



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0346

Introduced 1/27/2009, by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

415 ILCS 5/3.160	was 415 ILCS 5/3.78 and 3.78a
415 ILCS 5/3.330	was 415 ILCS 5/3.32
415 ILCS 5/22.48a new	
415 ILCS 5/22.51a new	
415 ILCS 5/58.19 new	

Amends the Environmental Protection Act. Defines "Tier 1 construction or demolition debris soil". Provides that a "pollution control facility" includes any site or facility at which Tier 1 construction or demolition debris soil is accepted or deposited as fill material. Provides that the Illinois Environmental Protection Agency may, by intergovernmental agreement, develop a special authorization for the removal and reuse of soil from and to sites within the corporate boundaries of a municipality with a population in excess of one million. Specifies the terms and requirements of the intergovernmental agreement. Specifies certification requirements for the use of contaminated soil as fill material in a quarry, mine, or other excavation. Provides that owners and operators of Tier 1 construction or demolition debris soil fill operations must develop and implement a receipt control plan and engineered control plan for construction or demolition debris soil used as fill material. Specifies the requirements of the receipt control plan and engineered control plan. Specifies the notice requirements for an intergovernmental agreement. Effective immediately.

LRB096 03275 JDS 13292 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 3.160 and 3.330 and by adding Sections
6 22.48a, 22.51a, and 58.19 as follows:

7 (415 ILCS 5/3.160) (was 415 ILCS 5/3.78 and 3.78a)

8 Sec. 3.160. Construction or demolition debris.

9 (a) "General construction or demolition debris" means
10 non-hazardous, uncontaminated materials resulting from the
11 construction, remodeling, repair, and demolition of utilities,
12 structures, and roads, limited to the following: bricks,
13 concrete, and other masonry materials; soil; rock; wood,
14 including non-hazardous painted, treated, and coated wood and
15 wood products; wall coverings; plaster; drywall; plumbing
16 fixtures; non-asbestos insulation; roofing shingles and other
17 roof coverings; reclaimed or other asphalt pavement; glass;
18 plastics that are not sealed in a manner that conceals waste;
19 electrical wiring and components containing no hazardous
20 substances; and piping or metals incidental to any of those
21 materials.

22 General construction or demolition debris does not include
23 uncontaminated soil generated during construction, remodeling,

1 repair, and demolition of utilities, structures, and roads
2 provided the uncontaminated soil is not commingled with any
3 general construction or demolition debris or other waste.

4 To the extent allowed by federal law, uncontaminated
5 concrete with protruding rebar shall be considered clean
6 construction or demolition debris and shall not be considered
7 "waste" if it is separated or processed and returned to the
8 economic mainstream in the form of raw materials or products
9 within 4 years of its generation, if it is not speculatively
10 accumulated and, if used as a fill material, it is used in
11 accordance with item (i) in subsection (b) of this Section.

12 (b) "Clean construction or demolition debris" means
13 uncontaminated broken concrete without protruding metal bars,
14 bricks, rock, stone, reclaimed or other asphalt pavement, or
15 soil generated from construction or demolition activities.

16 Clean construction or demolition debris does not include
17 uncontaminated soil generated during construction, remodeling,
18 repair, and demolition of utilities, structures, and roads
19 provided the uncontaminated soil is not commingled with any
20 clean construction or demolition debris or other waste.

21 To the extent allowed by federal law, clean construction or
22 demolition debris shall not be considered "waste" if it is (i)
23 used as fill material outside of a setback zone if the fill is
24 placed no higher than the highest point of elevation existing
25 prior to the filling immediately adjacent to the fill area, and
26 if covered by sufficient uncontaminated soil to support

