



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4711

by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

415 ILCS 5/58.1
415 ILCS 5/58.2
415 ILCS 5/58.9
415 ILCS 5/58.10

Amends the Environmental Protection Act concerning the Site Remediation Program. Provides that certain limitations on liability and cost recovery for site remediation do not apply to sites: (i) that are subject to any remediation or remedial activity regulated under a State program authorized, approved, or delegated pursuant to any federal environmental statute; or (ii) that do not qualify to participate in the Site Remediation Program. Provides that sites that are subject to post-closure, corrective action, or remediation requirements under the federal or State solid hazardous waste laws do not qualify to participate in the Site Remediation Program. Specifies that a definition of "remedial action" applies only to the provisions concerning the Site Remediation Program. Provides that the Pollution Control Board may (now, "shall") adopt rules concerning the proportionate share of liability. Provides that the Environmental Protection Agency's issuance of a No Further Remediation Letter signifies a release of further responsibilities for those sites that are eligible for the Site Remediation Program. Makes other changes. Effective immediately.

LRB095 03370 CMK 24682 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

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

4 Section 5. The Environmental Protection Act is amended by
5 changing Sections 58.1, 58.2, 58.9, and 58.10 as follows:

6 (415 ILCS 5/58.1)

7 Sec. 58.1. Applicability.

8 (a) (1) This Title establishes the procedures for the
9 investigative and remedial activities at sites where there is a
10 release, threatened release, or suspected release of hazardous
11 substances, pesticides, or petroleum and for the review and
12 approval of those activities.

13 (2) (A) Except as provided in subparagraph (B), any ~~Any~~
14 person, including persons required to perform investigations
15 and remediations under this Act, may elect to proceed under the
16 Site Remediation Program.

17 (B) A site is prohibited from participating in the Site
18 Remediation Program if: ~~this Title unless~~ (i) the site is on
19 the National Priorities List (Appendix B of 40 CFR 300); ~~;~~ (ii)
20 the site is a treatment, storage, or disposal site for which a
21 permit has been issued, or that is subject to closure,
22 post-closure, corrective action, or remediation requirements
23 under federal or State solid or hazardous waste laws ~~;~~ (iii)

1 the site is subject to federal or State underground storage
2 tank laws ~~;~~ or (iv) investigation or remedial action at the
3 site has been required by a federal court order or an order
4 issued by the United States Environmental Protection Agency. To
5 the extent allowed by federal law and regulations, the sites
6 listed under items (i), (ii), (iii), and (iv) may utilize the
7 provisions of the Site Remediation Program ~~this Title~~,
8 including the procedures for establishing risk-based
9 remediation objectives under Section 58.5.

10 (b) Except for sites excluded under subdivision (a) (2) of
11 this Section, the Remediation Applicant (RA) for any site that
12 has not received an Agency letter under subsection (y) of
13 Section 4 of this Act may elect to proceed under the provisions
14 of this Title by submitting a written statement of the election
15 to the Agency. In the absence of such election, the RA shall
16 continue under the provisions of this Act as applicable prior
17 to the effective date of this amendatory Act of 1995.

18 (c) Except for sites excluded under subdivision (a) (2)
19 of this Section, agrichemical facilities may elect to undertake
20 corrective action in conformance with this Title and rules
21 promulgated by the Board thereunder and land application
22 programs administered by the Department of Agriculture as
23 provided under Section 19 of the Illinois Pesticide Act, and
24 shall be eligible for the relief provided under Section 58.10.

25 (d) Notwithstanding the provisions of subsections (a),
26 (b), and (c) of this Section, the provisions of Section 58.9 do

1 not apply to:

2 (1) any site covered by the provisions of item (2)(B)
3 of subsection (a) of this Section; or

4 (2) any remediation or remedial activity that is
5 regulated under a state program authorized, approved, or
6 delegated pursuant to any federal environmental statute
7 including, but not limited to, the Clean Air Act, the Clean
8 Water Act, the Resource Conservation and Recovery Act, the
9 Safe Drinking Water Act, the Toxic Substances Control Act,
10 and the Federal Insecticide, Fungicide, and Rodenticide
11 Act.

