

AN ACT concerning safety.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Environmental Protection Act is amended by changing Section 58.8 and by adding Sections 22.2d, 22.50, and Title VI-D as follows:

(415 ILCS 5/22.2d new)

Sec. 22.2d. Authority of Director to issue orders.

(a) The purpose of this Section is to allow the Director to quickly and effectively respond to a release or substantial threat of a release of a hazardous substance, pesticide, or petroleum for which the Agency is required to give notice under Section 25d-3(a) of this Act by authorizing the Director to issue orders, unilaterally or on consent, requiring appropriate response actions and by providing for the exclusive administrative and judicial review of these orders. This Section is also intended to allow persons subject to an order under this Section to recover the costs of complying with the order if it is overturned or if they remediate the share of a release or threat of a release for which a bankrupt or insolvent party is liable under this Act.

(b) In addition to any other action taken by federal, State, or local government, for any release or substantial threat of release for which the Agency is required to give notice under Section 25d-3(a) of this Act, the Director may issue to any person who is potentially liable under this Act for the release or substantial threat of release any order that may be necessary to protect the public health and welfare and the environment.

(1) Any order issued under this Section shall require response actions consistent with the federal regulations and amendments thereto promulgated by the United States

Environmental Protection Agency to implement Section 105 of CERCLA, as amended, except that the remediation objectives for response actions ordered under this Section shall be determined in accordance with the risk-based remediation objectives adopted by the Board under Title XVII of this Act.

(2) Before the Director issues any order under this Section, the Agency shall send a Special Notice Letter to all persons identified by the Agency as potentially liable under this Act for the release or threat of release. This Special Notice Letter to the recipients shall include at a minimum the following information:

(A) that the Agency believes the recipient may be liable under the Act for responding to the release or threat of a release;

(B) the reasons why the Agency believes the recipient may be liable under the Act for the release or threat of a release; and

(C) the period of time, not less than 30 days from the date of issuance of the Special Notice Letter, during which the Agency is ready to negotiate with the recipient regarding their response to the release or threat of a release.

(3) To encourage the prompt negotiation of a settlement agreement or an order on consent with a recipient of a Special Notice Letter required under this Section, the Director shall not issue any unilateral order under this Section to the recipient during the 30 days immediately following the date of issuance of the Special Notice Letter.

(c) (1) The recipient of a unilateral order issued by the Director under this Section may petition the Board for a hearing on the order within 35 days after being served with the order. The Board shall take final action on the petition within 60 days after the date the petition is filed with the Board unless all parties to the proceeding agree to the extension. If

necessary to expedite the hearing and decision, the Board may hold special meetings of the Board and may provide for alternative public notice of the hearing and meeting, other than as otherwise required by law. In any hearing on the order the Agency shall have the burden of proof to establish that the petitioner is liable under this Act for the release or threat of release and that the actions required by the order are consistent with the requirements of subsection (b)(1) of this Section. The Board shall sustain the order if the petitioner is liable under this Act for the release or threat of release and to the extent the actions ordered are consistent with the requirements of subsection (b)(1) of this Section and are not otherwise unreasonable under the circumstances.

(A) The order issued by the Agency shall remain in full force and effect pending the Board's final action on the petition for review of the order, provided that the Board may grant a stay of all or a portion of the order if it finds that (i) there is a substantial likelihood that the petitioner is not liable under this Act for the release or threat of release or (ii) there is a substantial likelihood that the actions required by the order are not consistent with the requirements of subsection (b)(1) of this Section and that the harm to the public from a stay of the order will be outweighed by the harm to the petitioner if a stay is not granted. Any stay granted by the Board under this subsection (c)(1)(A) shall expire upon the Board's issuance of its final action on the petition for review of the order.

(B) If the Board finds that the petitioner is not liable under this Act for the release or threat of release it may authorize the payment of (i) all reasonable response costs incurred by the petitioner to comply with the order if it finds the petitioner's actions were consistent with the requirements of subsection (b)(1) of this Section and (ii) the petitioner's reasonable and appropriate costs, fees, and expenses incurred in petitioning the Board for

review of the order, including, but not limited to, reasonable attorneys' fees and expenses.

(2) Any party to a Board hearing under this subsection (c) may obtain judicial review, by filing a petition for review within 35 days from the date that a copy of the Board's final action sought to be reviewed was served upon the party affected by the final Board action complained of, under the provisions of the Administrative Review Law and the rules adopted pursuant thereto, except that the review shall be afforded in the appellate court for the district in which the cause of action arose and not in the circuit court. The appellate court shall retain jurisdiction during the pendency of any further action conducted by the Board under an order by the appellate court. The appellate court shall have jurisdiction to review all issues of law and fact presented upon appeal.

