

1 incorporate by reference these matters in its rules only if
2 the agency, organization, or association originally issuing
3 the matter makes copies readily available to the public.
4 This Section does not apply to any agency internal manual.

5 For any law imposing taxes on or measured by income, the
6 Department of Revenue may promulgate rules that include
7 incorporations by reference of federal rules or regulations
8 without identifying the incorporated matter by date and
9 without including a statement that the incorporation does not
10 include later amendments.

11 (b) Use of the incorporation by reference procedure
12 under this Section shall be reviewed by the Joint Committee
13 on Administrative Rules during the rulemaking process as set
14 forth in this Act.

15 (c) The agency adopting a rule, regulation, standard, or
16 guideline under this Section shall maintain a copy of the
17 referenced rule, regulation, standard, or guideline in at
18 least one of its principal offices and shall make it
19 available to the public upon request for inspection and
20 copying at no more than cost. Requests for copies of
21 materials incorporated by reference shall not be deemed
22 Freedom of Information Act requests unless so labeled by the
23 requestor. The agency shall designate by rule the agency
24 location at which incorporated materials are maintained and
25 made available to the public for inspection and copying.
26 These rules may be adopted under the procedures in Section
27 5-15. In addition, the agency may include the designation of
28 the agency location of incorporated materials in a rulemaking
29 under Section 5-35, but emergency and peremptory rulemaking
30 procedures may not be used solely for this purpose.

31 (d) An incorporation by reference that is included in a
32 rule adopted by the Environmental Protection Agency or the
33 Pollution Control Board may be updated using the expedited
34 rulemaking procedure provided in Section 28.6 of the

1 Environmental Protection Act. Sections 5-35 through 5-50 of
2 this Act do not apply to those expedited rulemakings, except
3 as may be otherwise provided in that Section 28.6 or in Board
4 or Agency rules implementing that Section.

5 (Source: P.A. 90-155, eff. 7-23-97.)

6 Section 10. The Environmental Protection Act is amended
7 by changing Sections 4, 5, 22.2, 30, 31, 33, 35, 36, 37, 42,
8 and 45 and adding Section 28.6 as follows:

9 (415 ILCS 5/4) (from Ch. 111 1/2, par. 1004)

10 Sec. 4. Environmental Protection Agency; establishment;
11 duties.

12 (a) There is established in the Executive Branch of the
13 State Government an agency to be known as the Environmental
14 Protection Agency. This Agency shall be under the
15 supervision and direction of a Director who shall be
16 appointed by the Governor with the advice and consent of the
17 Senate. The term of office of the Director shall expire on
18 the third Monday of January in odd numbered years, provided
19 that he or she shall hold office until a successor is
20 appointed and has qualified. The Director shall receive an
21 annual salary as set by the Governor from time to time or as
22 set by the Compensation Review Board, whichever is greater.
23 If set by the Governor, the Director's annual salary may not
24 exceed 85% of the Governor's annual salary. The Director, in
25 accord with the Personnel Code, shall employ and direct such
26 personnel, and shall provide for such laboratory and other
27 facilities, as may be necessary to carry out the purposes of
28 this Act. In addition, the Director may by agreement secure
29 such services as he or she may deem necessary from any other
30 department, agency, or unit of the State Government, and may
31 employ and compensate such consultants and technical
32 assistants as may be required.

1 (b) The Agency shall have the duty to collect and
 2 disseminate such information, acquire such technical data,
 3 and conduct such experiments as may be required to carry out
 4 the purposes of this Act, including ascertainment of the
 5 quantity and nature of discharges from any contaminant source
 6 and data on those sources, and to operate and arrange for the
 7 operation of devices for the monitoring of environmental
 8 quality.

9 (c) The Agency shall have authority to conduct a program
 10 of continuing surveillance and of regular or periodic
 11 inspection of actual or potential contaminant or noise
 12 sources, of public water supplies, and of refuse disposal
 13 sites.

14 (d) In accordance with constitutional limitations, the
 15 Agency shall have authority to enter at all reasonable times
 16 upon any private or public property for the purpose of:

17 (1) Inspecting and investigating to ascertain
 18 possible violations of this Act, any rule or regulation
 19 adopted under this Act, any permit or term or condition
 20 of a permit, or any Board order; or the Act or of
 21 regulations--thereunder,--or--of--permits--or--terms---or
 22 conditions--thereof;--or

23 (2) In accordance with the provisions of this Act,
 24 taking whatever preventive or corrective action,
 25 including but not limited to removal or remedial action,
 26 that is necessary or appropriate whenever there is a
 27 release or a substantial threat of a release of (A) a
 28 hazardous substance or pesticide or (B) petroleum from an
 29 underground storage tank.

30 (e) The Agency shall have the duty to investigate
 31 violations of this Act, any rule or regulation adopted under
 32 this Act, any permit or term or condition of a permit, or any
 33 Board order; Act-or-of-regulations-adopted-thereunder,--or-of
 34 permits--or---terms---or---conditions---thereof, to issue

1 administrative citations as provided in Section 31.1 of this
2 Act; and to take such summary enforcement action as is
3 provided for by Section 34 of this Act.

4 (f) The Agency shall appear before the Board in any
5 hearing upon a petition for variance, the denial of a permit,
6 or the validity or effect of a rule or regulation of the
7 Board, and shall have the authority to appear before the
8 Board in any hearing under the Act.

9 (g) The Agency shall have the duty to administer, in
10 accord with Title X of this Act, such permit and
11 certification systems as may be established by this Act or by
12 regulations adopted thereunder. The Agency may enter into
13 written delegation agreements with any department, agency, or
14 unit of State or local government under which all or portions
15 of this duty may be delegated for public water supply storage
16 and transport systems, sewage collection and transport
17 systems, air pollution control sources with uncontrolled
18 emissions of 100 tons per year or less and application of
19 algicides to waters of the State. Such delegation agreements
20 will require that the work to be performed thereunder will be
21 in accordance with Agency criteria, subject to Agency review,
22 and shall include such financial and program auditing by the
23 Agency as may be required.

24 (h) The Agency shall have authority to require the
25 submission of complete plans and specifications from any
26 applicant for a permit required by this Act or by regulations
27 thereunder, and to require the submission of such reports
28 regarding actual or potential violations of this Act, any
29 rule or regulation adopted under this Act, any permit or term
30 or condition of a permit, or any Board order ~~the-Act-or-of~~
31 ~~regulations-thereunder,-or-of-permits-or-terms-or--conditions~~
32 thereof, as may be necessary for the purposes of this Act.

33 (i) The Agency shall have authority to make
34 recommendations to the Board for the adoption of regulations

1 under Title VII of the Act.

2 (j) The Agency shall have the duty to represent the
3 State of Illinois in any and all matters pertaining to plans,
4 procedures, or negotiations for interstate compacts or other
5 governmental arrangements relating to environmental
6 protection.

7 (k) The Agency shall have the authority to accept,
8 receive, and administer on behalf of the State any grants,
9 gifts, loans, indirect cost reimbursements, or other funds
10 made available to the State from any source for purposes of
11 this Act or for air or water pollution control, public water
12 supply, solid waste disposal, noise abatement, or other
13 environmental protection activities, surveys, or programs.
14 Any federal funds received by the Agency pursuant to this
15 subsection shall be deposited in a trust fund with the State
16 Treasurer and held and disbursed by him in accordance with
17 Treasurer as Custodian of Funds Act, provided that such
18 monies shall be used only for the purposes for which they are
19 contributed and any balance remaining shall be returned to
20 the contributor.

21 The Agency is authorized to promulgate such regulations
22 and enter into such contracts as it may deem necessary for
23 carrying out the provisions of this subsection.

24 (l) The Agency is hereby designated as water pollution
25 agency for the state for all purposes of the Federal Water
26 Pollution Control Act, as amended; as implementing agency for
27 the State for all purposes of the Safe Drinking Water Act,
28 Public Law 93-523, as now or hereafter amended, except
29 Section 1425 of that Act; as air pollution agency for the
30 state for all purposes of the Clean Air Act of 1970, Public
31 Law 91-604, approved December 31, 1970, as amended; and as
32 solid waste agency for the state for all purposes of the
33 Solid Waste Disposal Act, Public Law 89-272, approved October
34 20, 1965, and amended by the Resource Recovery Act of 1970,

1 Public Law 91-512, approved October 26, 1970, as amended, and
2 amended by the Resource Conservation and Recovery Act of
3 1976, (P.L. 94-580) approved October 21, 1976, as amended; as
4 noise control agency for the state for all purposes of the
5 Noise Control Act of 1972, Public Law 92-574, approved
6 October 27, 1972, as amended; and as implementing agency for
7 the State for all purposes of the Comprehensive Environmental
8 Response, Compensation, and Liability Act of 1980 (P.L.
9 96-510), as amended; and otherwise as pollution control
10 agency for the State pursuant to federal laws integrated with
11 the foregoing laws, for financing purposes or otherwise. The
12 Agency is hereby authorized to take all action necessary or
13 appropriate to secure to the State the benefits of such
14 federal Acts, provided that the Agency shall transmit to the
15 United States without change any standards adopted by the
16 Pollution Control Board pursuant to Section 5(c) of this Act.
17 This subsection (1) of Section 4 shall not be construed to
18 bar or prohibit the Environmental Protection Trust Fund
19 Commission from accepting, receiving, and administering on
20 behalf of the State any grants, gifts, loans or other funds
21 for which the Commission is eligible pursuant to the
22 Environmental Protection Trust Fund Act. The Agency is
23 hereby designated as the State agency for all purposes of
24 administering the requirements of Section 313 of the federal
25 Emergency Planning and Community Right-to-Know Act of 1986.

26 Any municipality, sanitary district, or other political
27 subdivision, or any Agency of the State or interstate Agency,
28 which makes application for loans or grants under such
29 federal Acts shall notify the Agency of such application; the
30 Agency may participate in proceedings under such federal
31 Acts.

32 (m) The Agency shall have authority, consistent with
33 Section 5(c) and other provisions of this Act, and for
34 purposes of Section 303(e) of the Federal Water Pollution

1 Control Act, as now or hereafter amended, to engage in
2 planning processes and activities and to develop plans in
3 cooperation with units of local government, state agencies
4 and officers, and other appropriate persons in connection
5 with the jurisdiction or duties of each such unit, agency,
6 officer or person. Public hearings shall be held on the
7 planning process, at which any person shall be permitted to
8 appear and be heard, pursuant to procedural regulations
9 promulgated by the Agency.

10 (n) In accordance with the powers conferred upon the
11 Agency by Sections 10(g), 13(b), 19, 22(d) and 25 of this
12 Act, the Agency shall have authority to establish and enforce
13 minimum standards for the operation of laboratories relating
14 to analyses and laboratory tests for air pollution, water
15 pollution, noise emissions, contaminant discharges onto land
16 and sanitary, chemical, and mineral quality of water
17 distributed by a public water supply. The Agency may enter
18 into formal working agreements with other departments or
19 agencies of state government under which all or portions of
20 this authority may be delegated to the cooperating department
21 or agency.

22 (o) The Agency shall have the authority to issue
23 certificates of competency to persons and laboratories
24 meeting the minimum standards established by the Agency in
25 accordance with Section 4(n) of this Act and to promulgate
26 and enforce regulations relevant to the issuance and use of
27 such certificates. The Agency may enter into formal working
28 agreements with other departments or agencies of state
29 government under which all or portions of this authority may
30 be delegated to the cooperating department or agency.

