



Filed: 5/5/2010

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LRB096 16682 JDS 41314 a

1 AMENDMENT TO SENATE BILL 3721

2 AMENDMENT NO. _____. Amend Senate Bill 3721 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended by
5 changing Sections 3.160, 22.51, 31.1, and 42 and by adding
6 Sections 22.51a and 22.51b 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

1 roof coverings; reclaimed or other asphalt pavement; glass;
2 plastics that are not sealed in a manner that conceals waste;
3 electrical wiring and components containing no hazardous
4 substances; and corrugated cardboard, piping or metals
5 incidental to any of those materials.

6 General construction or demolition debris does not include
7 uncontaminated soil generated during construction, remodeling,
8 repair, and demolition of utilities, structures, and roads
9 provided the uncontaminated soil is not commingled with any
10 general construction or demolition debris or other waste.

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

19 (b) "Clean construction or demolition debris" means
20 uncontaminated broken concrete without protruding metal bars,
21 bricks, rock, stone, reclaimed or other asphalt pavement, or
22 soil generated from construction or demolition activities.

23 Clean construction or demolition debris does not include
24 uncontaminated soil generated during construction, remodeling,
25 repair, and demolition of utilities, structures, and roads
26 provided the uncontaminated soil is not commingled with any

1 clean construction or demolition debris or other waste.

2 To the extent allowed by federal law, clean construction or
3 demolition debris shall not be considered "waste" if it is (i)
4 used as fill material outside of a setback zone if the fill is
5 placed no higher than the highest point of elevation existing
6 prior to the filling immediately adjacent to the fill area, and
7 if covered by sufficient uncontaminated soil to support
8 vegetation within 30 days of the completion of filling or if
9 covered by a road or structure, and, if used as fill material
10 in a current or former quarry, mine, or other excavation, is
11 used in accordance with the requirements of Section 22.51 of
12 this Act and the rules adopted thereunder or (ii) separated or
13 processed and returned to the economic mainstream in the form
14 of raw materials or products, if it is not speculatively
15 accumulated and, if used as a fill material, it is used in
16 accordance with item (i), or (iii) solely broken concrete
17 without protruding metal bars used for erosion control, or (iv)
18 generated from the construction or demolition of a building,
19 road, or other structure and used to construct, on the site
20 where the construction or demolition has taken place, a manmade
21 functional structure not to exceed 20 feet above the highest
22 point of elevation of the property immediately adjacent to the
23 new manmade functional structure as that elevation existed
24 prior to the creation of that new structure, provided that the
25 structure shall be covered with sufficient soil materials to
26 sustain vegetation or by a road or structure, and further

1 provided that no such structure shall be constructed within a
2 home rule municipality with a population over 500,000 without
3 the consent of the municipality.

4 For purposes of this subsection (b), reclaimed or other
5 asphalt pavement shall not be considered speculatively
6 accumulated if: (i) it is not commingled with any other clean
7 construction or demolition debris or any waste; (ii) it is
8 returned to the economic mainstream in the form of raw
9 materials or products within 4 years after its generation;
10 (iii) at least 25% of the total amount present at a site during
11 a calendar year is transported off of the site during the next
12 calendar year; and (iv) if used as a fill material, it is used
13 in accordance with item (i) of the second paragraph of this
14 subsection (b).

15 (c) For purposes of this Section, the term "uncontaminated
16 soil" means soil that does not contain contaminants in
17 concentrations that pose a threat to human health and safety
18 and the environment.

19 (1) No later than one year after the effective date of
20 this amendatory Act of the 96th General Assembly, the
21 Agency shall propose, and, no later than one year after
22 receipt of the Agency's proposal, the Board shall adopt,
23 rules specifying the maximum concentrations of
24 contaminants that may be present in uncontaminated soil for
25 purposes of this Section. For carcinogens, the maximum
26 concentrations shall not allow exposure to exceed an excess

1 upper-bound lifetime risk of 1 in 1,000,000; provided that
2 the Board may consider allowing benzo(a)pyrene up to the
3 applicable background concentration set forth in Table H of
4 Appendix A of 35 Ill. Adm. Code 742 in soil used as fill
5 material in a current or former quarry, mine, or other
6 excavation in accordance with Section 22.51 or 22.51a of
7 this Act and rules adopted under those Sections, so long as
8 the applicable background concentration is based upon the
9 location of the quarry, mine, or other excavation.

10 (2) To the extent allowed under federal law and
11 regulations, uncontaminated soil shall not be considered a
12 waste.

13 (Source: P.A. 95-121, eff. 8-13-07; 96-235, eff. 8-11-09.)

14 (415 ILCS 5/22.51)

15 Sec. 22.51. Clean Construction or Demolition Debris Fill
16 Operations.

17 (a) No person shall conduct any clean construction or
18 demolition debris fill operation in violation of this Act or
19 any regulations or standards adopted by the Board.

20 (b) (1) (A) Beginning August 18, 2005 ~~30 days after the~~
21 ~~effective date of this amendatory Act of the 94th General~~
22 ~~Assembly~~ but prior to July 1, 2008, no person shall use clean
23 construction or demolition debris as fill material in a current
24 or former quarry, mine, or other excavation, unless they have
25 applied for an interim authorization from the Agency for the

1 clean construction or demolition debris fill operation.

