



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB3736

Introduced 2/25/2009, 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.

LRB096 01974 JDS 11984 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.

24 For purposes of Section 58.14, "remediation costs" shall  
25 not include costs incurred prior to January 1, 1998, costs  
26 incurred after the issuance of a No Further Remediation Letter

1 under Section 58.10 of this Act, or costs incurred more than 12  
2 months prior to acceptance into the Site Remediation Program.

3 For the purpose of Section 58.14a, "remediation costs" do  
4 not include any costs incurred before January 1, 2007, any  
5 costs incurred after the issuance of a No Further Remediation  
6 Letter under Section 58.10, or any costs incurred more than 12  
7 months before acceptance into the Site Remediation Program.

8 "Residential property" means any real property that is used  
9 for habitation by individuals and other property uses defined  
10 by Board rules such as education, health care, child care and  
11 related uses.

12 "River Edge Redevelopment Zone" has the meaning set forth  
13 under the River Edge Redevelopment Zone Act.

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

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

21 (Source: P.A. 95-454, eff. 8-27-07.)

22 (415 ILCS 5/58.9)

23 Sec. 58.9. Liability.

24 (a) Cost assignment.

25 (1) Except as provided in subsection (d) of Section



1       58.1 and notwithstanding subsection (f) of Section 22.2  
2       ~~Notwithstanding any other provisions of this Act to the~~  
3       ~~contrary, including subsection (f) of Section 22.2,~~ in no  
4       event may the Agency, the State of Illinois, or any person  
5       bring an action pursuant to this Act or the Groundwater  
6       Protection Act to require any person to conduct remedial  
7       action or to seek recovery of costs for remedial activity  
8       conducted by the State of Illinois or any person beyond the  
9       remediation of releases of regulated substances that may be  
10      attributed to being proximately caused by such person's act  
11      or omission or beyond such person's proportionate degree of  
12      responsibility for costs of the remedial action of releases  
13      of regulated substances that were proximately caused or  
14      contributed to by 2 or more persons.

15           (2) Except as provided in subsection (d) of Section  
16      58.1 and notwithstanding subsection (f) of Section 22.2  
17      ~~Notwithstanding any provisions in this Act to the contrary,~~  
18      ~~including subsection (f) of Section 22.2,~~ in no event may  
19      the State of Illinois or any person require the performance  
20      of remedial action pursuant to this Act against any of the  
21      following:

22           (A) A person who neither caused nor contributed to  
23      in any material respect a release of regulated  
24      substances on, in, or under the site that was  
25      identified and addressed by the remedial action taken  
26      pursuant to this Title.

1           (B) Notwithstanding a landlord's rights against a  
2 tenant, a landlord, if the landlord did not know, and  
3 could not have reasonably known, of the acts or  
4 omissions of a tenant that caused or contributed to, or  
5 were likely to have caused or contributed to, a release  
6 of regulated substances that resulted in the  
7 performance of remedial action at the site.

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

19           (D) The State of Illinois or any unit of local  
20 government if it voluntarily acquires ownership or  
21 control of the site through purchase, appropriation,  
22 or other means, unless the State of Illinois or the  
23 unit of local government takes possession of the site  
24 and exercises actual, direct, and continual or  
25 recurrent managerial control in the operation of the  
26 site that causes a release or substantial threat of a

1 release of a regulated substance resulting in removal  
2 or remedial activity.

3 (E) A financial institution, as that term is  
4 defined in Section 2 of the Illinois Banking Act and to  
5 include the Illinois Housing Development Authority,  
6 that has acquired the ownership, operation,  
7 management, or control of a site through foreclosure, a  
8 deed in lieu of foreclosure, receivership, by  
9 exercising of an assignment of rents, as mortgagee in  
10 possession or otherwise under the terms of a security  
11 interest held by the financial institution, or under  
12 the terms of an extension of credit made by the  
13 financial institution, unless the financial  
14 institution takes actual physical possession of the  
15 site and, in so doing, directly causes a release of a  
16 regulated substance that results in removal or  
17 remedial activity.

18 (F) A corporate fiduciary that has acquired  
19 ownership, operation, management, or control of a site  
20 through acceptance of a fiduciary appointment unless  
21 the corporate fiduciary directly causes a release of a  
22 regulated substance resulting in a removal or remedial  
23 activity.

24 (b) In the event that the State of Illinois seeks to  
25 require a person who may be liable pursuant to this Act to  
26 conduct remedial action at a Site covered by this Section

1 ~~activities~~ for a release or threatened release of a regulated  
2 substance, the Agency shall provide notice to such person. Such  
3 notice shall include the necessity to conduct remedial action  
4 pursuant to this Title and an opportunity for the person to  
5 perform the remedial action.

6 (c) In any instance in which the Agency has issued notice  
7 pursuant to subsection (b) of this Section, the Agency and the  
8 person to whom such notice was issued may attempt to determine  
9 the costs of conducting the remedial action that are  
10 attributable to the releases to which such person or any other  
11 person caused or contributed. Determinations pursuant to this  
12 Section may be made in accordance with rules promulgated by the  
13 Board.

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

1 Remediation Advisory Committee established in Section 58.11 of  
2 this Act and other interested participants.

3 (e) Nothing in this Section shall limit the authority of  
4 the Agency to provide notice under subsection (q) of Section 4  
5 or to undertake investigative, preventive, or corrective  
6 action under any other applicable provisions of this Act. The  
7 Director of the Agency is authorized to enter into such  
8 contracts and agreements as may be necessary to carry out the  
9 Agency's duties and responsibilities under this Section as  
10 expeditiously as possible.