12 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96.)

13 (415 ILCS 5/58.2)

14 Sec. 58.2. Definitions. The following words and phrases
15 when used in this Title shall have the meanings given to them
16 in this Section unless the context clearly indicates otherwise:

17 "Agrichemical facility" means a site on which agricultural
18 pesticides are stored or handled, or both, in preparation for
19 end use, or distributed. The term does not include basic
20 manufacturing facility sites.

21 "ASTM" means the American Society for Testing and
22 Materials.

23 "Area background" means concentrations of regulated
24 substances that are consistently present in the environment in
25 the vicinity of a site that are the result of natural

1 conditions or human activities, and not the result solely of
2 releases at the site.

3 "Brownfields site" or "brownfields" means a parcel of real
4 property, or a portion of the parcel, that has actual or
5 perceived contamination and an active potential for
6 redevelopment.

7 "Class I groundwater" means groundwater that meets the
8 Class I Potable Resource groundwater criteria set forth in the
9 Board rules adopted under the Illinois Groundwater Protection
10 Act.

11 "Class III groundwater" means groundwater that meets the
12 Class III Special Resource Groundwater criteria set forth in
13 the Board rules adopted under the Illinois Groundwater
14 Protection Act.

15 "Carcinogen" means a contaminant that is classified as a
16 Category A1 or A2 Carcinogen by the American Conference of
17 Governmental Industrial Hygienists; or a Category 1 or 2A/2B
18 Carcinogen by the World Health Organizations International
19 Agency for Research on Cancer; or a "Human Carcinogen" or
20 "Anticipated Human Carcinogen" by the United States Department
21 of Health and Human Service National Toxicological Program; or
22 a Category A or B1/B2 Carcinogen by the United States
23 Environmental Protection Agency in Integrated Risk Information
24 System or a Final Rule issued in a Federal Register notice by
25 the USEPA as of the effective date of this amendatory Act of
26 1995.

1 "Licensed Professional Engineer" (LPE) means a person,
2 corporation, or partnership licensed under the laws of this
3 State to practice professional engineering.

4 "Licensed Professional Geologist" means a person licensed
5 under the laws of the State of Illinois to practice as a
6 professional geologist.

7 "RELPEG" means a Licensed Professional Engineer or a
8 Licensed Professional Geologist engaged in review and
9 evaluation under this Title.

10 "Man-made pathway" means constructed routes that may allow
11 for the transport of regulated substances including, but not
12 limited to, sewers, utility lines, utility vaults, building
13 foundations, basements, crawl spaces, drainage ditches, or
14 previously excavated and filled areas.

15 "Municipality" means an incorporated city, village, or
16 town in this State. "Municipality" does not mean a township,
17 town when that term is used as the equivalent of a township,
18 incorporated town that has superseded a civil township, county,
19 or school district, park district, sanitary district, or
20 similar governmental district.

21 "Natural pathway" means natural routes for the transport of
22 regulated substances including, but not limited to, soil,
23 groundwater, sand seams and lenses, and gravel seams and
24 lenses.

25 "Person" means individual, trust, firm, joint stock
26 company, joint venture, consortium, commercial entity,

1 corporation (including a government corporation), partnership,
2 association, State, municipality, commission, political
3 subdivision of a State, or any interstate body including the
4 United States Government and each department, agency, and
5 instrumentality of the United States.

6 "Regulated substance" means any hazardous substance as
7 defined under Section 101(14) of the Comprehensive
8 Environmental Response, Compensation, and Liability Act of
9 1980 (P.L. 96-510) and petroleum products including crude oil
10 or any fraction thereof, natural gas, natural gas liquids,
11 liquefied natural gas, or synthetic gas usable for fuel (or
12 mixtures of natural gas and such synthetic gas).

