

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 57.2, 57.7, 57.8, 57.10, 58.2, 58.6,  
6 58.7, and 58.11 as follows:

7 (415 ILCS 5/57.2)

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

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

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

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

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

22 "Fund" means the Underground Storage Tank Fund.

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

27 "Indemnification" means indemnification of an owner or  
28 operator for the amount of any judgment entered against the  
29 owner or operator in a court of law, for the amount of any  
30 final order or determination made against the owner or  
31 operator by an agency of State government or any subdivision

1       thereof, or for the amount of any settlement entered into by  
2       the owner or operator, if the judgment, order, determination,  
3       or settlement arises out of bodily injury or property damage  
4       suffered as a result of a release of petroleum from an  
5       underground storage tank owned or operated by the owner or  
6       operator.

7       "Corrective action" means activities associated with  
8       compliance with the provisions of Sections 57.6 and 57.7 of  
9       this Title.

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

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

24       "Licensed Professional Engineer" means a person,  
25       corporation, or partnership licensed under the laws of the  
26       State of Illinois to practice professional engineering.

27       "Licensed Professional Geologist" means a person licensed  
28       under the laws of the State of Illinois to practice as a  
29       professional geologist.

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

33       "Physical soil classification" means verification that  
34       subsurface strata are as generally mapped in the publication

1 Illinois Geological Survey Circular (1984) titled "Potential  
 2 for Contamination of Shallow Aquifers in Illinois," by Berg,  
 3 Richard C., et al. Such classification may include review of  
 4 soil borings, well logs, physical soil analyses, regional  
 5 geologic maps, or other scientific publications.

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

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

17 "Class III Groundwater" means groundwater that meets the  
 18 Class III: Special Resource Groundwater criteria set forth  
 19 in the Board regulations adopted pursuant to the Illinois  
 20 Groundwater Protection Act.

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

23 (415 ILCS 5/57.7)

24 Sec. 57.7. Leaking underground storage tanks; physical  
 25 soil classification, groundwater investigation, site  
 26 classification, and corrective action.

27 (a) Physical soil classification and groundwater  
 28 investigation.

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

1 (A) a physical soil classification and  
 2 groundwater investigation plan designed to  
 3 determine site classification, in accordance  
 4 with subsection (b) of this Section, as High  
 5 Priority, Low Priority, or No Further Action.

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

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

23 (3) Within 30 days of completion of the physical  
 24 soil classification or groundwater investigation report  
 25 the owner or operator shall submit to the Agency:

26 (A) all physical soil classification and  
 27 groundwater investigation results; and

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

34 (b) Site Classification.

1           (1) After evaluation of the physical soil  
2 classification and groundwater investigation results,  
3 when required, and general site information, the site  
4 shall be classified as "No Further Action", "Low  
5 Priority", or "High Priority" based on the requirements  
6 of this Section. Site classification shall be determined  
7 by a Licensed Professional Engineer or Licensed  
8 Professional Geologist in accordance with the  
9 requirements of this Title and the Licensed Professional  
10 Engineer or Licensed Professional Geologist shall submit  
11 a certification to the Agency of the site classification.  
12 The Agency has the authority to audit site  
13 classifications and reject or modify any site  
14 classification inconsistent with the requirements of this  
15 Title.

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

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

23           (ii) A site evaluation under the direction of  
24 a Licensed Professional Engineer or Licensed  
25 Professional Geologist verifies the physical soil  
26 classification conditions are consistent with those  
27 indicated on the Illinois Geological Survey Circular  
28 (1984) titled "Potential for Contamination of  
29 Shallow Aquifers in Illinois," by Berg, Richard C.,  
30 et al.; and

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

33           (B) Groundwater investigation monitoring may  
34 be required to confirm that a site meets the

1 criteria of a No Further Action site. The Board  
2 shall adopt rules setting forth the criteria under  
3 which the Agency may exercise its discretionary  
4 authority to require investigations and the minimum  
5 field requirements for conducting investigations.

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

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

28 (B) The underground storage tank is within the  
29 minimum or maximum setback zone of a potable water  
30 supply well or regulated recharge area of a potable  
31 water supply well.