1 vegetation within 30 days of the completion of filling or if
2 covered by a road or structure, or (ii) separated or processed
3 and returned to the economic mainstream in the form of raw
4 materials or products, if it is not speculatively accumulated
5 and, if used as a fill material, it is used in accordance with
6 item (i), or (iii) solely broken concrete without protruding
7 metal bars used for erosion control, or (iv) generated from the
8 construction or demolition of a building, road, or other
9 structure and used to construct, on the site where the
10 construction or demolition has taken place, a manmade
11 functional structure not to exceed 20 feet above the highest
12 point of elevation of the property immediately adjacent to the
13 new manmade functional structure as that elevation existed
14 prior to the creation of that new structure, provided that the
15 structure shall be covered with sufficient soil materials to
16 sustain vegetation or by a road or structure, and further
17 provided that no such structure shall be constructed within a
18 home rule municipality with a population over 500,000 without
19 the consent of the municipality.

20 For purposes of this subsection (b), reclaimed or other
21 asphalt pavement shall not be considered speculatively
22 accumulated if: (i) it is not commingled with any other clean
23 construction or demolition debris or any waste; (ii) it is
24 returned to the economic mainstream in the form of raw
25 materials or products within 4 years after its generation;
26 (iii) at least 25% of the total amount present at a site during

1 a calendar year is transported off of the site during the next
2 calendar year; and (iv) if used as a fill material, it is used
3 in accordance with item (i) of the second paragraph of this
4 subsection (b).

5 (c) "Tier 1 construction or demolition debris soil" means
6 contaminated soil (i) that is generated from construction or
7 demolition activities and does not contain a contaminant with a
8 concentration that exceeds the most stringent residential Tier
9 1 remediation objectives adopted by the Board under Title XVII
10 of this Act, (ii) that does not contain a regulated substance
11 or pesticide for which residential Tier 1 remediation
12 objectives have not been determined, and (iii) that is free of
13 landscape or other waste.

14 (Source: P.A. 94-272, eff. 7-19-05; 95-121, eff. 8-13-07.)

15 (415 ILCS 5/3.330) (was 415 ILCS 5/3.32)

16 Sec. 3.330. Pollution control facility.

17 (a) "Pollution control facility" is any waste storage site,
18 sanitary landfill, waste disposal site, waste transfer
19 station, waste treatment facility, or waste incinerator. This
20 includes sewers, sewage treatment plants, and any other
21 facilities owned or operated by sanitary districts organized
22 under the Metropolitan Water Reclamation District Act and any
23 site or facility at which Tier 1 construction or demolition
24 debris soil is accepted or deposited as fill material.

25 The following are not pollution control facilities:

1 (1) (blank);

2 (2) waste storage sites regulated under 40 CFR, Part
3 761.42;

4 (3) sites or facilities used by any person conducting a
5 waste storage, waste treatment, waste disposal, waste
6 transfer or waste incineration operation, or a combination
7 thereof, for wastes generated by such person's own
8 activities, when such wastes are stored, treated, disposed
9 of, transferred or incinerated within the site or facility
10 owned, controlled or operated by such person, or when such
11 wastes are transported within or between sites or
12 facilities owned, controlled or operated by such person;

13 (4) sites or facilities at which the State is
14 performing removal or remedial action pursuant to Section
15 22.2 or 55.3;

16 (5) abandoned quarries used solely for the disposal of
17 concrete, earth materials, gravel, or aggregate debris
18 resulting from road construction activities conducted by a
19 unit of government or construction activities due to the
20 construction and installation of underground pipes, lines,
21 conduit or wires off of the premises of a public utility
22 company which are conducted by a public utility;

23 (6) sites or facilities used by any person to
24 specifically conduct a landscape composting operation;

25 (7) regional facilities as defined in the Central
26 Midwest Interstate Low-Level Radioactive Waste Compact;

1 (8) the portion of a site or facility where coal
2 combustion wastes are stored or disposed of in accordance
3 with subdivision (r) (2) or (r) (3) of Section 21;

4 (9) the portion of a site or facility used for the
5 collection, storage or processing of waste tires as defined
6 in Title XIV;