31 (p) Except as provided in Section 17.7, the Agency shall
32 have the duty to analyze samples as required from each public
33 water supply to determine compliance with the contaminant
34 levels specified by the Pollution Control Board. The maximum

1 number of samples which the Agency shall be required to
2 analyze for microbiological quality shall be 6 per month, but
3 the Agency may, at its option, analyze a larger number each
4 month for any supply. Results of sample analyses for
5 additional required bacteriological testing, turbidity,
6 residual chlorine and radionuclides are to be provided to the
7 Agency in accordance with Section 19. Owners of water
8 supplies may enter into agreements with the Agency to provide
9 for reduced Agency participation in sample analyses.

10 (q) The Agency shall have the authority to provide
11 notice to any person who may be liable pursuant to Section
12 22.2(f) of this Act for a release or a substantial threat of
13 a release of a hazardous substance or pesticide. Such notice
14 shall include the identified response action and an
15 opportunity for such person to perform the response action.

16 (r) The Agency may enter into written delegation
17 agreements with any unit of local government under which it
18 may delegate all or portions of its inspecting, investigating
19 and enforcement functions. Such delegation agreements shall
20 require that work performed thereunder be in accordance with
21 Agency criteria and subject to Agency review.
22 Notwithstanding any other provision of law to the contrary,
23 no unit of local government shall be liable for any injury
24 resulting from the exercise of its authority pursuant to such
25 a delegation agreement unless the injury is proximately
26 caused by the willful and wanton negligence of an agent or
27 employee of the unit of local government, and any policy of
28 insurance coverage issued to a unit of local government may
29 provide for the denial of liability and the nonpayment of
30 claims based upon injuries for which the unit of local
31 government is not liable pursuant to this subsection (r).

32 (s) The Agency shall have authority to take whatever
33 preventive or corrective action is necessary or appropriate,
34 including but not limited to expenditure of monies

1 appropriated from the Build Illinois Bond Fund and the Build
2 Illinois Purposes Fund for removal or remedial action,
3 whenever any hazardous substance or pesticide is released or
4 there is a substantial threat of such a release into the
5 environment. The State, the Director, and any State employee
6 shall be indemnified for any damages or injury arising out of
7 or resulting from any action taken under this subsection.
8 The Director of the Agency is authorized to enter into such
9 contracts and agreements as are necessary to carry out the
10 Agency's duties under this subsection.

11 (t) The Agency shall have authority to distribute
12 grants, subject to appropriation by the General Assembly, for
13 financing and construction of municipal wastewater
14 facilities. With respect to all monies appropriated from the
15 Build Illinois Bond Fund and the Build Illinois Purposes Fund
16 for wastewater facility grants, the Agency shall make
17 distributions in conformity with the rules and regulations
18 established pursuant to the Anti-Pollution Bond Act, as now
19 or hereafter amended.

20 (u) Pursuant to the Illinois Administrative Procedure
21 Act, the Agency shall have the authority to adopt such rules
22 as are necessary or appropriate for the Agency to implement
23 Section 31.1 of this Act.

24 (v) (Blank.)

25 (w) Neither the State, nor the Director, nor the Board,
26 nor any State employee shall be liable for any damages or
27 injury arising out of or resulting from any action taken
28 under subsection (s).

29 (x)(1) The Agency shall have authority to distribute
30 grants, subject to appropriation by the General Assembly,
31 to units of local government for financing and
32 construction of public water supply facilities. With
33 respect to all monies appropriated from the Build
34 Illinois Bond Fund or the Build Illinois Purposes Fund

1 for public water supply grants, such grants shall be made
2 in accordance with rules promulgated by the Agency. Such
3 rules shall include a requirement for a local match of
4 30% of the total project cost for projects funded through
5 such grants.

6 (2) The Agency shall not terminate a grant to a
7 unit of local government for the financing and
8 construction of public water supply facilities unless and
9 until the Agency adopts rules that set forth precise and
10 complete standards, pursuant to Section 5-20 of the
11 Illinois Administrative Procedure Act, for the
12 termination of such grants. The Agency shall not make
13 determinations on whether specific grant conditions are
14 necessary to ensure the integrity of a project or on
15 whether subagreements shall be awarded, with respect to
16 grants for the financing and construction of public water
17 supply facilities, unless and until the Agency adopts
18 rules that set forth precise and complete standards,
19 pursuant to Section 5-20 of the Illinois Administrative
20 Procedure Act, for making such determinations. The
21 Agency shall not issue a stop-work order in relation to
22 such grants unless and until the Agency adopts precise
23 and complete standards, pursuant to Section 5-20 of the
24 Illinois Administrative Procedure Act, for determining
25 whether to issue a stop-work order.

26 (y) The Agency shall have authority to release any
27 person from further responsibility for preventive or
28 corrective action under this Act following successful
29 completion of preventive or corrective action undertaken by
30 such person upon written request by the person.

31 (Source: P.A. 91-25, eff. 6-9-99; 92-574, eff. 6-26-02.)

32 (415 ILCS 5/5) (from Ch. 111 1/2, par. 1005)

33 Sec. 5. Pollution Control Board.

1 (a) There is hereby created an independent board to be
2 known as the Pollution Control Board, consisting of 7
3 technically qualified members, no more than 4 of whom may be
4 of the same political party, to be appointed by the Governor
5 with the advice and consent of the Senate.

6 All members shall hold office for 3 years from the first
7 day of July in the year in which they were appointed, except
8 in case of an appointment to fill a vacancy. In case of a
9 vacancy in the office when the Senate is not in session, the
10 Governor may make a temporary appointment until the next
11 meeting of the Senate, when he or she shall nominate some
12 person to fill such office; and any person so nominated, who
13 is confirmed by the Senate, shall hold the office during the
14 remainder of the term.

15 Members of the Board shall hold office until their
16 respective successors have been appointed and qualified. Any
17 member may resign from office, such resignation to take
18 effect when a successor has been appointed and has qualified.

19 Board members shall be paid \$37,000 per year or an amount
20 set by the Compensation Review Board, whichever is greater,
21 and the Chairman shall be paid \$43,000 per year or an amount
22 set by the Compensation Review Board, whichever is greater.
23 Each member shall be reimbursed for expenses necessarily
24 incurred, shall devote full time to the performance of his or
25 her duties and shall make a financial disclosure upon
26 appointment. Each Board member may employ one secretary and
27 one assistant, and the Chairman one secretary and 2
28 assistants. The Board also may employ and compensate hearing
29 officers to preside at hearings under this Act, and such
30 other personnel as may be necessary. Hearing officers shall
31 be attorneys licensed to practice law in Illinois.

32 The Governor shall designate one Board member to be
33 Chairman, who shall serve at the pleasure of the Governor.

34 The Board shall hold at least one meeting each month and

1 such additional meetings as may be prescribed by Board rules.
2 In addition, special meetings may be called by the Chairman
3 or by any 2 Board members, upon delivery of 24 hours written
4 notice to the office of each member. All Board meetings
5 shall be open to the public, and public notice of all
6 meetings shall be given at least 24 hours in advance of each
7 meeting. In emergency situations in which a majority of the
8 Board certifies that exigencies of time require the
9 requirements of public notice and of 24 hour written notice
10 to members may be dispensed with, and Board members shall
11 receive such notice as is reasonable under the circumstances.

12 Four members of the Board shall constitute a quorum, and
13 4 votes shall be required for any final determination by the
14 Board, except in a proceeding to remove a seal under
15 paragraph (d) of Section 34 of this Act. The Board shall
16 keep a complete and accurate record of all its meetings.

17 (b) The Board shall determine, define and implement the
18 environmental control standards applicable in the State of
19 Illinois and may adopt rules and regulations in accordance
20 with Title VII of this Act.

21 (c) The Board shall have authority to act for the State
22 in regard to the adoption of standards for submission to the
23 United States under any federal law respecting environmental
24 protection. Such standards shall be adopted in accordance
25 with Title VII of the Act and upon adoption shall be
26 forwarded to the Environmental Protection Agency for
27 submission to the United States pursuant to subsections (l)
28 and (m) of Section 4 of this Act. Nothing in this paragraph
29 shall limit the discretion of the Governor to delegate
30 authority granted to the Governor under any federal law.

31 (d) The Board shall have authority to conduct
32 proceedings upon complaints charging violations of this Act,
33 any rule or regulation adopted under this Act, ~~or~~ any permit
34 or term or condition of a permit, or any Board order; upon

1 administrative citations; upon petitions for variances or
2 adjusted standards; upon petitions for review of the Agency's
3 final determinations on permit applications in accordance
4 with Title X of this Act; upon petitions to remove seals
5 under Section 34 of this Act; and upon other petitions for
6 review of final determinations which are made pursuant to
7 this Act or Board rule and which involve a subject which the
8 Board is authorized to regulate. The Board may also conduct
9 other proceedings as may be provided by this Act or any other
10 statute or rule.

11 (e) In connection with any proceeding pursuant to
12 subsection (b) or (d) of this Section, the Board may subpoena
13 and compel the attendance of witnesses and the production of
14 evidence reasonably necessary to resolution of the matter
15 under consideration. The Board shall issue such subpoenas
16 upon the request of any party to a proceeding under
17 subsection (d) of this Section or upon its own motion.

18 (f) The Board may prescribe reasonable fees for permits
19 required pursuant to this Act. Such fees in the aggregate
20 may not exceed the total cost to the Agency for its
21 inspection and permit systems. The Board may not prescribe
22 any permit fees which are different in amount from those
23 established by this Act.

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

25 (415 ILCS 5/22.2) (from Ch. 111 1/2, par. 1022.2)

26 Sec. 22.2. Hazardous waste; fees; liability.

27 (a) There are hereby created within the State Treasury 2
28 special funds to be known respectively as the "Hazardous
29 Waste Fund" and the "Hazardous Waste Research Fund",
30 constituted from the fees collected pursuant to this Section.
31 In addition to the fees collected under this Section, the
32 Hazardous Waste Fund shall include other moneys made
33 available from any source for deposit into the Fund.

1 (b) (1) On and after January 1, 1989, the Agency shall
2 collect from the owner or operator of each of the
3 following sites a fee in the amount of:

4 (A) 9 cents per gallon or \$18.18 per cubic
5 yard, if the hazardous waste disposal site is
6 located off the site where such waste was produced.
7 The maximum amount payable under this subdivision
8 (A) with respect to the hazardous waste generated by
9 a single generator and deposited in monofills is
10 \$30,000 per year. If, as a result of the use of
11 multiple monofills, waste fees in excess of the
12 maximum are assessed with respect to a single waste
13 generator, the generator may apply to the Agency for
14 a credit.

15 (B) 9 cents or \$18.18 per cubic yard, if the
16 hazardous waste disposal site is located on the site
17 where such waste was produced, provided however the
18 maximum amount of fees payable under this paragraph
19 (B) is \$30,000 per year for each such hazardous
20 waste disposal site.

21 (C) If the hazardous waste disposal site is an
22 underground injection well, \$6,000 per year if not
23 more than 10,000,000 gallons per year are injected,
24 \$15,000 per year if more than 10,000,000 gallons but
25 not more than 50,000,000 gallons per year are
26 injected, and \$27,000 per year if more than
27 50,000,000 gallons per year are injected.