32 (C) There is evidence that, through natural or  
33 manmade pathways, migration of petroleum or vapors  
34 threaten human health or human safety or may cause

1 explosions in basements, crawl spaces, utility  
2 conduits, storm or sanitary sewers, vaults or other  
3 confined spaces.

4 (D) Class III special resource groundwater  
5 exists within 200 feet of the excavation.

6 (E) A surface water body is adversely affected  
7 by the presence of a visible sheen or free product  
8 layer as the result of an underground storage tank  
9 release.

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

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

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

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

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

1           (5) In the event the results of the physical soil  
2           classification and any required groundwater investigation  
3           reveal that the actual site geologic characteristics are  
4           different than those indicated by the Illinois Geological  
5           Survey Circular (1984) titled "Potential for  
6           Contamination of Shallow Aquifers in Illinois" by Berg,  
7           Richard C., et al., classification of the site shall be  
8           determined using the actual site geologic  
9           characteristics.

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

15          (c) Corrective Action.

16            (1) High Priority Site.

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

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



1 corrective action plan.

2 (C) The corrective action plan shall do all of  
3 the following:

4 (i) Provide that applicable indicator  
5 contaminant groundwater quality standards or  
6 groundwater objectives will not be exceeded in  
7 groundwater at the property boundary line or  
8 200 feet from the excavation, whichever is  
9 less, or other level if approved by the Agency,  
10 for any contaminant identified in the  
11 groundwater investigation after complete  
12 performance of the corrective action plan.

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

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

30 (iv) Remediate threats to a potable water  
31 supply.

32 (v) Remediate threats to a surface water  
33 body.

34 (D) Within 30 days of completion of the

1           corrective action, the owner or operator shall  
2           submit to the Agency such a completion report that  
3           includes a description of the corrective action plan  
4           and a description of the corrective action work  
5           performed and all analytical or sampling results  
6           derived from performance of the corrective action  
7           plan.

8           (E) The Agency shall issue to the owner or  
9           operator a no further remediation letter in  
10          accordance with Section 57.10 if all of the  
11          following are met:

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

1 storm or sanitary sewers, vaults or other  
2 confined spaces; (d) the underground storage  
3 tank release does not threaten any surface  
4 water body; and (e) the underground storage  
5 tank release does not threaten any potable  
6 water supply.

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

14 (2) Low Priority Site.

15 (A) Corrective action at a low priority site  
16 must include groundwater monitoring consistent with  
17 part (B) of this paragraph (2).

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

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

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

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

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

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

34 (E) Unless the Agency takes action under

1 subsection (b)(2)(C) to reclassify a site as high  
2 priority, upon receipt of a certification by a  
3 Licensed Professional Engineer or Licensed  
4 Professional Geologist submitted pursuant to  
5 paragraph (2) of subsection (c) of this Section, the  
6 Agency shall issue to the owner or operator a no  
7 further remediation letter in accordance with  
8 Section 57.10.

9 (3) No Further Action Site.

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

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

29 (4) Agency review and approval.

30 (A) Agency approval of any plan and associated  
31 budget, as described in this item (4), shall be  
32 considered final approval for purposes of seeking  
33 and obtaining payment from the Underground Storage  
34 Tank Fund if the costs associated with the

1 completion of any such plan are less than or equal  
2 to the amounts approved in such budget.

3 (B) In the event the Agency fails to approve,  
4 disapprove, or modify any plan or report submitted  
5 pursuant to this Title in writing within 120 days of  
6 the receipt by the Agency, the plan or report shall  
7 be considered to be rejected by operation of law for  
8 purposes of this Title and rejected for purposes of  
9 payment from the Leaking Underground Storage Tank  
10 Fund.

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

22 (ii) For purposes of those plans  
23 submitted pursuant to Part (E) (iii) of this  
24 paragraph (4) for which payment from the Fund  
25 is not being sought, the Agency need not take  
26 action on such plan until 120 days after it  
27 receives the corrective action completion  
28 report required under Section 57(c)(1)(D). In  
29 the event the Agency approved the plan, it  
30 shall proceed under the provisions of Section  
31 57(c)(4).