2 (B) The Agency shall approve an interim authorization upon
3 its receipt of a written application for the interim
4 authorization that is signed by the site owner and the site
5 operator, or their duly authorized agent, and that contains the
6 following information: (i) the location of the site where the
7 clean construction or demolition debris fill operation is
8 taking place, (ii) the name and address of the site owner,
9 (iii) the name and address of the site operator, and (iv) the
10 types and amounts of clean construction or demolition debris
11 being used as fill material at the site.

12 (C) The Agency may deny an interim authorization if the
13 site owner or the site operator, or their duly authorized
14 agent, fails to provide to the Agency the information listed in
15 subsection (b)(1)(B) of this Section. Any denial of an interim
16 authorization shall be subject to appeal to the Board in
17 accordance with the procedures of Section 40 of this Act.

18 (D) No person shall use clean construction or demolition
19 debris as fill material in a current or former quarry, mine, or
20 other excavation for which the Agency has denied interim
21 authorization under subsection (b)(1)(C) of this Section. The
22 Board may stay the prohibition of this subsection (D) during
23 the pendency of an appeal of the Agency's denial of the interim
24 authorization brought under subsection (b)(1)(C) of this
25 Section.

26 (2) Beginning September 1, 2006, owners and operators of

1 clean construction or demolition debris fill operations shall,
2 in accordance with a schedule prescribed by the Agency, submit
3 to the Agency applications for the permits required under this
4 Section. The Agency shall notify owners and operators in
5 writing of the due date for their permit application. The due
6 date shall be no less than 90 days after the date of the
7 Agency's written notification. Owners and operators who do not
8 receive a written notification from the Agency by October 1,
9 2007, shall submit a permit application to the Agency by
10 January 1, 2008. The interim authorization of owners and
11 operators who fail to submit a permit application to the Agency
12 by the permit application's due date shall terminate on (i) the
13 due date established by the Agency if the owner or operator
14 received a written notification from the Agency prior to
15 October 1, 2007, or (ii) or January 1, 2008, if the owner or
16 operator did not receive a written notification from the Agency
17 by October 1, 2007.

18 (3) On and after July 1, 2008, no person shall use clean
19 construction or demolition debris as fill material in a current
20 or former quarry, mine, or other excavation (i) without a
21 permit granted by the Agency for the clean construction or
22 demolition debris fill operation or in violation of any
23 conditions imposed by such permit, including periodic reports
24 and full access to adequate records and the inspection of
25 facilities, as may be necessary to assure compliance with this
26 Act and with Board regulations and standards adopted under this

1 Act or (ii) in violation of any regulations or standards
2 adopted by the Board under this Act.

3 (4) This subsection (b) does not apply to:

4 (A) the use of clean construction or demolition debris
5 as fill material in a current or former quarry, mine, or
6 other excavation located on the site where the clean
7 construction or demolition debris was generated;

8 (B) the use of clean construction or demolition debris
9 as fill material in an excavation other than a current or
10 former quarry or mine if this use complies with Illinois
11 Department of Transportation specifications; or

12 (C) current or former quarries, mines, and other
13 excavations that do not use clean construction or
14 demolition debris as fill material.

15 (c) In accordance with Title VII of this Act, the Board may
16 adopt regulations to promote the purposes of this Section. The
17 Agency shall consult with the mining and construction
18 industries during the development of any regulations to promote
19 the purposes of this Section.

20 (1) No later than December 15, 2005, the Agency shall
21 propose to the Board, and no later than September 1, 2006,
22 the Board shall adopt, regulations for the use of clean
23 construction or demolition debris as fill material in
24 current and former quarries, mines, and other excavations.
25 Such regulations shall include, but shall not be limited
26 to, standards for clean construction or demolition debris

1 fill operations and the submission and review of permits
2 required under this Section.

3 (2) Until the Board adopts rules under subsection
4 (c)(1) of this Section, all persons using clean
5 construction or demolition debris as fill material in a
6 current or former quarry, mine, or other excavation shall:

7 (A) Assure that only clean construction or
8 demolition debris is being used as fill material by
9 screening each truckload of material received using a
10 device approved by the Agency that detects volatile
11 organic compounds. Such devices may include, but are
12 not limited to, photo ionization detectors. All
13 screening devices shall be operated and maintained in
14 accordance with manufacturer's specifications.
15 Unacceptable fill material shall be rejected from the
16 site; and

17 (B) Retain for a minimum of 3 years the following
18 information:

19 (i) The name of the hauler, the name of the
20 generator, and place of origin of the debris or
21 soil;

22 (ii) The approximate weight or volume of the
23 debris or soil; and

24 (iii) The date the debris or soil was received.

25 (d) This Section applies only to clean construction or
26 demolition debris that is not considered "waste" as provided in

1 Section 3.160 of this Act.

2 (e) For purposes of this Section ~~a clean construction or~~
3 ~~demolition debris fill operation:~~

4 (1) The term "operator" means a person responsible for
5 the operation and maintenance of a clean construction or
6 demolition debris fill operation.

