

AN ACT concerning safety.

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

Section 5. The Environmental Protection Act is amended by changing Section 39.2 as follows:

(415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

Sec. 39.2. Local siting review.

(a) The county board of the county or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, shall approve or disapprove the request for local siting approval for each pollution control facility which is subject to such review. An applicant for local siting approval shall submit sufficient details describing the proposed facility to demonstrate compliance, and local siting approval shall be granted only if the proposed facility meets the following criteria:

(i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;

(ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

(iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;

(iv) (A) for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed; (B) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain, or if the facility is a facility described in subsection (b) (3) of

Section 22.19a, the site is flood-proofed;

(v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

(vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

(vii) if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;

(viii) if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; for purposes of this criterion (viii), the "solid waste management plan" means the plan that is in effect as of the date the application for siting approval is filed; and

(ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

The county board or the governing body of the municipality may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) under this Section.

(b) No later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in

each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located.

Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on such request as hereafter provided.

(c) An applicant shall file a copy of its request with the county board of the county or the governing body of the municipality in which the proposed site is located. The request shall include (i) the substance of the applicant's proposal and (ii) all documents, if any, submitted as of that date to the Agency pertaining to the proposed facility, except trade secrets as determined under Section 7.1 of this Act. All such documents or other materials on file with the county board or governing body of the municipality shall be made available for public inspection at the office of the county board or the governing body of the municipality and may be copied upon payment of the actual cost of reproduction.

Any person may file written comment with the county board or governing body of the municipality concerning the appropriateness of the proposed site for its intended purpose.

The county board or governing body of the municipality shall consider any comment received or postmarked not later than 30 days after the date of the last public hearing.

(d) At least one public hearing is to be held by the county board or governing body of the municipality no sooner than 90 days but no later than 120 days after the date on which it received the request for site approval. No later than 14 days prior to such hearing, notice shall be published in a newspaper of general circulation published in the county of the proposed site, and delivered by certified mail to all members of the General Assembly from the district in which the proposed site is located, to the governing authority of every municipality contiguous to the proposed site or contiguous to the municipality in which the proposed site is to be located, to the county board of the county where the proposed site is to be located, if the proposed site is located within the boundaries of a municipality, and to the Agency. Members or representatives of the governing authority of a municipality contiguous to the proposed site or contiguous to the municipality in which the proposed site is to be located and, if the proposed site is located in a municipality, members or representatives of the county board of a county in which the proposed site is to be located may appear at and participate in public hearings held pursuant to this Section. The public hearing shall develop a record sufficient to form the basis of appeal of the decision in accordance with Section 40.1 of this Act. The fact that a member of the county board or governing body of the municipality has publicly expressed an opinion on an issue related to a site review proceeding shall not preclude the member from taking part in the proceeding and voting on the issue.

(e) Decisions of the county board or governing body of the municipality are to be in writing, specifying the reasons for the decision, such reasons to be in conformance with subsection (a) of this Section. In granting approval for a site the county board or governing body of the municipality may impose such

conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board. Such decision shall be available for public inspection at the office of the county board or governing body of the municipality and may be copied upon payment of the actual cost of reproduction. If there is no final action by the county board or governing body of the municipality within 180 days after the date on which it received the request for site approval, the applicant may deem the request approved.

At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-questioning by the county board or governing body of the municipality and any participants, the applicant may file not more than one amended application upon payment of additional fees pursuant to subsection (k); in which case the time limitation for final action set forth in this subsection (e) shall be extended for an additional period of 90 days.

If, prior to making a final local siting decision, a county board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement.

(e-5) Siting approval obtained pursuant to this Section is transferable and may be transferred to a subsequent owner or operator. In the event that siting approval has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes and takes subject to any and all conditions imposed upon the prior owner or operator by the

county board of the county or governing body of the municipality pursuant to subsection (e). However, any such conditions imposed pursuant to this Section may be modified by agreement between the subsequent owner or operator and the appropriate county board or governing body. Further, in the event that siting approval obtained pursuant to this Section has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes all rights and obligations and takes the facility subject to any and all terms and conditions of any existing host agreement between the prior owner or operator and the appropriate county board or governing body.