7 (10) the portion of a site or facility used for
8 treatment of petroleum contaminated materials by
9 application onto or incorporation into the soil surface and
10 any portion of that site or facility used for storage of
11 petroleum contaminated materials before treatment. Only
12 those categories of petroleum listed in Section 57.9(a) (3)
13 are exempt under this subdivision (10);

14 (11) the portion of a site or facility where used oil
15 is collected or stored prior to shipment to a recycling or
16 energy recovery facility, provided that the used oil is
17 generated by households or commercial establishments, and
18 the site or facility is a recycling center or a business
19 where oil or gasoline is sold at retail;

20 (11.5) processing sites or facilities that receive
21 only on-specification used oil, as defined in 35 Ill.
22 Admin. Code 739, originating from used oil collectors for
23 processing that is managed under 35 Ill. Admin. Code 739 to
24 produce products for sale to off-site petroleum
25 facilities, if these processing sites or facilities are:
26 (i) located within a home rule unit of local government

1 with a population of at least 30,000 according to the 2000
2 federal census, that home rule unit of local government has
3 been designated as an Urban Round II Empowerment Zone by
4 the United States Department of Housing and Urban
5 Development, and that home rule unit of local government
6 has enacted an ordinance approving the location of the site
7 or facility and provided funding for the site or facility;
8 and (ii) in compliance with all applicable zoning
9 requirements;

10 (12) the portion of a site or facility utilizing coal
11 combustion waste for stabilization and treatment of only
12 waste generated on that site or facility when used in
13 connection with response actions pursuant to the federal
14 Comprehensive Environmental Response, Compensation, and
15 Liability Act of 1980, the federal Resource Conservation
16 and Recovery Act of 1976, or the Illinois Environmental
17 Protection Act or as authorized by the Agency;

18 (13) the portion of a site or facility accepting
19 exclusively general construction or demolition debris,
20 located in a county with a population over 700,000 as of
21 January 1, 2000, and operated and located in accordance
22 with Section 22.38 of this Act;

23 (14) the portion of a site or facility, located within
24 a unit of local government that has enacted local zoning
25 requirements, used to accept, separate, and process
26 uncontaminated broken concrete, with or without protruding

1 metal bars, provided that the uncontaminated broken
2 concrete and metal bars are not speculatively accumulated,
3 are at the site or facility no longer than one year after
4 their acceptance, and are returned to the economic
5 mainstream in the form of raw materials or products;

6 (15) the portion of a site or facility located in a
7 county with a population over 3,000,000 that has obtained
8 local siting approval under Section 39.2 of this Act for a
9 municipal waste incinerator on or before July 1, 2005 and
10 that is used for a non-hazardous waste transfer station;

11 (16) a site or facility that temporarily holds in
12 transit for 10 days or less, non-petruscible solid waste in
13 original containers, no larger in capacity than 500
14 gallons, provided that such waste is further transferred to
15 a recycling, disposal, treatment, or storage facility on a
16 non-contiguous site and provided such site or facility
17 complies with the applicable 10-day transfer requirements
18 of the federal Resource Conservation and Recovery Act of
19 1976 and United States Department of Transportation
20 hazardous material requirements. For purposes of this
21 Section only, "non-petruscible solid waste" means waste
22 other than municipal garbage that does not rot or become
23 putrid, including, but not limited to, paints, solvent,
24 filters, and absorbents;

25 (17) the portion of a site or facility located in a
26 county with a population greater than 3,000,000 that has

1 obtained local siting approval, under Section 39.2 of this
2 Act, for a municipal waste incinerator on or before July 1,
3 2005 and that is used for wood combustion facilities for
4 energy recovery that accept and burn only wood material, as
5 included in a fuel specification approved by the Agency;
6 and

7 (18) a transfer station used exclusively for landscape
8 waste, including a transfer station where landscape waste
9 is ground to reduce its volume, where the landscape waste
10 is held no longer than 24 hours from the time it was
11 received.

12 (b) A new pollution control facility is:

13 (1) a pollution control facility initially permitted
14 for development or construction after July 1, 1981; or

15 (2) the area of expansion beyond the boundary of a
16 currently permitted pollution control facility; or

17 (3) a permitted pollution control facility requesting
18 approval to store, dispose of, transfer or incinerate, for
19 the first time, any special or hazardous waste.