28 (D) 3 cents per gallon or \$6.06 per cubic yard
29 of hazardous waste received for treatment at a
30 hazardous waste treatment site, if the hazardous
31 waste treatment site is located off the site where
32 such waste was produced and if such hazardous waste
33 treatment site is owned, controlled and operated by
34 a person other than the generator of such waste.

1 After treatment at such hazardous waste treatment
2 site, the waste shall not be subject to any other
3 fee imposed by this subsection (b). For purposes of
4 this subsection (b), the term "treatment" is defined
5 as in Section 3.505 but shall not include recycling,
6 reclamation or reuse.

7 (2) The General Assembly shall annually appropriate
8 to the Fund such amounts as it deems necessary to fulfill
9 the purposes of this Act.

10 (3) The Agency shall have the authority to accept,
11 receive, and administer on behalf of the State any moneys
12 made available to the State from any source for the
13 purposes of the Hazardous Waste Fund set forth in
14 subsection (d) of this Section.

15 (4) Of the amount collected as fees provided for in
16 this Section, the Agency shall manage the use of such
17 funds to assure that sufficient funds are available for
18 match towards federal expenditures for response action at
19 sites which are listed on the National Priorities List;
20 provided, however, that this shall not apply to
21 additional monies appropriated to the Fund by the General
22 Assembly, nor shall it apply in the event that the
23 Director finds that revenues in the Hazardous Waste Fund
24 must be used to address conditions which create or may
25 create an immediate danger to the environment or public
26 health or to the welfare of the people of the State of
27 Illinois.

28 (5) Notwithstanding the other provisions of this
29 subsection (b), sludge from a publicly-owned sewage works
30 generated in Illinois, coal mining wastes and refuse
31 generated in Illinois, bottom boiler ash, flyash and flue
32 gas desulphurization sludge from public utility electric
33 generating facilities located in Illinois, and bottom
34 boiler ash and flyash from all incinerators which process

1 solely municipal waste shall not be subject to the fee.

2 (6) For the purposes of this subsection (b),
3 "monofill" means a facility, or a unit at a facility,
4 that accepts only wastes bearing the same USEPA hazardous
5 waste identification number, or compatible wastes as
6 determined by the Agency.

7 (c) The Agency shall establish procedures, not later
8 than January 1, 1984, relating to the collection of the fees
9 authorized by this Section. Such procedures shall include,
10 but not be limited to: (1) necessary records identifying the
11 quantities of hazardous waste received or disposed; (2) the
12 form and submission of reports to accompany the payment of
13 fees to the Agency; and (3) the time and manner of payment of
14 fees to the Agency, which payments shall be not more often
15 than quarterly.

16 (d) Beginning July 1, 1996, the Agency shall deposit all
17 such receipts in the State Treasury to the credit of the
18 Hazardous Waste Fund, except as provided in subsection (e) of
19 this Section. All monies in the Hazardous Waste Fund shall be
20 used by the Agency for the following purposes:

21 (1) Taking whatever preventive or corrective action
22 is necessary or appropriate, in circumstances certified
23 by the Director, including but not limited to removal or
24 remedial action whenever there is a release or
25 substantial threat of a release of a hazardous substance
26 or pesticide; provided, the Agency shall expend no more
27 than \$1,000,000 on any single incident without
28 appropriation by the General Assembly.

29 (2) To meet any requirements which must be met by
30 the State in order to obtain federal funds pursuant to
31 the Comprehensive Environmental Response, Compensation
32 and Liability Act of 1980, (P.L. 96-510).

33 (3) In an amount up to 30% of the amount collected
34 as fees provided for in this Section, for use by the

1 Agency to conduct groundwater protection activities,
2 including providing grants to appropriate units of local
3 government which are addressing protection of underground
4 waters pursuant to the provisions of this Act.

5 (4) To fund the development and implementation of
6 the model pesticide collection program under Section 19.1
7 of the Illinois Pesticide Act.

8 (5) To the extent the Agency has received and
9 deposited monies in the Fund other than fees collected
10 under subsection (b) of this Section, to pay for the cost
11 of Agency employees for services provided in reviewing
12 the performance of response actions pursuant to Title
13 XVII of this Act.

14 (6) In an amount up to 15% of the fees collected
15 annually under subsection (b) of this Section, for use by
16 the Agency for administration of the provisions of this
17 Section.

18 (e) The Agency shall deposit 10% of all receipts
19 collected under subsection (b) of this Section, but not to
20 exceed \$200,000 per year, in the State Treasury to the credit
21 of the Hazardous Waste Research Fund established by this Act.
22 Pursuant to appropriation, all monies in such Fund shall be
23 used by the Department of Natural Resources for the purposes
24 set forth in this subsection.

25 The Department of Natural Resources may enter into
26 contracts with business, industrial, university, governmental
27 or other qualified individuals or organizations to assist in
28 the research and development intended to recycle, reduce the
29 volume of, separate, detoxify or reduce the hazardous
30 properties of hazardous wastes in Illinois. Monies in the
31 Fund may also be used by the Department of Natural Resources
32 for technical studies, monitoring activities, and educational
33 and research activities which are related to the protection
34 of underground waters. Monies in the Hazardous Waste

1 Research Fund may be used to administer the Illinois Health
2 and Hazardous Substances Registry Act. Monies in the
3 Hazardous Waste Research Fund shall not be used for any
4 sanitary landfill or the acquisition or construction of any
5 facility. This does not preclude the purchase of equipment
6 for the purpose of public demonstration projects. The
7 Department of Natural Resources shall adopt guidelines for
8 cost sharing, selecting, and administering projects under
9 this subsection.

10 (f) Notwithstanding any other provision or rule of law,
11 and subject only to the defenses set forth in subsection (j)
12 of this Section, the following persons shall be liable for
13 all costs of removal or remedial action incurred by the State
14 of Illinois or any unit of local government as a result of a
15 release or substantial threat of a release of a hazardous
16 substance or pesticide:

17 (1) the owner and operator of a facility or vessel
18 from which there is a release or substantial threat of
19 release of a hazardous substance or pesticide;

20 (2) any person who at the time of disposal,
21 transport, storage or treatment of a hazardous substance
22 or pesticide owned or operated the facility or vessel
23 used for such disposal, transport, treatment or storage
24 from which there was a release or substantial threat of a
25 release of any such hazardous substance or pesticide;

26 (3) any person who by contract, agreement, or
27 otherwise has arranged with another party or entity for
28 transport, storage, disposal or treatment of hazardous
29 substances or pesticides owned, controlled or possessed
30 by such person at a facility owned or operated by another
31 party or entity from which facility there is a release or
32 substantial threat of a release of such hazardous
33 substances or pesticides; and

34 (4) any person who accepts or accepted any

1 hazardous substances or pesticides for transport to
2 disposal, storage or treatment facilities or sites from
3 which there is a release or a substantial threat of a
4 release of a hazardous substance or pesticide.

5 Any monies received by the State of Illinois pursuant to
6 this subsection (f) shall be deposited in the State Treasury
7 to the credit of the Hazardous Waste Fund.

8 In accordance with the other provisions of this Section,
9 costs of removal or remedial action incurred by a unit of
10 local government may be recovered in an action before the
11 Board brought by the unit of local government under
12 subsection (i) of this Section. Any monies so recovered
13 shall be paid to the unit of local government.

14 (g)(1) No indemnification, hold harmless, or similar
15 agreement or conveyance shall be effective to transfer
16 from the owner or operator of any vessel or facility or
17 from any person who may be liable for a release or
18 substantial threat of a release under this Section, to
19 any other person the liability imposed under this
20 Section. Nothing in this Section shall bar any agreement
21 to insure, hold harmless or indemnify a party to such
22 agreements for any liability under this Section.

23 (2) Nothing in this Section, including the
24 provisions of paragraph (g)(1) of this Section, shall bar
25 a cause of action that an owner or operator or any other
26 person subject to liability under this Section, or a
27 guarantor, has or would have, by reason of subrogation or
28 otherwise against any person.

29 (h) For purposes of this Section:

30 (1) The term "facility" means:

31 (A) any building, structure, installation,
32 equipment, pipe or pipeline including but not
33 limited to any pipe into a sewer or publicly owned
34 treatment works, well, pit, pond, lagoon,

1 impoundment, ditch, landfill, storage container,
2 motor vehicle, rolling stock, or aircraft; or

3 (B) any site or area where a hazardous
4 substance has been deposited, stored, disposed of,
5 placed, or otherwise come to be located.

6 (2) The term "owner or operator" means:

7 (A) any person owning or operating a vessel or
8 facility;

9 (B) in the case of an abandoned facility, any
10 person owning or operating the abandoned facility or
11 any person who owned, operated, or otherwise
12 controlled activities at the abandoned facility
13 immediately prior to such abandonment;

14 (C) in the case of a land trust as defined in
15 Section 2 of the Land Trustee as Creditor Act, the
16 person owning the beneficial interest in the land
17 trust;

18 (D) in the case of a fiduciary (other than a
19 land trustee), the estate, trust estate, or other
20 interest in property held in a fiduciary capacity,
21 and not the fiduciary. For the purposes of this
22 Section, "fiduciary" means a trustee, executor,
23 administrator, guardian, receiver, conservator or
24 other person holding a facility or vessel in a
25 fiduciary capacity;

26 (E) in the case of a "financial institution",
27 meaning the Illinois Housing Development Authority
28 and that term as defined in Section 2 of the
29 Illinois Banking Act, that has acquired ownership,
30 operation, management, or control of a vessel or
31 facility through foreclosure or under the terms of a
32 security interest held by the financial institution
33 or under the terms of an extension of credit made by
34 the financial institution, the financial institution

1 only if the financial institution takes possession
2 of the vessel or facility and the financial
3 institution exercises actual, direct, and continual
4 or recurrent managerial control in the operation of
5 the vessel or facility that causes a release or
6 substantial threat of a release of a hazardous
7 substance or pesticide resulting in removal or
8 remedial action;

9 (F) In the case of an owner of residential
10 property, the owner if the owner is a person other
11 than an individual, or if the owner is an individual
12 who owns more than 10 dwelling units in Illinois, or
13 if the owner, or an agent, representative,
14 contractor, or employee of the owner, has caused,
15 contributed to, or allowed the release or threatened
16 release of a hazardous substance or pesticide. The
17 term "residential property" means single family
18 residences of one to 4 dwelling units, including
19 accessory land, buildings, or improvements
20 incidental to those dwellings that are exclusively
21 used for the residential use. For purposes of this
22 subparagraph (F), the term "individual" means a
23 natural person, and shall not include corporations,
24 partnerships, trusts, or other non-natural persons.

25 (G) In the case of any facility, title or
26 control of which was conveyed due to bankruptcy,
27 foreclosure, tax delinquency, abandonment, or
28 similar means to a unit of State or local
29 government, any person who owned, operated, or
30 otherwise controlled activities at the facility
31 immediately beforehand.