(f) A local siting approval granted under this Section shall expire at the end of 2 calendar years from the date upon which it was granted, unless the local siting approval granted under this Section is for a sanitary landfill operation, in which case the approval shall expire at the end of 3 calendar years from the date upon which it was granted, and unless within that period the applicant has made application to the Agency for a permit to develop the site. In the event that the local siting decision has been appealed, such expiration period shall be deemed to begin on the date upon which the appeal process is concluded.

Except as otherwise provided in this subsection, upon the expiration of a development permit under subsection (k) of Section 39, any associated local siting approval granted for the facility under this Section shall also expire.

If a first development permit for a municipal waste incineration facility expires under subsection (k) of Section 39 after September 30, 1989 due to circumstances beyond the control of the applicant, any associated local siting approval granted for the facility under this Section may be used to fulfill the local siting approval requirement upon application for a second development permit for the same site, provided that the proposal in the new application is materially the same, with respect to the criteria in subsection (a) of this

Section, as the proposal that received the original siting approval, and application for the second development permit is made before January 1, 1990.

(g) The siting approval procedures, criteria and appeal procedures provided for in this Act for new pollution control facilities shall be the exclusive siting procedures and rules and appeal procedures for facilities subject to such procedures. Local zoning or other local land use requirements shall not be applicable to such siting decisions.

(h) Nothing in this Section shall apply to any existing or new pollution control facility located within the corporate limits of a municipality with a population of over 1,000,000.

(i) (Blank.)

The Board shall adopt regulations establishing the geologic and hydrologic siting criteria necessary to protect usable groundwater resources which are to be followed by the Agency in its review of permit applications for new pollution control facilities. Such regulations, insofar as they apply to new pollution control facilities authorized to store, treat or dispose of any hazardous waste, shall be at least as stringent as the requirements of the Resource Conservation and Recovery Act and any State or federal regulations adopted pursuant thereto.

(j) Any new pollution control facility which has never obtained local siting approval under the provisions of this Section shall be required to obtain such approval after a final decision on an appeal of a permit denial.

(k) A county board or governing body of a municipality may charge applicants for siting review under this Section a reasonable fee to cover the reasonable and necessary costs incurred by such county or municipality in the siting review process.

(l) The governing Authority as determined by subsection (c) of Section 39 of this Act may request the Department of Transportation to perform traffic impact studies of proposed or potential locations for required pollution control facilities.

(m) An applicant may not file a request for local siting approval which is substantially the same as a request which was disapproved pursuant to a finding against the applicant under any of criteria (i) through (ix) of subsection (a) of this Section within the preceding 2 years.

(n) In any review proceeding of a decision of the county board or governing body of a municipality made pursuant to the local siting review process, the petitioner in the review proceeding shall pay to the county or municipality the cost of preparing and certifying the record of proceedings. Should the petitioner in the review proceeding fail to make payment, the provisions of Section 3-109 of the Code of Civil Procedure shall apply.

In the event the petitioner is a citizens' group that participated in the siting proceeding and is so located as to be affected by the proposed facility, such petitioner shall be exempt from paying the costs of preparing and certifying the record.

(o) Notwithstanding any other provision of this Section, a transfer station used exclusively for landscape waste, where landscape waste is held no longer than 24 hours from the time it was received, is not subject to the requirements of local siting approval under this Section, but is subject only to local zoning approval.

(Source: P.A. 91-588, eff. 8-14-99; 92-574, eff. 6-26-02.)

Section 98. Applicability. The change made to Section 39.2 of the Environmental Protection Act by this amendatory Act of the 94th General Assembly applies only to siting applications filed on or after the effective date of this amendatory Act.

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