20 (Source: P.A. 94-94, eff. 7-1-05; 94-249, eff. 7-19-05; 94-824,
21 eff. 6-2-06; 95-131, eff. 8-13-07; 95-177, eff. 1-1-08; 95-331,
22 eff. 8-21-07; 95-408, eff. 8-24-07; 95-876, eff. 8-21-08.)

23 (415 ILCS 5/22.48a new)

24 Sec. 22.48a. Tier 1 construction or demolition debris soil
25 certification.

1 (a) No person shall use contaminated soil as fill material
2 in a current or former quarry, mine, or other excavation unless
3 the owner or the owner's authorized agent first certifies in a
4 written, signed, and dated statement that the soil is Tier 1
5 construction or demolition debris soil. For the purposes of
6 this Section, the term "owner" means the owner of the site from
7 which soil is removed. For the purposes of this Section, the
8 term "other excavation" does not include holes, trenches, or
9 similar earth removal created as part of normal construction,
10 removal, or maintenance of a structure, utility, or
11 transportation infrastructure.

12 (1) All information used to determine that soil is Tier
13 1 construction or demolition debris soil must be attached
14 to the certification. The information attached to the
15 certification must include, but is not limited to, the
16 following:

17 (A) The means by which the owner has determined
18 that the soil does not contain a contaminant that would
19 prevent the soil from meeting the definition of Tier 1
20 construction or demolition debris soil, and if a
21 chemical analysis of the soil has not been performed
22 the reasons why a chemical analysis was not performed.

23 (B) If the soil undergoes chemical analysis, the
24 results of the analysis must be on the letterhead of
25 the laboratory conducting the analysis and signed by
26 the person that conducted the analysis or his or her

1 supervisor. The chemical analysis must be conducted in
2 accordance with the requirements of 35 Ill. Adm. Code
3 742 and "Test Methods for Evaluating Solid Waste,
4 Physical/Chemical Methods", USEPA Publication No.
5 SW-846, as amended.

6 (2) Certifications under this Section shall include
7 the owner's name, address, and contact information,
8 identify the location of the site from which the soil was
9 removed, and identify the load of soil covered by the
10 certification.

11 (3) Certifications under this Section, with the
12 requisite attachments, shall be maintained by the owner for
13 at least 3 years after the date the soil is accepted by the
14 quarry, mine, or other excavation, except that
15 certifications relating to an appeal, litigation, or other
16 disputed claim must be maintained for at least 3 years
17 after the date of the final disposition of the appeal,
18 litigation, or other disputed claim. The owner shall
19 provide a copy of the certification to the soil hauler, and
20 the soil hauler shall present the certification to the
21 operator of the quarry, mine, or other excavation upon
22 delivery of the soil. The owner shall make copies of the
23 certification available for inspection and copying by the
24 Agency during normal business hours. If the Agency believes
25 soil has been inaccurately certified, then the Agency may
26 require a chemical analysis of the soil by the owner of the

1 site from which soil is removed or by the owner or operator
2 of the quarry, mine, or other excavation.

3 (4) No person shall falsely certify that soil is Tier 1
4 construction or demolition debris soil.

5 (b) Persons using contaminated soil as fill material in a
6 current or former quarry, mine, or other excavation must
7 maintain a copy of the certification required under this
8 Section, with the requisite attachments, for at least 3 years
9 after the date of accepting the soil, except that
10 certifications relating to an appeal, litigation, or other
11 disputed claim must be maintained for at least 3 years after
12 the date of the final disposition of the appeal, litigation, or
13 other disputed claim. Copies of the certifications must be made
14 available to the Agency for inspection and copying during
15 normal business hours.

16 (c) No person shall use contaminated soil as fill material
17 in a current or former quarry, mine, or other excavation unless
18 the soil is Tier 1 construction or demolition debris soil.