32 (H) The term "owner or operator" does not
33 include a unit of State or local government which
34 acquired ownership or control through bankruptcy,

1 tax delinquency, abandonment, or other circumstances
2 in which the government acquires title by virtue of
3 its function as sovereign. The exclusion provided
4 under this paragraph shall not apply to any State or
5 local government which has caused or contributed to
6 the release or threatened release of a hazardous
7 substance from the facility, and such a State or
8 local government shall be subject to the provisions
9 of this Act in the same manner and to the same
10 extent, both procedurally and substantively, as any
11 nongovernmental entity, including liability under
12 Section 22.2(f).

13 (i) The costs and damages provided for in this Section
14 may be imposed by the Board in an action brought before the
15 Board in accordance with Title VIII of this Act, except that
16 Section 33(c) of this Act shall not apply to any such action.

17 (j) (1) There shall be no liability under this Section
18 for a person otherwise liable who can establish by a
19 preponderance of the evidence that the release or substantial
20 threat of release of a hazardous substance and the damages
21 resulting therefrom were caused solely by:

22 (A) an act of God;

23 (B) an act of war;

24 (C) an act or omission of a third party other than
25 an employee or agent of the defendant, or other than one
26 whose act or omission occurs in connection with a
27 contractual relationship, existing directly or
28 indirectly, with the defendant (except where the sole
29 contractual arrangement arises from a published tariff
30 and acceptance for carriage by a common carrier by rail),
31 if the defendant establishes by a preponderance of the
32 evidence that (i) he exercised due care with respect to
33 the hazardous substance concerned, taking into
34 consideration the characteristics of such hazardous

1 substance, in light of all relevant facts and
2 circumstances, and (ii) he took precautions against
3 foreseeable acts or omissions of any such third party and
4 the consequences that could foreseeably result from such
5 acts or omissions; or

6 (D) any combination of the foregoing paragraphs.

7 (2) There shall be no liability under this Section for
8 any release permitted by State or federal law.

9 (3) There shall be no liability under this Section for
10 damages as a result of actions taken or omitted in the course
11 of rendering care, assistance, or advice in accordance with
12 this Section or the National Contingency Plan pursuant to the
13 Comprehensive Environmental Response, Compensation and
14 Liability Act of 1980 (P.L. 96-510) or at the direction of an
15 on-scene coordinator appointed under such plan, with respect
16 to an incident creating a danger to public health or welfare
17 or the environment as a result of any release of a hazardous
18 substance or a substantial threat thereof. This subsection
19 shall not preclude liability for damages as the result of
20 gross negligence or intentional misconduct on the part of
21 such person. For the purposes of the preceding sentence,
22 reckless, willful, or wanton misconduct shall constitute
23 gross negligence.

24 (4) There shall be no liability under this Section for
25 any person (including, but not limited to, an owner of
26 residential property who applies a pesticide to the
27 residential property or who has another person apply a
28 pesticide to the residential property) for response costs or
29 damages as the result of the storage, handling and use, or
30 recommendation for storage, handling and use, of a pesticide
31 consistent with:

32 (A) its directions for storage, handling and use as
33 stated in its label or labeling;

34 (B) its warnings and cautions as stated in its

1 label or labeling; and

2 (C) the uses for which it is registered under the
3 Federal Insecticide, Fungicide and Rodenticide Act and
4 the Illinois Pesticide Act.

5 (4.5) There shall be no liability under subdivision
6 (f)(1) of this Section for response costs or damages as the
7 result of a release of a pesticide from an agrichemical
8 facility site if the Agency has received notice from the
9 Department of Agriculture pursuant to Section 19.3 of the
10 Illinois Pesticide Act, the owner or operator of the
11 agrichemical facility is proceeding with a corrective action
12 plan under the Agrichemical Facility Response Action Program
13 implemented under that Section, and the Agency has provided a
14 written endorsement of a corrective action plan.

15 (4.6) There shall be no liability under subdivision
16 (f)(1) of this Section for response costs or damages as the
17 result of a substantial threat of a release of a pesticide
18 from an agrichemical facility site if the Agency has received
19 notice from the Department of Agriculture pursuant to Section
20 19.3 of the Illinois Pesticide Act and the owner or operator
21 of the agrichemical facility is proceeding with a corrective
22 action plan under the Agrichemical Facility Response Action
23 Program implemented under that Section.

24 (5) Nothing in this subsection (j) shall affect or
25 modify in any way the obligations or liability of any person
26 under any other provision of this Act or State or federal
27 law, including common law, for damages, injury, or loss
28 resulting from a release or substantial threat of a release
29 of any hazardous substance or for removal or remedial action
30 or the costs of removal or remedial action of such hazardous
31 substance.

32 (6)(A) The term "contractual relationship", for the
33 purpose of this subsection includes, but is not limited to,
34 land contracts, deeds or other instruments transferring title

1 or possession, unless the real property on which the facility
2 concerned is located was acquired by the defendant after the
3 disposal or placement of the hazardous substance on, in, or
4 at the facility, and one or more of the circumstances
5 described in clause (i), (ii), or (iii) of this paragraph is
6 also established by the defendant by a preponderance of the
7 evidence:

8 (i) At the time the defendant acquired the facility
9 the defendant did not know and had no reason to know that
10 any hazardous substance which is the subject of the
11 release or threatened release was disposed of on, in or
12 at the facility.

13 (ii) The defendant is a government entity which
14 acquired the facility by escheat, or through any other
15 involuntary transfer or acquisition, or through the
16 exercise of eminent domain authority by purchase or
17 condemnation.

18 (iii) The defendant acquired the facility by
19 inheritance or bequest.

20 In addition to establishing the foregoing, the defendant
21 must establish that he has satisfied the requirements of
22 subparagraph (C) of paragraph (1) of this subsection (j).

23 (B) To establish the defendant had no reason to know, as
24 provided in clause (i) of subparagraph (A) of this paragraph,
25 the defendant must have undertaken, at the time of
26 acquisition, all appropriate inquiry into the previous
27 ownership and uses of the property consistent with good
28 commercial or customary practice in an effort to minimize
29 liability. For purposes of the preceding sentence, the court
30 shall take into account any specialized knowledge or
31 experience on the part of the defendant, the relationship of
32 the purchase price to the value of the property if
33 uncontaminated, commonly known or reasonably ascertainable
34 information about the property, the obviousness of the

1 presence or likely presence of contamination at the property,
2 and the ability to detect such contamination by appropriate
3 inspection.

4 (C) Nothing in this paragraph (6) or in subparagraph (C)
5 of paragraph (1) of this subsection shall diminish the
6 liability of any previous owner or operator of such facility
7 who would otherwise be liable under this Act. Notwithstanding
8 this paragraph (6), if the defendant obtained actual
9 knowledge of the release or threatened release of a hazardous
10 substance at such facility when the defendant owned the real
11 property and then subsequently transferred ownership of the
12 property to another person without disclosing such knowledge,
13 such defendant shall be treated as liable under subsection
14 (f) of this Section and no defense under subparagraph (C) of
15 paragraph (1) of this subsection shall be available to such
16 defendant.

17 (D) Nothing in this paragraph (6) shall affect the
18 liability under this Act of a defendant who, by any act or
19 omission, caused or contributed to the release or threatened
20 release of a hazardous substance which is the subject of the
21 action relating to the facility.

22 (E) (i) Except as provided in clause (ii) of this
23 subparagraph (E), a defendant who has acquired real property
24 shall have established a rebuttable presumption against all
25 State claims and a conclusive presumption against all private
26 party claims that the defendant has made all appropriate
27 inquiry within the meaning of subdivision (6)(B) of this
28 subsection (j) if the defendant proves that immediately prior
29 to or at the time of the acquisition:

30 (I) the defendant obtained a Phase I Environmental
31 Audit of the real property that meets or exceeds the
32 requirements of this subparagraph (E), and the Phase I
33 Environmental Audit did not disclose the presence or
34 likely presence of a release or a substantial threat of a

1 release of a hazardous substance or pesticide at, on, to,
2 or from the real property; or

3 (II) the defendant obtained a Phase II
4 Environmental Audit of the real property that meets or
5 exceeds the requirements of this subparagraph (E), and
6 the Phase II Environmental Audit did not disclose the
7 presence or likely presence of a release or a substantial
8 threat of a release of a hazardous substance or pesticide
9 at, on, to, or from the real property.

10 (ii) No presumption shall be created under clause (i) of
11 this subparagraph (E), and a defendant shall be precluded
12 from demonstrating that the defendant has made all
13 appropriate inquiry within the meaning of subdivision (6)(B)
14 of this subsection (j), if:

15 (I) the defendant fails to obtain all Environmental
16 Audits required under this subparagraph (E) or any such
17 Environmental Audit fails to meet or exceed the
18 requirements of this subparagraph (E);

19 (II) a Phase I Environmental Audit discloses the
20 presence or likely presence of a release or a substantial
21 threat of a release of a hazardous substance or pesticide
22 at, on, to, or from real property, and the defendant
23 fails to obtain a Phase II Environmental Audit;

24 (III) a Phase II Environmental Audit discloses the
25 presence or likely presence of a release or a substantial
26 threat of a release of a hazardous substance or pesticide
27 at, on, to, or from the real property;

28 (IV) the defendant fails to maintain a written
29 compilation and explanatory summary report of the
30 information reviewed in the course of each Environmental
31 Audit under this subparagraph (E); or

32 (V) there is any evidence of fraud, material
33 concealment, or material misrepresentation by the
34 defendant of environmental conditions or of related

1 information discovered during the course of an
2 Environmental Audit.

3 (iii) For purposes of this subparagraph (E), the term
4 "environmental professional" means an individual (other than
5 a practicing attorney) who, through academic training,
6 occupational experience, and reputation (such as engineers,
7 industrial hygienists, or geologists) can objectively conduct
8 one or more aspects of an Environmental Audit and who either:

9 (I) maintains at the time of the Environmental
10 Audit and for at least one year thereafter at least
11 \$500,000 of environmental consultants' professional
12 liability insurance coverage issued by an insurance
13 company licensed to do business in Illinois; or

14 (II) is an Illinois licensed professional engineer
15 or an Illinois licensed industrial hygienist.

16 An environmental professional may employ persons who are
17 not environmental professionals to assist in the preparation
18 of an Environmental Audit if such persons are under the
19 direct supervision and control of the environmental
20 professional.

21 (iv) For purposes of this subparagraph (E), the term
22 "real property" means any interest in any parcel of land, and
23 includes, but is not limited to, buildings, fixtures, and
24 improvements.

25 (v) For purposes of this subparagraph (E), the term
26 "Phase I Environmental Audit" means an investigation of real
27 property, conducted by environmental professionals, to
28 discover the presence or likely presence of a release or a
29 substantial threat of a release of a hazardous substance or
30 pesticide at, on, to, or from real property, and whether a
31 release or a substantial threat of a release of a hazardous
32 substance or pesticide has occurred or may occur at, on, to,
33 or from the real property. Until such time as the United
34 States Environmental Protection Agency establishes standards

1 for making appropriate inquiry into the previous ownership
2 and uses of the facility pursuant to 42 U.S.C. Sec.
3 9601(35)(B)(ii), the investigation shall comply with the
4 procedures of the American Society for Testing and Materials,
5 including the document known as Standard E1527-97, entitled
6 "Standard Procedures for Environmental Site Assessment: Phase
7 1 Environmental Site Assessment Process". Upon their
8 adoption, the standards promulgated by USEPA pursuant to 42
9 U.S.C. Sec. 9601(35)(B)(ii) shall govern the performance of
10 Phase I Environmental Audits. In addition to the above
11 requirements, the Phase I Environmental Audit shall include a
12 review of recorded land title records for the purpose of
13 determining whether the real property is subject to an
14 environmental land use restriction such as a No Further
15 Remediation Letter, Environmental Land Use Control, or
16 Highway Authority Agreement. The investigation shall include
17 a review of at least each of the following sources of
18 information concerning the current and previous ownership and
19 use of the real property:

20 (I) Recorded chain of title documents regarding the
21 real property, including all deeds, easements, leases,
22 restrictions, and covenants for a period of 50 years.