32 (C) In approving any plan submitted pursuant  
33 to Part (E) of this paragraph (4), the Agency shall  
34 determine, by a procedure promulgated by the Board

1 under item (7) of subsection (b) of Section 57.14,  
2 that the costs associated with the plan are  
3 reasonable, will be incurred in the performance of  
4 corrective action, and will not be used for  
5 corrective action activities in excess of those  
6 required to meet the minimum requirements of this  
7 title.

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

18 (i) an explanation of the Sections of  
19 this Act which may be violated if the plans  
20 were approved;

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

25 (iii) an explanation of the specific type  
26 of information, if any, which the Agency deems  
27 the applicant did not provide the Agency; and

28 (iv) a statement of specific reasons why  
29 the Act and the regulations might not be met if  
30 the plan were approved.

31 Any action by the Agency to disapprove or  
32 modify a plan or report or the rejection of any plan  
33 or report by operation of law shall be subject to  
34 appeal to the Board in accordance with the

1 procedures of Section 40. If the owner or operator  
2 elects to incorporate modifications required by the  
3 Agency rather than appeal, an amended plan shall be  
4 submitted to the Agency within 35 days of receipt of  
5 the Agency's written notification.

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

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

13 (ii) Any groundwater monitoring plan or  
14 budget submitted pursuant to subsection  
15 (c)(2)(B) of this Section;

16 (iii) Any corrective action plan  
17 submitted pursuant to subsection (c)(1)(A) of  
18 this Section; or

19 (iv) Any corrective action plan budget  
20 submitted pursuant to subsection (c)(1)(B) of  
21 this Section.

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



1 objectives shall mean Class I groundwater standards or  
2 objectives as applicable.

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

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

24 (Source: P.A. 88-496; 88-668, eff. 9-16-94; 89-428, eff.  
25 1-1-96; 89-457, eff. 5-22-96; revised 1-25-02.)

26 (415 ILCS 5/57.8)

27 Sec. 57.8. Underground Storage Tank Fund; payment;  
28 options for State payment; deferred correction election to  
29 commence corrective action upon availability of funds. If an  
30 owner or operator is eligible to access the Underground  
31 Storage Tank Fund pursuant to an Office of State Fire Marshal  
32 eligibility/deductible final determination letter issued in  
33 accordance with Section 57.9, the owner or operator may

1 submit a complete application for final or partial payment to  
2 the Agency for activities taken in response to a confirmed  
3 release. An owner or operator may submit a request for  
4 partial or final payment regarding a site no more frequently  
5 than once every 90 days.

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

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

29 (2) If sufficient funds are available in the  
30 Underground Storage Tank Fund, the Agency shall, within  
31 60 days, forward to the Office of the State Comptroller a  
32 voucher in the amount approved under the payment  
33 application.

34 (3) In the case of insufficient funds, the Agency

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

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

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

1           (6) For purposes of this Section, a complete  
2 application shall consist of:

3           (A) A certification from a Licensed  
4 Professional Engineer or Licensed Professional  
5 Geologist as required under this Title and  
6 acknowledged by the owner or operator.

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

12           (C) A copy of the Office of the State Fire  
13 Marshal's eligibility and deductibility  
14 determination.

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

19           (E) A federal taxpayer identification number  
20 and legal status disclosure certification on a form  
21 prescribed and provided by the Agency.

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

1 determining on a site-by-site basis whether deferral is  
 2 appropriate. The regulations also shall establish the  
 3 minimum investigatory requirements for determining whether  
 4 the risk based criteria are present at a site considering  
 5 deferral and procedures for the notification of owners or  
 6 operators of insufficient funds, Agency review of request for  
 7 deferral, notification of Agency final decisions, returning  
 8 deferred sites to active status, and earmarking of funds for  
 9 payment.

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

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

22 (2) a settlement with a third party due to a  
 23 release of petroleum from an underground storage tank is  
 24 reasonable.

