

1 AN ACT concerning 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 by
5 changing Section 39.2 and 40.1 as follows:

6 (415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

7 Sec. 39.2. Local siting review.

8 (a) The county board of the county or the governing body of
9 the municipality, as determined by paragraph (c) of Section 39
10 of this Act, shall approve or disapprove the request for local
11 siting approval for each pollution control facility which is
12 subject to such review. An applicant for local siting approval
13 shall submit sufficient details describing the proposed
14 facility and evidence to demonstrate compliance, and local
15 siting approval shall be granted only if the proposed facility
16 meets the following criteria:

17 (i) the facility is necessary to accommodate the waste
18 needs of the area it is intended to serve;

19 (ii) the facility is so designed, located and proposed
20 to be operated that the public health, safety and welfare
21 will be protected;

22 (iii) the facility is located so as to minimize
23 incompatibility with the character of the surrounding area

1 and to minimize the effect on the value of the surrounding
2 property;

3 (iv) (A) for a facility other than a sanitary landfill
4 or waste disposal site, the facility is located outside
5 the boundary of the 100 year flood plain or the site is
6 flood-proofed; (B) for a facility that is a sanitary
7 landfill or waste disposal site, the facility is located
8 outside the boundary of the 100-year floodplain, or if the
9 facility is a facility described in subsection (b) (3) of
10 Section 22.19a, the site is flood-proofed;

11 (v) the plan of operations for the facility is
12 designed to minimize the danger to the surrounding area
13 from fire, spills, or other operational accidents;

14 (vi) the traffic patterns to or from the facility are
15 so designed as to minimize the impact on existing traffic
16 flows;

17 (vii) if the facility will be treating, storing or
18 disposing of hazardous waste, an emergency response plan
19 exists for the facility which includes notification,
20 containment and evacuation procedures to be used in case
21 of an accidental release;

22 (viii) if the facility is to be located in a county
23 where the county board has adopted a solid waste
24 management plan consistent with the planning requirements
25 of the Local Solid Waste Disposal Act or the Solid Waste
26 Planning and Recycling Act, the facility is consistent

1 with that plan; for purposes of this criterion (viii), the
2 "solid waste management plan" means the plan that is in
3 effect as of the date the application for siting approval
4 is filed; and

5 (ix) if the facility will be located within a
6 regulated recharge area, any applicable requirements
7 specified by the Board for such areas have been met.

8 The county board or the governing body of the municipality
9 may also consider as evidence the previous operating
10 experience and past record of convictions or admissions of
11 violations of the applicant (and any subsidiary or parent
12 corporation) in the field of solid waste management when
13 considering criteria (ii) and (v) under this Section.

14 If the facility is subject to the location restrictions in
15 Section 22.14 of this Act, compliance with that Section shall
16 be determined as of the date the application for siting
17 approval is filed.

18 (b) No later than 14 days before the date on which the
19 county board or governing body of the municipality receives a
20 request for site approval, the applicant shall cause written
21 notice of such request to be served either in person or by
22 registered mail, return receipt requested, on the owners of
23 all property within the subject area not solely owned by the
24 applicant, and on the owners of all property within 250 feet in
25 each direction of the lot line of the subject property, said
26 owners being such persons or entities which appear from the

1 authentic tax records of the County in which such facility is
2 to be located; provided, that the number of all feet occupied
3 by all public roads, streets, alleys and other public ways
4 shall be excluded in computing the 250 feet requirement;
5 provided further, that in no event shall this requirement
6 exceed 400 feet, including public streets, alleys and other
7 public ways.

8 Such written notice shall also be served upon members of
9 the General Assembly from the legislative district in which
10 the proposed facility is located and shall be published in a
11 newspaper of general circulation published in the county in
12 which the site is located.

13 Such notice shall state the name and address of the
14 applicant, the location of the proposed site, the nature and
15 size of the development, the nature of the activity proposed,
16 the probable life of the proposed activity, the date when the
17 request for site approval will be submitted, and a description
18 of the right of persons to comment on such request as hereafter
19 provided.

20 (c) An applicant shall file a copy of its request with the
21 county board of the county or the governing body of the
22 municipality in which the proposed site is located. The
23 request shall include (i) the substance of the applicant's
24 proposal and (ii) all documents, if any, submitted as of that
25 date to the Agency pertaining to the proposed facility, except
26 trade secrets as determined under Section 7.1 of this Act. All

1 such documents or other materials on file with the county
2 board or governing body of the municipality shall be made
3 available for public inspection at the office of the county
4 board or the governing body of the municipality and may be
5 copied upon payment of the actual cost of reproduction.