13 "Remedial action" means, for purposes of this Title,
14 activities associated with compliance with the provisions of
15 Sections 58.6 and 58.7.

16 "Remediation Applicant" (RA) means any person seeking to
17 perform or performing investigative or remedial activities
18 under this Title, including the owner or operator of the site
19 or persons authorized by law or consent to act on behalf of or
20 in lieu of the owner or operator of the site.

21 "Remediation costs" means reasonable costs paid for
22 investigating and remediating regulated substances of concern
23 consistent with the remedy selected for a site. For purposes of
24 Section 58.14, "remediation costs" shall not include costs
25 incurred prior to January 1, 1998, costs incurred after the
26 issuance of a No Further Remediation Letter under Section 58.10

1 of this Act, or costs incurred more than 12 months prior to
2 acceptance into the Site Remediation Program.

3 "Residential property" means any real property that is used
4 for habitation by individuals and other property uses defined
5 by Board rules such as education, health care, child care and
6 related uses.

7 "Site" means any single location, place, tract of land or
8 parcel of property, or portion thereof, including contiguous
9 property separated by a public right-of-way.

10 "Regulated substance of concern" means any contaminant
11 that is expected to be present at the site based upon past and
12 current land uses and associated releases that are known to the
13 Remediation Applicant based upon reasonable inquiry.

14 (Source: P.A. 92-735, eff. 7-25-02.)

15 (415 ILCS 5/58.9)

16 Sec. 58.9. Liability.

17 (a) Cost assignment.

18 (1) Except as provided in subsection (d) of Section
19 58.1 and notwithstanding subsection (f) of Section 22.2
20 ~~Notwithstanding any other provisions of this Act to the~~
21 ~~contrary, including subsection (f) of Section 22.2,~~ in no
22 event may the Agency, the State of Illinois, or any person
23 bring an action pursuant to this Act or the Groundwater
24 Protection Act to require any person to conduct remedial
25 action or to seek recovery of costs for remedial activity

1 conducted by the State of Illinois or any person beyond the
2 remediation of releases of regulated substances that may be
3 attributed to being proximately caused by such person's act
4 or omission or beyond such person's proportionate degree of
5 responsibility for costs of the remedial action of releases
6 of regulated substances that were proximately caused or
7 contributed to by 2 or more persons.

8 (2) Except as provided in subsection (d) of Section
9 58.1 and notwithstanding subsection (f) of Section 22.2
10 ~~Notwithstanding any provisions in this Act to the contrary,~~
11 ~~including subsection (f) of Section 22.2,~~ in no event may
12 the State of Illinois or any person require the performance
13 of remedial action pursuant to this Act against any of the
14 following:

15 (A) A person who neither caused nor contributed to
16 in any material respect a release of regulated
17 substances on, in, or under the site that was
18 identified and addressed by the remedial action taken
19 pursuant to this Title.

20 (B) Notwithstanding a landlord's rights against a
21 tenant, a landlord, if the landlord did not know, and
22 could not have reasonably known, of the acts or
23 omissions of a tenant that caused or contributed to, or
24 were likely to have caused or contributed to, a release
25 of regulated substances that resulted in the
26 performance of remedial action at the site.

1 (C) The State of Illinois or any unit of local
2 government if it involuntarily acquires ownership or
3 control of the site by virtue of its function as a
4 sovereign through such means as escheat, bankruptcy,
5 tax delinquency, or abandonment, unless the State of
6 Illinois or unit of local government takes possession
7 of the site and exercises actual, direct, and continual
8 or recurrent managerial control in the operation of the
9 site that causes a release or substantial threat of a
10 release of a regulated substance resulting in removal
11 or remedial activity.