19 (415 ILCS 5/22.51a new)

20 Sec. 22.51a. Tier 1 construction or demolition debris soil
21 fill operation.

22 (a) No person shall conduct any Tier 1 construction or
23 demolition debris soil fill operation in violation of this Act
24 or any regulations or standards adopted by the Board or without
25 a permit issued by the Agency. A Tier 1 construction or

1 demolition debris soil fill operation is any former quarry,
2 mine, or other excavation that disposes of Tier 1 construction
3 or demolition debris soil, as defined in Section 3.160 of this
4 Act. A Tier 1 construction or demolition debris soil fill
5 operation must comply with the Receipt Control Plan
6 requirements and Engineered Control Plan requirements in this
7 Section. A Tier 1 construction or demolition debris soil fill
8 operation shall be subject to the local siting review
9 requirements of Section 39.2 of this Act.

10 Owners and operators of Tier 1 construction or demolition
11 debris soil fill operations must develop and implement a
12 Receipt Control Plan for construction or demolition debris soil
13 used as fill material. At a minimum, the Receipt Control Plan
14 must provide for and include the following:

15 (1) A visual inspection to confirm that the soil is
16 Tier 1 construction or demolition debris soil;

17 (2) A screening of all soil with (i) a photo ionization
18 detector or a flame ionization detector and (ii) an X-ray
19 Fluorescence Spectroscopy instrument to confirm that the
20 soil is consistent with the Tier 1 construction or
21 demolition debris soil certification required under
22 Section 22.48a of this Act. The Agency by permit may
23 approve the use of instruments other than the instruments
24 identified in item (2) of this subsection (a);

25 (3) A report for any soil that includes: (i) a copy of
26 the Tier 1 construction or demolition debris soil

1 certification required under Section 22.48a of this Act
2 from the soil hauler; (ii) a chemical analysis of the soil
3 to confirm that it is Tier 1 construction or demolition
4 debris soil if the Tier 1 construction or demolition debris
5 soil certification does not include chemical analysis
6 results demonstrating that the soil is Tier 1 construction
7 or demolition debris soil, or if the owner or operator of
8 the fill operation does not agree with the certification;
9 and (iii) a confirmation that the soil was not removed from
10 a site as a part of activities conducted under the
11 Comprehensive Environmental Response, Compensation, and
12 Liability Act (CERCLA), a Resource Conservation and
13 Recovery Act (RCRA) Closure or Corrective Action, or an
14 Agency remediation program such as the Site Remediation
15 Program or Leaking Underground Storage Tank Program; and

16 (4) The posting of a sign at the entrance of the fill
17 operation that includes the type of material the facility
18 accepts.

19 (b) Chemical analysis conducted under this Section must be
20 conducted in accordance with the requirements of 35 Ill. Adm.
21 Code 742 and "Test Methods for Evaluating Solid Waste,
22 Physical/Chemical Methods", USEPA Publication No. SW-846, as
23 amended. A copy of the lab analysis, on the letterhead of the
24 laboratory conducting the analysis and signed by the person
25 that conducted the analysis or his or her supervisor, must be
26 included in the operating record for the Tier 1 construction or

1 demolition debris soil fill operation along with the Tier 1
2 construction or demolition debris soil certifications required
3 under Section 22.48a of this Act.

4 Owners and operators of Tier 1 construction or demolition
5 debris soil fill operations must document the inspections,
6 screening, and chemical analysis conducted under this Section.
7 Owners and operators must maintain the documentation, along
8 with the required Tier 1 construction or demolition debris soil
9 certifications, for at least 3 years after the date of
10 accepting the soil, except that documentation and
11 certifications relating to an appeal, litigation, or other
12 disputed claim must be maintained for at least 3 years after
13 the date of the final disposition of the appeal, litigation, or
14 other disputed claim. Copies of the documentation and the
15 certifications must be made available to the Agency for
16 inspection and copying during normal business hours.