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

32 Amount	Number of Tanks
33 \$1,000,000.....	fewer than 101
34 \$2,000,000.....	101 or more

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

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

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

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

23 (f) Until the Board adopts regulations pursuant to  
24 Section 57.14, handling charges are eligible for payment only  
25 if they are equal to or less than the amount determined by  
26 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

34 (g) The Agency shall not approve any payment from the

1 Fund to pay an owner or operator:

2 (1) for costs of corrective action incurred by such  
3 owner or operator in an amount in excess of \$1,000,000  
4 per occurrence; and

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

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

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

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

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

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

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

34 (1) the owner or operator was deemed eligible to

1 access the Fund for payment of corrective action costs  
2 for some, but not all, of the underground storage tanks  
3 at the site; and

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

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

8 (415 ILCS 5/57.10)

9 Sec. 57.10. Professional Engineer or Professional  
10 Geologist certification; presumptions against liability.

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

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

26 (c) The Agency's issuance of a no further remediation  
27 letter shall signify, based on the certification of the  
28 Licensed Professional Engineer, that:

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

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



1           (3) no further corrective action concerning the  
2           occurrence is necessary for the protection of human  
3           health, safety and the environment.

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

6           (1) The owner or operator to whom the letter was  
7           issued.

8           (2) Any parent corporation or subsidiary of such  
9           owner or operator.

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

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

17          (5) Any mortgagee or trustee of a deed of trust of  
18          such owner or operator.

19          (6) Any successor-in-interest of such owner or  
20          operator.

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

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

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

32          (f) The Board shall adopt rules setting forth the  
33          criteria under which the Agency may require an owner or  
34          operator to conduct further investigation or remediation

1 related to a release for which a no further remediation  
2 letter has been issued.

3 (g) Holders of security interests in sites subject to  
4 the requirements of this Title XVI shall be entitled to the  
5 same protections and subject to the same responsibilities  
6 provided under general regulations promulgated under Subtitle  
7 I of the Hazardous and Solid Waste Amendments of 1984 (P.L.  
8 98-616) of the Resource Conservation and Recovery Act of 1976  
9 (P.L. 94-580).  
10 (Source: P.A. 88-496; 89-428, eff. 1-1-96; 89-457, eff.  
11 5-22-96.)

12 (415 ILCS 5/58.2)

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

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

21 "ASTM" means the American Society for Testing and  
22 Materials.

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

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

32 "Class I groundwater" means groundwater that meets the  
33 Class I Potable Resource groundwater criteria set forth in

1 the Board rules adopted under the Illinois Groundwater  
2 Protection Act.

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

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

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

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

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

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

33 "Municipality" means an incorporated city, village, or  
34 town in this State. "Municipality" does not mean a township,

1 town when that term is used as the equivalent of a township,  
2 incorporated town that has superseded a civil township,  
3 county, or school district, park district, sanitary district,  
4 or similar governmental district.

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

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

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

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

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

30 "Remediation costs" means reasonable costs paid for  
31 investigating and remediating regulated substances of concern  
32 consistent with the remedy selected for a site. For purposes  
33 of Section 58.14, "remediation costs" shall not include costs  
34 incurred prior to January 1, 1998, costs incurred after the

1 issuance of a No Further Remediation Letter under Section  
2 58.10 of this Act, or costs incurred more than 12 months  
3 prior to acceptance into the Site Remediation Program.

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

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

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

15 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96;  
16 90-123, eff. 7-21-97.)

17 (415 ILCS 5/58.6)

18 Sec. 58.6. Remedial investigations and reports.

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

33 (b) (1) Site investigation and Site Investigation

1 Report. The RA shall conduct a site investigation to  
 2 determine the significant physical features of the site  
 3 and vicinity that may affect contaminant transport and  
 4 risk to human health, safety, and the environment and to  
 5 determine the nature, concentration, direction and rate  
 6 of movement, and extent of the contamination at the site.

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

- 11 (A) Executive summary;
- 12 (B) Site history;
- 13 (C) Site-specific sampling methods and  
 14 results;
- 15 (D) Documentation of field activities,  
 16 including quality assurance project plan;
- 17 (E) Interpretation of results; and
- 18 (F) Conclusions.

