



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB0510

Introduced 2/17/2005, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

415 ILCS 5/Title XVIII heading new
415 ILCS 5/59 new
415 ILCS 5/59.1 new
415 ILCS 5/59.2 new
415 ILCS 5/59.3 new
415 ILCS 5/59.5 new
415 ILCS 5/59.6 new
415 ILCS 5/59.7 new
415 ILCS 5/59.8 new
415 ILCS 5/59.9 new

Amends the Environmental Protection Act. Establishes a Beneficial Use Determination Program. Provides that a generator or proposed user of an item that would otherwise be considered waste may apply to the Agency for a determination that the item has a beneficial use. Sets forth requirements for applying for the Beneficial Use Determination. Provides that if the Agency determines that an item has a beneficial use, it is not considered waste under the Act. Creates the Beneficial Use Determination Advisory Committee to review, evaluate, and make recommendations regarding proposed rules to be adopted for the administration of this Title. Provides that the Beneficial Use Determination Advisory Committee shall terminate its functions not more than 24 months after the effective date of this amendatory Act of the 94th General Assembly. Makes other changes. Effective immediately.

LRB094 07709 RSP 37885 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning environment 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 adding Title XVIII as follows:

6 (415 ILCS 5/Title XVIII heading new)

7 TITLE XVIII: BENEFICIAL USE DETERMINATION PROGRAM

8 (415 ILCS 5/59 new)

9 Sec. 59. Intent and purpose.

10 (a) It is the intent of this Title:

11 (1) To encourage the beneficial use, in an
12 environmentally sound manner, of certain materials that
13 would otherwise be managed or discarded as waste.

14 (2) To establish procedures for determining whether a
15 material no longer used for its originally intended
16 purpose:

17 (i) is being discarded and, therefore, should be
18 considered a waste; or

19 (ii) is being beneficially used and therefore
20 should not be considered a waste.

21 (3) To assure that a material no longer used for its
22 originally intended purpose is managed or discarded in
23 accordance with applicable State and federal laws and
24 regulations.

25 (b) If any provision of this Title conflicts with any
26 federal law, the federal law takes precedence over that
27 provision.

28 (415 ILCS 5/59.1 new)

1 Sec. 59.1. Applicability. This Title applies to materials
2 that, absent a beneficial use determination by the Agency under
3 this Title, would be considered waste. Any generator or
4 proposed user may use the procedures under this Title to
5 request a beneficial use determination from the Agency for a
6 specific material and process being conducted at a specifically
7 identified facility. The procedures under this Title, however,
8 do not apply to any of the following materials:

9 (1) clean construction or demolition debris, as
10 defined in Section 3.160;

11 (2) coal combustion waste, as defined in Section 3.140;

12 (3) coal combustion by-products, as defined in Section
13 3.135;

14 (4) potentially infectious medical waste, as defined
15 in Section 3.360;

16 (5) landscape waste, as defined in Section 3.270;

17 (6) used oil, as defined in Section 3.520;

18 (7) solid or dissolved material in domestic sewage;

19 (8) solid or dissolved materials in irrigation return
20 flows;

21 (9) industrial discharges that are point sources
22 subject to permits under Section 402 of the Clean Water
23 Act;

24 (10) source, special nuclear, or by-products
25 materials, as defined by the Atomic Energy Act;

26 (11) solid or dissolved material from any facility
27 subject to the federal Surface Mining Control and
28 Reclamations Act of 1977 or rules or regulations thereunder
29 or any law or regulations adopted by the State of Illinois
30 pursuant thereto;

31 (12) any hazardous waste, as defined in Section 3.220;

32 (13) any waste regulated under the federal Toxic
33 Substances Control Act (P.L. 94-469), as amended; or

34 (14) any material to be burned or incinerated.

1 Sec. 59.2. Program. The Agency must establish and maintain
2 a Beneficial Use Determination Program to be administered under
3 this Title XVIII and in accordance with rules adopted by the
4 Illinois Pollution Control Board.

5 (415 ILCS 5/59.3 new)

6 Sec. 59.3. Review and approval.

7 (a) Application requirements. All requests for
8 determinations that are submitted under this Title must be
9 submitted in writing for review or approval in accordance with
10 this Section and rules adopted under Section 59.8. The request
11 must be on application forms prescribed and provided by the
12 Agency.

