



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

415 ILCS 5/3.304 new	
415 ILCS 5/21.3	from Ch. 111 1/2, par. 1021.3
415 ILCS 5/22.15	from Ch. 111 1/2, par. 1022.15
415 ILCS 5/22.15a new	

Amends the Environmental Protection Act. Provides that, upon making a finding that an open dump poses a threat to the public health or to the environment, the Environmental Protection Agency may take whatever preventive or corrective action is necessary or appropriate to end that threat. Sets forth the preventive or corrective actions that may be taken. Sets forth the persons that are liable for all costs of corrective or preventive action incurred by the State as a result of open dumping, including the reasonable costs of collection. Provides that certain costs concerning open dumping, waste tires, and underground storage tanks constitute an environmental reclamation lien. Effective immediately.

LRB093 13500 BDD 40197 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning environmental protection.

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

4 Section 5. The Environmental Protection Act is amended by
5 changing Sections 21.3 and 22.15 and by adding Sections 3.304
6 and 22.15a as follows:

7 (415 ILCS 5/3.304 new)

8 Sec. 3.304. Open Dump. "Open dump" means a disposal site
9 that does not fulfill the requirements of a sanitary landfill.

10 (415 ILCS 5/21.3) (from Ch. 111 1/2, par. 1021.3)

11 Sec. 21.3. Environmental reclamation lien.

12 (a) All costs and damages for which a person is liable to
13 the State of Illinois under Section 22.2, 22.15a, 55.3, or
14 57.12 and ~~Section 22.18~~ shall constitute an environmental
15 reclamation lien in favor of the State of Illinois upon all
16 real property and rights to such property which:

17 (1) belong to such person; and

18 (2) are subject to or affected by a removal or remedial
19 action under Section 22.2 or investigation, preventive
20 action, corrective action, or enforcement action under
21 Section 22.15a, 55.3, or 57.12 ~~22.18~~.

22 (b) An environmental reclamation lien shall continue until
23 the liability for the costs and damages, or a judgment against
24 the person arising out of such liability, is satisfied.

25 (c) An environmental reclamation lien shall be effective
26 upon the filing by the Agency of a Notice of Environmental
27 Reclamation Lien with the recorder or the registrar of titles
28 of the county in which the real property lies. The Agency shall
29 not file an environmental reclamation lien, and no such lien
30 shall be valid, unless the Agency has sent notice pursuant to
31 subsection (q) of Section 4, subsection (c) of Section 22.15a,

1 subsection (d) of Section 55.3, or subsection (c) of Section
2 57.12 of this Act to owners of the real property. Nothing in
3 this Section shall be construed to give the Agency's lien a
4 preference over the rights of any bona fide purchaser or
5 mortgagee or other lienholder (not including the United States
6 when holding an unfiled lien) arising prior to the filing of a
7 notice of environmental reclamation lien in the office of the
8 recorder or registrar of titles of the county in which the
9 property subject to the lien is located. For purposes of this
10 Section, the term "bona fide" shall not include any mortgage of
11 real or personal property or any other credit transaction that
12 results in the mortgagee or the holder of the security acting
13 as trustee for unsecured creditors of the liable person
14 mentioned in the notice of lien who executed such chattel or
15 real property mortgage or the document evidencing such credit
16 transaction. Such lien shall be inferior to the lien of general
17 taxes, special assessments and special taxes heretofore or
18 hereafter levied by any political subdivision of this State.

19 (d) The environmental reclamation lien shall not exceed the
20 amount of expenditures as itemized on the Affidavit of
21 Expenditures attached to and filed with the Notice of
22 Environmental Reclamation Lien. The Affidavit of Expenditures
23 may be amended if additional costs or damages are incurred.

24 (e) Upon filing of the Notice of Environmental Reclamation
25 Lien a copy with attachments shall be served upon the owners of
26 the real property. Notice of such service shall be served on
27 all lienholders of record as of the date of filing.