6 Any person may file written comment with the county board
7 or governing body of the municipality concerning the
8 appropriateness of the proposed site for its intended purpose.
9 The county board or governing body of the municipality shall
10 consider any comment received or postmarked not later than 30
11 days after the date of the last public hearing.

12 (d) At least one public hearing, at which an applicant
13 shall present at least one witness to testify subject to
14 cross-examination, is to be held by the county board or
15 governing body of the municipality no sooner than 90 days but
16 no later than 120 days after the date on which it received the
17 request for site approval. No later than 14 days prior to such
18 hearing, notice shall be published in a newspaper of general
19 circulation published in the county of the proposed site, and
20 delivered by certified mail to all members of the General
21 Assembly from the district in which the proposed site is
22 located, to the governing authority of every municipality
23 contiguous to the proposed site or contiguous to the
24 municipality in which the proposed site is to be located, to
25 the county board of the county where the proposed site is to be
26 located, if the proposed site is located within the boundaries

1 of a municipality, and to the Agency. Members or
2 representatives of the governing authority of a municipality
3 contiguous to the proposed site or contiguous to the
4 municipality in which the proposed site is to be located and,
5 if the proposed site is located in a municipality, members or
6 representatives of the county board of a county in which the
7 proposed site is to be located may appear at and participate in
8 public hearings held pursuant to this Section. The public
9 hearing shall develop a record sufficient to form the basis of
10 appeal of the decision in accordance with Section 40.1 of this
11 Act. The fact that a member of the county board or governing
12 body of the municipality has publicly expressed an opinion on
13 an issue related to a site review proceeding shall not
14 preclude the member from taking part in the proceeding and
15 voting on the issue.

16 (d-5) The county board of the county or governing body of
17 the municipality shall conduct the hearing required under
18 subsection (d) in a manner that is accessible to the public,
19 including, but not limited to, individuals with disabilities
20 and individuals who are not native speakers of English. Upon
21 completion of the hearing, the county board of the county or
22 the governing body of the municipality shall certify
23 compliance with the requirements of this subsection as a part
24 of the written record of the hearing. The inclusion of the
25 certification described in this subsection in the written
26 record of the hearing shall constitute prima facie evidence of

1 compliance with the requirements of this subsection, and an
2 allegation or claim of noncompliance with this subsection
3 shall not serve as the basis for an appeal of siting approval
4 under Section 40.1.

5 (e) Decisions of the county board or governing body of the
6 municipality are to be in writing, confirming a public hearing
7 was held with testimony from at least one witness presented by
8 the applicant, specifying the reasons for the decision, such
9 reasons to be in conformance with subsection (a) of this
10 Section. In granting approval for a site the county board or
11 governing body of the municipality may impose such conditions
12 as may be reasonable and necessary to accomplish the purposes
13 of this Section and as are not inconsistent with regulations
14 promulgated by the Board. Such decision shall be available for
15 public inspection at the office of the county board or
16 governing body of the municipality and may be copied upon
17 payment of the actual cost of reproduction. If there is no
18 final action by the county board or governing body of the
19 municipality within 180 days after the date on which it
20 received the request for site approval, the applicant may deem
21 the request approved.

22 At the public hearing, at any time prior to completion by
23 the applicant of the presentation of the applicant's factual
24 evidence, testimony, and an opportunity for cross-examination
25 by the county board or governing body of the municipality and
26 any participants, the applicant may file not more than one

1 amended application upon payment of additional fees pursuant
2 to subsection (k); in which case the time limitation for final
3 action set forth in this subsection (e) shall be extended for
4 an additional period of 90 days.

5 If, prior to making a final local siting decision, a
6 county board or governing body of a municipality has
7 negotiated and entered into a host agreement with the local
8 siting applicant, the terms and conditions of the host
9 agreement, whether written or oral, shall be disclosed and
10 made a part of the hearing record for that local siting
11 proceeding. In the case of an oral agreement, the disclosure
12 shall be made in the form of a written summary jointly prepared
13 and submitted by the county board or governing body of the
14 municipality and the siting applicant and shall describe the
15 terms and conditions of the oral agreement.

