

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 Sections 3.160, 22.51, 31.1, and 42 and by adding Sections 22.51a and 22.51b as follows:

(415 ILCS 5/3.160) (was 415 ILCS 5/3.78 and 3.78a)

Sec. 3.160. Construction or demolition debris.

(a) "General construction or demolition debris" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials.

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling,

repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste.

To the extent allowed by federal law, uncontaminated concrete with protruding rebar shall be considered clean construction or demolition debris and shall not be considered "waste" if it is separated or processed and returned to the economic mainstream in the form of raw materials or products within 4 years of its generation, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with item (i) in subsection (b) of this Section.

(b) "Clean construction or demolition debris" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities.

Clean construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any clean construction or demolition debris or other waste.

To the extent allowed by federal law, clean construction or demolition debris shall not be considered "waste" if it is (i) used as fill material outside of a setback zone if the fill is placed no higher than the highest point of elevation existing prior to the filling immediately adjacent to the fill area, and if covered by sufficient uncontaminated soil to support

vegetation within 30 days of the completion of filling or if covered by a road or structure, and, if used as fill material in a current or former quarry, mine, or other excavation, is used in accordance with the requirements of Section 22.51 of this Act and the rules adopted thereunder or (ii) separated or processed and returned to the economic mainstream in the form of raw materials or products, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with item (i), or (iii) solely broken concrete without protruding metal bars used for erosion control, or (iv) generated from the construction or demolition of a building, road, or other structure and used to construct, on the site where the construction or demolition has taken place, a manmade functional structure not to exceed 20 feet above the highest point of elevation of the property immediately adjacent to the new manmade functional structure as that elevation existed prior to the creation of that new structure, provided that the structure shall be covered with sufficient soil materials to sustain vegetation or by a road or structure, and further provided that no such structure shall be constructed within a home rule municipality with a population over 500,000 without the consent of the municipality.

For purposes of this subsection (b), reclaimed or other asphalt pavement shall not be considered speculatively accumulated if: (i) it is not commingled with any other clean construction or demolition debris or any waste; (ii) it is

returned to the economic mainstream in the form of raw materials or products within 4 years after its generation; (iii) at least 25% of the total amount present at a site during a calendar year is transported off of the site during the next calendar year; and (iv) if used as a fill material, it is used in accordance with item (i) of the second paragraph of this subsection (b).

(c) For purposes of this Section, the term "uncontaminated soil" means soil that does not contain contaminants in concentrations that pose a threat to human health and safety and the environment.

(1) No later than one year after the effective date of this amendatory Act of the 96th General Assembly, the Agency shall propose, and, no later than one year after receipt of the Agency's proposal, the Board shall adopt, rules specifying the maximum concentrations of contaminants that may be present in uncontaminated soil for purposes of this Section. For carcinogens, the maximum concentrations shall not allow exposure to exceed an excess upper-bound lifetime risk of 1 in 1,000,000; provided that the Board may consider allowing benzo(a)pyrene up to the applicable background concentration set forth in Table H of Appendix A of 35 Ill. Adm. Code 742 in soil used as fill material in a current or former quarry, mine, or other excavation in accordance with Section 22.51 or 22.51a of this Act and rules adopted under those Sections, so long as

the applicable background concentration is based upon the location of the quarry, mine, or other excavation.

(2) To the extent allowed under federal law and regulations, uncontaminated soil shall not be considered a waste.

(Source: P.A. 95-121, eff. 8-13-07; 96-235, eff. 8-11-09.)

(415 ILCS 5/22.51)

Sec. 22.51. Clean Construction or Demolition Debris Fill Operations.

(a) No person shall conduct any clean construction or demolition debris fill operation in violation of this Act or any regulations or standards adopted by the Board.

(b) (1) (A) Beginning August 18, 2005 ~~30 days after the effective date of this amendatory Act of the 94th General Assembly~~ but prior to July 1, 2008, no person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation, unless they have applied for an interim authorization from the Agency for the clean construction or demolition debris fill operation.

(B) The Agency shall approve an interim authorization upon its receipt of a written application for the interim authorization that is signed by the site owner and the site operator, or their duly authorized agent, and that contains the following information: (i) the location of the site where the clean construction or demolition debris fill operation is

taking place, (ii) the name and address of the site owner, (iii) the name and address of the site operator, and (iv) the types and amounts of clean construction or demolition debris being used as fill material at the site.