28 (f) ~~(Blank) Within 60 days after initiating response or~~
29 ~~remedial action at the site under Section 22.2 or 22.18, the~~
30 ~~Agency shall file a Notice of Response Action in Progress. The~~
31 ~~Notice shall be filed with the recorder or registrar of titles~~
32 ~~of the county in which the real property lies.~~

33 (g) In addition to any other remedy provided by the laws of
34 this State, the Agency may foreclose in the circuit court an
35 environmental reclamation lien on real property for any costs
36 or damages imposed under Section 22.2, 22.15a, 55.3, or 57.12

1 ~~or Section 22.18~~ to the same extent and in the same manner as
2 in the enforcement of other liens. The process, practice and
3 procedure for such foreclosure shall be the same as provided in
4 Article XV of the Code of Civil Procedure. Nothing in this
5 Section shall affect the right of the State of Illinois to
6 bring an action against any person to recover all costs and
7 damages for which such person is liable under Section 22.2,
8 22.15a, 55.3, or 57.12 ~~or Section 22.18~~.

9 (h) Any liability to the State under Section 22.2, 22.15a,
10 55.3, or 57.12 ~~or Section 22.18~~ shall constitute a debt to the
11 State. Interest on such debt shall begin to accrue at a rate of
12 12% per annum from the date of the filing of the Notice of
13 Environmental Reclamation Lien under paragraph (c). Accrued
14 interest shall be included as a cost incurred by the State of
15 Illinois under Section 22.2, 22.15A, 55.3, or 57.12 ~~or Section~~
16 ~~22.18~~.

17 (i) "Environmental reclamation lien" means a lien
18 established under this Section.

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

20 (415 ILCS 5/22.15) (from Ch. 111 1/2, par. 1022.15)

21 Sec. 22.15. Solid Waste Management Fund; fees.

22 (a) There is hereby created within the State Treasury a
23 special fund to be known as the "Solid Waste Management Fund",
24 to be constituted from the fees collected by the State pursuant
25 to this Section and from repayments of loans made from the Fund
26 for solid waste projects. Moneys received by the Department of
27 Commerce and Community Affairs in repayment of loans made
28 pursuant to the Illinois Solid Waste Management Act shall be
29 deposited into the Solid Waste Management Revolving Loan Fund.

30 (b) The Agency shall assess and collect a fee in the amount
31 set forth herein from the owner or operator of each sanitary
32 landfill permitted or required to be permitted by the Agency to
33 dispose of solid waste if the sanitary landfill is located off
34 the site where such waste was produced and if such sanitary
35 landfill is owned, controlled, and operated by a person other

1 than the generator of such waste. The Agency shall deposit all
2 fees collected into the Solid Waste Management Fund. If a site
3 is contiguous to one or more landfills owned or operated by the
4 same person, the volumes permanently disposed of by each
5 landfill shall be combined for purposes of determining the fee
6 under this subsection.

7 (1) If more than 150,000 cubic yards of non-hazardous
8 solid waste is permanently disposed of at a site in a
9 calendar year, the owner or operator shall either pay a fee
10 of 95 cents per cubic yard or, alternatively, the owner or
11 operator may weigh the quantity of the solid waste
12 permanently disposed of with a device for which
13 certification has been obtained under the Weights and
14 Measures Act and pay a fee of \$2.00 per ton of solid waste
15 permanently disposed of. In no case shall the fee collected
16 or paid by the owner or operator under this paragraph
17 exceed \$1.55 per cubic yard or \$3.27 per ton.

18 (2) If more than 100,000 cubic yards but not more than
19 150,000 cubic yards of non-hazardous waste is permanently
20 disposed of at a site in a calendar year, the owner or
21 operator shall pay a fee of \$52,630.

22 (3) If more than 50,000 cubic yards but not more than
23 100,000 cubic yards of non-hazardous solid waste is
24 permanently disposed of at a site in a calendar year, the
25 owner or operator shall pay a fee of \$23,790.

26 (4) If more than 10,000 cubic yards but not more than
27 50,000 cubic yards of non-hazardous solid waste is
28 permanently disposed of at a site in a calendar year, the
29 owner or operator shall pay a fee of \$7,260.

30 (5) If not more than 10,000 cubic yards of
31 non-hazardous solid waste is permanently disposed of at a
32 site in a calendar year, the owner or operator shall pay a
33 fee of \$1050.

34 (c) (Blank.)

