

1 AMENDMENT TO HOUSE BILL 3373

2 AMENDMENT NO. _____. Amend House Bill 3373 by replacing
3 line 5 with the following:
4 "by changing Sections 4 and 39.5 and adding Title 18 as
5 follows:

6 (415 ILCS 5/4) (from Ch. 111 1/2, par. 1004)
7 Sec. 4. Environmental Protection Agency; establishment;
8 duties.

9 (a) There is established in the Executive Branch of the
10 State Government an agency to be known as the Environmental
11 Protection Agency. This Agency shall be under the supervision
12 and direction of a Director who shall be appointed by the
13 Governor with the advice and consent of the Senate. The term
14 of office of the Director shall expire on the third Monday of
15 January in odd numbered years provided that he shall hold his
16 office until his successor is appointed and qualified. The
17 Director shall receive an annual salary as set by the
18 Governor from time to time or as set by the Compensation
19 Review Board, whichever is greater. If set by the Governor,
20 the Director's annual salary may not exceed 85% of the
21 Governor's annual salary. The Director, in accord with the
22 Personnel Code, shall employ and direct such personnel, and
23 shall provide for such laboratory and other facilities, as

1 may be necessary to carry out the purposes of this Act. In
2 addition, the Director may by agreement secure such services
3 as he may deem necessary from any other department, agency,
4 or unit of the State Government, and may employ and
5 compensate such consultants and technical assistants as may
6 be required.

7 (b) The Agency shall have the duty to collect and
8 disseminate such information, acquire such technical data,
9 and conduct such experiments as may be required to carry out
10 the purposes of this Act, including ascertainment of the
11 quantity and nature of discharges from any contaminant source
12 and data on those sources, and to operate and arrange for the
13 operation of devices for the monitoring of environmental
14 quality.

15 (c) The Agency shall have authority to conduct a program
16 of continuing surveillance and of regular or periodic
17 inspection of actual or potential contaminant or noise
18 sources, of public water supplies, and of refuse disposal
19 sites.

20 (d) In accordance with constitutional limitations, the
21 Agency shall have authority to enter at all reasonable times
22 upon any private or public property for the purpose of:

23 (1) Inspecting and investigating to ascertain possible
24 violations of the Act or of regulations thereunder, or of
25 permits or terms or conditions thereof; or

26 (2) In accordance with the provisions of this Act,
27 taking whatever preventive or corrective action, including
28 but not limited to removal or remedial action, that is
29 necessary or appropriate whenever there is a release or a
30 substantial threat of a release of (A) a hazardous substance
31 or pesticide or (B) petroleum from an underground storage
32 tank.

33 (e) The Agency shall have the duty to investigate
34 violations of this Act or of regulations adopted thereunder,

1 or of permits or terms or conditions thereof, to issue
2 administrative citations as provided in Section 31.1 of this
3 Act, and to take such summary enforcement action as is
4 provided for by Section 34 of this Act.

5 (f) The Agency shall appear before the Board in any
6 hearing upon a petition for variance, the denial of a permit,
7 or the validity or effect of a rule or regulation of the
8 Board, and shall have the authority to appear before the
9 Board in any hearing under the Act.

10 (g) The Agency shall have the duty to administer, in
11 accord with Title X of this Act, such permit and
12 certification systems as may be established by this Act or by
13 regulations adopted thereunder. The Agency may enter into
14 written delegation agreements with any department, agency, or
15 unit of State or local government under which all or portions
16 of this duty may be delegated for public water supply storage
17 and transport systems, sewage collection and transport
18 systems, air pollution control sources with uncontrolled
19 emissions of 100 tons per year or less and application of
20 algicides to waters of the State. Such delegation agreements
21 will require that the work to be performed thereunder will be
22 in accordance with Agency criteria, subject to Agency review,
23 and shall include such financial and program auditing by the
24 Agency as may be required.

25 (h) The Agency shall have authority to require the
26 submission of complete plans and specifications from any
27 applicant for a permit required by this Act or by regulations
28 thereunder, and to require the submission of such reports
29 regarding actual or potential violations of the Act or of
30 regulations thereunder, or of permits or terms or conditions
31 thereof, as may be necessary for purposes of this Act.

32 (i) The Agency shall have authority to make
33 recommendations to the Board for the adoption of regulations
34 under Title VII of the Act.

1 (j) The Agency shall have the duty to represent the
2 State of Illinois in any and all matters pertaining to plans,
3 procedures, or negotiations for interstate compacts or other
4 governmental arrangements relating to environmental
5 protection.