7 (2) The term "owner" means a person who has any direct
8 or indirect interest in a clean construction or demolition
9 debris fill operation or in land on which a person operates
10 and maintains a clean construction or demolition debris
11 fill operation. A "direct or indirect interest" does not
12 include the ownership of publicly traded stock. The "owner"
13 is the "operator" if there is no other person who is
14 operating and maintaining a clean construction or
15 demolition debris fill operation.

16 (3) The term "clean construction or demolition debris
17 fill operation" means a current or former quarry, mine, or
18 other excavation where clean construction or demolition
19 debris is used as fill material.

20 (4) The term "uncontaminated soil" shall have the same
21 meaning as uncontaminated soil under Section 3.160 of this
22 Act.

23 (f) (1) No later than one year after the effective date of
24 this amendatory Act of the 96th General Assembly, the Agency
25 shall propose to the Board, and, no later than one year after
26 the Board's receipt of the Agency's proposal, the Board shall

1 adopt, rules for the use of clean construction or demolition
2 debris and uncontaminated soil as fill material at clean
3 construction or demolition debris fill operations. The rules
4 must include standards and procedures necessary to protect
5 groundwater, which may include, but shall not be limited to,
6 the following: requirements regarding testing and
7 certification of soil used as fill material, surface water
8 runoff, liners or other protective barriers, monitoring
9 (including, but not limited to, groundwater monitoring),
10 corrective action, recordkeeping, reporting, closure and
11 post-closure care, financial assurance, post-closure land use
12 controls, location standards, and the modification of existing
13 permits to conform to the requirements of this Act and Board
14 rules. The rules may also include limits on the use of
15 recyclable concrete and asphalt as fill material at clean
16 construction or demolition debris fill operations, taking into
17 account factors such as technical feasibility, economic
18 reasonableness, and the availability of markets for such
19 materials.

20 (2) Until the effective date of the Board rules adopted
21 under subdivision (f)(1) of this Section, and in addition to
22 any other requirements, owners and operators of clean
23 construction or demolition debris fill operations must do all
24 of the following in subdivisions (f)(2)(A) through (f)(2)(D) of
25 this Section for all clean construction or demolition debris
26 and uncontaminated soil accepted for use as fill material. The

1 requirements in subdivisions (f) (2) (A) through (f) (2) (D) of
2 this Section shall not limit any rules adopted by the Board.

3 (A) Document the following information for each load of
4 clean construction or demolition debris or uncontaminated
5 soil received: (i) the name of the hauler, the address of
6 the site of origin, and the owner and the operator of the
7 site of origin of the clean construction or demolition
8 debris or uncontaminated soil, (ii) the weight or volume of
9 the clean construction or demolition debris or
10 uncontaminated soil, and (iii) the date the clean
11 construction or demolition debris or uncontaminated soil
12 was received.

13 (B) For all soil, obtain either (i) a certification
14 from the owner or operator of the site from which the soil
15 was removed that the site has never been used for
16 commercial or industrial purposes and is presumed to be
17 uncontaminated soil or (ii) a certification from a licensed
18 Professional Engineer that the soil is uncontaminated
19 soil. Certifications required under this subdivision
20 (f) (2) (B) must be on forms and in a format prescribed by
21 the Agency.

22 (C) Confirm that the clean construction or demolition
23 debris or uncontaminated soil was not removed from a site
24 as part of a cleanup or removal of contaminants, including,
25 but not limited to, activities conducted under the
26 Comprehensive Environmental Response, Compensation, and

1 Liability Act of 1980, as amended; as part of a Closure or
2 Corrective Action under the Resource Conservation and
3 Recovery Act, as amended; or under an Agency remediation
4 program, such as the Leaking Underground Storage Tank
5 Program or Site Remediation Program, but excluding sites
6 subject to Section 58.16 of this Act where there is no
7 presence or likely presence of a release or a substantial
8 threat of a release of a regulated substance at, on, or
9 from the real property.

10 (D) Document all activities required under subdivision
11 (f)(2) of this Section. Documentation of any chemical
12 analysis must include, but is not limited to, (i) a copy of
13 the lab analysis, (ii) accreditation status of the
14 laboratory performing the analysis, and (iii)
15 certification by an authorized agent of the laboratory that
16 the analysis has been performed in accordance with the
17 Agency's rules for the accreditation of environmental
18 laboratories and the scope of accreditation.

19 (3) Owners and operators of clean construction or
20 demolition debris fill operations must maintain all
21 documentation required under subdivision (f)(2) of this
22 Section for a minimum of 3 years following the receipt of each
23 load of clean construction or demolition debris or
24 uncontaminated soil, except that documentation relating to an
25 appeal, litigation, or other disputed claim must be maintained
26 until at least 3 years after the date of the final disposition

1 of the appeal, litigation, or other disputed claim. Copies of
2 the documentation must be made available to the Agency and to
3 units of local government for inspection and copying during
4 normal business hours. The Agency may prescribe forms and
5 formats for the documentation required under subdivision
6 (f)(2) of this Section.