23 (II) Aerial photographs that may reflect prior uses
24 of the real property and that are reasonably obtainable
25 through State, federal, or local government agencies or
26 bodies.

27 (III) Recorded environmental cleanup liens, if any,
28 against the real property that have arisen pursuant to
29 this Act or federal statutes.

30 (IV) Reasonably obtainable State, federal, and
31 local government records of sites or facilities at, on,
32 or near the real property to discover the presence or
33 likely presence of a hazardous substance or pesticide,
34 and whether a release or a substantial threat of a

1 release---of--a--hazardous--substance--or--pesticide--has
 2 occurred-or-may-occur--at,--on,--to,--or--from--the--real
 3 property.--Such-government-records-shall-include,--but-not
 4 be-limited-to:--reasonably-obtainable-State,--federal,--and
 5 local-government-investigation-reports-for-those-sites-or
 6 facilities;--reasonably--obtainable--State,--federal,--and
 7 local-government-records-of-activities-likely-to-cause-or
 8 contribute-to-a-release-or--a--threatened--release--of--a
 9 hazardous--substance-or-pesticide-at,--on,--to,--or--from-the
 10 real-property,--including-landfill--and--other--treatment,
 11 storage,--and--disposal--location--records,--underground
 12 storage-tank-records,--hazardous--waste--transporter--and
 13 generator-records,--and-spill-reporting-records;--and-other
 14 reasonably---obtainable---State,---federal,---and---local
 15 government-environmental-records-that-report-incidents-or
 16 activities--that--are--likely-to-cause-or-contribute-to-a
 17 release-or-a-threatened-release-of-a-hazardous--substance
 18 or--pesticide--at,--on,--to,--or--from-the-real-property.--In
 19 order-to-be-deemed-"reasonably--obtainable"--as--required
 20 herein,--a-copy-or-reasonable-facsimile-of-the-record-must
 21 be--obtainable--from-the-government-agency-by-request-and
 22 upon-payment-of-a-processing-fee,--if-any,--established--by
 23 the--government--agency.---The--Agency--is--authorized-to
 24 establish--a--reasonable--fee--for--processing---requests
 25 received--under--this--subparagraph-(E)-for-records.--All
 26 fees-collected-by-the-Agency-under--this--clause--(v)(IV)
 27 shall--be--deposited--into--the--Environmental-Protection
 28 Permit-and-Inspection-Fund--in--accordance--with--Section
 29 22.8.

30 Notwithstanding--any--other-law,--if-the-fee-is-paid,
 31 the-Agency-shall-process-a-request--received--under--this
 32 subparagraph--(E)--for--records--within--30--days--of-the
 33 receipt-of-such-request.

34 (V)--A-visual-site-inspection-of-the--real--property

1 and--all-facilities-and-improvements-on-the-real-property
 2 and--a--visual--inspection--of---properties---immediately
 3 adjacent-to-the-real-property,--including-an-investigation
 4 of--any--use,--storage,--treatment,--spills--from-use,--or
 5 disposal-of-hazardous-substances,--hazardous-wastes,--solid
 6 wastes,--or-pesticides.---If--the--person--conducting--the
 7 investigation--is--denied-access-to-any-property-adjacent
 8 to-the-real-property,--the-person-shall-conduct--a--visual
 9 inspection-of-that-adjacent-property-from-the-property-to
 10 which--the--person--does--have--access--and--from--public
 11 rights-of-way.

12 (VI)--A-review-of-business-records-for-activities-at
 13 or-on-the-real-property-for-a-period-of-50-years.

14 (vi) For purposes of subparagraph (E), the term "Phase
 15 II Environmental Audit" means an investigation of real
 16 property, conducted by environmental professionals,
 17 subsequent to a Phase I Environmental Audit. If the Phase I
 18 Environmental Audit discloses the presence or likely presence
 19 of a hazardous substance or a pesticide or a release or a
 20 substantial threat of a release of a hazardous substance or
 21 pesticide:

22 (I) In or to soil, the defendant, as part of the
 23 Phase II Environmental Audit, shall perform a series of
 24 soil borings sufficient to determine whether there is a
 25 presence or likely presence of a hazardous substance or
 26 pesticide and whether there is or has been a release or a
 27 substantial threat of a release of a hazardous substance
 28 or pesticide at, on, to, or from the real property.

29 (II) In or to groundwater, the defendant, as part
 30 of the Phase II Environmental Audit, shall: review
 31 information regarding local geology, water well
 32 locations, and locations of waters of the State as may be
 33 obtained from State, federal, and local government
 34 records, including but not limited to the United States

1 Geological Service, the State Geological Survey Division
2 of the Department of Natural Resources, and the State
3 Water Survey Division of the Department of Natural
4 Resources; and perform groundwater monitoring sufficient
5 to determine whether there is a presence or likely
6 presence of a hazardous substance or pesticide, and
7 whether there is or has been a release or a substantial
8 threat of a release of a hazardous substance or pesticide
9 at, on, to, or from the real property.

10 (III) On or to media other than soil or
11 groundwater, the defendant, as part of the Phase II
12 Environmental Audit, shall perform an investigation
13 sufficient to determine whether there is a presence or
14 likely presence of a hazardous substance or pesticide,
15 and whether there is or has been a release or a
16 substantial threat of a release of a hazardous substance
17 or pesticide at, on, to, or from the real property.

18 (vii) The findings of each Environmental Audit prepared
19 under this subparagraph (E) shall be set forth in a written
20 audit report. Each audit report shall contain an affirmation
21 by the defendant and by each environmental professional who
22 prepared the Environmental Audit that the facts stated in the
23 report are true and are made under a penalty of perjury as
24 defined in Section 32-2 of the Criminal Code of 1961. It is
25 perjury for any person to sign an audit report that contains
26 a false material statement that the person does not believe
27 to be true.

28 (viii) The Agency is not required to review, approve, or
29 certify the results of any Environmental Audit. The
30 performance of an Environmental Audit shall in no way entitle
31 a defendant to a presumption of Agency approval or
32 certification of the results of the Environmental Audit.

33 The presence or absence of a disclosure document prepared
34 under the Responsible Property Transfer Act of 1988 shall not

1 be a defense under this Act and shall not satisfy the
2 requirements of subdivision (6)(A) of this subsection (j).

3 (7) No person shall be liable under this Section for
4 response costs or damages as the result of a pesticide
5 release if the Agency has found that a pesticide release
6 occurred based on a Health Advisory issued by the U.S.
7 Environmental Protection Agency or an action level developed
8 by the Agency, unless the Agency notified the manufacturer of
9 the pesticide and provided an opportunity of not less than 30
10 days for the manufacturer to comment on the technical and
11 scientific justification supporting the Health Advisory or
12 action level.

13 (8) No person shall be liable under this Section for
14 response costs or damages as the result of a pesticide
15 release that occurs in the course of a farm pesticide
16 collection program operated under Section 19.1 of the
17 Illinois Pesticide Act, unless the release results from gross
18 negligence or intentional misconduct.

19 (k) If any person who is liable for a release or
20 substantial threat of release of a hazardous substance or
21 pesticide fails without sufficient cause to provide removal
22 or remedial action upon or in accordance with a notice and
23 request by the Agency or upon or in accordance with any order
24 of the Board or any court, such person may be liable to the
25 State for punitive damages in an amount at least equal to,
26 and not more than 3 times, the amount of any costs incurred
27 by the State of Illinois as a result of such failure to take
28 such removal or remedial action. The punitive damages
29 imposed by the Board shall be in addition to any costs
30 recovered from such person pursuant to this Section and in
31 addition to any other penalty or relief provided by this Act
32 or any other law.

33 Any monies received by the State pursuant to this
34 subsection (k) shall be deposited in the Hazardous Waste

1 Fund.

2 (1) Beginning January 1, 1988, the Agency shall annually
3 collect a \$250 fee for each Special Waste Hauling Permit
4 Application and, in addition, shall collect a fee of \$20 for
5 each waste hauling vehicle identified in the annual permit
6 application and for each vehicle which is added to the permit
7 during the annual period. The Agency shall deposit 85% of
8 such fees collected under this subsection in the State
9 Treasury to the credit of the Hazardous Waste Research Fund;
10 and shall deposit the remaining 15% of such fees collected in
11 the State Treasury to the credit of the Environmental
12 Protection Permit and Inspection Fund. The majority of such
13 receipts which are deposited in the Hazardous Waste Research
14 Fund pursuant to this subsection shall be used by the
15 Department of Natural Resources for activities which relate
16 to the protection of underground waters. Persons engaged in
17 the offsite transportation of hazardous waste by highway and
18 participating in the Uniform Program under subsection (1-5)
19 are not required to file a Special Waste Hauling Permit
20 Application.

21 (1-5) (1) As used in this subsection:

22 "Base state" means the state selected by a
23 transporter according to the procedures established under
24 the Uniform Program.

25 "Base state agreement" means an agreement between
26 participating states electing to register or permit
27 transporters.

28 "Participating state" means a state electing to
29 participate in the Uniform Program by entering into a
30 base state agreement.

31 "Transporter" means a person engaged in the offsite
32 transportation of hazardous waste by highway.

33 "Uniform application" means the uniform registration
34 and permit application form prescribed under the Uniform

1 Program.

2 "Uniform Program" means the Uniform State Hazardous
3 Materials Transportation Registration and Permit Program
4 established in the report submitted and amended pursuant
5 to 49 U.S.C. Section 5119(b), as implemented by the
6 Agency under this subsection.

7 "Vehicle" means any self-propelled motor vehicle,
8 except a truck tractor without a trailer, designed or
9 used for the transportation of hazardous waste subject to
10 the hazardous waste manifesting requirements of 40 U.S.C.
11 Section 6923(a)(3).

12 (2) Beginning July 1, 1998, the Agency shall
13 implement the Uniform State Hazardous Materials
14 Transportation Registration and Permit Program. On and
15 after that date, no person shall engage in the offsite
16 transportation of hazardous waste by highway without
17 registering and obtaining a permit under the Uniform
18 Program. A transporter with its principal place of
19 business in Illinois shall register with and obtain a
20 permit from the Agency. A transporter that designates
21 another participating state in the Uniform Program as its
22 base state shall likewise register with and obtain a
23 permit from that state before transporting hazardous
24 waste in Illinois.

25 (3) Beginning July 1, 1998, the Agency shall
26 annually collect no more than a \$250 processing and audit
27 fee from each transporter of hazardous waste who has
28 filed a uniform application and, in addition, the Agency
29 shall annually collect an apportioned vehicle
30 registration fee of \$20. The amount of the apportioned
31 vehicle registration fee shall be calculated consistent
32 with the procedures established under the Uniform
33 Program.

