

1 AN ACT concerning environmental protection.

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 Section 39 as follows:

6 (415 ILCS 5/39) (from Ch. 111 1/2, par. 1039)

7 Sec. 39. Issuance of permits; procedures.

8 (a) When the Board has by regulation required a permit
9 for the construction, installation, or operation of any type
10 of facility, equipment, vehicle, vessel, or aircraft, the
11 applicant shall apply to the Agency for such permit and it
12 shall be the duty of the Agency to issue such a permit upon
13 proof by the applicant that the facility, equipment, vehicle,
14 vessel, or aircraft will not cause a violation of this Act or
15 of regulations hereunder. The Agency shall adopt such
16 procedures as are necessary to carry out its duties under
17 this Section. In granting permits the Agency may impose such
18 conditions as may be necessary to accomplish the purposes of
19 this Act, and as are not inconsistent with the regulations
20 promulgated by the Board hereunder. Except as otherwise
21 provided in this Act, a bond or other security shall not be
22 required as a condition for the issuance of a permit. If the
23 Agency denies any permit under this Section, the Agency shall
24 transmit to the applicant within the time limitations of this
25 Section specific, detailed statements as to the reasons the
26 permit application was denied. Such statements shall
27 include, but not be limited to the following:

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

30 (ii) the provision of the regulations, promulgated
31 under this Act, which may be violated if the permit were

1 granted;

2 (iii) the specific type of information, if any,
3 which the Agency deems the applicant did not provide the
4 Agency; and

5 (iv) a statement of specific reasons why the Act
6 and the regulations might not be met if the permit were
7 granted.

8 If there is no final action by the Agency within 90 days
9 after the filing of the application for permit, the applicant
10 may deem the permit issued; except that this time period
11 shall be extended to 180 days when (1) notice and
12 opportunity for public hearing are required by State or
13 federal law or regulation, (2) the application which was
14 filed is for any permit to develop a landfill subject to
15 issuance pursuant to this subsection, or (3) the application
16 that was filed is for a MSWLF unit required to issue public
17 notice under subsection (p) of Section 39.

18 The Agency shall publish notice of all final permit
19 determinations for development permits for MSWLF units and
20 for significant permit modifications for lateral expansions
21 for existing MSWLF units one time in a newspaper of general
22 circulation in the county in which the unit is or is proposed
23 to be located.

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

1 1994.

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

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

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

24 The Agency may issue general NPDES permits for discharges
25 from categories of point sources which are subject to the
26 same permit limitations and conditions. Such general permits
27 may be issued without individual applications and shall
28 conform to regulations promulgated under Section 402 of the
29 Federal Water Pollution Control Act, as now or hereafter
30 amended.

31 The Agency may include, among such conditions, effluent
32 limitations and other requirements established under this
33 Act, Board regulations, the Federal Water Pollution Control
34 Act, as now or hereafter amended, and regulations pursuant

1 thereto, and schedules for achieving compliance therewith at
2 the earliest reasonable date.

3 The Agency shall adopt filing requirements and procedures
4 which are necessary and appropriate for the issuance of NPDES
5 permits, and which are consistent with the Act or regulations
6 adopted by the Board, and with the Federal Water Pollution
7 Control Act, as now or hereafter amended, and regulations
8 pursuant thereto.

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

16 (c) Except for those facilities owned or operated by
17 sanitary districts organized under the Metropolitan Water
18 Reclamation District Act, no permit for the development or
19 construction of a new pollution control facility may be
20 granted by the Agency unless the applicant submits proof to
21 the Agency that the location of the facility has been
22 approved by the County Board of the county if in an
23 unincorporated area, or the governing body of the
24 municipality when in an incorporated area, in which the
25 facility is to be located in accordance with Section 39.2 of
26 this Act. However, if the location of the facility is in an
27 unincorporated area and within 2 miles of an adjacent county,
28 no permit may be granted by the Agency unless the applicant
29 submits proof to the Agency that the location of the facility
30 has also been approved by the county board of the adjacent
31 county.

32 In the event that siting approval granted pursuant to
33 Section 39.2 has been transferred to a subsequent owner or
34 operator, that subsequent owner or operator may apply to the

1 Agency for, and the Agency may grant, a development or
2 construction permit for the facility for which local siting
3 approval was granted. Upon application to the Agency for a
4 development or construction permit by that subsequent owner
5 or operator, the permit applicant shall cause written notice
6 of the permit application to be served upon the appropriate
7 county board or governing body of the municipality that
8 granted siting approval for that facility and upon any party
9 to the siting proceeding pursuant to which siting approval
10 was granted. In that event, the Agency shall conduct an
11 evaluation of the subsequent owner or operator's prior
12 experience in waste management operations in the manner
13 conducted under subsection (i) of Section 39 of this Act.