(A) The order issued by the Agency shall remain in full force and effect pending the appellate court's ruling on the order, provided that the appellate court may grant a stay of all or a portion of the order if it finds that (i) there is a substantial likelihood that the petitioner is not liable under this Act for the release or threat of release or (ii) there is a substantial likelihood that the actions required by the order are not consistent with the requirements of subsection (b)(1) of this Section and that the harm to the public from a stay of the order will be outweighed by the harm to the petitioner if a stay is not granted. Any stay granted by the appellate court under this subsection (c)(2)(A) shall expire upon the issuance of the appellate court's ruling on the appeal of the Board's final action.

(B) If the appellate court finds that the petitioner is not liable under this Act for the release or threat of release it may authorize the payment of (i) all reasonable response costs incurred by the petitioner to comply with the order if it finds that the petitioner's actions were consistent with the requirements of subsection (b)(1) of

this Section and (ii) the petitioner's reasonable and appropriate costs, fees, and expenses incurred in petitioning the Appellate Court for review of the order, including, but not limited to, reasonable attorneys' fees and expenses.

(d) Any person who receives and complies with the terms of any order issued under this Section may, within 60 days after completion of the required action, petition the Director for reimbursement for the reasonable costs of that action, plus interest, subject to all of the following terms and conditions:

(1) The interest payable under this subsection accrues on the amounts expended from the date of expenditure to the date of payment of reimbursement at the rate set forth in Section 3-2 of the Uniform Penalty and Interest Act.

(2) If the Director refuses to grant all or part of a petition made under this subsection, the petitioner may, within 35 days after receipt of the refusal, file a petition with the Board seeking reimbursement.

(3) To obtain reimbursement, the petitioner must establish, by a preponderance of the evidence, that:

(A) the only costs for which the petitioner seeks reimbursement are costs incurred by the petitioner in remediating the share of a release or threat of a release for which a bankrupt or insolvent party is liable under this Act, the costs of the share are a fair and accurate apportionment among the persons potentially liable under this Act for the release or threat of a release, and the bankrupt or insolvent party failed to pay the costs of the share; and

(B) the petitioner's response actions were consistent with the federal regulations and amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Section 105 of CERCLA, as amended, except that the remediation objectives for response actions shall be determined in accordance with the risk-based

remediation objectives adopted by the Board under Title XVII of this Act; and

(C) the costs for which the petitioner seeks reimbursement are reasonable in light of the action required by the relevant order.

(4) Reimbursement awarded by the Board under item (3) of subsection (d) may include appropriate costs, fees, and other expenses incurred in petitioning the Director or Board for reimbursement under subsection (d), including, but not limited to, reasonable fees and expenses of attorneys.

(5) Costs paid to a petitioner under a policy of insurance, another written agreement, or a court order are not eligible for payment under this subsection (d). A petitioner who receives payment under a policy of insurance, another written agreement, or a court order shall reimburse the State to the extent that such payment covers costs for which payment was received under this subsection (d). Any monies received by the State under this item (5) shall be deposited into the Hazardous Waste Fund.

(e) Except as otherwise provided in subsection (c) of this Section, no court nor the Board has jurisdiction to review any order issued under this Section or any administrative or judicial action related to the order.

(f) Except as provided in subsection (g) of this Section, any person may seek contribution from any other person who is liable for the costs of response actions under this Section. In resolving contribution claims, the Board or court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate.

(g) A person who has complied with an order under this Section and has resolved their liability under this Act with respect to the release or threat of a release shall not be liable for claims for contribution relating to the release or threat of a release.

(h) The provisions of Section 58.9 of this Act do not apply

to any action taken under this Section.

(i) This Section does not apply to releases or threats of releases from underground storage tanks subject to Title XVI of this Act. Orders issued by the Agency in response to such releases or threats of releases shall be issued under Section 57.12(d) of this Act instead of this Section, and the costs of complying with said orders shall be reimbursed in accordance with Title XVI of this Act instead of this Section.

(j) Any person who, without sufficient cause, willfully violates or fails or refuses to comply with any order issued under this Section is in violation of this Act.

(k) The Agency may adopt rules as necessary for the implementation of this Section.

(415 ILCS 5/22.50 new)

Sec. 22.50. Compliance with land use limitations. No person shall use, or cause or allow the use of, any site for which a land use limitation has been imposed under this Act in a manner inconsistent with the land use limitation unless further investigation or remedial action has been conducted that documents the attainment of remedial objectives appropriate for the new land use and a new closure letter has been obtained from the Agency and recorded in the chain of title for the site. For the purpose of this Section, the term "land use limitation" shall include, but shall not be limited to, institutional controls and engineered barriers imposed under this Act and the regulations adopted under this Act. For the purposes of this Section, the term "closure letter" shall include, but shall not be limited to, No Further Remediation Letters issued under Titles XVI and XVII of this Act and the regulations adopted under those Titles.

