 (1) Site Investigation Reports and related

1 activities: Whether investigations have been conducted  
2 and the results compiled in accordance with the  
3 appropriate procedures and whether the interpretations  
4 and conclusions reached are supported by the information  
5 gathered. In making the determination, the following  
6 factors shall be considered:

7 (A) The adequacy of the description of the  
8 site and site characteristics that were used to  
9 evaluate the site;

10 (B) The adequacy of the investigation of  
11 potential pathways and risks to receptors identified  
12 at the site; and

13 (C) The appropriateness of the sampling and  
14 analysis used.

15 (2) Remediation Objectives Reports: Whether the  
16 remediation objectives are consistent with the  
17 requirements of the applicable method for selecting or  
18 determining remediation objectives under Section 58.5.  
19 In making the determination, the following factors shall  
20 be considered:

21 (A) If the objectives were based on the  
22 determination of area background levels under  
23 subsection (b) of Section 58.5, whether the review  
24 of current and historic conditions at or in the  
25 immediate vicinity of the site has been thorough and  
26 whether the site sampling and analysis has been  
27 performed in a manner resulting in accurate  
28 determinations;

29 (B) If the objectives were calculated on the  
30 basis of predetermined equations using site specific  
31 data, whether the calculations were accurately  
32 performed and whether the site specific data reflect  
33 actual site conditions; and

34 (C) If the objectives were determined using a

1 site specific risk assessment procedure, whether the  
2 procedure used is nationally recognized and  
3 accepted, whether the calculations were accurately  
4 performed, and whether the site specific data  
5 reflect actual site conditions.

6 (3) Remedial Action Plans and related activities:  
7 Whether the plan will result in compliance with this  
8 Title, and rules adopted under it and attainment of the  
9 applicable remediation objectives. In making the  
10 determination, the following factors shall be considered:

11 (A) The likelihood that the plan will result  
12 in the attainment of the applicable remediation  
13 objectives;

14 (B) Whether the activities proposed are  
15 consistent with generally accepted engineering and  
16 geologic practices; and

17 (C) The management of risk relative to any  
18 remaining contamination, including but not limited  
19 to, provisions for the long-term enforcement,  
20 operation, and maintenance of institutional and  
21 engineering controls, if relied on.

22 (4) Remedial Action Completion Reports and related  
23 activities: Whether the remedial activities have been  
24 completed in accordance with the approved Remedial Action  
25 Plan and whether the applicable remediation objectives  
26 have been attained.

27 (f) All plans and reports submitted for review shall  
28 include a Licensed Professional Engineer's or Licensed  
29 Professional Geologist's certification that all  
30 investigations and remedial activities were carried out  
31 under his or her direction and, to the best of his or her  
32 knowledge and belief, the work described in the plan or  
33 report has been completed in accordance with generally  
34 accepted engineering and geologic practices, and the

1 information presented is accurate and complete.

2 (g) In accordance with Section 58.11, the Agency shall  
3 propose and the Board shall adopt rules to carry out the  
4 purposes of this Section. At a minimum, the rules shall  
5 detail the types of services the Agency may provide in  
6 response to requests under subdivision (b) (1) of this  
7 Section and the recordkeeping it will utilize in documenting  
8 to the RA the costs incurred by the Agency in providing such  
9 services. Until the Board adopts the rules, the Agency may  
10 continue to offer services of the type offered under  
11 subsections (m) and (n) of Section 22.2 of this Act prior to  
12 their repeal.

13 (h) Public participation.

14 (1) The Agency shall develop guidance to assist  
15 RA's in the implementation of a community relations plan  
16 to address activity at sites undergoing remedial action  
17 pursuant to this Title.

18 (2) The RA may elect to enter into a services  
19 agreement with the Agency for Agency assistance in  
20 community outreach efforts.

21 (3) The Agency shall maintain a registry listing  
22 those sites undergoing remedial action pursuant to this  
23 Title.

24 (4) Notwithstanding any provisions of this Section,  
25 the RA of a site undergoing remedial activity pursuant to  
26 this Title may elect to initiate a community outreach  
27 effort for the site.

28 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96;  
29 89-626, eff. 8-9-96.)

30 (415 ILCS 5/58.11)

31 Sec. 58.11. Regulations and Site Remediation Advisory  
32 Committee.

33 (a) There is hereby established an 11-member ~~a 10-member~~



1 Site Remediation Advisory Committee, which shall be appointed  
2 by the Governor. The Committee shall include one member  
3 recommended by the Illinois State Chamber of Commerce, one  
4 member recommended by the Illinois Manufacturers'  
5 Association, one member recommended by the Chemical Industry  
6 Council of Illinois, one member recommended by the Consulting  
7 Engineers Council of Illinois, one member recommended by the  
8 Illinois Chapter of the American Institute of Professional  
9 Geologists, one member recommended by the Illinois Bankers  
10 Association, one member recommended by the Community Bankers  
11 Association of Illinois, one member recommended by the  
12 National Solid Waste Management Association, and 3 other  
13 members as determined by the Governor. Members of the  
14 Advisory Committee may organize themselves as they deem  
15 necessary and shall serve without compensation.

16 (b) The Committee shall:

17 (1) Review, evaluate, and make recommendations  
18 regarding State laws, rules, and procedures that relate  
19 to site remediations.

20 (2) Review, evaluate, and make recommendations  
21 regarding the review and approval activities of the  
22 Agency and Review and Evaluation Licensed Professional  
23 Engineers and Geologists.

24 (3) Make recommendations relating to the State's  
25 efforts to implement this Title.

26 (4) Review, evaluate, and make recommendations  
27 regarding the procedures for determining proportionate  
28 degree of responsibility for a release of regulated  
29 substances.

30 (5) Review, evaluate, and make recommendations  
31 regarding the reports prepared by the Agency in  
32 accordance with subsection (e) of this Section.

33 (c) Within 9 months after the effective date of this  
34 amendatory Act of 1995, the Agency, after consideration of

1 the recommendations of the Committee, shall propose rules  
2 prescribing procedures and standards for its administration  
3 of this Title. Within 9 months after receipt of the Agency's  
4 proposed rules, the Board shall adopt, pursuant to Sections  
5 27 and 28 of this Act, rules that are consistent with this  
6 Title, including classifications of land use and provisions  
7 for the avoidance of No Further Remediation Letters.

8 (d) Until such time as the rules required under this  
9 Section take effect, the Agency shall administer its  
10 activities under this Title in accordance with Agency  
11 procedures and applicable provisions of this Act.

12 (e) By July 1, 1997 and as deemed appropriate  
13 thereafter, the Agency shall prepare reports to the Governor  
14 and the General Assembly concerning the status of all sites  
15 for which the Agency has expended money from the Hazardous  
16 Waste Fund. The reports shall include specific information  
17 on the financial, technical, and cost recovery status of each  
18 site.

19 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96;  
20 89-626, eff. 8-9-96.)

21 Section 99. Effective date. This Act takes effect upon  
22 becoming law.