6 (k) The Agency shall have the authority to accept,
7 receive, and administer on behalf of the State any grants,
8 gifts, loans, indirect cost reimbursements, or other funds
9 made available to the State from any source for purposes of
10 this Act or for air or water pollution control, public water
11 supply, solid waste disposal, noise abatement, or other
12 environmental protection activities, surveys, or programs.
13 Any federal funds received by the Agency pursuant to this
14 subsection shall be deposited in a trust fund with the State
15 Treasurer and held and disbursed by him in accordance with
16 Treasurer as Custodian of Funds Act, provided that such
17 monies shall be used only for the purposes for which they are
18 contributed and any balance remaining shall be returned to
19 the contributor.

20 The Agency is authorized to promulgate such regulations
21 and enter into such contracts as it may deem necessary for
22 carrying out the provisions of this subsection.

23 (l) The Agency is hereby designated as water pollution
24 agency for the state for all purposes of the Federal Water
25 Pollution Control Act, as amended; as implementing agency for
26 the State for all purposes of the Safe Drinking Water Act,
27 Public Law 93-523, as now or hereafter amended, except
28 Section 1425 of that Act; as air pollution agency for the
29 state for all purposes of the Clean Air Act of 1970, Public
30 Law 91-604, approved December 31, 1970, as amended; and as
31 solid waste agency for the state for all purposes of the
32 Solid Waste Disposal Act, Public Law 89-272, approved October
33 20, 1965, and amended by the Resource Recovery Act of 1970,
34 Public Law 91-512, approved October 26, 1970, as amended, and

1 amended by the Resource Conservation and Recovery Act of
2 1976, (P.L. 94-580) approved October 21, 1976, as amended; as
3 noise control agency for the state for all purposes of the
4 Noise Control Act of 1972, Public Law 92-574, approved
5 October 27, 1972, as amended; and as implementing agency for
6 the State for all purposes of the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980 (P.L.
8 96-510), as amended; and otherwise as pollution control
9 agency for the State pursuant to federal laws integrated with
10 the foregoing laws, for financing purposes or otherwise. The
11 Agency is hereby authorized to take all action necessary or
12 appropriate to secure to the State the benefits of such
13 federal Acts, provided that the Agency shall transmit to the
14 United States without change any standards adopted by the
15 Pollution Control Board pursuant to Section 5(c) of this Act.
16 This subsection (l) of Section 4 shall not be construed to
17 bar or prohibit the Environmental Protection Trust Fund
18 Commission from accepting, receiving, and administering on
19 behalf of the State any grants, gifts, loans or other funds
20 for which the Commission is eligible pursuant to the
21 Environmental Protection Trust Fund Act. The Agency is hereby
22 designated as the State agency for all purposes of
23 administering the requirements of Section 313 of the federal
24 Emergency Planning and Community Right-to-Know Act of 1986.

25 Any municipality, sanitary district, or other political
26 subdivision, or any Agency of the State or interstate Agency,
27 which makes application for loans or grants under such
28 federal Acts shall notify the Agency of such application; the
29 Agency may participate in proceedings under such federal
30 Acts.

31 (m) The Agency shall have authority, consistent with
32 Section 5(c) and other provisions of this Act, and for
33 purposes of Section 303(e) of the Federal Water Pollution
34 Control Act, as now or hereafter amended, to engage in

1 planning processes and activities and to develop plans in
2 cooperation with units of local government, state agencies
3 and officers, and other appropriate persons in connection
4 with the jurisdiction or duties of each such unit, agency,
5 officer or person. Public hearings shall be held on the
6 planning process, at which any person shall be permitted to
7 appear and be heard, pursuant to procedural regulations
8 promulgated by the Agency.

9 (n) In accordance with the powers conferred upon the
10 Agency by Sections 10(g), 13(b), 19, 22(d) and 25 of this
11 Act, the Agency shall have authority to establish and enforce
12 minimum standards for the operation of laboratories relating
13 to analyses and laboratory tests for air pollution, water
14 pollution, noise emissions, contaminant discharges onto land
15 and sanitary, chemical, and mineral quality of water
16 distributed by a public water supply. The Agency may enter
17 into formal working agreements with other departments or
18 agencies of state government under which all or portions of
19 this authority may be delegated to the cooperating department
20 or agency.

21 (o) The Agency shall have the authority to issue
22 certificates of competency to persons and laboratories
23 meeting the minimum standards established by the Agency in
24 accordance with Section 4(n) of this Act and to promulgate
25 and enforce regulations relevant to the issuance and use of
26 such certificates. The Agency may enter into formal working
27 agreements with other departments or agencies of state
28 government under which all or portions of this authority may
29 be delegated to the cooperating department or agency.