(415 ILCS 5/Title VI-D heading new)

TITLE VI-D. RIGHT-TO-KNOW

(415 ILCS 5/25d-1 new)

Sec. 25d-1. Definitions. For the purposes of this Title, the terms "community water system", "non-community water system", "potable", "private water system", and "semi-private water system" have the meanings ascribed to them in the Illinois Groundwater Protection Act.

(415 ILCS 5/25d-2 new)

Sec. 25d-2. Contaminant evaluation. The Agency shall evaluate releases of contaminants whenever it determines that the extent of soil or groundwater contamination may extend beyond the boundary of the site where the release occurred. The Agency shall take appropriate actions in response to the release, which may include, but shall not be limited to, public notices, investigations, administrative orders under Sections 22.2d or 57.12(d) of this Act, and enforcement referrals. Except as provided in Section 25d-3 of this Act, for releases undergoing investigation or remediation under Agency oversight the Agency may determine that no further action is necessary to comply with this Section.

(415 ILCS 5/25d-3 new)

Sec. 25d-3. Notices.

(a) Beginning January 1, 2006, if the Agency determines that:

(1) Soil contamination beyond the boundary of the site where the release occurred poses a threat of exposure to the public above the appropriate Tier 1 remediation objectives, based on the current use of the off-site property, adopted by the Board under Title XVII of this Act, the Agency shall give notice of the threat to the owner of the contaminated property; or

(2) Groundwater contamination poses a threat of exposure to the public above the Class I groundwater quality standards adopted by the Board under this Act and the Groundwater Protection Act, the Agency shall give notice of the threat to the following:

(A) for any private, semi-private, or non-community water system, the owners of the properties served by the system; and

(B) for any community water system, the owners and operators of the system.

The Agency's determination must be based on the credible, scientific information available to it, and the Agency is not required to perform additional investigations or studies beyond those required by applicable federal or State laws.

(b) Beginning January 1, 2006, if any of the following actions occur: (i) the Agency refers a matter for enforcement under Section 43(a) of this Act; (ii) the Agency issues a seal order under Section 34(a) of this Act; or (iii) the Agency, the United States Environmental Protection Agency (USEPA), or a third party under Agency or USEPA oversight performs an immediate removal under the federal Comprehensive Environmental Response, Compensation, and Liability Act, as amended, then, within 60 days after the action, the Agency must give notice of the action to the owners of all property within 2,500 feet of the subject contamination or any closer or farther distance that the Agency deems appropriate under the circumstances. Within 30 days after a request by the Agency, the appropriate officials of the county in which the property is located must provide to the Agency the names and addresses of all property owners to whom the Agency is required to give notice under this subsection (b), these owners being the persons or entities that appear from the authentic tax records of the county.

(c) The methods by which the Agency gives the notices required under this Section shall be determined in consultation with members of the public and appropriate members of the regulated community and may include, but shall not be limited to, personal notification, public meetings, signs, electronic notification, and print media. For sites at which a responsible party has implemented a community relations plan, the Agency may allow the responsible party to provide Agency-approved

notices in lieu of the notices required to be given by the Agency. Notices issued under this Section may contain the following information:

(1) the name and address of the site or facility where the release occurred or is suspected to have occurred;

(2) the identification of the contaminant released or suspected to have been released;

(3) information as to whether the contaminant was released or suspected to have been released into the air, land, or water;

(4) a brief description of the potential adverse health effects posed by the contaminant;

(5) a recommendation that water systems with wells impacted or potentially impacted by the contaminant be appropriately tested; and

(6) the name, business address, and phone number of persons at the Agency from whom additional information about the release or suspected release can be obtained.

(d) Any person who is a responsible party with respect to the release or substantial threat of release for which notice is given under this Section is liable for all reasonable costs incurred by the State in giving the notice. All moneys received by the State under this subsection (d) for costs related to releases and substantial threats of releases of hazardous substances, pesticides, and petroleum other than releases and substantial threats of releases of petroleum from underground storage tanks subject to Title XVI of this Act must be deposited in and used for purposes consistent with the Hazardous Waste Fund. All moneys received by the State under this subsection (d) for costs related to releases and substantial threats of releases of petroleum from underground storage tanks subject to Title XVI of this Act must be deposited in and used for purposes consistent with the Underground Storage Tank Fund.