(C) The Agency may deny an interim authorization if the site owner or the site operator, or their duly authorized agent, fails to provide to the Agency the information listed in subsection (b) (1) (B) of this Section. Any denial of an interim authorization shall be subject to appeal to the Board in accordance with the procedures of Section 40 of this Act.

(D) No person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation for which the Agency has denied interim authorization under subsection (b) (1) (C) of this Section. The Board may stay the prohibition of this subsection (D) during the pendency of an appeal of the Agency's denial of the interim authorization brought under subsection (b) (1) (C) of this Section.

(2) Beginning September 1, 2006, owners and operators of clean construction or demolition debris fill operations shall, in accordance with a schedule prescribed by the Agency, submit to the Agency applications for the permits required under this Section. The Agency shall notify owners and operators in writing of the due date for their permit application. The due date shall be no less than 90 days after the date of the Agency's written notification. Owners and operators who do not

receive a written notification from the Agency by October 1, 2007, shall submit a permit application to the Agency by January 1, 2008. The interim authorization of owners and operators who fail to submit a permit application to the Agency by the permit application's due date shall terminate on (i) the due date established by the Agency if the owner or operator received a written notification from the Agency prior to October 1, 2007, or (ii) or January 1, 2008, if the owner or operator did not receive a written notification from the Agency by October 1, 2007.

(3) On and after July 1, 2008, no person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation (i) without a permit granted by the Agency for the clean construction or demolition debris fill operation or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with Board regulations and standards adopted under this Act or (ii) in violation of any regulations or standards adopted by the Board under this Act.

(4) This subsection (b) does not apply to:

(A) the use of clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation located on the site where the clean construction or demolition debris was generated;

(B) the use of clean construction or demolition debris as fill material in an excavation other than a current or former quarry or mine if this use complies with Illinois Department of Transportation specifications; or

(C) current or former quarries, mines, and other excavations that do not use clean construction or demolition debris as fill material.

(c) In accordance with Title VII of this Act, the Board may adopt regulations to promote the purposes of this Section. The Agency shall consult with the mining and construction industries during the development of any regulations to promote the purposes of this Section.

(1) No later than December 15, 2005, the Agency shall propose to the Board, and no later than September 1, 2006, the Board shall adopt, regulations for the use of clean construction or demolition debris as fill material in current and former quarries, mines, and other excavations. Such regulations shall include, but shall not be limited to, standards for clean construction or demolition debris fill operations and the submission and review of permits required under this Section.

(2) Until the Board adopts rules under subsection (c)(1) of this Section, all persons using clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation shall:

(A) Assure that only clean construction or

demolition debris is being used as fill material by screening each truckload of material received using a device approved by the Agency that detects volatile organic compounds. Such devices may include, but are not limited to, photo ionization detectors. All screening devices shall be operated and maintained in accordance with manufacturer's specifications. Unacceptable fill material shall be rejected from the site; and

(B) Retain for a minimum of 3 years the following information:

(i) The name of the hauler, the name of the generator, and place of origin of the debris or soil;

(ii) The approximate weight or volume of the debris or soil; and

(iii) The date the debris or soil was received.

(d) This Section applies only to clean construction or demolition debris that is not considered "waste" as provided in Section 3.160 of this Act.

(e) For purposes of this Section ~~a clean construction or demolition debris fill operation:~~

(1) The term "operator" means a person responsible for the operation and maintenance of a clean construction or demolition debris fill operation.

(2) The term "owner" means a person who has any direct

or indirect interest in a clean construction or demolition debris fill operation or in land on which a person operates and maintains a clean construction or demolition debris fill operation. A "direct or indirect interest" does not include the ownership of publicly traded stock. The "owner" is the "operator" if there is no other person who is operating and maintaining a clean construction or demolition debris fill operation.

(3) The term "clean construction or demolition debris fill operation" means a current or former quarry, mine, or other excavation where clean construction or demolition debris is used as fill material.

(4) The term "uncontaminated soil" shall have the same meaning as uncontaminated soil under Section 3.160 of this Act.