14 Beginning August 20, 1993, if the pollution control
15 facility consists of a hazardous or solid waste disposal
16 facility for which the proposed site is located in an
17 unincorporated area of a county with a population of less
18 than 100,000 and includes all or a portion of a parcel of
19 land that was, on April 1, 1993, adjacent to a municipality
20 having a population of less than 5,000, then the local siting
21 review required under this subsection (c) in conjunction with
22 any permit applied for after that date shall be performed by
23 the governing body of that adjacent municipality rather than
24 the county board of the county in which the proposed site is
25 located; and for the purposes of that local siting review,
26 any references in this Act to the county board shall be
27 deemed to mean the governing body of that adjacent
28 municipality; provided, however, that the provisions of this
29 paragraph shall not apply to any proposed site which was, on
30 April 1, 1993, owned in whole or in part by another
31 municipality.

32 In the case of a pollution control facility for which a
33 development permit was issued before November 12, 1981, if an
34 operating permit has not been issued by the Agency prior to

1 August 31, 1989 for any portion of the facility, then the
2 Agency may not issue or renew any development permit nor
3 issue an original operating permit for any portion of such
4 facility unless the applicant has submitted proof to the
5 Agency that the location of the facility has been approved by
6 the appropriate county board or municipal governing body
7 pursuant to Section 39.2 of this Act.

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

23 Except for those facilities owned or operated by sanitary
24 districts organized under the Metropolitan Water Reclamation
25 District Act, and except for new pollution control facilities
26 governed by Section 39.2, and except for fossil fuel mining
27 facilities, the granting of a permit under this Act shall not
28 relieve the applicant from meeting and securing all necessary
29 zoning approvals from the unit of government having zoning
30 jurisdiction over the proposed facility.

31 Before beginning construction on any new sewage treatment
32 plant or sludge drying site to be owned or operated by a
33 sanitary district organized under the Metropolitan Water
34 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
9 the 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
13 made:

14 (1) the municipal waste transfer station was in
15 existence on or before January 1, 1979 and was in
16 continuous operation from January 1, 1979 to January 1,
17 1993;

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

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

27 (4) the site has local zoning approval.

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

32 All RCRA permits shall contain those terms and
33 conditions, including but not limited to schedules of
34 compliance, which may be required to accomplish the purposes

1 and provisions of this Act. The Agency may include among
2 such conditions standards and other requirements established
3 under this Act, Board regulations, the Resource Conservation
4 and Recovery Act of 1976 (P.L. 94-580), as amended, and
5 regulations pursuant thereto, and may include schedules for
6 achieving compliance therewith as soon as possible. The
7 Agency shall require that a performance bond or other
8 security be provided as a condition for the issuance of a
9 RCRA permit.

10 In the case of a permit to operate a hazardous waste or
11 PCB incinerator as defined in subsection (k) of Section 44,
12 the Agency shall require, as a condition of the permit, that
13 the operator of the facility perform such analyses of the
14 waste to be incinerated as may be necessary and appropriate
15 to ensure the safe operation of the incinerator.

16 The Agency shall adopt filing requirements and procedures
17 which are necessary and appropriate for the issuance of RCRA
18 permits, and which are consistent with the Act or regulations
19 adopted by the Board, and with the Resource Conservation and
20 Recovery Act of 1976 (P.L. 94-580), as amended, and
21 regulations pursuant thereto.

22 The applicant shall make available to the public for
23 inspection all documents submitted by the applicant to the
24 Agency in furtherance of an application, with the exception
25 of trade secrets, at the office of the county board or
26 governing body of the municipality. Such documents may be
27 copied upon payment of the actual cost of reproduction during
28 regular business hours of the local office. The Agency shall
29 issue a written statement concurrent with its grant or denial
30 of the permit explaining the basis for its decision.

31 (e) The Agency may issue UIC permits exclusively under
32 this subsection to persons owning or operating a facility for
33 the underground injection of contaminants as defined under
34 this Act.

1 All UIC permits shall contain those terms and conditions,
2 including but not limited to schedules of compliance, which
3 may be required to accomplish the purposes and provisions of
4 this Act. The Agency may include among such conditions
5 standards and other requirements established under this Act,
6 Board regulations, the Safe Drinking Water Act (P.L. 93-523),
7 as amended, and regulations pursuant thereto, and may include
8 schedules for achieving compliance therewith. The Agency
9 shall require that a performance bond or other security be
10 provided as a condition for the issuance of a UIC permit.