30 (p) Except as provided in Section 17.7, the Agency shall
31 have the duty to analyze samples as required from each public
32 water supply to determine compliance with the contaminant
33 levels specified by the Pollution Control Board. The maximum
34 number of samples which the Agency shall be required to

1 analyze for microbiological quality shall be 6 per month, but
2 the Agency may, at its option, analyze a larger number each
3 month for any supply. Results of sample analyses for
4 additional required bacteriological testing, turbidity,
5 residual chlorine and radionuclides are to be provided to the
6 Agency in accordance with Section 19. Owners of water
7 supplies may enter into agreements with the Agency to provide
8 for reduced Agency participation in sample analyses.

9 (q) The Agency shall have the authority to provide
10 notice to any person who may be liable pursuant to Section
11 22.2(f) of this Act for a release or a substantial threat of
12 a release of a hazardous substance or pesticide. Such notice
13 shall include the identified response action and an
14 opportunity for such person to perform the response action.

15 (r) The Agency may enter into written delegation
16 agreements with any unit of local government under which it
17 may delegate all or portions of its inspecting, investigating
18 and enforcement functions. Such delegation agreements shall
19 require that work performed thereunder be in accordance with
20 Agency criteria and subject to Agency review. Notwithstanding
21 any other provision of law to the contrary, no unit of local
22 government shall be liable for any injury resulting from the
23 exercise of its authority pursuant to such a delegation
24 agreement unless the injury is proximately caused by the
25 willful and wanton negligence of an agent or employee of the
26 unit of local government, and any policy of insurance
27 coverage issued to a unit of local government may provide for
28 the denial of liability and the nonpayment of claims based
29 upon injuries for which the unit of local government is not
30 liable pursuant to this subsection (r).

31 (s) The Agency shall have authority to take whatever
32 preventive or corrective action is necessary or appropriate,
33 including but not limited to expenditure of monies
34 appropriated from the Build Illinois Bond Fund and the Build

1 Illinois Purposes Fund for removal or remedial action,
2 whenever any hazardous substance or pesticide is released or
3 there is a substantial threat of such a release into the
4 environment. The State, the Director, and any State employee
5 shall be indemnified for any damages or injury arising out of
6 or resulting from any action taken under this subsection.
7 The Director of the Agency is authorized to enter into such
8 contracts and agreements as are necessary to carry out the
9 Agency's duties under this subsection.

10 (t) The Agency shall have authority to distribute
11 grants, subject to appropriation by the General Assembly, for
12 financing and construction of municipal wastewater
13 facilities. With respect to all monies appropriated from the
14 Build Illinois Bond Fund and the Build Illinois Purposes Fund
15 for wastewater facility grants, the Agency shall make
16 distributions in conformity with the rules and regulations
17 established pursuant to the Anti-Pollution Bond Act, as now
18 or hereafter amended.

19 (u) Pursuant to the Illinois Administrative Procedure
20 Act, the Agency shall have the authority to adopt such rules
21 as are necessary or appropriate for the Agency to implement
22 Section 31.1 of this Act.

23 (v) (Blank)

24 (w) Neither the State, nor the Director, nor the Board,
25 nor any State employee shall be liable for any damages or
26 injury arising out of or resulting from any action taken
27 under subsection (s) or subsection (v).

28 (x)(1) The Agency shall have authority to distribute
29 grants, subject to appropriation by the General Assembly, to
30 units of local government for financing and construction of
31 public water supply facilities. With respect to all monies
32 appropriated from the Build Illinois Bond Fund or the Build
33 Illinois Purposes Fund for public water supply grants, such
34 grants shall be made in accordance with rules promulgated by

1 the Agency. Such rules shall include a requirement for a
2 local match of 30% of the total project cost for projects
3 funded through such grants.

4 (2) The Agency shall not terminate a grant to a unit of
5 local government for the financing and construction of public
6 water supply facilities unless and until the Agency adopts
7 rules that set forth precise and complete standards, pursuant
8 to Section 5-20 of the Illinois Administrative Procedure Act,
9 for the termination of such grants. The Agency shall not
10 make determinations on whether specific grant conditions are
11 necessary to ensure the integrity of a project or on whether
12 subagreements shall be awarded, with respect to grants for
13 the financing and construction of public water supply
14 facilities, unless and until the Agency adopts rules that set
15 forth precise and complete standards, pursuant to Section
16 5-20 of the Illinois Administrative Procedure Act, for making
17 such determinations. The Agency shall not issue a stop-work
18 order in relation to such grants unless and until the Agency
19 adopts precise and complete standards, pursuant to Section
20 5-20 of the Illinois Administrative Procedure Act, for
21 determining whether to issue a stop-work order.

22 (y) The Agency shall have authority to release any
23 person from further responsibility for preventive or
24 corrective action under this Act following successful
25 completion of preventive or corrective action undertaken by
26 such person upon written request by the person.