34 All moneys received by the Agency from the

1 collection of fees pursuant to the Uniform Program shall
2 be deposited into the Hazardous Waste Transporter account
3 hereby created within the Environmental Protection Permit
4 and Inspection Fund. Moneys remaining in the account at
5 the close of the fiscal year shall not lapse to the
6 General Revenue Fund. The State Treasurer may receive
7 money or other assets from any source for deposit into
8 the account. The Agency may expend moneys from the
9 account, upon appropriation, for the implementation of
10 the Uniform Program, including the costs to the Agency of
11 fee collection and administration. In addition, funds
12 not expended for the implementation of the Uniform
13 Program may be utilized for emergency response and
14 cleanup activities related to hazardous waste
15 transportation that are initiated by the Agency.

16 Whenever the amount of the Hazardous Waste
17 Transporter account exceeds by 115% the amount annually
18 appropriated by the General Assembly, the Agency shall credit
19 participating transporters an amount, proportionately based
20 on the amount of the vehicle fee paid, equal to the excess in
21 the account, and shall determine the need to reduce the
22 amount of the fee charged transporters in the subsequent
23 fiscal year by the amount of the credit.

24 (4) (A) The Agency may propose and the Board shall
25 adopt rules as necessary to implement and enforce the
26 Uniform Program. The Agency is authorized to enter into
27 agreements with other agencies of this State as necessary
28 to carry out administrative functions or enforcement of
29 the Uniform Program.

30 (B) The Agency shall recognize a Uniform Program
31 registration as valid for one year from the date a notice
32 of registration form is issued and a permit as valid for
33 3 years from the date issued or until a transporter fails
34 to renew its registration, whichever occurs first.

1 (C) The Agency may inspect or examine any motor
 2 vehicle or facility operated by a transporter, including
 3 papers, books, records, documents, or other materials to
 4 determine if a transporter is complying with the Uniform
 5 Program. The Agency may also conduct investigations and
 6 audits as necessary to determine if a transporter is
 7 entitled to a permit or to make suspension or revocation
 8 determinations consistent with the standards of the
 9 Uniform Program.

10 (5) The Agency may enter into agreements with
 11 federal agencies, national repositories, or other
 12 participating states as necessary to allow for the
 13 reciprocal registration and permitting of transporters
 14 pursuant to the Uniform Program. The agreements may
 15 include procedures for determining a base state, the
 16 collection and distribution of registration fees, dispute
 17 resolution, the exchange of information for reporting and
 18 enforcement purposes, and other provisions necessary to
 19 fully implement, administer, and enforce the Uniform
 20 Program.

21 (m) (Blank).

22 (n) (Blank).

23 (Source: P.A. 91-36, eff. 6-15-99; 92-574, eff. 6-26-02.)

24 (415 ILCS 5/28.6 new)

25 Sec. 28.6. Expedited rulemaking to update incorporation
 26 by reference.

27 (a) Any person may file a proposal with the Board or the
 28 Agency, whichever is appropriate, to update an incorporation
 29 by reference included in a Board or Agency rule. The Board
 30 or the Agency may also make such a proposal on its own
 31 initiative.

32 (b) An expedited rulemaking to update an incorporation
 33 by reference under this Section shall be for the sole purpose

1 of replacing a reference to an older or obsolete version of a
2 document with a reference to the current version of that
3 document or its successor document.

4 (c) An expedited rulemaking to update an incorporation
5 by reference under this Section shall comply with subsections
6 (a) and (c) of Section 5-75 of the Illinois Administrative
7 Procedure Act. Except as otherwise provided in this Section
8 or the rules implementing this Section, Sections 5-35 through
9 5-50 of the Illinois Administrative Procedure Act and
10 Sections 27 and 28 of this Act do not apply to rulemaking
11 under this Section.

12 (d) Within 30 days after receiving a proposal under this
13 Section, the Board or the Agency shall cause notice of the
14 proposal to be filed with the Secretary of State for
15 publication in the Illinois Register. The date upon which
16 the notice appears in the Illinois Register commences a
17 public comment period of 45 days, during which any person may
18 file comments on the proposal with the Board or the Agency,
19 whichever is applicable.

20 (e) If no objection to the proposed amendment is filed
21 during the public comment period, then the proposed amendment
22 may be adopted and filed with the Secretary of State for
23 publication in the Illinois Register as a final rule. The
24 amendment becomes effective immediately upon filing with the
25 Secretary of State, unless a later effective date is required
26 by statute or is specified in the rulemaking.

27 (f) If an objection to the proposed amendment is filed
28 during the public comment period, then the proposed amendment
29 shall not be adopted pursuant to this Section. Nothing in
30 this Section precludes the adoption of a change to an
31 incorporation by reference through other lawful rulemaking
32 procedures.

33 (g) The Board and the Agency may each adopt procedural
34 rules to implement this Section.

(415 ILCS 5/30) (from Ch. 111 1/2, par. 1030)

Sec. 30. Investigations. The Agency shall cause investigations to be made upon the request of the Board or upon receipt of information concerning an alleged violation of this Act, ~~or of any rule or regulation adopted under this Act, promulgated thereunder, or of any permit granted by the Agency~~ or any term or condition of a any-such permit, or any Board order, and may cause to be made such other investigations as it shall deem advisable.

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

(415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)

Sec. 31. Notice; complaint; hearing.

(a)(1) Within 180 days of becoming aware of an alleged violation of the Act or any rule adopted under the Act or of a permit granted by the Agency or condition of the permit, the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency has evidence of the alleged violation. At a minimum, the written notice shall contain:

(A) notification to the person complained against of the requirement to submit a written response addressing the violations alleged and the option to meet with appropriate agency personnel to resolve any alleged violations that could lead to the filing of a formal complaint;

(B) a detailed explanation by the Agency of the violations alleged;

(C) an explanation by the Agency of the actions that the Agency believes may resolve the alleged violations, including an estimate of a reasonable time period for the person complained against to complete the suggested resolution; and

1 (D) an explanation of any alleged violation
2 that the Agency believes cannot be resolved without
3 the involvement of the Office of the Illinois
4 Attorney General or the State's Attorney of the
5 county in which the alleged violation occurred and
6 the basis for the Agency's belief.

7 (2) A written response to the violations alleged
8 shall be submitted to the Agency, by certified mail,
9 within 45 days of receipt of notice by the person
10 complained against, unless the Agency agrees to an
11 extension. The written response shall include:

12 (A) information in rebuttal, explanation or
13 justification of each alleged violation;

14 (B) a proposed Compliance Commitment Agreement
15 that includes specified times for achieving each
16 commitment and which may consist of a statement
17 indicating that the person complained against
18 believes that compliance has been achieved; and

19 (C) a request for a meeting with appropriate
20 Agency personnel if a meeting is desired by the
21 person complained against.

22 (3) If the person complained against fails to
23 respond in accordance with the requirements of
24 subdivision (2) of this subsection (a), the failure to
25 respond shall be considered a waiver of the requirements
26 of this subsection (a) and nothing in this Section shall
27 preclude the Agency from proceeding pursuant to
28 subsection (b) of this Section.

29 (4) A meeting requested pursuant to subdivision (2)
30 of this subsection (a) shall be held without a
31 representative of the Office of the Illinois Attorney
32 General or the State's Attorney of the county in which
33 the alleged violation occurred, within 60 days of receipt
34 of notice by the person complained against, unless the

1 Agency agrees to a postponement. At the meeting, the
2 Agency shall provide an opportunity for the person
3 complained against to respond to each alleged violation,
4 suggested resolution, and suggested implementation time
5 frame, and to suggest alternate resolutions.

6 (5) If a meeting requested pursuant to subdivision
7 (2) of this subsection (a) is held, the person complained
8 against shall, within 21 days following the meeting or
9 within an extended time period as agreed to by the
10 Agency, submit by certified mail to the Agency a written
11 response to the alleged violations. The written response
12 shall include:

13 (A) additional information in rebuttal,
14 explanation or justification of each alleged
15 violation;

16 (B) a proposed Compliance Commitment Agreement
17 that includes specified times for achieving each
18 commitment and which may consist of a statement
19 indicating that the person complained against
20 believes that compliance has been achieved; and

21 (C) a statement indicating that, should the
22 person complained against so wish, the person
23 complained against chooses to rely upon the initial
24 written response submitted pursuant to subdivision
25 (2) of this subsection (a).

26 (6) If the person complained against fails to
27 respond in accordance with the requirements of
28 subdivision (5) of this subsection (a), the failure to
29 respond shall be considered a waiver of the requirements
30 of this subsection (a) and nothing in this Section shall
31 preclude the Agency from proceeding pursuant to
32 subsection (b) of this Section.

33 (7) Within 30 days of the Agency's receipt of a
34 written response submitted by the person complained

1 against pursuant to subdivision (2) of this subsection
2 (a), if a meeting is not requested, or subdivision (5) of
3 this subsection (a), if a meeting is held, or within a
4 later time period as agreed to by the Agency and the
5 person complained against, the Agency shall issue and
6 serve, by certified mail, upon the person complained
7 against a written notice informing the person of its
8 acceptance, rejection, or proposed modification to the
9 proposed Compliance Commitment Agreement as contained
10 within the written response.

11 (8) Nothing in this subsection (a) is intended to
12 require the Agency to enter into Compliance Commitment
13 Agreements for any alleged violation that the Agency
14 believes cannot be resolved without the involvement of
15 the Office of the Attorney General or the State's
16 Attorney of the county in which the alleged violation
17 occurred, for, among other purposes, the imposition of
18 statutory penalties.

19 (9) The Agency's failure to respond to a written
20 response submitted pursuant to subdivision (2) of this
21 subsection (a), if a meeting is not requested, or
22 subdivision (5) of this subsection (a), if a meeting is
23 held, within 30 days, or within the time period otherwise
24 agreed to in writing by the Agency and the person
25 complained against, shall be deemed an acceptance by the
26 Agency of the proposed Compliance Commitment Agreement
27 for the violations alleged in the written notice issued
28 under subdivision (1) of this subsection (a) as contained
29 within the written response.

30 (10) If the person complained against complies with
31 the terms of a Compliance Commitment Agreement accepted
32 pursuant to this subsection (a), the Agency shall not
33 refer the alleged violations which are the subject of the
34 Compliance Commitment Agreement to the Office of the

1 Illinois Attorney General or the State's Attorney of the
2 county in which the alleged violation occurred. However,
3 nothing in this subsection is intended to preclude the
4 Agency from continuing negotiations with the person
5 complained against or from proceeding pursuant to the
6 provisions of subsection (b) of this Section for alleged
7 violations which remain the subject of disagreement
8 between the Agency and the person complained against
9 following fulfillment of the requirements of this
10 subsection (a).

11 (11) Nothing in this subsection (a) is intended to
12 preclude the person complained against from submitting to
13 the Agency, by certified mail, at any time, notification
14 that the person complained against consents to waiver of
15 the requirements of subsections (a) and (b) of this
16 Section.