7 Chemical analysis conducted under subdivision (f)(2) of
8 this Section must be conducted in accordance with the
9 requirements of 35 Ill. Adm. Code 742, as amended, and "Test
10 Methods for Evaluating Solid Waste, Physical/Chemical
11 Methods", USEPA Publication No. SW-846, as amended.

12 (g)(1) No person shall use soil other than uncontaminated
13 soil as fill material at a clean construction or demolition
14 debris fill operation.

15 (2) No person shall use construction or demolition debris
16 other than clean construction or demolition debris as fill
17 material at a clean construction or demolition debris fill
18 operation.

19 (Source: P.A. 94-272, eff. 7-19-05; 94-725, eff. 6-1-06.)

20 (415 ILCS 5/22.51a new)

21 Sec. 22.51a. Uncontaminated Soil Fill Operations.

22 (a) For purposes of this Section:

23 (1) The term "uncontaminated soil" shall have the same
24 meaning as uncontaminated soil under Section 3.160 of this
25 Act.

1 (2) The term "uncontaminated soil fill operation"
2 means a current or former quarry, mine, or other excavation
3 where uncontaminated soil is used as fill material, but
4 does not include a clean construction or demolition debris
5 fill operation.

6 (b) No person shall use soil other than uncontaminated soil
7 as fill material at an uncontaminated soil fill operation.

8 (c) Owners and operators of uncontaminated soil fill
9 operations must register the fill operations with the Agency.
10 Uncontaminated soil fill operations that received
11 uncontaminated soil prior to the effective date of this
12 amendatory Act of the 96th General Assembly must be registered
13 with the Agency no later than March 31, 2011. Uncontaminated
14 soil fill operations that first receive uncontaminated soil on
15 or after the effective date of this amendatory Act of the 96th
16 General Assembly must be registered with the Agency prior to
17 the receipt of any uncontaminated soil. Registrations must be
18 submitted on forms and in a format prescribed by the Agency.

19 (d) (1) No later than one year after the effective date of
20 this amendatory Act of the 96th General Assembly, the Agency
21 shall propose to the Board, and, no later than one year after
22 the Board's receipt of the Agency's proposal, the Board shall
23 adopt, rules for the use of uncontaminated soil as fill
24 material at uncontaminated soil fill operations. The rules must
25 include standards and procedures necessary to protect
26 groundwater, which shall include, but shall not be limited to,

1 testing and certification of soil used as fill material and
2 requirements for recordkeeping.

3 (2) Until the effective date of the Board rules adopted
4 under subdivision (d) (1) of this Section, owners and operators
5 of uncontaminated soil fill operations must do all of the
6 following in subdivisions (d) (2) (A) through (d) (2) (F) of this
7 Section for all uncontaminated soil accepted for use as fill
8 material. The requirements in subdivisions (d) (2) (A) through
9 (d) (2) (F) of this Section shall not limit any rules adopted by
10 the Board.

11 (A) Document the following information for each load of
12 uncontaminated soil received: (i) the name of the hauler,
13 the address of the site of origin, and the owner and the
14 operator of the site of origin of the uncontaminated soil,
15 (ii) the weight or volume of the uncontaminated soil, and
16 (iii) the date the uncontaminated soil was received.

17 (B) Obtain either (i) a certification from the owner or
18 operator of the site from which the soil was removed that
19 the site has never been used for commercial or industrial
20 purposes and is presumed to be uncontaminated soil or (ii)
21 a certification from a licensed Professional Engineer that
22 the soil is uncontaminated soil. Certifications required
23 under this subdivision (d) (2) (B) must be on forms and in a
24 format prescribed by the Agency.

25 (C) Confirm that the uncontaminated soil was not
26 removed from a site as part of a cleanup or removal of

1 contaminants, including, but not limited to, activities
2 conducted under the Comprehensive Environmental Response,
3 Compensation, and Liability Act of 1980, as amended; as
4 part of a Closure or Corrective Action under the Resource
5 Conservation and Recovery Act, as amended; or under an
6 Agency remediation program, such as the Leaking
7 Underground Storage Tank Program or Site Remediation
8 Program, but excluding sites subject to Section 58.16 of
9 this Act where there is no presence or likely presence of a
10 release or a substantial threat of a release of a regulated
11 substance at, on, or from the real property.

12 (D) Visually inspect each load to confirm that only
13 uncontaminated soil is being accepted for use as fill
14 material.

15 (E) Screen each load of uncontaminated soil using a
16 device that is approved by the Agency and detects volatile
17 organic compounds. Such a device may include, but is not
18 limited to, a photo ionization detector or a flame
19 ionization detector. All screening devices shall be
20 operated and maintained in accordance with the
21 manufacturer's specifications. Unacceptable soil must be
22 rejected from the fill operation.

23 (F) Document all activities required under subdivision
24 (d)(2) of this Section. Documentation of any chemical
25 analysis must include, but is not limited to, (i) a copy of
26 the lab analysis, (ii) accreditation status of the

1 laboratory performing the analysis, and (iii)
2 certification by an authorized agent of the laboratory that
3 the analysis has been performed in accordance with the
4 Agency's rules for the accreditation of environmental
5 laboratories and the scope of accreditation.