12 (D) The State of Illinois or any unit of local
13 government if it voluntarily acquires ownership or
14 control of the site through purchase, appropriation,
15 or other means, unless the State of Illinois or the
16 unit of local government takes possession of the site
17 and exercises actual, direct, and continual or
18 recurrent managerial control in the operation of the
19 site that causes a release or substantial threat of a
20 release of a regulated substance resulting in removal
21 or remedial activity.

22 (E) A financial institution, as that term is
23 defined in Section 2 of the Illinois Banking Act and to
24 include the Illinois Housing Development Authority,
25 that has acquired the ownership, operation,
26 management, or control of a site through foreclosure, a

1 deed in lieu of foreclosure, receivership, by
2 exercising of an assignment of rents, as mortgagee in
3 possession or otherwise under the terms of a security
4 interest held by the financial institution, or under
5 the terms of an extension of credit made by the
6 financial institution, unless the financial
7 institution takes actual physical possession of the
8 site and, in so doing, directly causes a release of a
9 regulated substance that results in removal or
10 remedial activity.

11 (F) A corporate fiduciary that has acquired
12 ownership, operation, management, or control of a site
13 through acceptance of a fiduciary appointment unless
14 the corporate fiduciary directly causes a release of a
15 regulated substance resulting in a removal or remedial
16 activity.

17 (b) In the event that the State of Illinois seeks to
18 require a person who may be liable pursuant to this Act to
19 conduct remedial action at a Site covered by this Section
20 ~~activities~~ for a release or threatened release of a regulated
21 substance, the Agency shall provide notice to such person. Such
22 notice shall include the necessity to conduct remedial action
23 pursuant to this Title and an opportunity for the person to
24 perform the remedial action.

25 (c) In any instance in which the Agency has issued notice
26 pursuant to subsection (b) of this Section, the Agency and the

1 person to whom such notice was issued may attempt to determine
2 the costs of conducting the remedial action that are
3 attributable to the releases to which such person or any other
4 person caused or contributed. Determinations pursuant to this
5 Section may be made in accordance with rules promulgated by the
6 Board.

7 (d) The Board may ~~shall~~ adopt, ~~not later than January 1,~~
8 ~~1999,~~ pursuant to Sections 27 and 28 of this Act, rules and
9 procedures for determining proportionate share. Such rules
10 shall, at a minimum, provide for criteria for the determination
11 of apportioned responsibility based upon the degree to which a
12 person directly caused or contributed to a release of regulated
13 substances on, in, or under the site identified and addressed
14 in the remedial action; procedures to establish how and when
15 such persons may file a petition for determination of such
16 apportionment; and any other standards or procedures which the
17 Board may adopt pursuant to this Section. In developing such
18 rules, the Board shall take into consideration any
19 recommendations and proposals of the Agency and the Site
20 Remediation Advisory Committee established in Section 58.11 of
21 this Act and other interested participants.

22 (e) Nothing in this Section shall limit the authority of
23 the Agency to provide notice under subsection (q) of Section 4
24 or to undertake investigative, preventive, or corrective
25 action under any other applicable provisions of this Act. The
26 Director of the Agency is authorized to enter into such

1 contracts and agreements as may be necessary to carry out the
2 Agency's duties and responsibilities under this Section as
3 expeditiously as possible.

4 (f) This Section does not apply to any cost recovery action
5 brought by the State under Section 22.2 to recover costs
6 incurred by the State prior to July 1, 1996.

7 (Source: P.A. 89-443, eff. 7-1-96; 90-484, eff. 8-17-97.)

8 (415 ILCS 5/58.10)

9 Sec. 58.10. Effect of completed remediation; liability
10 releases.

11 (a) The Agency's issuance of the No Further Remediation
12 Letter to a site eligible for the Site Remediation Program
13 under Section 58.1 signifies a release from further
14 responsibilities under this Act in performing the approved
15 remedial action and shall be considered prima facie evidence
16 that the site does not constitute a threat to human health and
17 the environment and does not require further remediation under
18 this Act, so long as the site is utilized in accordance with
19 the terms of the No Further Remediation Letter.