16 (e-5) Siting approval obtained pursuant to this Section is
17 transferable and may be transferred to a subsequent owner or
18 operator. In the event that siting approval has been
19 transferred to a subsequent owner or operator, that subsequent
20 owner or operator assumes and takes subject to any and all
21 conditions imposed upon the prior owner or operator by the
22 county board of the county or governing body of the
23 municipality pursuant to subsection (e). However, any such
24 conditions imposed pursuant to this Section may be modified by
25 agreement between the subsequent owner or operator and the
26 appropriate county board or governing body. Further, in the

1 event that siting approval obtained pursuant to this Section
2 has been transferred to a subsequent owner or operator, that
3 subsequent owner or operator assumes all rights and
4 obligations and takes the facility subject to any and all
5 terms and conditions of any existing host agreement between
6 the prior owner or operator and the appropriate county board
7 or governing body.

8 (f) A local siting approval granted under this Section
9 shall expire at the end of 2 calendar years from the date upon
10 which it was granted, unless the local siting approval granted
11 under this Section is for a sanitary landfill operation, in
12 which case the approval shall expire at the end of 3 calendar
13 years from the date upon which it was granted, and unless
14 within that period the applicant has made application to the
15 Agency for a permit to develop the site. In the event that the
16 local siting decision has been appealed, such expiration
17 period shall be deemed to begin on the date upon which the
18 appeal process is concluded.

19 Except as otherwise provided in this subsection, upon the
20 expiration of a development permit under subsection (k) of
21 Section 39, any associated local siting approval granted for
22 the facility under this Section shall also expire.

23 If a first development permit for a municipal waste
24 incineration facility expires under subsection (k) of Section
25 39 after September 30, 1989 due to circumstances beyond the
26 control of the applicant, any associated local siting approval

1 granted for the facility under this Section may be used to
2 fulfill the local siting approval requirement upon application
3 for a second development permit for the same site, provided
4 that the proposal in the new application is materially the
5 same, with respect to the criteria in subsection (a) of this
6 Section, as the proposal that received the original siting
7 approval, and application for the second development permit is
8 made before January 1, 1990.

9 (g) The siting approval procedures, criteria and appeal
10 procedures provided for in this Act for new pollution control
11 facilities shall be the exclusive siting procedures and rules
12 and appeal procedures for facilities subject to such
13 procedures. Local zoning or other local land use requirements
14 shall not be applicable to such siting decisions.

15 (h) Nothing in this Section shall apply to any existing or
16 new pollution control facility located within the corporate
17 limits of a municipality with a population of over 1,000,000.

18 (i) (Blank.)

19 The Board shall adopt regulations establishing the
20 geologic and hydrologic siting criteria necessary to protect
21 usable groundwater resources which are to be followed by the
22 Agency in its review of permit applications for new pollution
23 control facilities. Such regulations, insofar as they apply to
24 new pollution control facilities authorized to store, treat or
25 dispose of any hazardous waste, shall be at least as stringent
26 as the requirements of the Resource Conservation and Recovery

1 Act and any State or federal regulations adopted pursuant
2 thereto.

3 (j) Any new pollution control facility which has never
4 obtained local siting approval under the provisions of this
5 Section shall be required to obtain such approval after a
6 final decision on an appeal of a permit denial.

7 (k) A county board or governing body of a municipality may
8 charge applicants for siting review under this Section a
9 reasonable fee to cover the reasonable and necessary costs
10 incurred by such county or municipality in the siting review
11 process.

12 (l) The governing Authority as determined by subsection
13 (c) of Section 39 of this Act may request the Department of
14 Transportation to perform traffic impact studies of proposed
15 or potential locations for required pollution control
16 facilities, including studies of the emissions associated with
17 traffic. The Department of Transportation may charge a fee to
18 cover the costs of the emissions study.

19 (m) An applicant may not file a request for local siting
20 approval which is substantially the same as a request which
21 was disapproved pursuant to a finding against the applicant
22 under any of criteria (i) through (ix) of subsection (a) of
23 this Section within the preceding 2 years.

24 (n) In any review proceeding of a decision of the county
25 board or governing body of a municipality made pursuant to the
26 local siting review process, the petitioner in the review

1 proceeding shall pay to the county or municipality the cost of
2 preparing and certifying the record of proceedings. Should the
3 petitioner in the review proceeding fail to make payment, the
4 provisions of Section 3-109 of the Code of Civil Procedure
5 shall apply.

6 In the event the petitioner is a citizens' group that
7 participated in the siting proceeding and is so located as to
8 be affected by the proposed facility, such petitioner shall be
9 exempt from paying the costs of preparing and certifying the
10 record.

11 (o) Notwithstanding any other provision of this Section, a
12 transfer station used exclusively for landscape waste, where
13 landscape waste is held no longer than 24 hours from the time
14 it was received, is not subject to the requirements of local
15 siting approval under this Section, but is subject only to
16 local zoning approval.

17 (Source: P.A. 100-382, eff. 8-25-17.)