11 The Agency shall adopt filing requirements and procedures
12 which are necessary and appropriate for the issuance of UIC
13 permits, and which are consistent with the Act or regulations
14 adopted by the Board, and with the Safe Drinking Water Act
15 (P.L. 93-523), as amended, and regulations pursuant thereto.

16 The applicant shall make available to the public for
17 inspection, all documents submitted by the applicant to the
18 Agency in furtherance of an application, with the exception
19 of trade secrets, at the office of the county board or
20 governing body of the municipality. Such documents may be
21 copied upon payment of the actual cost of reproduction during
22 regular business hours of the local office. The Agency shall
23 issue a written statement concurrent with its grant or denial
24 of the permit explaining the basis for its decision.

25 (f) In making any determination pursuant to Section 9.1
26 of this Act:

27 (1) The Agency shall have authority to make the
28 determination of any question required to be determined
29 by the Clean Air Act, as now or hereafter amended, this
30 Act, or the regulations of the Board, including the
31 determination of the Lowest Achievable Emission Rate,
32 Maximum Achievable Control Technology, or Best Available
33 Control Technology, consistent with the Board's
34 regulations, if any.

1 (2) The Agency shall, after conferring with the
2 applicant, give written notice to the applicant of its
3 proposed decision on the application including the terms
4 and conditions of the permit to be issued and the facts,
5 conduct or other basis upon which the Agency will rely to
6 support its proposed action.

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

11 (g) The Agency shall include as conditions upon all
12 permits issued for hazardous waste disposal sites such
13 restrictions upon the future use of such sites as are
14 reasonably necessary to protect public health and the
15 environment, including permanent prohibition of the use of
16 such sites for purposes which may create an unreasonable risk
17 of injury to human health or to the environment. After
18 administrative and judicial challenges to such restrictions
19 have been exhausted, the Agency shall file such restrictions
20 of record in the Office of the Recorder of the county in
21 which the hazardous waste disposal site is located.

22 (h) A hazardous waste stream may not be deposited in a
23 permitted hazardous waste site unless specific authorization
24 is obtained from the Agency by the generator and disposal
25 site owner and operator for the deposit of that specific
26 hazardous waste stream. The Agency may grant specific
27 authorization for disposal of hazardous waste streams only
28 after the generator has reasonably demonstrated that,
29 considering technological feasibility and economic
30 reasonableness, the hazardous waste cannot be reasonably
31 recycled for reuse, nor incinerated or chemically, physically
32 or biologically treated so as to neutralize the hazardous
33 waste and render it nonhazardous. In granting authorization
34 under this Section, the Agency may impose such conditions as

1 may be necessary to accomplish the purposes of the Act and
2 are consistent with this Act and regulations promulgated by
3 the Board hereunder. If the Agency refuses to grant
4 authorization under this Section, the applicant may appeal as
5 if the Agency refused to grant a permit, pursuant to the
6 provisions of subsection (a) of Section 40 of this Act. For
7 purposes of this subsection (h), the term "generator" has the
8 meaning given in Section 3.12 of this Act, unless: (1) the
9 hazardous waste is treated, incinerated, or partially
10 recycled for reuse prior to disposal, in which case the last
11 person who treats, incinerates, or partially recycles the
12 hazardous waste prior to disposal is the generator; or (2)
13 the hazardous waste is from a response action, in which case
14 the person performing the response action is the generator.
15 This subsection (h) does not apply to any hazardous waste
16 that is restricted from land disposal under 35 Ill. Adm. Code
17 728.

18 (i) Before issuing any RCRA permit or any permit for a
19 waste storage site, sanitary landfill, waste disposal site,
20 waste transfer station, waste treatment facility, waste
21 incinerator, or any waste-transportation operation, the
22 Agency shall conduct an evaluation of the prospective owner's
23 or operator's prior experience in waste management
24 operations. The Agency may deny such a permit if the
25 prospective owner or operator or any employee or officer of
26 the prospective owner or operator has a history of:

27 (1) repeated violations of federal, State, or local
28 laws, regulations, standards, or ordinances in the
29 operation of waste management facilities or sites; or

30 (2) conviction in this or another State of any
31 crime which is a felony under the laws of this State, or
32 conviction of a felony in a federal court; or

33 (3) proof of gross carelessness or incompetence in
34 handling, storing, processing, transporting or disposing

1 of waste.