35 (d) The Agency shall establish rules relating to the
36 collection of the fees authorized by this Section. Such rules

1 shall include, but not be limited to:

2 (1) necessary records identifying the quantities of
3 solid waste received or disposed;

4 (2) the form and submission of reports to accompany the
5 payment of fees to the Agency;

6 (3) the time and manner of payment of fees to the
7 Agency, which payments shall not be more often than
8 quarterly; and

9 (4) procedures setting forth criteria establishing
10 when an owner or operator may measure by weight or volume
11 during any given quarter or other fee payment period.

12 (e) Pursuant to appropriation, all monies in the Solid
13 Waste Management Fund shall be used by the Agency and the
14 Department of Commerce and Community Affairs for the purposes
15 set forth in this Section and in the Illinois Solid Waste
16 Management Act, including for the costs of fee collection and
17 administration, and may be used by the Agency for activities
18 conducted under Section 22.2 or 22.15a of this Act.

19 (f) The Agency is authorized to enter into such agreements
20 and to promulgate such rules as are necessary to carry out its
21 duties under this Section and the Illinois Solid Waste
22 Management Act.

23 (g) On the first day of January, April, July, and October
24 of each year, beginning on July 1, 1996, the State Comptroller
25 and Treasurer shall transfer \$500,000 from the Solid Waste
26 Management Fund to the Hazardous Waste Fund. Moneys transferred
27 under this subsection (g) shall be used only for the purposes
28 set forth in item (1) of subsection (d) of Section 22.2.

29 (h) The Agency is authorized to provide financial
30 assistance to units of local government for the performance of
31 inspecting, investigating and enforcement activities pursuant
32 to Section 4(r) at nonhazardous solid waste disposal sites.

33 (i) The Agency is authorized to support the operations of
34 an industrial materials exchange service, and to conduct
35 household waste collection and disposal programs.

36 (j) A unit of local government, as defined in the Local

1 Solid Waste Disposal Act, in which a solid waste disposal
2 facility is located may establish a fee, tax, or surcharge with
3 regard to the permanent disposal of solid waste. All fees,
4 taxes, and surcharges collected under this subsection shall be
5 utilized for solid waste management purposes, including
6 long-term monitoring and maintenance of landfills, planning,
7 implementation, inspection, enforcement and other activities
8 consistent with the Solid Waste Management Act and the Local
9 Solid Waste Disposal Act, or for any other environment-related
10 purpose, including but not limited to an environment-related
11 public works project, but not for the construction of a new
12 pollution control facility other than a household hazardous
13 waste facility. However, the total fee, tax or surcharge
14 imposed by all units of local government under this subsection
15 (j) upon the solid waste disposal facility shall not exceed:

16 (1) 60¢ per cubic yard if more than 150,000 cubic yards
17 of non-hazardous solid waste is permanently disposed of at
18 the site in a calendar year, unless the owner or operator
19 weighs the quantity of the solid waste received with a
20 device for which certification has been obtained under the
21 Weights and Measures Act, in which case the fee shall not
22 exceed \$1.27 per ton of solid waste permanently disposed
23 of.

24 (2) \$33,350 if more than 100,000 cubic yards, but not
25 more than 150,000 cubic yards, of non-hazardous waste is
26 permanently disposed of at the site in a calendar year.

27 (3) \$15,500 if more than 50,000 cubic yards, but not
28 more than 100,000 cubic yards, of non-hazardous solid waste
29 is permanently disposed of at the site in a calendar year.

30 (4) \$4,650 if more than 10,000 cubic yards, but not
31 more than 50,000 cubic yards, of non-hazardous solid waste
32 is permanently disposed of at the site in a calendar year.

33 (5) \$650 if not more than 10,000 cubic yards of
34 non-hazardous solid waste is permanently disposed of at the
35 site in a calendar year.

36 The corporate authorities of the unit of local government

1 may use proceeds from the fee, tax, or surcharge to reimburse a
2 highway commissioner whose road district lies wholly or
3 partially within the corporate limits of the unit of local
4 government for expenses incurred in the removal of
5 nonhazardous, nonfluid municipal waste that has been dumped on
6 public property in violation of a State law or local ordinance.

7 A county or Municipal Joint Action Agency that imposes a
8 fee, tax, or surcharge under this subsection may use the
9 proceeds thereof to reimburse a municipality that lies wholly
10 or partially within its boundaries for expenses incurred in the
11 removal of nonhazardous, nonfluid municipal waste that has been
12 dumped on public property in violation of a State law or local
13 ordinance.