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

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

15 (415 ILCS 5/58.10)

16 Sec. 58.10. Effect of completed remediation; liability  
17 releases.

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

1 the terms of the No Further Remediation Letter.

2 (b) Within 30 days of the Agency's approval of a Remedial  
3 Action Completion Report, the Agency shall issue a No Further  
4 Remediation Letter applicable to the site. In the event that  
5 the Agency fails to issue the No Further Remediation Letter  
6 within 30 days after approval of the Remedial Action Completion  
7 Report, the No Further Remediation Letter shall issue by  
8 operation of law. A No Further Remediation Letter issued  
9 pursuant to this Section shall be limited to and shall include  
10 all of the following:

11 (1) An acknowledgment that the requirements of the  
12 Remedial Action Plan and the Remedial Action Completion  
13 Report were satisfied;

14 (2) A description of the location of the affected  
15 property by adequate legal description or by reference to a  
16 plat showing its boundaries;

17 (3) The level of the remediation objectives,  
18 specifying, as appropriate, any land use limitation  
19 imposed as a result of such remediation efforts;

20 (4) A statement that the Agency's issuance of the No  
21 Further Remediation Letter signifies a release from  
22 further responsibilities under this Act in performing the  
23 approved remedial action and shall be considered prima  
24 facie evidence that the site does not constitute a threat  
25 to human health and the environment and does not require  
26 further remediation under the Act, so long as the site is

1 utilized in accordance with the terms of the No Further  
2 Remediation Letter;

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

7 (6) A description of any preventive, engineering, and  
8 institutional controls required in the approved Remedial  
9 Action Plan and notification that failure to manage the  
10 controls in full compliance with the terms of the Remedial  
11 Action Plan may result in avoidance of the No Further  
12 Remediation Letter;

13 (7) The recording obligations pursuant to Section  
14 58.8;

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

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

20 (10) If only a portion of the site or only selected  
21 regulated substances at a site were the subject of  
22 corrective action, any other provisions agreed to by the  
23 Agency and the RA.

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

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

3 (1) The RA or other person to whom the letter was  
4 issued.

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

6 (3) Any parent corporation or subsidiary of the owner  
7 of the site.

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

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

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

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

18 (8) Any transferee of the owner of the site whether the  
19 transfer was by sale, bankruptcy proceeding, partition,  
20 dissolution of marriage, settlement or adjudication of any  
21 civil action, charitable gift, or bequest.

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

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



1 through foreclosure or under the terms of a security  
2 interest held by the financial institution, under the terms  
3 of an extension of credit made by the financial  
4 institution, or any successor in interest thereto.

5 (11) In the case of a fiduciary (other than a land  
6 trustee), the estate, trust estate, or other interest in  
7 property held in a fiduciary capacity, and a trustee,  
8 executor, administrator, guardian, receiver, conservator,  
9 or other person who holds the remediated site in a  
10 fiduciary capacity, or a transferee of such party.

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

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

21 (2) The failure of the owner, operator, RA, or any  
22 subsequent transferee to operate and maintain preventive  
23 or engineering controls or comply with a groundwater  
24 monitoring plan, if applicable;

25 (3) The disturbance or removal of contamination that  
26 has been left in place in accordance with the Remedial

1 Action Plan;

2 (4) The failure to comply with the recording  
3 requirements of Section 58.8;

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

6 (6) Subsequent discovery of contaminants, not  
7 identified as part of the investigative or remedial  
8 activities upon which the issuance of the No Further  
9 Remediation Letter was based, that pose a threat to human  
10 health or the environment; or

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

13 (f) If the Agency seeks to void a No Further Remediation  
14 Letter, it shall provide notice by certified letter to the  
15 current title holder of the site and to the RA at his or her  
16 last known address. The notice shall specify the cause for the  
17 voidance and describe facts in support of that cause.

18 (1) Within 35 days of the receipt of the notice of  
19 voidance, the RA or current title holder may appeal the  
20 Agency's decision to the Board in the manner provided for  
21 the review of permits in Section 40 of this Act. If the  
22 Board fails to take final action on the petition within 120  
23 days, unless such time period is waived by the petitioner,  
24 the petition shall be deemed denied and the petitioner  
25 shall be entitled to an Appellate Court order pursuant to  
26 subsection (d) of Section 41 of this Act. The Agency shall

1 have the burden of proof in any such action.

2 (2) If the Agency's action is not appealed, the Agency  
3 shall submit the notice of voidance to the Office of the  
4 Recorder or the Registrar of Titles for the county in which  
5 the site is located. The notice shall be filed in  
6 accordance with Illinois law so that it forms a permanent  
7 part of the chain of title for the site.

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

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

22 (g) Within 30 days after the receipt of a No Further  
23 Remediation Letter issued by the Agency or by operation of law  
24 pursuant to this Section, the recipient of the letter shall  
25 forward to the Agency a No Further Remediation Assessment in  
26 the amount of the lesser of \$2,500 or an amount equal to the

1 costs incurred for the site by the Agency under Section 58.7.  
2 The assessment shall be made payable to the State of Illinois,  
3 for deposit in the Hazardous Waste Fund. The No Further  
4 Remediation Assessment is in addition to any other costs that  
5 may be incurred by the Agency pursuant to Section 58.7.

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

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.