19 (c) Remediation Objectives Report.

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

29 (2) If a RA elects to determine remediation  
 30 objectives appropriate for the site using the area  
 31 background procedures under subsection (b) of Section  
 32 58.5, the RA shall develop such remediation objectives  
 33 based on site-specific literature review, sampling  
 34 protocol, or appropriate statistical methods in

1           accordance with Board rules.     In support of such  
2           remediation objectives, the RA shall prepare a  
3           Remediation Objectives Report demonstrating how the area  
4           background remediation objectives were determined.

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

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

24          (e) Remedial Action Completion Report.

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

32                 (2) If the approved remediation objectives for the  
33                 regulated substances of concern established under Section  
34                 58.5 are equal to or above the levels existing at the

1 site prior to any remedial action, notification and  
2 documentation of such shall constitute the entire  
3 Remedial Action Completion Report for purposes of this  
4 Title.

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

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

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

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

20 (415 ILCS 5/58.7)

21 Sec. 58.7. Review and approvals.

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

25 (b) Review and evaluation by the Agency.

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

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



1 (B) Allow for or otherwise arrange site visits  
2 or other site evaluation by the Agency when so  
3 requested;

4 (C) Agree to perform the work plan as approved  
5 under this Title;

6 (D) Agree to pay any reasonable costs incurred  
7 and documented by the Agency in providing such  
8 services;

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

14 (F) Demonstrate, if necessary, authority to  
15 act on behalf of or in lieu of the owner or  
16 operator.

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

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

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

32 (A) The Agency has incurred costs in  
33 performing response actions, other than review or  
34 evaluation services, due to the failure of the RA to

1 take response action in accordance with a notice  
2 issued pursuant to this Act;

3 (B) The RA has agreed in writing to the  
4 payment of such costs;

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

8 (D) The RA has requested or has consented to  
9 Agency review or evaluation services under  
10 subdivision (b) (1) of this Section.

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

16 (c) Review and evaluation by a Licensed Professional  
17 Engineer or Licensed Professional Geologist. A RA may elect  
18 to contract with a Licensed Professional Engineer or, in the  
19 case of a site investigation report only, a Licensed  
20 Professional Geologist, who will perform review and  
21 evaluation services on behalf of and under the direction of  
22 the Agency relative to the site activities.

23 (1) Prior to entering into the contract with the  
24 RELPEG ~~Review--and--Evaluation---Licensed---Professional~~  
25 ~~Engineer--(RELPE)~~, the RA shall notify the Agency of the  
26 RELPEG RELPE to be selected. The Agency and the RA shall  
27 discuss the potential terms of the contract.

28 (2) At a minimum, the contract with the RELPEG  
29 RELPE shall provide that the RELPEG RELPE will submit  
30 any reports directly to the Agency, will take his or her  
31 directions for work assignments from the Agency, and will  
32 perform the assigned work on behalf of the Agency.

33 (3) Reasonable costs incurred by the Agency shall  
34 be paid by the RA directly to the Agency in accordance

1 with the terms of the review and evaluation services  
2 agreement entered into under subdivision (b) (1) of  
3 Section 58.7.

4 (4) In no event shall the RELPEG RELPE acting on  
5 behalf of the Agency be an employee of the RA or the  
6 owner or operator of the site or be an employee of any  
7 other person the RA has contracted to provide services  
8 relative to the site.

9 (d) Review and approval. All reviews required under  
10 this Title shall be carried out by the Agency or a RELPEG  
11 RELPE, both under the direction of a Licensed Professional  
12 Engineer or, in the case of the review of a site  
13 investigation only, a Licensed Professional Geologist.

14 (1) All review activities conducted by the Agency  
15 or a RELPEG RELPE shall be carried out in conformance  
16 with this Title and rules promulgated under Section  
17 58.11.

18 (2) Subject to the limitations in subsection (c)  
19 and this subsection (d), the specific plans, reports, and  
20 activities that which the Agency or a RELPEG RELPE may  
21 review include:

22 (A) Site Investigation Reports and related  
23 activities;

24 (B) Remediation Objectives Reports;

25 (C) Remedial Action Plans and related  
26 activities; and

27 (D) Remedial Action Completion Reports and  
28 related activities.