14 If the fees are to be used to conduct a local sanitary
15 landfill inspection or enforcement program, the unit of local
16 government must enter into a written delegation agreement with
17 the Agency pursuant to subsection (r) of Section 4. The unit of
18 local government and the Agency shall enter into such a written
19 delegation agreement within 60 days after the establishment of
20 such fees. At least annually, the Agency shall conduct an audit
21 of the expenditures made by units of local government from the
22 funds granted by the Agency to the units of local government
23 for purposes of local sanitary landfill inspection and
24 enforcement programs, to ensure that the funds have been
25 expended for the prescribed purposes under the grant.

26 The fees, taxes or surcharges collected under this
27 subsection (j) shall be placed by the unit of local government
28 in a separate fund, and the interest received on the moneys in
29 the fund shall be credited to the fund. The monies in the fund
30 may be accumulated over a period of years to be expended in
31 accordance with this subsection.

32 A unit of local government, as defined in the Local Solid
33 Waste Disposal Act, shall prepare and distribute to the Agency,
34 in April of each year, a report that details spending plans for
35 monies collected in accordance with this subsection. The report
36 will at a minimum include the following:

1 (1) The total monies collected pursuant to this
2 subsection.

3 (2) The most current balance of monies collected
4 pursuant to this subsection.

5 (3) An itemized accounting of all monies expended for
6 the previous year pursuant to this subsection.

7 (4) An estimation of monies to be collected for the
8 following 3 years pursuant to this subsection.

9 (5) A narrative detailing the general direction and
10 scope of future expenditures for one, 2 and 3 years.

11 The exemptions granted under Sections 22.16 and 22.16a, and
12 under subsections (c) and (k) of this Section, shall be
13 applicable to any fee, tax or surcharge imposed under this
14 subsection (j); except that the fee, tax or surcharge
15 authorized to be imposed under this subsection (j) may be made
16 applicable by a unit of local government to the permanent
17 disposal of solid waste after December 31, 1986, under any
18 contract lawfully executed before June 1, 1986 under which more
19 than 150,000 cubic yards (or 50,000 tons) of solid waste is to
20 be permanently disposed of, even though the waste is exempt
21 from the fee imposed by the State under subsection (b) of this
22 Section pursuant to an exemption granted under Section 22.16.

23 (k) In accordance with the findings and purposes of the
24 Illinois Solid Waste Management Act, beginning January 1, 1989
25 the fee under subsection (b) and the fee, tax or surcharge
26 under subsection (j) shall not apply to:

27 (1) Waste which is hazardous waste; or

28 (2) Waste which is pollution control waste; or

29 (3) Waste from recycling, reclamation or reuse
30 processes which have been approved by the Agency as being
31 designed to remove any contaminant from wastes so as to
32 render such wastes reusable, provided that the process
33 renders at least 50% of the waste reusable; or

34 (4) Non-hazardous solid waste that is received at a
35 sanitary landfill and composted or recycled through a
36 process permitted by the Agency; or

1 (5) Any landfill which is permitted by the Agency to
2 receive only demolition or construction debris or
3 landscape waste.

4 (Source: P.A. 92-574, eff. 6-26-02; 93-32, eff. 7-1-03.)

5 (415 ILCS 5/22.15a new)

6 Sec. 22.15a. Open dumps.

7 (a) Upon making a finding that an open dump poses a threat
8 to the public health or to the environment, the Agency may take
9 whatever preventive or corrective action is necessary or
10 appropriate to end that threat. This preventive or corrective
11 action may consist of any or all of the following:

12 (1) Removing waste from the site.

13 (2) Removing soil and water contamination that is
14 related to waste at the site.

15 (3) Installing devices to monitor and control
16 groundwater and surface water contamination that is
17 related to waste at the site.

18 (4) Taking any other actions that are authorized by
19 Board regulations.

20 (b) Subject to the availability of appropriated funds, the
21 Agency may undertake a consensual removal action for the
22 removal of up to 20 cubic yards of waste at no cost to the owner
23 of an open dump in accordance to the following requirements:

24 (1) Actions under this subsection must be taken
25 pursuant to a written agreement between the Agency and the
26 owner of the open dump.