6 (3) Owners and operators of uncontaminated soil fill
7 operations must maintain all documentation required under
8 subdivision (d)(2) of this Section for a minimum of 3 years
9 following the receipt of each load of uncontaminated soil,
10 except that documentation relating to an appeal, litigation, or
11 other disputed claim must be maintained until at least 3 years
12 after the date of the final disposition of the appeal,
13 litigation, or other disputed claim. Copies of the
14 documentation must be made available to the Agency and to units
15 of local government for inspection and copying during normal
16 business hours. The Agency may prescribe forms and formats for
17 the documentation required under subdivision (d)(2) of this
18 Section.

19 Chemical analysis conducted under subdivision (d)(2) of
20 this Section must be conducted in accordance with the
21 requirements of 35 Ill. Adm. Code 742, as amended, and "Test
22 Methods for Evaluating Solid Waste, Physical/Chemical
23 Methods", USEPA Publication No. SW-846, as amended.

24 (415 ILCS 5/22.51b new)

25 Sec. 22.51b. Fees for permitted facilities accepting clean

1 construction or demolition debris or uncontaminated soil.

2 (a) The Agency shall assess and collect a fee from the
3 owner or operator of each clean construction or demolition
4 debris fill operation that is permitted or required to be
5 permitted by the Agency. The fee assessed and collected under
6 this subsection shall be 20 cents per cubic yard of clean
7 construction or demolition debris or uncontaminated soil
8 accepted by the clean construction or demolition debris fill
9 operation, or, alternatively, the owner or operator may weigh
10 the quantity of the clean construction or demolition debris or
11 uncontaminated soil with a device for which certification has
12 been obtained under the Weights and Measures Act and pay a fee
13 of 14 cents per ton of clean construction or demolition debris
14 or uncontaminated soil. The fee shall apply to construction or
15 demolition debris or uncontaminated soil if (i) the clean
16 construction or demolition debris fill operation is located off
17 the site where the clean construction or demolition debris or
18 uncontaminated soil was generated and (ii) the clean
19 construction or demolition debris fill operation is owned,
20 controlled, and operated by a person other than the generator
21 of the clean construction or demolition debris or
22 uncontaminated soil.

23 (b) The Agency shall establish rules relating to the
24 collection of the fees authorized by subsection (a) of this
25 Section. These rules shall include, but are not limited to, the
26 following:

1 (1) Records identifying the quantities of clean
2 construction or demolition debris and uncontaminated soil
3 received.

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

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

9 (c) Fees collected under this Section shall be in addition
10 to any other fees collected under any other Section.

11 (d) The Agency shall not refund any fee paid to it under
12 this Section.

13 (e) The Agency shall deposit all fees collected under this
14 subsection into the Environmental Protection Permit and
15 Inspection Fund. Pursuant to appropriation, all moneys
16 collected under this Section shall be used by the Agency for
17 the implementation of this Section and for permit and
18 inspection activities.

19 (f) A unit of local government, as defined in the Local
20 Solid Waste Disposal Act, in which a clean construction or
21 demolition debris fill operation is located and which has
22 entered into a delegation agreement with the Agency pursuant to
23 subsection (r) of Section 4 of this Act for inspection,
24 investigation, or enforcement functions related to clean
25 construction or demolition debris fill operations may
26 establish a fee, tax, or surcharge with regard to clean

1 construction or demolition debris or uncontaminated soil
2 accepted by clean construction or demolition debris fill
3 operations. All fees, taxes, and surcharges collected under
4 this subsection shall be used for inspection, investigation,
5 and enforcement functions performed by the unit of local
6 government pursuant to the delegation agreement with the
7 Agency. Fees, taxes, and surcharges established under this
8 subsection (f) shall not exceed a total of 10 cents per cubic
9 yard of clean construction or demolition debris or
10 uncontaminated soil accepted by the clean construction or
11 demolition debris fill operation, unless the owner or operator
12 weighs the quantity of the clean construction or demolition
13 debris or uncontaminated soil with a device for which
14 certification has been obtained under the Weights and Measures
15 Act, in which case the fee shall not exceed 7 cents per ton of
16 clean construction or demolition debris or uncontaminated
17 soil.

18 (g) For the purposes of this Section:

19 (1) The term "uncontaminated soil" shall have the same
20 meaning as uncontaminated soil under Section 3.160 of this
21 Act.

22 (2) The term "clean construction or demolition debris
23 fill operation" shall have the same meaning as clean
24 construction or demolition debris fill operation under
25 Section 22.51 of this Act.

1 (415 ILCS 5/31.1) (from Ch. 111 1/2, par. 1031.1)

2 Sec. 31.1. Administrative citation.

3 (a) The prohibitions specified in subsections (o) and (p)
4 of Section 21 and subsection (k) of Section 55 of this Act
5 shall be enforceable either by administrative citation under
6 this Section or as otherwise provided by this Act. Violations
7 of Section 22.51 and 22.51a of this Act shall be enforceable
8 either by administrative citation under this Section or as
9 otherwise provided by this Act.