20 (b) Within 30 days of the Agency's approval of a Remedial
21 Action Completion Report, the Agency shall issue a No Further
22 Remediation Letter applicable to the site. In the event that
23 the Agency fails to issue the No Further Remediation Letter
24 within 30 days after approval of the Remedial Action Completion
25 Report, the No Further Remediation Letter shall issue by

1 operation of law. A No Further Remediation Letter issued
2 pursuant to this Section shall be limited to and shall include
3 all of the following:

4 (1) An acknowledgment that the requirements of the
5 Remedial Action Plan and the Remedial Action Completion
6 Report were satisfied;

7 (2) A description of the location of the affected
8 property by adequate legal description or by reference to a
9 plat showing its boundaries;

10 (3) The level of the remediation objectives,
11 specifying, as appropriate, any land use limitation
12 imposed as a result of such remediation efforts;

13 (4) A statement that the Agency's issuance of the No
14 Further Remediation Letter signifies a release from
15 further responsibilities under this Act in performing the
16 approved remedial action and shall be considered prima
17 facie evidence that the site does not constitute a threat
18 to human health and the environment and does not require
19 further remediation under the Act, so long as the site is
20 utilized in accordance with the terms of the No Further
21 Remediation Letter;

22 (5) The prohibition against the use of any site in a
23 manner inconsistent with any land use limitation imposed as
24 a result of such remediation efforts without additional
25 appropriate remedial activities;

26 (6) A description of any preventive, engineering, and

1 institutional controls required in the approved Remedial
2 Action Plan and notification that failure to manage the
3 controls in full compliance with the terms of the Remedial
4 Action Plan may result in avoidance of the No Further
5 Remediation Letter;

6 (7) The recording obligations pursuant to Section
7 58.8;

8 (8) The opportunity to request a change in the recorded
9 land use pursuant to Section 58.8;

10 (9) Notification that further information regarding
11 the site can be obtained from the Agency through a request
12 under the Freedom of Information Act (5 ILCS 140); and

13 (10) If only a portion of the site or only selected
14 regulated substances at a site were the subject of
15 corrective action, any other provisions agreed to by the
16 Agency and the RA.

17 (c) The Agency may deny a No Further Remediation Letter if
18 fees applicable under the review and evaluation services
19 agreement have not been paid in full.

20 (d) The No Further Remediation Letter shall apply in favor
21 of the following persons:

22 (1) The RA or other person to whom the letter was
23 issued.

24 (2) The owner and operator of the site.

25 (3) Any parent corporation or subsidiary of the owner
26 of the site.

1 (4) Any co-owner, either by joint-tenancy, right of
2 survivorship, or any other party sharing a legal
3 relationship with the owner of the site.

4 (5) Any holder of a beneficial interest of a land trust
5 or inter vivos trust, whether revocable or irrevocable,
6 involving the site.

7 (6) Any mortgagee or trustee of a deed of trust of the
8 owner of the site or any assignee, transferee, or any
9 successor-in-interest thereto.

10 (7) Any successor-in-interest of the owner of the site.

11 (8) Any transferee of the owner of the site whether the
12 transfer was by sale, bankruptcy proceeding, partition,
13 dissolution of marriage, settlement or adjudication of any
14 civil action, charitable gift, or bequest.

15 (9) Any heir or devisee of the owner of the site.

16 (10) Any financial institution, as that term is defined
17 in Section 2 of the Illinois Banking Act and to include the
18 Illinois Housing Development Authority, that has acquired
19 the ownership, operation, management, or control of a site
20 through foreclosure or under the terms of a security
21 interest held by the financial institution, under the terms
22 of an extension of credit made by the financial
23 institution, or any successor in interest thereto.