27 (2) The written agreement must at a minimum specify:

28 (A) that the owner relinquishes any claim of an
29 ownership interest in any waste that is removed or in
30 any proceeds from its sale;

31 (B) that waste will no longer be allowed to
32 accumulate at the site in a manner that constitutes
33 open dumping;

34 (C) that the owner will hold harmless the Agency or
35 any employee or contractor used by the Agency to effect

1 the removal for any damage to property incurred during
2 the course of action under this subsection, except for
3 damage incurred by gross negligence or intentional
4 misconduct; and

5 (D) any conditions upon or assistance required
6 from the owner to assure that the waste is so located
7 or arranged as to facilitate its removal.

8 (3) The Agency may establish by rule the conditions and
9 priorities for the removal of waste under this subsection
10 (b).

11 (4) The Agency must prescribe the form of written
12 agreements under this subsection (b).

13 (c) The Agency may provide notice to the owner of an open
14 dump whenever the Agency finds that the open dump poses a
15 threat to public health or the environment. The notice provided
16 by the Agency must include the identified preventive or
17 corrective action and must provide an opportunity for the owner
18 to perform the action.

19 (d) In accordance with constitutional limitations, the
20 Agency may enter, at all reasonable times, upon any private or
21 public property for the purpose of taking any preventive or
22 corrective action that is necessary and appropriate under this
23 Section whenever the Agency finds that an open dump poses a
24 threat to the public health or to the environment.

25 (e) Notwithstanding any other provision or rule of law and
26 subject only to the defenses set forth in subsection (g) of
27 this Section, the following persons shall be liable for all
28 costs of corrective or preventive action incurred by the State
29 of Illinois as a result of open dumping, including the
30 reasonable costs of collection:

31 (1) any person with an ownership interest in the open
32 dump;

33 (2) any person with an ownership or leasehold interest
34 in the open dump at the time waste was disposed of at the
35 site;

36 (3) any person who transported waste that was disposed

1 of at the open dump; and

2 (4) any person who disposed of waste at the open dump.

3 Any moneys received by the Agency under this subsection (e)
4 must be deposited into the Hazardous Waste Fund.

5 (f) Any person liable to the Agency for costs incurred
6 under subsection (e) of this Section may be liable to the State
7 of Illinois for punitive damages in an amount at least equal to
8 and not more than 3 times the costs incurred by the State if
9 that person failed, without sufficient cause, to take
10 preventive or corrective action under the notice issued under
11 subsection (c) of this Section.

12 (g) There shall be no liability under subsection (e) of
13 this Section for a person otherwise liable who can establish by
14 a preponderance of the evidence that the hazard created by the
15 open dump was caused solely by:

16 (1) an act of God;

17 (2) an act of war; or

18 (3) an act or omission of a third party other than an
19 employee or agent and other than a person whose act or
20 omission occurs in connection with a contractual
21 relationship with the person otherwise liable. For the
22 purposes of this paragraph, "contractual relationship"
23 includes, but is not limited to, land contracts, deeds and
24 other instruments transferring title or possession, unless
25 the real property upon which the open dump is located was
26 acquired by the defendant after the disposal or placement
27 of waste on, in, or at the property and one or more of the
28 following circumstances is also established by a
29 preponderance of the evidence:

30 (A) at the time the defendant acquired the
31 property, the defendant did not know and had no reason
32 to know that any waste had been disposed of or placed
33 on, in, or at the property, and the defendant
34 undertook, at the time of acquisition, all appropriate
35 inquiries into the previous ownership and uses of the
36 property consistent with good commercial or customary

1 practice in an effort to minimize liability;

2 (B) the defendant is a government entity that
3 acquired the property by escheat or through any other
4 involuntary transfer or acquisition, or through the
5 exercise of eminent domain authority by purchase or
6 condemnation; or

7 (C) the defendant acquired the property by
8 inheritance or bequest.

9 (h) Nothing in this Section shall affect or modify the
10 obligations or liability of any person under any other
11 provision of this Act, federal law, or State law, including the
12 common law, for injuries, damages, or losses resulting from the
13 circumstances leading to Agency action under this Section.

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

19 (j) Neither the State, the Agency, the Board, the Director,
20 nor any State employee is liable for any damage or injury
21 arising out of or resulting from any action taken under this
22 Section.

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