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

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

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

24 (m) The Agency may issue permits to persons owning or
25 operating a facility for composting landscape waste. In
26 granting such permits, the Agency may impose such conditions
27 as may be necessary to accomplish the purposes of this Act,
28 and as are not inconsistent with applicable regulations
29 promulgated by the Board. Except as otherwise provided in
30 this Act, a bond or other security shall not be required as a
31 condition for the issuance of a permit. If the Agency denies
32 any permit pursuant to this subsection, the Agency shall
33 transmit to the applicant within the time limitations of this
34 subsection specific, detailed statements as to the reasons

1 the permit application was denied. Such statements shall
2 include but not be limited to the following:

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

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

8 (3) the specific information, if any, the Agency
9 deems the applicant did not provide in its application to
10 the Agency; and

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

14 If no final action is taken by the Agency within 90 days
15 after the filing of the application for permit, the applicant
16 may deem the permit issued. Any applicant for a permit may
17 waive the 90 day limitation by filing a written statement
18 with the Agency.

19 The Agency shall issue permits for such facilities upon
20 receipt of an application that includes a legal description
21 of the site, a topographic map of the site drawn to the scale
22 of 200 feet to the inch or larger, a description of the
23 operation, including the area served, an estimate of the
24 volume of materials to be processed, and documentation that:

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

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

29 (3) the facility is located so as to minimize
30 incompatibility with the character of the surrounding
31 area, including at least a 200 foot setback from any
32 residence, and in the case of a facility that is
33 developed or the permitted composting area of which is
34 expanded after November 17, 1991, the composting area is

1 located at least 1/8 mile from the nearest residence
2 (other than a residence located on the same property as
3 the facility);

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

9 (5) the operation of the facility will include
10 appropriate dust and odor control measures, limitations
11 on operating hours, appropriate noise control measures
12 for shredding, chipping and similar equipment, management
13 procedures for composting, containment and disposal of
14 non-compostable wastes, procedures to be used for
15 terminating operations at the site, and recordkeeping
16 sufficient to document the amount of materials received,
17 composted and otherwise disposed of; and

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

20 The Agency shall issue renewable permits of not longer
21 than 10 years in duration for the composting of landscape
22 wastes, as defined in Section 3.70 of this Act, based on the
23 above requirements.

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

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

33 (o) From September 4, 1990 until December 31, 1993, no
34 permit shall be issued by the Agency for the development or

1 construction of any new facility intended to be used for the
2 incineration of any hazardous waste. This subsection shall
3 not apply to facilities intended for use for combustion of
4 potentially infectious medical waste, for use as part of a
5 State or federally designated clean-up action, or for use
6 solely for the conduct of research and the development and
7 demonstration of technologies for the incineration of
8 hazardous waste.

9 (p) (1) Any person submitting an application for a
10 permit for a new MSWLF unit or for a lateral expansion under
11 subsection (t) of Section 21 of this Act for an existing
12 MSWLF unit that has not received and is not subject to local
13 siting approval under Section 39.2 of this Act shall publish
14 notice of the application in a newspaper of general
15 circulation in the county in which the MSWLF unit is or is
16 proposed to be located. The notice must be published at
17 least 15 days before submission of the permit application to
18 the Agency. The notice shall state the name and address of
19 the applicant, the location of the MSWLF unit or proposed
20 MSWLF unit, the nature and size of the MSWLF unit or proposed
21 MSWLF unit, the nature of the activity proposed, the probable
22 life of the proposed activity, the date the permit
23 application will be submitted, and a statement that persons
24 may file written comments with the Agency concerning the
25 permit application within 30 days after the filing of the
26 permit application unless the time period to submit comments
27 is extended by the Agency.

28 When a permit applicant submits information to the Agency
29 to supplement a permit application being reviewed by the
30 Agency, the applicant shall not be required to reissue the
31 notice under this subsection.

32 (2) The Agency shall accept written comments concerning
33 the permit application that are postmarked no later than 30
34 days after the filing of the permit application, unless the

1 time period to accept comments is extended by the Agency.

2 (3) Each applicant for a permit described in part (1) of
3 this subsection shall file a copy of the permit application
4 with the county board or governing body of the municipality
5 in which the MSWLF unit is or is proposed to be located at
6 the same time the application is submitted to the Agency.
7 The permit application filed with the county board or
8 governing body of the municipality shall include all
9 documents submitted to or to be submitted to the Agency,
10 except trade secrets as determined under Section 7.1 of this
11 Act. The permit application and other documents on file with
12 the county board or governing body of the municipality shall
13 be made available for public inspection during regular
14 business hours at the office of the county board or the
15 governing body of the municipality and may be copied upon
16 payment of the actual cost of reproduction.

17 (Source: P.A. 89-487, eff. 6-21-96; 89-556, eff. 7-26-96;
18 90-14, eff. 7-1-97; 90-367, eff. 8-10-97; 90-537, eff.
19 11-26-97; 90-655, eff 7-30-98.)