Sec. 25d-4. Agency authority. Whenever the Agency determines that a public notice should be issued under this Title, the Agency has the authority to issue an information demand letter to the owner or operator of the site or facility where the release occurred or is suspected to have occurred that requires the owner or operator to provide the Agency with the information necessary, to the extent practicable, to give the notices required under Section 25d-3 of this Title. In the case of a release or suspected release from an underground storage tank subject to Title XVI of this Act, the Agency has the authority to issue such a letter to the owner or operator of the underground storage tank. Within 30 days after the issuance of a letter under this Section, or within a greater period specified by the Agency, the person who receives the letter shall provide the Agency with the required information. Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any letter issued under this Section is in violation of this Act.

(415 ILCS 5/25d-5 new)

Sec. 25d-5. Contamination information. Beginning July 1, 2006, the Agency shall make all of the following information available on the Internet:

(i) Copies of all notifications given under Section 25d-3 of this Section. The copies must be indexed and the index shall, at a minimum, be searchable by notification date, zip code, site or facility name, and geographic location.

(ii) Appropriate Agency databases containing information about releases or suspected releases of contaminants in the State. The databases must, at a minimum, be searchable by notification date, zip code, site or facility name, and geographic location.

(iii) Links to appropriate USEPA databases containing information about releases or suspected releases of contaminants in the State.

(415 ILCS 5/25d-6 new)

Sec. 25d-6. Agency coordination. Beginning January 1, 2006, the Agency shall coordinate with the Department of Public Health to provide training to regional and local health department staff on the use of the information posted on the Internet under Section 25d-5 of this Title. Also beginning January 1, 2006, the Agency shall coordinate with the Department of Public Health to provide training to licensed water well drillers on the use of the information posted on the Internet under Section 25d-5 of this Title in relation to the location and installation of new wells serving private, semi-private, and non-community water systems.

(415 ILCS 5/25d-7 new)

Sec. 25d-7. Rulemaking.

(a) Within 180 days after the effective date of this amendatory Act of the 94th General Assembly, the Agency shall evaluate the Board's rules and propose amendments to the rules as necessary to require potable water supply well surveys and community relations activities where such surveys and activities are appropriate in response to releases of contaminants that have impacted or that may impact offsite potable water supply wells. Within 240 days after receiving the Agency's proposal, the Board shall amend its rules as necessary to require potable water supply well surveys and community relations activities where such surveys and activities are appropriate in response to releases of contaminants that have impacted or that may impact offsite potable water supply wells. Community relations activities required by the Board shall include, but shall not be limited to, submitting a community relations plan for Agency approval, maintaining a public information repository that contains timely information about the actions being taken in response to a release, and maintaining dialogue with the community through means such as public meetings, fact sheets, and community advisory groups.

(b) The Agency shall adopt rules setting forth costs for which persons may be liable to the State under Section 25d-3(d) of this Act. In addition, the Agency shall have the authority to adopt other rules as necessary for the administration of this Title.

(415 ILCS 5/25d-8 new)

Sec. 25d-8. Liability. Except for willful and wanton misconduct, neither the State, the Director, nor any State employee shall be liable for any damages or injuries arising out of or resulting from any act or omission occurring under this amendatory Act of the 94th General Assembly.

(415 ILCS 5/25d-9 new)

Sec. 25d-9. Admissibility. The Agency's giving of notice or failure to give notice under Section 25d-3 of this Title shall not be admissible for any purpose in any administrative or judicial proceeding.

(415 ILCS 5/25d-10 new)

Sec. 25d-10. Avoiding duplication. The Agency shall take whatever steps it deems necessary to eliminate the potential for duplicative notices required by this Title and Section 9.1 of the Illinois Groundwater Protection Act.

(415 ILCS 5/58.8)

Sec. 58.8. Duty to record.

(a) The RA receiving a No Further Remediation Letter from the Agency pursuant to Section 58.10, shall submit the letter to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days of receipt of the letter. The Office of the Recorder or the Registrar of Titles shall accept and record that letter in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

(b) A No Further Remediation Letter shall not become

effective until officially recorded in accordance with subsection (a) of this Section. The RA shall obtain and submit to the Agency a certified copy of the No Further Remediation Letter as recorded.

(c) (Blank). ~~At no time shall any site for which a land use limitation has been imposed as a result of remediation activities under this Title be used in a manner inconsistent with the land use limitation unless further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use and a new No Further Remediation Letter obtained and recorded in accordance with this Title.~~

(d) In the event that a No Further Remediation Letter issues by operation of law pursuant to Section 58.10, the RA may, for purposes of this Section, file an affidavit stating that the letter issued by operation of law. Upon receipt of the No Further Remediation Letter from the Agency, the RA shall comply with the requirements of subsections (a) and (b) of this Section.

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

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