10 (b) Whenever Agency personnel or personnel of a unit of
11 local government to which the Agency has delegated its
12 functions pursuant to subsection (r) of Section 4 of this Act,
13 on the basis of direct observation, determine that any person
14 has violated any provision of subsection (o) or (p) of Section
15 21, Section 22.51, Section 22.51a, or subsection (k) of Section
16 55 of this Act, the Agency or such unit of local government may
17 issue and serve an administrative citation upon such person
18 within not more than 60 days after the date of the observed
19 violation. Each such citation issued shall be served upon the
20 person named therein or such person's authorized agent for
21 service of process, and shall include the following
22 information:

23 (1) a statement specifying the provisions of
24 subsection (o) or (p) of Section 21, Section 22.51, Section
25 22.51a, or subsection (k) of Section 55 of which the person
26 was observed to be in violation;

1 (2) a copy of the inspection report in which the Agency
2 or local government recorded the violation, which report
3 shall include the date and time of inspection, and weather
4 conditions prevailing during the inspection;

5 (3) the penalty imposed by subdivision (b)(4) or
6 (b)(4-5) of Section 42 for such violation;

7 (4) instructions for contesting the administrative
8 citation findings pursuant to this Section, including
9 notification that the person has 35 days within which to
10 file a petition for review before the Board to contest the
11 administrative citation; and

12 (5) an affidavit by the personnel observing the
13 violation, attesting to their material actions and
14 observations.

15 (c) The Agency or unit of local government shall file a
16 copy of each administrative citation served under subsection
17 (b) of this Section with the Board no later than 10 days after
18 the date of service.

19 (d) (1) If the person named in the administrative citation
20 fails to petition the Board for review within 35 days from the
21 date of service, the Board shall adopt a final order, which
22 shall include the administrative citation and findings of
23 violation as alleged in the citation, and shall impose the
24 penalty specified in subdivision (b)(4) or (b)(4-5) of Section
25 42.

26 (2) If a petition for review is filed before the Board to

1 contest an administrative citation issued under subsection (b)
2 of this Section, the Agency or unit of local government shall
3 appear as a complainant at a hearing before the Board to be
4 conducted pursuant to Section 32 of this Act at a time not less
5 than 21 days after notice of such hearing has been sent by the
6 Board to the Agency or unit of local government and the person
7 named in the citation. In such hearings, the burden of proof
8 shall be on the Agency or unit of local government. If, based
9 on the record, the Board finds that the alleged violation
10 occurred, it shall adopt a final order which shall include the
11 administrative citation and findings of violation as alleged in
12 the citation, and shall impose the penalty specified in
13 subdivision (b)(4) or (b)(4-5) of Section 42. However, if the
14 Board finds that the person appealing the citation has shown
15 that the violation resulted from uncontrollable circumstances,
16 the Board shall adopt a final order which makes no finding of
17 violation and which imposes no penalty.

18 (e) Sections 10-25 through 10-60 of the Illinois
19 Administrative Procedure Act shall not apply to any
20 administrative citation issued under subsection (b) of this
21 Section.

22 (f) The other provisions of this Section shall not apply to
23 a sanitary landfill operated by a unit of local government
24 solely for the purpose of disposing of water and sewage
25 treatment plant sludges, including necessary stabilizing
26 materials.

1 (g) All final orders issued and entered by the Board
2 pursuant to this Section shall be enforceable by injunction,
3 mandamus or other appropriate remedy, in accordance with
4 Section 42 of this Act.

5 (Source: P.A. 96-737, eff. 8-25-09.)

6 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

7 Sec. 42. Civil penalties.

8 (a) Except as provided in this Section, any person that
9 violates any provision of this Act or any regulation adopted by
10 the Board, or any permit or term or condition thereof, or that
11 violates any order of the Board pursuant to this Act, shall be
12 liable for a civil penalty of not to exceed \$50,000 for the
13 violation and an additional civil penalty of not to exceed
14 \$10,000 for each day during which the violation continues; such
15 penalties may, upon order of the Board or a court of competent
16 jurisdiction, be made payable to the Environmental Protection
17 Trust Fund, to be used in accordance with the provisions of the
18 Environmental Protection Trust Fund Act.

19 (b) Notwithstanding the provisions of subsection (a) of
20 this Section:

21 (1) Any person that violates Section 12(f) of this Act
22 or any NPDES permit or term or condition thereof, or any
23 filing requirement, regulation or order relating to the
24 NPDES permit program, shall be liable to a civil penalty of
25 not to exceed \$10,000 per day of violation.

1 (2) Any person that violates Section 12(g) of this Act
2 or any UIC permit or term or condition thereof, or any
3 filing requirement, regulation or order relating to the
4 State UIC program for all wells, except Class II wells as
5 defined by the Board under this Act, shall be liable to a
6 civil penalty not to exceed \$2,500 per day of violation;
7 provided, however, that any person who commits such
8 violations relating to the State UIC program for Class II
9 wells, as defined by the Board under this Act, shall be
10 liable to a civil penalty of not to exceed \$10,000 for the
11 violation and an additional civil penalty of not to exceed
12 \$1,000 for each day during which the violation continues.