17 (c) Owners and operators of Tier 1 construction or
18 demolition debris soil fill operations must develop and
19 implement a closure and post-closure care plan that includes,
20 but is not limited to, covering all Tier 1 construction or
21 demolition debris soil with at least 3 feet of uncontaminated
22 soil, a road, or a structure within 30 days after completion of
23 the filling.

24 (d) No person shall use contaminated soil as fill material
25 in a current or former quarry, mine, or other excavation unless
26 the soil is Tier 1 construction or demolition debris soil.

1 (e) For the purposes of this Section, the term "other
2 excavation" does not include holes, trenches, or similar earth
3 removal created as part of normal construction, removal, or
4 maintenance of a structure, utility, or transportation
5 infrastructure.

6 (f) A Tier 1 construction or demolition debris soil fill
7 operation must comply with the following engineered control
8 plan requirements:

9 (1) Prior to the acceptance of Tier I construction or
10 demolition debris soil, a land use restriction that
11 restricts property use to industrial or commercial uses
12 must be recorded in the chain of title for the property on
13 which the quarry, mine, or other excavation is located.

14 (2) A Tier 1 construction or demolition debris soil
15 fill operation shall implement a groundwater monitoring
16 program based upon a comprehensive site hydrogeological
17 characterization. The groundwater monitoring program shall
18 be approved by the Agency.

19 (415 ILCS 5/58.19 new)

20 Sec. 58.19. Intergovernmental agreement.

21 (a) The Agency may, by intergovernmental agreement,
22 develop a special authorization for the removal and reuse of
23 soil only from and to sites and locations situated wholly
24 within the corporate boundaries of a municipality having a
25 population in excess of 1,000,000. The terms and conditions of

1 the intergovernmental agreement and special authorization
2 shall:

3 (1) apply only to soils that are removed from sites
4 owned by the municipality and located within the corporate
5 limits of the municipality, and that are reused as
6 engineered barriers at SRP Sites in accordance with the
7 Agency's Tiered Approach to Corrective Action Objectives
8 (TACO), as general fill below those engineered barriers in
9 accordance with IEPA requirements, or at IEPA Response
10 Action Sites in accordance with IEPA requirements;

11 (2) require the municipality to examine and research
12 each proposed soil removal location to determine whether
13 there has been any potential for contamination of the soil
14 as a result of current or past land uses or activities;

15 (3) require the municipality to ensure that
16 representative soil samples are collected from each
17 proposed soil removal location prior to removing the soil
18 for reuse, and from the soil delivered to SRP sites or IEPA
19 Response Action Sites for reuse. The municipality shall
20 also ensure that each sample is analyzed for all of the
21 parameters designated by IEPA;

22 (4) apply only to soil that does not contain a
23 contaminant other than the contaminants set forth in
24 Appendix A of 35 Ill. Adm. Code 740;

25 (5) require the municipality to ensure that soils
26 leaving the site are visually inspected and not mixed with

1 wastes or otherwise contaminated; and

2 (6) apply only to soil that does not exceed Tier 1 Soil
3 Remediation Objectives for Residential Properties set
4 forth in Appendix B of 35 Ill. Adm. Code 742.

5 (b) Prior to entering into any intergovernmental agreement
6 or granting any special authorization pursuant to this Section,
7 the Agency and the municipality shall provide public notice and
8 jointly conduct at least one public hearing on the subject
9 matter of the agreement and the special authorization. The
10 Agency and the municipality shall:

11 (1) provide at least 45 days' written notice of the
12 parties' intent to enter into an intergovernmental
13 agreement or grant a special authorization;

14 (2) conduct a public hearing in the ward, or in at
15 least one of the wards, in which the soil is to be
16 deposited or reused;

17 (3) submit the text of the proposed intergovernmental
18 agreement or special authorization for publication in the
19 Illinois Register at least 45 days before the public
20 meeting; and

21 (4) make available copies of the actual text of the
22 proposed intergovernmental agreement or special
23 authorization to the public upon request and to the public
24 at the public meeting.

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