13 (b) Content of application. At a minimum, the application
14 must include the following:

15 (1) a demonstration that the material proposed for the
16 program is not a hazardous waste;

17 (2) a description of the material and its proposed use;

18 (3) the physical and chemical characteristics and the
19 organic and inorganic compounds that comprise the material
20 or a representative sample of such material, and that will
21 comprise each proposed product;

22 (4) a description of the expected physical and chemical
23 characteristics, including volume, of any leachate or
24 runoff from the proposed process if the material will be
25 applied to the land;

26 (5) an application fee in accordance with Section 59.4
27 for each determination that is requested;

28 (6) a demonstration that there is a known or expected
29 market for the intended use of the material under review
30 and all of the proposed products by providing one or more
31 of the following:

32 (A) a contract, letter of intent, or other written
33 agreement to purchase the proposed product or to have
34 the material under review used in the manner proposed;

35 (B) a description of how the proposed product will

1 be used;

2 (C) a demonstration that the proposed product
3 complies with industry standards and specifications
4 for that product; or

5 (D) other documentation demonstrating that a
6 market exists for the proposed product or use, which
7 shall include submittal of documentation pursuant to
8 subparagraph (A); and

9 (7) a demonstration that the management of the material
10 under review will not adversely affect human health and
11 safety or the environment by providing a control plan that
12 includes, at a minimum, the following:

13 (A) the source of the material under review,
14 including contractual arrangements with the supplier;

15 (B) procedures for periodic testing of the
16 material under review and the proposed product to
17 ensure that the proposed material and product's
18 composition has not changed significantly;

19 (C) the disposition of any material that may result
20 from the manufacture of the product into which the
21 material under review is intended to be incorporated;

22 (D) a description of the type of storage and the
23 maximum anticipated inventory of the material under
24 review before being used;

25 (E) procedures for run-on and run-off control of
26 the storage areas for the material under review; and

27 (F) a plan and implementation schedule of
28 management methods designed to minimize uncontrolled
29 dispersion of the material under review before and
30 during all aspects of its storage as inventory and
31 during beneficial use.

32 (c) Standard of review.

33 (1) The Agency shall determine in writing, on a
34 case-by-case basis, whether a proposal constitutes a
35 beneficial use based on adequate demonstration by the
36 applicant that all of the following criteria are satisfied:

1 (A) that the proposed material management
2 activity:

3 (i) will not cause a release or threat of
4 release to the land, air, or water (surface or
5 ground water) that would exceed standards
6 promulgated by the Board; and

7 (ii) will otherwise provide adequate
8 protection of human health or the environment;

9 (B) that a market exists for the material under
10 review or the product into which the material under
11 review is proposed to be incorporated;

12 (C) that the nature of the proposed use constitutes
13 a legitimate reuse of the material as an ingredient or
14 raw material rather than disposal;

15 (D) that the material under review is intended to
16 function or serve as an effective substitute for an
17 analogous raw material; and

18 (E) that a material that is proposed for
19 incorporation into a manufacturing process does not
20 need to be decontaminated or otherwise specially
21 handled or processed before such incorporation in
22 order to minimize loss of material or to provide
23 adequate protection of human health or safety or the
24 environment.

25 (2) Except as otherwise provided by Section 59.5, any
26 beneficial use determination granted pursuant to the
27 provisions of this Title shall be granted for a period not
28 to exceed 5 years. If the applicant desires a continuation
29 of the beneficial use determination beyond 5 years, the
30 applicant must reapply for a new determination 90 days
31 before the expiration of the 5-year period and must send
32 the Agency the appropriate fee under Section 59.4.

33 (d) Certification. All applications submitted for review
34 must include a certification by the applicant that all the
35 information presented is true, accurate, and complete to the
36 best knowledge of the applicant. Where applications for a

1 beneficial use determination include technical information
2 that would require the supervision of a Licensed Professional
3 Engineer or Licensed Professional Geologist, as appropriate,
4 there must also be a certification by the LPE or the LPG that
5 the information compiled was prepared under his or her personal
6 supervision and, to the best of his or her knowledge and
7 belief, the information is true, accurate, and complete.

8 (e) Agency review.

9 (1) Within 90 days after receipt by the Agency of a
10 request meeting the requirements of this Section, the
11 Agency shall issue a letter to the applicant approving,
12 disapproving, or approving with conditions the request
13 submitted. The applicant may waive this deadline in
14 writing. If a request is disapproved or approved with
15 conditions, the Agency's letter shall set forth the reasons
16 for the disapproval or conditions. Any letter disapproving
17 a request or approving a request with conditions shall be
18 sent by certified mail, return receipt requested.