13 (3) Any person that violates Sections 21(f), 21(g),
14 21(h) or 21(i) of this Act, or any RCRA permit or term or
15 condition thereof, or any filing requirement, regulation
16 or order relating to the State RCRA program, shall be
17 liable to a civil penalty of not to exceed \$25,000 per day
18 of violation.

19 (4) In an administrative citation action under Section
20 31.1 of this Act, any person found to have violated any
21 provision of subsection (o) of Section 21 of this Act shall
22 pay a civil penalty of \$500 for each violation of each such
23 provision, plus any hearing costs incurred by the Board and
24 the Agency. Such penalties shall be made payable to the
25 Environmental Protection Trust Fund, to be used in
26 accordance with the provisions of the Environmental

1 Protection Trust Fund Act; except that if a unit of local
2 government issued the administrative citation, 50% of the
3 civil penalty shall be payable to the unit of local
4 government.

5 (4-5) In an administrative citation action under
6 Section 31.1 of this Act, any person found to have violated
7 any provision of subsection (p) of Section 21, Section
8 22.51, Section 22.51a, or subsection (k) of Section 55 of
9 this Act shall pay a civil penalty of \$1,500 for each
10 violation of each such provision, plus any hearing costs
11 incurred by the Board and the Agency, except that the civil
12 penalty amount shall be \$3,000 for each violation of any
13 provision of subsection (p) of Section 21, Section 22.51,
14 Section 22.51a, or subsection (k) of Section 55 that is the
15 person's second or subsequent adjudication violation of
16 that provision. The penalties shall be deposited into the
17 Environmental Protection Trust Fund, to be used in
18 accordance with the provisions of the Environmental
19 Protection Trust Fund Act; except that if a unit of local
20 government issued the administrative citation, 50% of the
21 civil penalty shall be payable to the unit of local
22 government.

23 (5) Any person who violates subsection 6 of Section
24 39.5 of this Act or any CAAPP permit, or term or condition
25 thereof, or any fee or filing requirement, or any duty to
26 allow or carry out inspection, entry or monitoring

1 activities, or any regulation or order relating to the
2 CAAPP shall be liable for a civil penalty not to exceed
3 \$10,000 per day of violation.

4 (6) Any owner or operator of a community water system
5 that violates subsection (b) of Section 18.1 or subsection
6 (a) of Section 25d-3 of this Act shall, for each day of
7 violation, be liable for a civil penalty not to exceed \$5
8 for each of the premises connected to the affected
9 community water system.

10 (b.5) In lieu of the penalties set forth in subsections (a)
11 and (b) of this Section, any person who fails to file, in a
12 timely manner, toxic chemical release forms with the Agency
13 pursuant to Section 25b-2 of this Act shall be liable for a
14 civil penalty of \$100 per day for each day the forms are late,
15 not to exceed a maximum total penalty of \$6,000. This daily
16 penalty shall begin accruing on the thirty-first day after the
17 date that the person receives the warning notice issued by the
18 Agency pursuant to Section 25b-6 of this Act; and the penalty
19 shall be paid to the Agency. The daily accrual of penalties
20 shall cease as of January 1 of the following year. All
21 penalties collected by the Agency pursuant to this subsection
22 shall be deposited into the Environmental Protection Permit and
23 Inspection Fund.

24 (c) Any person that violates this Act, any rule or
25 regulation adopted under this Act, any permit or term or
26 condition of a permit, or any Board order and causes the death

1 of fish or aquatic life shall, in addition to the other
2 penalties provided by this Act, be liable to pay to the State
3 an additional sum for the reasonable value of the fish or
4 aquatic life destroyed. Any money so recovered shall be placed
5 in the Wildlife and Fish Fund in the State Treasury.

6 (d) The penalties provided for in this Section may be
7 recovered in a civil action.

8 (e) The State's Attorney of the county in which the
9 violation occurred, or the Attorney General, may, at the
10 request of the Agency or on his own motion, institute a civil
11 action for an injunction, prohibitory or mandatory, to restrain
12 violations of this Act, any rule or regulation adopted under
13 this Act, any permit or term or condition of a permit, or any
14 Board order, or to require such other actions as may be
15 necessary to address violations of this Act, any rule or
16 regulation adopted under this Act, any permit or term or
17 condition of a permit, or any Board order.

18 (f) The State's Attorney of the county in which the
19 violation occurred, or the Attorney General, shall bring such
20 actions in the name of the people of the State of Illinois.
21 Without limiting any other authority which may exist for the
22 awarding of attorney's fees and costs, the Board or a court of
23 competent jurisdiction may award costs and reasonable
24 attorney's fees, including the reasonable costs of expert
25 witnesses and consultants, to the State's Attorney or the
26 Attorney General in a case where he has prevailed against a

1 person who has committed a wilful, knowing or repeated
2 violation of this Act, any rule or regulation adopted under
3 this Act, any permit or term or condition of a permit, or any
4 Board order.

5 Any funds collected under this subsection (f) in which the
6 Attorney General has prevailed shall be deposited in the
7 Hazardous Waste Fund created in Section 22.2 of this Act. Any
8 funds collected under this subsection (f) in which a State's
9 Attorney has prevailed shall be retained by the county in which
10 he serves.