(f)(1) No later than one year after the effective date of this amendatory Act of the 96th General Assembly, the Agency shall propose to the Board, and, no later than one year after the Board's receipt of the Agency's proposal, the Board shall adopt, rules for the use of clean construction or demolition debris and uncontaminated soil as fill material at clean construction or demolition debris fill operations. The rules must include standards and procedures necessary to protect groundwater, which may include, but shall not be limited to, the following: requirements regarding testing and certification of soil used as fill material, surface water

runoff, liners or other protective barriers, monitoring (including, but not limited to, groundwater monitoring), corrective action, recordkeeping, reporting, closure and post-closure care, financial assurance, post-closure land use controls, location standards, and the modification of existing permits to conform to the requirements of this Act and Board rules. The rules may also include limits on the use of recyclable concrete and asphalt as fill material at clean construction or demolition debris fill operations, taking into account factors such as technical feasibility, economic reasonableness, and the availability of markets for such materials.

(2) Until the effective date of the Board rules adopted under subdivision (f)(1) of this Section, and in addition to any other requirements, owners and operators of clean construction or demolition debris fill operations must do all of the following in subdivisions (f)(2)(A) through (f)(2)(D) of this Section for all clean construction or demolition debris and uncontaminated soil accepted for use as fill material. The requirements in subdivisions (f)(2)(A) through (f)(2)(D) of this Section shall not limit any rules adopted by the Board.

(A) Document the following information for each load of clean construction or demolition debris or uncontaminated soil received: (i) the name of the hauler, the address of the site of origin, and the owner and the operator of the site of origin of the clean construction or demolition

debris or uncontaminated soil, (ii) the weight or volume of the clean construction or demolition debris or uncontaminated soil, and (iii) the date the clean construction or demolition debris or uncontaminated soil was received.

(B) For all soil, obtain either (i) a certification from the owner or operator of the site from which the soil was removed that the site has never been used for commercial or industrial purposes and is presumed to be uncontaminated soil or (ii) a certification from a licensed Professional Engineer that the soil is uncontaminated soil. Certifications required under this subdivision (f) (2) (B) must be on forms and in a format prescribed by the Agency.

(C) Confirm that the clean construction or demolition debris or uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants, including, but not limited to, activities conducted under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; as part of a Closure or Corrective Action under the Resource Conservation and Recovery Act, as amended; or under an Agency remediation program, such as the Leaking Underground Storage Tank Program or Site Remediation Program, but excluding sites subject to Section 58.16 of this Act where there is no presence or likely presence of a release or a substantial

threat of a release of a regulated substance at, on, or from the real property.

(D) Document all activities required under subdivision (f)(2) of this Section. Documentation of any chemical analysis must include, but is not limited to, (i) a copy of the lab analysis, (ii) accreditation status of the laboratory performing the analysis, and (iii) certification by an authorized agent of the laboratory that the analysis has been performed in accordance with the Agency's rules for the accreditation of environmental laboratories and the scope of accreditation.

(3) Owners and operators of clean construction or demolition debris fill operations must maintain all documentation required under subdivision (f)(2) of this Section for a minimum of 3 years following the receipt of each load of clean construction or demolition debris or uncontaminated soil, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. Copies of the documentation must be made available to the Agency and to units of local government for inspection and copying during normal business hours. The Agency may prescribe forms and formats for the documentation required under subdivision (f)(2) of this Section.

Chemical analysis conducted under subdivision (f)(2) of

this Section must be conducted in accordance with the requirements of 35 Ill. Adm. Code 742, as amended, and "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA Publication No. SW-846, as amended.

(g)(1) No person shall use soil other than uncontaminated soil as fill material at a clean construction or demolition debris fill operation.

(2) No person shall use construction or demolition debris other than clean construction or demolition debris as fill material at a clean construction or demolition debris fill operation.

(Source: P.A. 94-272, eff. 7-19-05; 94-725, eff. 6-1-06.)

(415 ILCS 5/22.51a new)

Sec. 22.51a. Uncontaminated Soil Fill Operations.

(a) For purposes of this Section:

(1) The term "uncontaminated soil" shall have the same meaning as uncontaminated soil under Section 3.160 of this Act.

(2) The term "uncontaminated soil fill operation" means a current or former quarry, mine, or other excavation where uncontaminated soil is used as fill material, but does not include a clean construction or demolition debris fill operation.