17 (b) For alleged violations that remain the subject of
18 disagreement between the Agency and the person complained
19 against following fulfillment of the requirements of
20 subsection (a) of this Section, and as a precondition to the
21 Agency's referral or request to the Office of the Illinois
22 Attorney General or the State's Attorney of the county in
23 which the alleged violation occurred for legal representation
24 regarding an alleged violation that may be addressed pursuant
25 to subsection (c) or (d) of this Section or pursuant to
26 Section 42 of this Act, the Agency shall issue and serve, by
27 certified mail, upon the person complained against a written
28 notice informing that person that the Agency intends to
29 pursue legal action. Such notice shall notify the person
30 complained against of the violations to be alleged and offer
31 the person an opportunity to meet with appropriate Agency
32 personnel in an effort to resolve any alleged violations that
33 could lead to the filing of a formal complaint. The meeting
34 with Agency personnel shall be held within 30 days of receipt

1 of notice served pursuant to this subsection upon the person
2 complained against, unless the Agency agrees to a
3 postponement or the person notifies the Agency that he or she
4 will not appear at a meeting within the 30 day time period.
5 Nothing in this subsection is intended to preclude the Agency
6 from following the provisions of subsection (c) or (d) of
7 this Section or from requesting the legal representation of
8 the Office of the Illinois Attorney General or the State's
9 Attorney of the county in which the alleged violations
10 occurred for alleged violations which remain the subject of
11 disagreement between the Agency and the person complained
12 against after the provisions of this subsection are
13 fulfilled.

14 (c)(1) For alleged violations which remain the subject
15 of disagreement between the Agency and the person
16 complained against following waiver, pursuant to
17 subdivision (10) of subsection (a) of this Section, or
18 fulfillment of the requirements of subsections (a) and
19 (b) of this Section, the Office of the Illinois Attorney
20 General or the State's Attorney of the county in which
21 the alleged violation occurred shall issue and serve upon
22 the person complained against a written notice, together
23 with a formal complaint, which shall specify the
24 provision of the Act or the rule or regulation or permit
25 or term or condition thereof under which such person is
26 said to be in violation, and a statement of the manner
27 in, and the extent to which such person is said to
28 violate the Act or such rule or regulation or permit or
29 term or condition thereof and shall require the person so
30 complained against to answer the charges of such formal
31 complaint at a hearing before the Board at a time not
32 less than 21 days after the date of notice by the Board,
33 except as provided in Section 34 of this Act. Such
34 complaint shall be accompanied by a notification to the

1 defendant that financing may be available, through the
2 Illinois Environmental Facilities Financing Act, to
3 correct such violation. A copy of such notice of such
4 hearings shall also be sent to any person that has
5 complained to the Agency respecting the respondent within
6 the six months preceding the date of the complaint, and
7 to any person in the county in which the offending
8 activity occurred that has requested notice of
9 enforcement proceedings; 21 days notice of such hearings
10 shall also be published in a newspaper of general
11 circulation in such county. The respondent may file a
12 written answer, and at such hearing the rules prescribed
13 in Sections 32 and 33 of this Act shall apply. In the
14 case of actual or threatened acts outside Illinois
15 contributing to environmental damage in Illinois, the
16 extraterritorial service-of-process provisions of
17 Sections 2-208 and 2-209 of the Code of Civil Procedure
18 shall apply.

19 With respect to notices served pursuant to this
20 subsection (c)(1) which involve hazardous material or
21 wastes in any manner, the Agency shall annually publish a
22 list of all such notices served. The list shall include
23 the date the investigation commenced, the date notice was
24 sent, the date the matter was referred to the Attorney
25 General, if applicable, and the current status of the
26 matter.

27 (2) Notwithstanding the provisions of subdivision
28 (1) of this subsection (c), whenever a complaint has been
29 filed on behalf of the Agency or by the People of the
30 State of Illinois, the parties may file with the Board a
31 stipulation and proposal for settlement accompanied by a
32 request for relief from the requirement of a hearing
33 pursuant to subdivision (1). Unless the Board, in its
34 discretion, concludes that a hearing will be held, the

1 Board shall cause notice of the stipulation, proposal and
 2 request for relief to be published and sent in the same
 3 manner as is required for hearing pursuant to subdivision
 4 (1) of this subsection. The notice shall include a
 5 statement that any person may file a written demand for
 6 hearing within 21 days after receiving the notice. If any
 7 person files a timely written demand for hearing, the
 8 Board shall deny the request for relief from a hearing
 9 and shall hold a hearing in accordance with the
 10 provisions of subdivision (1).

11 (3) Notwithstanding the provisions of subdivision
 12 (1) of this subsection (c), if the Agency becomes aware
 13 of a violation of this Act arising from, or as a result
 14 of, voluntary pollution prevention activities, the Agency
 15 shall not proceed with the written notice required by
 16 subsection (a) of this Section unless:

17 (A) the person fails to take corrective action
 18 or eliminate the reported violation within a
 19 reasonable time; or

20 (B) the Agency believes that the violation
 21 poses a substantial and imminent danger to the
 22 public health or welfare or the environment. For
 23 the purposes of this item (B), "substantial and
 24 imminent danger" means a danger with a likelihood of
 25 serious or irreversible harm.

26 (d)(1) Any person may file with the Board a
 27 complaint, meeting the requirements of subsection (c) of
 28 this Section, against any person allegedly violating this
 29 Act, any rule or regulation adopted under this Act, any
 30 permit or term or condition of a permit, or any Board
 31 order. ~~or-any-rule-or-regulation-thereunder-or-any-permit~~
 32 ~~or-term-or--condition--thereof.~~ The complainant shall
 33 immediately serve a copy of such complaint upon the
 34 person or persons named therein. Unless the Board

1 determines that such complaint is duplicative or
2 frivolous, it shall schedule a hearing and serve written
3 notice thereof upon the person or persons named therein,
4 in accord with subsection (c) of this Section.

5 (2) Whenever a complaint has been filed by a person
6 other than the Attorney General or the State's Attorney,
7 the parties may file with the Board a stipulation and
8 proposal for settlement accompanied by a request for
9 relief from the hearing requirement of subdivision (c)(1)
10 of this Section. Unless the Board, in its discretion,
11 concludes that a hearing should be held, no hearing on
12 the stipulation and proposal for settlement is required.

13 (e) In hearings before the Board under this Title the
14 burden shall be on the Agency or other complainant to show
15 either that the respondent has caused or threatened to cause
16 air or water pollution or that the respondent has violated or
17 threatens to violate any provision of this Act or any rule or
18 regulation of the Board or permit or term or condition
19 thereof. If such proof has been made, the burden shall be on
20 the respondent to show that compliance with the Board's
21 regulations would impose an arbitrary or unreasonable
22 hardship.

23 (f) The provisions of this Section shall not apply to
24 administrative citation actions commenced under Section 31.1
25 of this Act.

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

27 (415 ILCS 5/33) (from Ch. 111 1/2, par. 1033)
28 Sec. 33. Board orders.

29 (a) After due consideration of the written and oral
30 statements, the testimony and arguments that shall be
31 submitted at the hearing, or upon default in appearance of
32 the respondent on return day specified in the notice, the
33 Board shall issue and enter such final order, or make such

1 final determination, as it shall deem appropriate under the
2 circumstances. It shall not be a defense to findings of
3 violations of the provisions of this Act, any rule or
4 regulation adopted under this Act, any permit or term or
5 condition of a permit, or any Board order, ~~the Act or Board~~
6 ~~regulations~~ or a bar to the assessment of civil penalties
7 that the person has come into compliance subsequent to the
8 violation, except where such action is barred by any
9 applicable State or federal statute of limitation. In all
10 such matters the Board shall file and publish a written
11 opinion stating the facts and reasons leading to its
12 decision. The Board shall immediately notify the respondent
13 of such order in writing by registered mail.

14 (b) Such order may include a direction to cease and
15 desist from violations of this Act, any rule or regulation
16 adopted under this Act, any permit or term or condition of a
17 permit, or any Board order ~~the Act or of the Board's rules~~
18 ~~and regulations any permit or term or condition thereof,~~
19 and/or the imposition by the Board of civil penalties in
20 accord with Section 42 of this Act. The Board may also
21 revoke the permit as a penalty for violation. If such order
22 includes a reasonable delay during which to correct a
23 violation, the Board may require the posting of sufficient
24 performance bond or other security to assure the correction
25 of such violation within the time prescribed.

26 (c) In making its orders and determinations, the Board
27 shall take into consideration all the facts and circumstances
28 bearing upon the reasonableness of the emissions, discharges
29 or deposits involved including, but not limited to:

30 (i) the character and degree of injury to, or
31 interference with the protection of the health, general
32 welfare and physical property of the people;

33 (ii) the social and economic value of the pollution
34 source;

1 (iii) the suitability or unsuitability of the
2 pollution source to the area in which it is located,
3 including the question of priority of location in the
4 area involved;

5 (iv) the technical practicability and economic
6 reasonableness of reducing or eliminating the emissions,
7 discharges or deposits resulting from such pollution
8 source; and

9 (v) any subsequent compliance.

10 Whenever a proceeding before the Board may affect the
11 right of the public individually or collectively to the use
12 of community sewer or water facilities provided by a
13 municipally owned or publicly regulated company, the Board
14 shall at least 30 days prior to the scheduled date of the
15 first hearing in such proceeding, give notice of the date,
16 time, place, and purpose of such hearing by public
17 advertisement in a newspaper of general circulation in the
18 area of the State concerned. The Board shall conduct a full
19 and complete hearing into the social and economic impact
20 which would result from restriction or denial of the right to
21 use such facilities and allow all persons claiming an
22 interest to intervene as parties and present evidence of such
23 social and economic impact.

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

28 (Source: P.A. 85-1041; 86-1363.)

29 (415 ILCS 5/35) (from Ch. 111 1/2, par. 1035)

30 Sec. 35. Variances; general provisions. To the extent
31 consistent with applicable provisions of the Federal Water
32 Pollution Control Act, as now or hereafter amended, the
33 Federal Safe Drinking Water Act (P.L. 93-523), as now or

1 hereafter amended, the Clean Air Act as amended in 1977 (P.L.
 2 95-95), and regulations pursuant thereto, and to the extent
 3 consistent with applicable provisions of the Federal Resource
 4 Conservation and Recovery Act of 1976 (P.L. 94-580), and
 5 regulations pursuant thereto;

6 (a) The Board may grant individual variances beyond the
 7 limitations prescribed in this Act, whenever it is found,
 8 upon presentation of adequate proof, that compliance with any
 9 rule or regulation, requirement or order of the Board would
 10 impose an arbitrary or unreasonable hardship. However, the
 11 Board is not required to find that an arbitrary or
 12 unreasonable hardship exists exclusively because the
 13 regulatory standard is under review and the costs of
 14 compliance are substantial and certain. In granting or
 15 denying a variance the Board shall file and publish a written
 16 opinion stating the facts and reasons leading to its
 17 decision.

18 (b) The Agency Board shall grant provisional variances
 19 whenever it is found, upon presentation of adequate proof,
 20 ~~only--upon--notification--from--the--Agency~~ that compliance on a
 21 short term basis with any rule or regulation, requirement or
 22 order of the Board, or with any permit requirement, would
 23 impose an arbitrary or unreasonable hardship. Such
 24 ~~previsional--variances--shall--be--issued--within--2--working--days~~
 25 ~~of--notification--from--the--Agency.~~

26 (Source: P.A. 86-671.)