24 (11) In the case of a fiduciary (other than a land
25 trustee), the estate, trust estate, or other interest in
26 property held in a fiduciary capacity, and a trustee,

1 executor, administrator, guardian, receiver, conservator,
2 or other person who holds the remediated site in a
3 fiduciary capacity, or a transferee of such party.

4 (e) The No Further Remediation Letter shall be voidable if
5 the site activities are not managed in full compliance with the
6 provisions of this Title, any rules adopted under it, or the
7 approved Remedial Action Plan or remediation objectives upon
8 which the issuance of the No Further Remediation Letter was
9 based. Specific acts or omissions that may result in avoidance
10 of the No Further Remediation Letter include, but shall not be
11 limited to:

12 (1) Any violation of institutional controls or land use
13 restrictions, if applicable;

14 (2) The failure of the owner, operator, RA, or any
15 subsequent transferee to operate and maintain preventive
16 or engineering controls or comply with a groundwater
17 monitoring plan, if applicable;

18 (3) The disturbance or removal of contamination that
19 has been left in place in accordance with the Remedial
20 Action Plan;

21 (4) The failure to comply with the recording
22 requirements of Section 58.8;

23 (5) Obtaining the No Further Remediation Letter by
24 fraud or misrepresentation;

25 (6) Subsequent discovery of contaminants, not
26 identified as part of the investigative or remedial

1 activities upon which the issuance of the No Further
2 Remediation Letter was based, that pose a threat to human
3 health or the environment; or

4 (7) The failure to pay the No Further Remediation
5 Assessment required under subsection (g) of this Section.

6 (f) If the Agency seeks to void a No Further Remediation
7 Letter, it shall provide notice by certified letter to the
8 current title holder of the site and to the RA at his or her
9 last known address. The notice shall specify the cause for the
10 avoidance and describe facts in support of that cause.

11 (1) Within 35 days of the receipt of the notice of
12 avoidance, the RA or current title holder may appeal the
13 Agency's decision to the Board in the manner provided for
14 the review of permits in Section 40 of this Act. If the
15 Board fails to take final action on the petition within 120
16 days, unless such time period is waived by the petitioner,
17 the petition shall be deemed denied and the petitioner
18 shall be entitled to an Appellate Court order pursuant to
19 subsection (d) of Section 41 of this Act. The Agency shall
20 have the burden of proof in any such action.

21 (2) If the Agency's action is not appealed, the Agency
22 shall submit the notice of avoidance to the Office of the
23 Recorder or the Registrar of Titles for the county in which
24 the site is located. The notice shall be filed in
25 accordance with Illinois law so that it forms a permanent
26 part of the chain of title for the site.

1 (3) If the Agency's action is appealed, the action
2 shall not become effective until the appeal process has
3 been exhausted and a final decision reached by the Board or
4 courts.

5 (4) Upon receiving notice of appeal, the Agency shall
6 file a notice of lis pendens with the Office of the
7 Recorder or the Registrar of Titles for the county in which
8 the site is located. The notice shall be filed in
9 accordance with Illinois law so that it becomes a part of
10 the chain of title for the site. However, if the Agency's
11 action is not upheld on appeal, the notice of lis pendens
12 shall be removed in accordance with Illinois law within 45
13 days of receipt of the final decision of the Board or the
14 courts.

15 (g) Within 30 days after the receipt of a No Further
16 Remediation Letter issued by the Agency or by operation of law
17 pursuant to this Section, the recipient of the letter shall
18 forward to the Agency a No Further Remediation Assessment in
19 the amount of the lesser of \$2,500 or an amount equal to the
20 costs incurred for the site by the Agency under Section 58.7.
21 The assessment shall be made payable to the State of Illinois,
22 for deposit in the Hazardous Waste Fund. The No Further
23 Remediation Assessment is in addition to any other costs that
24 may be incurred by the Agency pursuant to Section 58.7.

25 (Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96;
26 89-626, eff. 8-9-96.)

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