(b) No person shall use soil other than uncontaminated soil as fill material at an uncontaminated soil fill operation.

(c) Owners and operators of uncontaminated soil fill operations must register the fill operations with the Agency. Uncontaminated soil fill operations that received uncontaminated soil prior to the effective date of this amendatory Act of the 96th General Assembly must be registered with the Agency no later than March 31, 2011. Uncontaminated soil fill operations that first receive uncontaminated soil on or after the effective date of this amendatory Act of the 96th General Assembly must be registered with the Agency prior to the receipt of any uncontaminated soil. Registrations must be submitted on forms and in a format prescribed by the Agency.

(d) (1) No later than one year after the effective date of this amendatory Act of the 96th General Assembly, the Agency shall propose to the Board, and, no later than one year after the Board's receipt of the Agency's proposal, the Board shall adopt, rules for the use of uncontaminated soil as fill material at uncontaminated soil fill operations. The rules must include standards and procedures necessary to protect groundwater, which shall include, but shall not be limited to, testing and certification of soil used as fill material and requirements for recordkeeping.

(2) Until the effective date of the Board rules adopted under subdivision (d) (1) of this Section, owners and operators of uncontaminated soil fill operations must do all of the following in subdivisions (d) (2) (A) through (d) (2) (F) of this Section for all uncontaminated soil accepted for use as fill

material. The requirements in subdivisions (d)(2)(A) through (d)(2)(F) of this Section shall not limit any rules adopted by the Board.

(A) Document the following information for each load of uncontaminated soil received: (i) the name of the hauler, the address of the site of origin, and the owner and the operator of the site of origin of the uncontaminated soil, (ii) the weight or volume of the uncontaminated soil, and (iii) the date the uncontaminated soil was received.

(B) Obtain either (i) a certification from the owner or operator of the site from which the soil was removed that the site has never been used for commercial or industrial purposes and is presumed to be uncontaminated soil or (ii) a certification from a licensed Professional Engineer that the soil is uncontaminated soil. Certifications required under this subdivision (d)(2)(B) must be on forms and in a format prescribed by the Agency.

(C) Confirm that the uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants, including, but not limited to, activities conducted under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; as part of a Closure or Corrective Action under the Resource Conservation and Recovery Act, as amended; or under an Agency remediation program, such as the Leaking Underground Storage Tank Program or Site Remediation

Program, but excluding sites subject to Section 58.16 of this Act where there is no presence or likely presence of a release or a substantial threat of a release of a regulated substance at, on, or from the real property.

(D) Visually inspect each load to confirm that only uncontaminated soil is being accepted for use as fill material.

(E) Screen each load of uncontaminated soil using a device that is approved by the Agency and detects volatile organic compounds. Such a device may include, but is not limited to, a photo ionization detector or a flame ionization detector. All screening devices shall be operated and maintained in accordance with the manufacturer's specifications. Unacceptable soil must be rejected from the fill operation.

(F) Document all activities required under subdivision (d)(2) of this Section. Documentation of any chemical analysis must include, but is not limited to, (i) a copy of the lab analysis, (ii) accreditation status of the laboratory performing the analysis, and (iii) certification by an authorized agent of the laboratory that the analysis has been performed in accordance with the Agency's rules for the accreditation of environmental laboratories and the scope of accreditation.

(3) Owners and operators of uncontaminated soil fill operations must maintain all documentation required under

subdivision (d)(2) of this Section for a minimum of 3 years following the receipt of each load of uncontaminated soil, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. Copies of the documentation must be made available to the Agency and to units of local government for inspection and copying during normal business hours. The Agency may prescribe forms and formats for the documentation required under subdivision (d)(2) of this Section.

Chemical analysis conducted under subdivision (d)(2) of this Section must be conducted in accordance with the requirements of 35 Ill. Adm. Code 742, as amended, and "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA Publication No. SW-846, as amended.

(415 ILCS 5/22.51b new)

Sec. 22.51b. Fees for permitted facilities accepting clean construction or demolition debris or uncontaminated soil.