19 (2) In approving beneficial use determinations, the
20 Agency may impose such conditions as it may deem necessary
21 to accomplish the purposes of this Act that are not
22 inconsistent with the rules adopted by the Board under this
23 Title.

24 (3) If the Agency disapproves a request or approves a
25 request with conditions, the applicant may, within 35 days
26 of receipt of the Agency's decision, petition for a hearing
27 before the Board to contest the decision. If the Agency
28 fails to act within 90 days after the receipt of a request,
29 the request shall be deemed granted until such time as the
30 Agency has taken final action to approve, disapprove, or
31 approve with conditions the request. Appeals to the Board
32 must be in the manner provided for the review of permits in
33 Section 40.

34 (4) The Agency may adopt procedural rules, as may be
35 necessary to carry out its duties under this Title, that
36 are not inconsistent with the requirements of this Title.

1 (415 ILCS 5/59.5 new)

2 Sec. 59.5. Revocation. The Agency may seek revocation from
3 the Board on a beneficial use determination in accordance with
4 procedures adopted pursuant to Section 59.8. Either of the
5 following may constitute grounds for revocation of a beneficial
6 use determination:

7 (1) demonstration that a determination was made on the
8 basis of fraud or misrepresentation; or

9 (2) demonstration that, due to a change in law, the
10 determination no longer satisfies the intent or purpose for
11 a beneficial use under this Title.

12 (415 ILCS 5/59.6 new)

13 Sec. 59.6. Effect of a beneficial use determination.

14 (a) As long as all applicable conditions of the beneficial
15 use determination are complied with, the material or process is
16 not a waste. If any applicable condition of the beneficial use
17 determination is not complied with, the material or process is
18 a waste.

19 (b) The effective date of a beneficial use determination is
20 the date of issuance, is prospective only, and is for a period
21 of 5 years, unless otherwise stated in the determination.

22 (415 ILCS 5/59.7 new)

23 Sec. 59.7. Beneficial Use Determination Advisory
24 Committee.

25 (a) There is hereby established a 10-member Beneficial Use
26 Determination Advisory Committee, which shall be appointed by
27 the Governor within 6 months after the effective date of this
28 amendatory Act of the 94th General Assembly. The Committee
29 shall include one member recommended by the Illinois State
30 Chamber of Commerce, one member recommended by the Illinois
31 Manufacturers' Association, one member recommended by the
32 Consulting Engineers Council, one member recommended by the
33 National Solid Waste Management Association, one member

1 recommended by the Illinois Recycling Association, one member
2 from an environmental advocacy group, one member from a public
3 interest community organization, one member from a community
4 development corporation, one member from the Illinois
5 Department of Natural Resources, and one member from the
6 Illinois Department of Commerce and Economic Opportunity.
7 Members shall serve without compensation.

8 (b) The Committee shall review, evaluate, and make
9 recommendations regarding proposed rules to be adopted under
10 Section 59.8. The Committee shall terminate its functions not
11 more than 24 months after the effective date of this amendatory
12 Act of the 94th General Assembly.

13 (415 ILCS 5/59.8 new)

14 Sec. 59.8. Board rules.

15 (a) Within 12 months after the effective date of this
16 amendatory Act of the 94th General Assembly, the Agency, after
17 consideration of the recommendations of the Committee, shall
18 propose rules prescribing procedures and standards for
19 administration of this Title. Within 12 months after receipt of
20 the Agency's proposed rules, the Board shall adopt, pursuant to
21 Sections 27 and 28, rules that are consistent with this Title.

22 (b) Prior to the effective date of the rules adopted under
23 this Section, the Agency is authorized to conduct reviews of
24 and make determinations relative to the applications under this
25 Title. The Agency is authorized to prepare and distribute
26 guidance documents relative to its administration of this
27 Title. Guidance documents prepared under this Title shall not
28 be considered rules for purposes of the Illinois Administrative
29 Procedure Act.

30 (415 ILCS 5/59.9 new)

31 Sec. 59.9. Severability.

32 The provisions of this Title XVIII are severable under
33 Section 1.31 of the Statute on Statutes.

1 Section 99. Effective Date. This Act takes effect upon
2 becoming law.