29 (3) Only the Agency shall have the authority to  
30 approve, disapprove, or approve with conditions a plan  
31 or report as a result of the review process including  
32 those plans and reports reviewed by a RELPEG RELPE. If  
33 the Agency disapproves a plan or report or approves a  
34 plan or report with conditions, the written notification

1 required by subdivision (d) (4) of this Section shall  
2 contain the following information, as applicable:

3 (A) An explanation of the Sections of this  
4 Title that may be violated if the plan or report was  
5 approved;

6 (B) An explanation of the provisions of the  
7 rules promulgated under this Title that may be  
8 violated if the plan or report was approved;

9 (C) An explanation of the specific type of  
10 information, if any, that the Agency deems the  
11 applicant did not provide the Agency;

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

15 (E) An explanation of the reasons for  
16 conditions if conditions are required.

17 (4) Upon approving, disapproving, or approving with  
18 conditions a plan or report, the Agency shall notify the  
19 RA in writing of its decision. In the case of approval  
20 or approval with conditions of a Remedial Action  
21 Completion Report, the Agency shall prepare a No Further  
22 Remediation Letter that meets the requirements of Section  
23 58.10 and send a copy of the letter to the RA.

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

1 (e) Standard of review. In making determinations, the  
 2 following factors, and additional factors as may be adopted  
 3 by the Board in accordance with Section 58.11, shall be  
 4 considered by the Agency when reviewing or approving plans,  
 5 reports, and related activities, or the RELPEG RELPE, when  
 6 reviewing plans, reports, and related activities:

7 (1) Site Investigation Reports and related  
 8 activities: Whether investigations have been conducted  
 9 and the results compiled in accordance with the  
 10 appropriate procedures and whether the interpretations  
 11 and conclusions reached are supported by the information  
 12 gathered. In making the determination, the following  
 13 factors shall be considered:

14 (A) The adequacy of the description of the  
 15 site and site characteristics that were used to  
 16 evaluate the site;

17 (B) The adequacy of the investigation of  
 18 potential pathways and risks to receptors identified  
 19 at the site; and

20 (C) The appropriateness of the sampling and  
 21 analysis used.

22 (2) Remediation Objectives Reports: Whether the  
 23 remediation objectives are consistent with the  
 24 requirements of the applicable method for selecting or  
 25 determining remediation objectives under Section 58.5.  
 26 In making the determination, the following factors shall  
 27 be considered:

28 (A) If the objectives were based on the  
 29 determination of area background levels under  
 30 subsection (b) of Section 58.5, whether the review  
 31 of current and historic conditions at or in the  
 32 immediate vicinity of the site has been thorough and  
 33 whether the site sampling and analysis has been  
 34 performed in a manner resulting in accurate

1           determinations;

2                   (B) If the objectives were calculated on the  
3 basis of predetermined equations using site specific  
4 data, whether the calculations were accurately  
5 performed and whether the site specific data reflect  
6 actual site conditions; and

7                   (C) If the objectives were determined using a  
8 site specific risk assessment procedure, whether the  
9 procedure used is nationally recognized and  
10 accepted, whether the calculations were accurately  
11 performed, and whether the site specific data  
12 reflect actual site conditions.

13           (3) Remedial Action Plans and related activities:  
14 Whether the plan will result in compliance with this  
15 Title, and rules adopted under it and attainment of the  
16 applicable remediation objectives. In making the  
17 determination, the following factors shall be considered:

18                   (A) The likelihood that the plan will result  
19 in the attainment of the applicable remediation  
20 objectives;

21                   (B) Whether the activities proposed are  
22 consistent with generally accepted engineering  
23 practices; and

24                   (C) The management of risk relative to any  
25 remaining contamination, including but not limited  
26 to, provisions for the long-term enforcement,  
27 operation, and maintenance of institutional and  
28 engineering controls, if relied on.