(a) The Agency shall assess and collect a fee from the owner or operator of each clean construction or demolition debris fill operation that is permitted or required to be permitted by the Agency. The fee assessed and collected under this subsection shall be 20 cents per cubic yard of clean construction or demolition debris or uncontaminated soil

accepted by the clean construction or demolition debris fill operation, or, alternatively, the owner or operator may weigh the quantity of the clean construction or demolition debris or uncontaminated soil with a device for which certification has been obtained under the Weights and Measures Act and pay a fee of 14 cents per ton of clean construction or demolition debris or uncontaminated soil. The fee shall apply to construction or demolition debris or uncontaminated soil if (i) the clean construction or demolition debris fill operation is located off the site where the clean construction or demolition debris or uncontaminated soil was generated and (ii) the clean construction or demolition debris fill operation is owned, controlled, and operated by a person other than the generator of the clean construction or demolition debris or uncontaminated soil.

(b) The Agency shall establish rules relating to the collection of the fees authorized by subsection (a) of this Section. These rules shall include, but are not limited to, the following:

(1) Records identifying the quantities of clean construction or demolition debris and uncontaminated soil received.

(2) The form and submission of reports to accompany the payment of fees to the Agency.

(3) The time and manner of payment of fees to the Agency, which payments shall not be more often than

quarterly.

(c) Fees collected under this Section shall be in addition to any other fees collected under any other Section.

(d) The Agency shall not refund any fee paid to it under this Section.

(e) The Agency shall deposit all fees collected under this subsection into the Environmental Protection Permit and Inspection Fund. Pursuant to appropriation, all moneys collected under this Section shall be used by the Agency for the implementation of this Section and for permit and inspection activities.

(f) A unit of local government, as defined in the Local Solid Waste Disposal Act, in which a clean construction or demolition debris fill operation is located and which has entered into a delegation agreement with the Agency pursuant to subsection (r) of Section 4 of this Act for inspection, investigation, or enforcement functions related to clean construction or demolition debris fill operations may establish a fee, tax, or surcharge with regard to clean construction or demolition debris or uncontaminated soil accepted by clean construction or demolition debris fill operations. All fees, taxes, and surcharges collected under this subsection shall be used for inspection, investigation, and enforcement functions performed by the unit of local government pursuant to the delegation agreement with the Agency. Fees, taxes, and surcharges established under this

subsection (f) shall not exceed a total of 10 cents per cubic yard of clean construction or demolition debris or uncontaminated soil accepted by the clean construction or demolition debris fill operation, unless the owner or operator weighs the quantity of the clean construction or demolition debris or uncontaminated soil with a device for which certification has been obtained under the Weights and Measures Act, in which case the fee shall not exceed 7 cents per ton of clean construction or demolition debris or uncontaminated soil.

(g) For the purposes of this Section:

(1) The term "uncontaminated soil" shall have the same meaning as uncontaminated soil under Section 3.160 of this Act.

(2) The term "clean construction or demolition debris fill operation" shall have the same meaning as clean construction or demolition debris fill operation under Section 22.51 of this Act.

(415 ILCS 5/31.1) (from Ch. 111 1/2, par. 1031.1)

Sec. 31.1. Administrative citation.

(a) The prohibitions specified in subsections (o) and (p) of Section 21 and subsection (k) of Section 55 of this Act shall be enforceable either by administrative citation under this Section or as otherwise provided by this Act. Violations of Section 22.51 and 22.51a of this Act shall be enforceable

either by administrative citation under this Section or as otherwise provided by this Act.

(b) Whenever Agency personnel or personnel of a unit of local government to which the Agency has delegated its functions pursuant to subsection (r) of Section 4 of this Act, on the basis of direct observation, determine that any person has violated any provision of subsection (o) or (p) of Section 21, Section 22.51, Section 22.51a, or subsection (k) of Section 55 of this Act, the Agency or such unit of local government may issue and serve an administrative citation upon such person within not more than 60 days after the date of the observed violation. Each such citation issued shall be served upon the person named therein or such person's authorized agent for service of process, and shall include the following information:

(1) a statement specifying the provisions of subsection (o) or (p) of Section 21, Section 22.51, Section 22.51a, or subsection (k) of Section 55 of which the person was observed to be in violation;

(2) a copy of the inspection report in which the Agency or local government recorded the violation, which report shall include the date and time of inspection, and weather conditions prevailing during the inspection;

(3) the penalty imposed by subdivision (b)(4) or (b)(4-5) of Section 42 for such violation;

(4) instructions for contesting the administrative

citation findings pursuant to this Section, including notification that the person has 35 days within which to file a petition for review before the Board to contest the administrative citation; and

(5) an affidavit by the personnel observing the violation, attesting to their material actions and observations.