27 (415 ILCS 5/36) (from Ch. 111 1/2, par. 1036)

28 Sec. 36. Variances and provisional variances.

29 (a) In granting a variance the Board may impose such
 30 conditions as the policies of this Act may require. If the
 31 hardship complained of consists solely of the need for a
 32 reasonable delay in which to correct a violation of this Act
 33 or of the Board regulations, the Board shall condition the

1 grant of such variance upon the posting of sufficient
 2 performance bond or other security to assure the completion
 3 of the work covered by the variance. The Board shall have no
 4 authority to delegate to the Agency its powers to require
 5 such performance bond. The original amount of such
 6 performance bond shall not exceed the reasonable cost of the
 7 work to be completed pursuant to the variance. The obligation
 8 under such bond shall at no time exceed the reasonable cost
 9 of work remaining pursuant to the variance.

10 (b) Except as provided by Section 38 of this Act, any
 11 variance granted pursuant to the provisions of this Section
 12 shall be granted for such period of time, not exceeding five
 13 years, as shall be specified by the Board at the time of the
 14 grant of such variance, and upon the condition that the
 15 person who receives such variance shall make such periodic
 16 progress reports as the Board shall specify. Such variance
 17 may be extended from year to year by affirmative action of
 18 the Board, but only if satisfactory progress has been shown.

19 (c) Any provisional variance granted by the Agency Board
 20 pursuant to subsection (b) of Section 35 shall be for a
 21 period of time not to exceed 45 days. A provisional variance
 22 may be extended ~~Upon receipt of a recommendation from the~~
 23 ~~Agency to extend this time period, the Board shall grant~~ up
 24 to an additional 45 days by written decision of the Agency.
 25 The provisional variances granted to any one person shall not
 26 exceed a total of 90 days during any calendar year.

27 (Source: P.A. 81-1442.)

28 (415 ILCS 5/37) (from Ch. 111 1/2, par. 1037)

29 Sec. 37. Variances; procedures.

30 (a) Any person seeking a variance pursuant to subsection
 31 (a) of Section 35 shall do so by filing a petition for
 32 variance with the Board and the Agency. Any person filing
 33 such a petition shall pay a filing fee. The Agency shall

1 promptly give written notice of such petition to any person
2 in the county in which the installation or property for which
3 variance is sought is located who has in writing requested
4 notice of variance petitions, the State's attorney of such
5 county, the Chairman of the County Board of such county, and
6 to each member of the General Assembly from the legislative
7 district in which that installation or property is located,
8 and shall publish a single notice of such petition in a
9 newspaper of general circulation in such county. The notices
10 required by this Section shall include the street address,
11 and if there is no street address then the legal description
12 or the location with reference to any well known landmark,
13 highway, road, thoroughfare or intersection.

14 The Agency shall promptly investigate such petition and
15 consider the views of persons who might be adversely affected
16 by the grant of a variance. The Agency shall make a
17 recommendation to the Board as to the disposition of the
18 petition. If the Board, in its discretion, concludes that a
19 hearing would be advisable, or if the Agency or any other
20 person files a written objection to the grant of such
21 variance within 21 days, together with a written request for
22 hearing, then a hearing shall be held, under the rules
23 prescribed in Sections 32 and 33 (a) of this Act, and the
24 burden of proof shall be on the petitioner.

25 (b) Any person seeking a provisional variance pursuant
26 to subsection (b) of Section 35 shall make a request to the
27 Agency. The Agency shall promptly investigate and consider
28 the merits of the request. ~~The Agency may notify the Board~~
29 ~~of its recommendation.~~ If the Agency fails to take final
30 action within 30 days after receipt of the request for a
31 provisional variance, or if the Agency denies the request,
32 the person may initiate a proceeding with the Board under
33 subsection (a) of Section 35.

34 If the Agency grants a provisional variance, the Agency

1 must promptly file a copy of its written decision with the
 2 Board, and the Board shall give prompt notice of its action
 3 to the public by issuing a press release for distribution to
 4 newspapers of general circulation in the county. The Board
 5 must maintain for public inspection copies of all provisional
 6 variances filed with it by the Agency.

7 (Source: P.A. 87-914; 88-474.)

8 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)
 9 Sec. 42. Civil penalties.

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

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

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

29 (2) Any person that violates Section 12(g) of this
 30 Act or any UIC permit or term or condition thereof, or
 31 any filing requirement, regulation or order relating to
 32 the State UIC program for all wells, except Class II
 33 wells as defined by the Board under this Act, shall be

1 liable to a civil penalty not to exceed \$2,500 per day of
2 violation; provided, however, that any person who commits
3 such violations relating to the State UIC program for
4 Class II wells, as defined by the Board under this Act,
5 shall be liable to a civil penalty of not to exceed
6 \$10,000 for the violation and an additional civil penalty
7 of not to exceed \$1,000 for each day during which the
8 violation continues.

9 (3) Any person that violates Sections 21(f), 21(g),
10 21(h) or 21(i) of this Act, or any RCRA permit or term or
11 condition thereof, or any filing requirement, regulation
12 or order relating to the State RCRA program, shall be
13 liable to a civil penalty of not to exceed \$25,000 per
14 day of violation.

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

27 (4-5) In an administrative citation action under
28 Section 31.1 of this Act, any person found to have
29 violated any provision of subsection (p) of Section 21 of
30 this Act shall pay a civil penalty of \$1,500 for each
31 violation of each such provision, plus any hearing costs
32 incurred by the Board and the Agency, except that the
33 civil penalty amount shall be a-first-offense-and \$3,000
34 for each violation of any provision of subsection (p) of

1 Section 21 that is the person's a second or subsequent
2 adjudicated violation of that provision offense, plus any
3 ~~hearing costs incurred by the Board and the Agency.~~ The
4 penalties shall be deposited into the Environmental
5 Protection Trust Fund, to be used in accordance with the
6 provisions of the Environmental Protection Trust Fund
7 Act; except that if a unit of local government issued the
8 administrative citation, 50% of the civil penalty shall
9 be payable to the unit of local government.

10 (5) Any person who violates subsection 6 of Section
11 39.5 of this Act or any CAAPP permit, or term or
12 condition thereof, or any fee or filing requirement, or
13 any duty to allow or carry out inspection, entry or
14 monitoring activities, or any regulation or order
15 relating to the CAAPP shall be liable for a civil penalty
16 not to exceed \$10,000 per day of violation.

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

31 (c) Any person that violates this Act, any rule or
32 regulation adopted under this Act, any permit or term or
33 condition of a permit, or any Board order ~~or an order or~~
34 ~~either determination of the Board under this Act~~ and causes

1 the death of fish or aquatic life shall, in addition to the
2 other penalties provided by this Act, be liable to pay to the
3 State an additional sum for the reasonable value of the fish
4 or aquatic life destroyed. Any money so recovered shall be
5 placed in the Wildlife and Fish Fund in the State Treasury.

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

8 (e) The State's Attorney of the county in which the
9 violation occurred, or the Attorney General, may, at the
10 request of the Agency or on his own motion, institute a civil
11 action for an injunction to restrain violations of this Act,
12 any rule or regulation adopted under this Act, any permit or
13 term or condition of a permit, or any Board order.

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

27 Any funds collected under this subsection (f) in which
28 the Attorney General has prevailed shall be deposited in the
29 Hazardous Waste Fund created in Section 22.2 of this Act.
30 Any funds collected under this subsection (f) in which a
31 State's Attorney has prevailed shall be retained by the
32 county in which he serves.

33 (g) All final orders imposing civil penalties pursuant
34 to this Section shall prescribe the time for payment of such

1 penalties. If any such penalty is not paid within the time
2 prescribed, interest on such penalty at the rate set forth in
3 subsection (a) of Section 1003 of the Illinois Income Tax
4 Act, shall be paid for the period from the date payment is
5 due until the date payment is received. However, if the time
6 for payment is stayed during the pendency of an appeal,
7 interest shall not accrue during such stay.

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

13 (1) the duration and gravity of the violation;

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

18 (3) any economic benefits accrued by the violator
19 because of delay in compliance with requirements;

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

25 (5) the number, proximity in time, and gravity of
26 previously adjudicated violations of this Act by the
27 violator.

28 (Source: P.A. 90-773, eff. 8-14-98; 91-82, eff. 1-1-00.)

29 (415 ILCS 5/45) (from Ch. 111 1/2, par. 1045)

30 Sec. 45. Injunctive and other relief.

31 (a) No existing civil or criminal remedy for any
32 wrongful action shall be excluded or impaired by this Act.
33 Nothing in this Act shall be construed to limit or supersede

1 the provisions of the Illinois Oil and Gas Act and the powers
2 therein granted to prevent the intrusion of water into oil,
3 gas or coal strata and to prevent the pollution of fresh
4 water supplies by oil, gas or salt water or oil field wastes,
5 except that water quality standards as set forth by the
6 Pollution Control Board apply to and are effective within the
7 areas covered by and affected by permits issued by the
8 Department of Natural Resources. However, if the Department
9 of Natural Resources fails to act upon any complaint within a
10 period of 10 working days following the receipt of a
11 complaint by the Department, the Environmental Protection
12 Agency may proceed under the provisions of this Act.

13 (b) Any person adversely affected in fact by a violation
14 of this Act, any rule or regulation adopted under this Act,
15 ~~or~~ any permit or term or condition of a permit, or any Board
16 order may sue for injunctive relief against such violation.
17 However, except as provided in subsections ~~subsection~~ (d) and
18 (e), no action shall be brought under this Section until 30
19 days after the plaintiff has been denied relief by the Board
20 in a proceeding brought under subdivision (d)(1) ~~subsection~~
21 ~~(d)~~ of Section 31 of this Act. The prevailing party shall be
22 awarded costs and reasonable attorneys' fees.

23 (c) Nothing in Section 39.4 of this Act shall limit the
24 authority of the Agency to proceed with enforcement under the
25 provisions of this Act for violations of terms and conditions
26 of an endorsed agrichemical facility permit, an endorsed
27 lawncare containment permit, or this Act or regulations
28 hereunder caused or threatened by an agrichemical facility or
29 a lawncare wash water containment area, provided that prior
30 notice is given to the Department of Agriculture which
31 provides that Department an opportunity to respond as
32 appropriate.

33 (d) If the State brings an action under this Act against
34 a person with an interest in real property upon which the

1 person is alleged to have allowed open dumping or open
2 burning by a third party in violation of this Act, which
3 action seeks to compel the defendant to remove the waste or
4 otherwise clean up the site, the defendant may, in the manner
5 provided by law for third-party complaints, bring in as a
6 third-party defendant a person who with actual knowledge
7 caused or contributed to the illegal open dumping or open
8 burning, or who is or may be liable for all or part of the
9 removal and cleanup costs. The court may include any of the
10 parties which it determines to have, with actual knowledge,
11 allowed, caused or contributed to the illegal open dumping or
12 open burning in any order that it may issue to compel removal
13 of the waste and cleanup of the site, and may apportion the
14 removal and cleanup costs among such parties, as it deems
15 appropriate. However, a person may not seek to recover any
16 fines or civil penalties imposed upon him under this Act from
17 a third-party defendant in an action brought under this
18 subsection.

19 (e) A final order issued by the Board pursuant to
20 Section 33 of this Act may be enforced through a civil action
21 for injunctive or other relief instituted by a person who was
22 a party to the Board enforcement proceeding in which the
23 Board issued the final order.

24 (Source: P.A. 91-357, eff. 7-29-99; 92-574, eff. 6-26-02.)

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