29           (4) Remedial Action Completion Reports and related  
30 activities: Whether the remedial activities have been  
31 completed in accordance with the approved Remedial Action  
32 Plan and whether the applicable remediation objectives  
33 have been attained.

34           (f) All plans and reports submitted for review shall

1 include a Licensed Professional Engineer's certification that  
2 all investigations and remedial activities were carried out  
3 under his or her direction and, to the best of his or her  
4 knowledge and belief, the work described in the plan or  
5 report has been completed in accordance with generally  
6 accepted engineering practices, and the information presented  
7 is accurate and complete. In the case of a site investigation  
8 report prepared or supervised by a Licensed Professional  
9 Geologist, the required certification may be made by the  
10 Licensed Professional Geologist (rather than a Licensed  
11 Professional Engineer) and based upon generally accepted  
12 principles of professional geology.

13 (g) 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. At a minimum, the rules shall  
16 detail the types of services the Agency may provide in  
17 response to requests under subdivision (b) (1) of this  
18 Section and the recordkeeping it will utilize in documenting  
19 to the RA the costs incurred by the Agency in providing such  
20 services. Until the Board adopts the rules, the Agency may  
21 continue to offer services of the type offered under  
22 subsections (m) and (n) of Section 22.2 of this Act prior to  
23 their repeal.

24 (h) Public participation.

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

29 (2) The RA may elect to enter into a services  
30 agreement with the Agency for Agency assistance in  
31 community outreach efforts.

32 (3) The Agency shall maintain a registry listing  
33 those sites undergoing remedial action pursuant to this  
34 Title.

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

5           (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96;  
 6           89-626, eff. 8-9-96.)

7           (415 ILCS 5/58.11)

8           Sec. 58.11. Regulations and Site Remediation Advisory  
 9           Committee.

10          (a) There is hereby established a 10-member Site  
 11          Remediation Advisory Committee, which shall be appointed by  
 12          the Governor. The Committee shall include one member  
 13          recommended by the Illinois State Chamber of Commerce, one  
 14          member recommended by the Illinois Manufacturers'  
 15          Association, one member recommended by the Chemical Industry  
 16          Council of Illinois, one member recommended by the Consulting  
 17          Engineers Council of Illinois, one member recommended by the  
 18          Illinois Bankers Association, one member recommended by the  
 19          Community Bankers Association of Illinois, one member  
 20          recommended by the National Solid Waste Management  
 21          Association, and 3 other members as determined by the  
 22          Governor. Members of the Advisory Committee may organize  
 23          themselves as they deem necessary and shall serve without  
 24          compensation.

25          (b) The Committee shall:

26                 (1) Review, evaluate, and make recommendations  
 27                 regarding State laws, rules, and procedures that relate  
 28                 to site remediations.

29                 (2) Review, evaluate, and make recommendations  
 30                 regarding the review and approval activities of the  
 31                 Agency and Review and Evaluation Licensed Professional  
 32                 Engineers and Geologists.

33                 (3) Make recommendations relating to the State's



1 efforts to implement this Title.

2 (4) Review, evaluate, and make recommendations  
3 regarding the procedures for determining proportionate  
4 degree of responsibility for a release of regulated  
5 substances.

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

9 (c) Within 9 months after the effective date of this  
10 amendatory Act of 1995, the Agency, after consideration of  
11 the recommendations of the Committee, shall propose rules  
12 prescribing procedures and standards for its administration  
13 of this Title. Within 9 months after receipt of the Agency's  
14 proposed rules, the Board shall adopt, pursuant to Sections  
15 27 and 28 of this Act, rules that are consistent with this  
16 Title, including classifications of land use and provisions  
17 for the avoidance of No Further Remediation Letters.

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

22 (e) By July 1, 1997 and as deemed appropriate  
23 thereafter, the Agency shall prepare reports to the Governor  
24 and the General Assembly concerning the status of all sites  
25 for which the Agency has expended money from the Hazardous  
26 Waste Fund. The reports shall include specific information  
27 on the financial, technical, and cost recovery status of each  
28 site.

29 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96;  
30 89-626, eff. 8-9-96.)

31 Section 99. Effective date. This Act takes effect upon  
32 becoming law.