(c) The Agency or unit of local government shall file a copy of each administrative citation served under subsection (b) of this Section with the Board no later than 10 days after the date of service.

(d) (1) If the person named in the administrative citation fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) or (b)(4-5) of Section 42.

(2) If a petition for review is filed before the Board to contest an administrative citation issued under subsection (b) of this Section, the Agency or unit of local government shall appear as a complainant at a hearing before the Board to be conducted pursuant to Section 32 of this Act at a time not less than 21 days after notice of such hearing has been sent by the Board to the Agency or unit of local government and the person named in the citation. In such hearings, the burden of proof

shall be on the Agency or unit of local government. If, based on the record, the Board finds that the alleged violation occurred, it shall adopt a final order which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b) (4) or (b) (4-5) of Section 42. However, if the Board finds that the person appealing the citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.

(e) Sections 10-25 through 10-60 of the Illinois Administrative Procedure Act shall not apply to any administrative citation issued under subsection (b) of this Section.

(f) The other provisions of this Section shall not apply to a sanitary landfill operated by a unit of local government solely for the purpose of disposing of water and sewage treatment plant sludges, including necessary stabilizing materials.

(g) All final orders issued and entered by the Board pursuant to this Section shall be enforceable by injunction, mandamus or other appropriate remedy, in accordance with Section 42 of this Act.

(Source: P.A. 96-737, eff. 8-25-09.)

(415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

Sec. 42. Civil penalties.

(a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues; such penalties may, upon order of the Board or a court of competent jurisdiction, be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act.

(b) Notwithstanding the provisions of subsection (a) of this Section:

(1) Any person that violates Section 12(f) of this Act or any NPDES permit or term or condition thereof, or any filing requirement, regulation or order relating to the NPDES permit program, shall be liable to a civil penalty of not to exceed \$10,000 per day of violation.

(2) Any person that violates Section 12(g) of this Act or any UIC permit or term or condition thereof, or any filing requirement, regulation or order relating to the State UIC program for all wells, except Class II wells as defined by the Board under this Act, shall be liable to a civil penalty not to exceed \$2,500 per day of violation; provided, however, that any person who commits such

violations relating to the State UIC program for Class II wells, as defined by the Board under this Act, shall be liable to a civil penalty of not to exceed \$10,000 for the violation and an additional civil penalty of not to exceed \$1,000 for each day during which the violation continues.

(3) Any person that violates Sections 21(f), 21(g), 21(h) or 21(i) of this Act, or any RCRA permit or term or condition thereof, or any filing requirement, regulation or order relating to the State RCRA program, shall be liable to a civil penalty of not to exceed \$25,000 per day of violation.

(4) In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (o) of Section 21 of this Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act; except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

(4-5) In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21, Section

22.51, Section 22.51a, or subsection (k) of Section 55 of this Act shall pay a civil penalty of \$1,500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency, except that the civil penalty amount shall be \$3,000 for each violation of any provision of subsection (p) of Section 21, Section 22.51, Section 22.51a, or subsection (k) of Section 55 that is the person's second or subsequent adjudication violation of that provision. The penalties shall be deposited into the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act; except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

(5) Any person who violates subsection 6 of Section 39.5 of this Act or any CAAPP permit, or term or condition thereof, or any fee or filing requirement, or any duty to allow or carry out inspection, entry or monitoring activities, or any regulation or order relating to the CAAPP shall be liable for a civil penalty not to exceed \$10,000 per day of violation.

(6) Any owner or operator of a community water system that violates subsection (b) of Section 18.1 or subsection (a) of Section 25d-3 of this Act shall, for each day of violation, be liable for a civil penalty not to exceed \$5

for each of the premises connected to the affected community water system.