11 (g) All final orders imposing civil penalties pursuant to
12 this Section shall prescribe the time for payment of such
13 penalties. If any such penalty is not paid within the time
14 prescribed, interest on such penalty at the rate set forth in
15 subsection (a) of Section 1003 of the Illinois Income Tax Act,
16 shall be paid for the period from the date payment is due until
17 the date payment is received. However, if the time for payment
18 is stayed during the pendency of an appeal, interest shall not
19 accrue during such stay.

20 (h) In determining the appropriate civil penalty to be
21 imposed under subdivisions (a), (b) (1), (b) (2), (b) (3), or
22 (b) (5) of this Section, the Board is authorized to consider any
23 matters of record in mitigation or aggravation of penalty,
24 including but not limited to the following factors:

- 25 (1) the duration and gravity of the violation;
26 (2) the presence or absence of due diligence on the

1 part of the respondent in attempting to comply with
2 requirements of this Act and regulations thereunder or to
3 secure relief therefrom as provided by this Act;

4 (3) any economic benefits accrued by the respondent
5 because of delay in compliance with requirements, in which
6 case the economic benefits shall be determined by the
7 lowest cost alternative for achieving compliance;

8 (4) the amount of monetary penalty which will serve to
9 deter further violations by the respondent and to otherwise
10 aid in enhancing voluntary compliance with this Act by the
11 respondent and other persons similarly subject to the Act;

12 (5) the number, proximity in time, and gravity of
13 previously adjudicated violations of this Act by the
14 respondent;

15 (6) whether the respondent voluntarily self-disclosed,
16 in accordance with subsection (i) of this Section, the
17 non-compliance to the Agency; and

18 (7) whether the respondent has agreed to undertake a
19 "supplemental environmental project," which means an
20 environmentally beneficial project that a respondent
21 agrees to undertake in settlement of an enforcement action
22 brought under this Act, but which the respondent is not
23 otherwise legally required to perform.

24 In determining the appropriate civil penalty to be imposed
25 under subsection (a) or paragraph (1), (2), (3), or (5) of
26 subsection (b) of this Section, the Board shall ensure, in all

1 cases, that the penalty is at least as great as the economic
2 benefits, if any, accrued by the respondent as a result of the
3 violation, unless the Board finds that imposition of such
4 penalty would result in an arbitrary or unreasonable financial
5 hardship. However, such civil penalty may be off-set in whole
6 or in part pursuant to a supplemental environmental project
7 agreed to by the complainant and the respondent.

8 (i) A person who voluntarily self-discloses non-compliance
9 to the Agency, of which the Agency had been unaware, is
10 entitled to a 100% reduction in the portion of the penalty that
11 is not based on the economic benefit of non-compliance if the
12 person can establish the following:

13 (1) that the non-compliance was discovered through an
14 environmental audit or a compliance management system
15 documented by the regulated entity as reflecting the
16 regulated entity's due diligence in preventing, detecting,
17 and correcting violations;

18 (2) that the non-compliance was disclosed in writing
19 within 30 days of the date on which the person discovered
20 it;

21 (3) that the non-compliance was discovered and
22 disclosed prior to:

23 (i) the commencement of an Agency inspection,
24 investigation, or request for information;

25 (ii) notice of a citizen suit;

26 (iii) the filing of a complaint by a citizen, the

1 Illinois Attorney General, or the State's Attorney of
2 the county in which the violation occurred;

3 (iv) the reporting of the non-compliance by an
4 employee of the person without that person's
5 knowledge; or

6 (v) imminent discovery of the non-compliance by
7 the Agency;

8 (4) that the non-compliance is being corrected and any
9 environmental harm is being remediated in a timely fashion;

10 (5) that the person agrees to prevent a recurrence of
11 the non-compliance;

12 (6) that no related non-compliance events have
13 occurred in the past 3 years at the same facility or in the
14 past 5 years as part of a pattern at multiple facilities
15 owned or operated by the person;

16 (7) that the non-compliance did not result in serious
17 actual harm or present an imminent and substantial
18 endangerment to human health or the environment or violate
19 the specific terms of any judicial or administrative order
20 or consent agreement;

21 (8) that the person cooperates as reasonably requested
22 by the Agency after the disclosure; and

23 (9) that the non-compliance was identified voluntarily
24 and not through a monitoring, sampling, or auditing
25 procedure that is required by statute, rule, permit,
26 judicial or administrative order, or consent agreement.

1 If a person can establish all of the elements under this
2 subsection except the element set forth in paragraph (1) of
3 this subsection, the person is entitled to a 75% reduction in
4 the portion of the penalty that is not based upon the economic
5 benefit of non-compliance.

6 (j) In addition to an other remedy or penalty that may
7 apply, whether civil or criminal, any person who violates
8 Section 22.52 of this Act shall be liable for an additional
9 civil penalty of up to 3 times the gross amount of any
10 pecuniary gain resulting from the violation.

11 (Source: P.A. 95-331, eff. 8-21-07; 96-603, eff. 8-24-09;
12 96-737, eff. 8-25-09; revised 9-15-09.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law."