(b.5) In lieu of the penalties set forth in subsections (a) and (b) of this Section, any person who fails to file, in a timely manner, toxic chemical release forms with the Agency pursuant to Section 25b-2 of this Act shall be liable for a civil penalty of \$100 per day for each day the forms are late, not to exceed a maximum total penalty of \$6,000. This daily penalty shall begin accruing on the thirty-first day after the date that the person receives the warning notice issued by the Agency pursuant to Section 25b-6 of this Act; and the penalty shall be paid to the Agency. The daily accrual of penalties shall cease as of January 1 of the following year. All penalties collected by the Agency pursuant to this subsection shall be deposited into the Environmental Protection Permit and Inspection Fund.

(c) Any person that violates this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order and causes the death of fish or aquatic life shall, in addition to the other penalties provided by this Act, be liable to pay to the State an additional sum for the reasonable value of the fish or aquatic life destroyed. Any money so recovered shall be placed in the Wildlife and Fish Fund in the State Treasury.

(d) The penalties provided for in this Section may be recovered in a civil action.

(e) The State's Attorney of the county in which the violation occurred, or the Attorney General, may, at the request of the Agency or on his own motion, institute a civil action for an injunction, prohibitory or mandatory, to restrain violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, or to require such other actions as may be necessary to address violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.

(f) The State's Attorney of the county in which the violation occurred, or the Attorney General, shall bring such actions in the name of the people of the State of Illinois. Without limiting any other authority which may exist for the awarding of attorney's fees and costs, the Board or a court of competent jurisdiction may award costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in a case where he has prevailed against a person who has committed a wilful, knowing or repeated violation of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.

Any funds collected under this subsection (f) in which the Attorney General has prevailed shall be deposited in the Hazardous Waste Fund created in Section 22.2 of this Act. Any

funds collected under this subsection (f) in which a State's Attorney has prevailed shall be retained by the county in which he serves.

(g) All final orders imposing civil penalties pursuant to this Section shall prescribe the time for payment of such penalties. If any such penalty is not paid within the time prescribed, interest on such penalty at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, shall be paid for the period from the date payment is due until the date payment is received. However, if the time for payment is stayed during the pendency of an appeal, interest shall not accrue during such stay.

(h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b) (1), (b) (2), (b) (3), or (b) (5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

(1) the duration and gravity of the violation;

(2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

(3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

(4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

(5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;

(6) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency; and

(7) whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent.

(i) A person who voluntarily self-discloses non-compliance to the Agency, of which the Agency had been unaware, is entitled to a 100% reduction in the portion of the penalty that is not based on the economic benefit of non-compliance if the person can establish the following:

(1) that the non-compliance was discovered through an environmental audit or a compliance management system documented by the regulated entity as reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations;

(2) that the non-compliance was disclosed in writing within 30 days of the date on which the person discovered it;

(3) that the non-compliance was discovered and disclosed prior to:

(i) the commencement of an Agency inspection, investigation, or request for information;

(ii) notice of a citizen suit;

(iii) the filing of a complaint by a citizen, the Illinois Attorney General, or the State's Attorney of the county in which the violation occurred;

(iv) the reporting of the non-compliance by an employee of the person without that person's knowledge; or

(v) imminent discovery of the non-compliance by the Agency;

(4) that the non-compliance is being corrected and any environmental harm is being remediated in a timely fashion;

(5) that the person agrees to prevent a recurrence of the non-compliance;

(6) that no related non-compliance events have occurred in the past 3 years at the same facility or in the past 5 years as part of a pattern at multiple facilities owned or operated by the person;

(7) that the non-compliance did not result in serious actual harm or present an imminent and substantial endangerment to human health or the environment or violate the specific terms of any judicial or administrative order or consent agreement;

(8) that the person cooperates as reasonably requested by the Agency after the disclosure; and

(9) that the non-compliance was identified voluntarily and not through a monitoring, sampling, or auditing procedure that is required by statute, rule, permit, judicial or administrative order, or consent agreement.

If a person can establish all of the elements under this subsection except the element set forth in paragraph (1) of this subsection, the person is entitled to a 75% reduction in the portion of the penalty that is not based upon the economic benefit of non-compliance.

(j) In addition to an other remedy or penalty that may apply, whether civil or criminal, any person who violates

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Section 22.52 of this Act shall be liable for an additional civil penalty of up to 3 times the gross amount of any pecuniary gain resulting from the violation.

(Source: P.A. 95-331, eff. 8-21-07; 96-603, eff. 8-24-09; 96-737, eff. 8-25-09; revised 9-15-09.)

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