27 (z) Only when it acts in accordance with the provisions
28 of Title XVIII of this Act will the Agency have the authority
29 to respond to, investigate, seek remedial action, and proceed
30 with enforcement activities in the event of an accidental or
31 unintended release to the environment, as defined in Title
32 XVIII of this Act, from a facility subject to the provisions
33 of this Act.

34 (Source: P.A. 91-25, eff. 6-9-99.)"; and

1 on page 74, by inserting the following immediately after line
2 7:

3 "TITLE XVIII

4 RELEASE RESPONSE AND REPORTING ACTIONS

5 (415 ILCS 5/59 new)

6 Sec. 59. Intent. It is the intent of this Title to:

7 (1) Assure that accidental or unintended releases
8 to the environment from facilities regulated by this Act
9 are properly addressed and, if necessary, remediated in a
10 manner that protects the citizens of the State as well as
11 the environment;

12 (2) Assure that duplication of effort by State
13 agencies is minimized and that State rules are consistent
14 with federal regulations to the extent possible;

15 (3) Assure that the functions required under this
16 Title are carried out by the State government staff
17 members that are assigned and trained to handle those
18 specific functions;

19 (4) Assure that the regulated community is aware of
20 its responsibilities and obligations under law and rule.

21 (415 ILCS 5/59.1 new)

22 Sec. 59.1. Applicability.

23 (a) This Title establishes the exclusive procedures for
24 State activities related to the response to and remediation
25 of accidental or unintended releases to the environment.

26 (b) Any accidental or unintended release that is
27 reported pursuant to a federal or State reporting requirement
28 and is later, upon further investigation, determined not to
29 be subject to a reporting requirement is not an accidental or
30 unintended release for purposes of this Title.

(415 ILCS 5/59.2 new)

Sec. 59.2. Definitions. For the purposes of this Title:

"Accidental or unintended release" means any release that a person is required to report to the Illinois Emergency Management Agency pursuant to the Illinois Emergency Planning and Community Right to Know Act or the Illinois Chemical Safety Act or that a person is required to report, respond to, and remediate in accordance with federal law and regulations.

"IEMA" means the Illinois Emergency Management Agency.

"Immediate or imminent threat" means a threat that can reasonably be expected to result in the death or injury of persons or that would require the evacuation of citizens or cause irreparable damage to the environment.

"Initial response activities" means actions taken by the Agency immediately upon notification that a release has occurred and which are taken in an effort to carry out its responsibilities under subsection (b) of Section 59.3 of this Act.

(415 ILCS 5/59.3 new)

Sec 59.3. Initial response activities.

(a) IEMA shall, upon notification of an accidental or unintended release, promptly inform the Agency of that report.

(b) The Agency may at its discretion:

(1) contact the responsible official listed in the report to IEMA to determine if assistance is required or advisable;

(2) conduct on-site investigations;

(3) participate in on-site activities by establishing a physical presence at the site and providing technical assistance aimed at containing the release and by conducting initial response activities and

1 assisting local or State emergency service organizations
2 as well as the persons responsible for such release.

3 (c) At the point that a release no longer poses an
4 immediate or imminent threat to human health or the
5 environment, the initial response activities of the Agency
6 shall cease.

7 (d) The Director of the Agency shall designate an
8 organizational entity within the Agency that shall have
9 primary oversight authority over initial response activities.

10 (415 ILCS 5/59.4 new)

11 Sec 59.4. Subsequent remediation activities:

12 (a) IEMA shall review the initial and follow-up reports
13 required by the federal Emergency Planning and Community
14 Right-To-Know Act of 1986, (42 U.S.C. 11001 et seq.) and the
15 regulations thereunder and the Illinois Emergency Planning
16 and Community Right to Know Act and the rules thereunder
17 filed by a person reporting a release to determine if
18 subsequent remediation activity is warranted. Subsequent
19 remediation activity may be deemed necessary only if IEMA
20 determines that residual contamination can be reasonably
21 expected to exist in an environmental medium in such
22 quantities that a violation of Board standards is likely to
23 occur. IEMA may consult with the Agency regarding such
24 determinations. Such decisions shall be made in accordance
25 with rules adopted by the Board. Until such regulations are
26 adopted, IEMA shall use its best professional judgment.

27 (b) In the event the Agency has provided on-site
28 assistance under the provisions of subsection (b)(3) of
29 Section 59.3, the Agency may determine that subsequent
30 remediation may be necessary. Subsequent remediation activity
31 may be deemed necessary only if the Agency determines that
32 residual contamination can be reasonably expected to exist in
33 an environmental medium in such quantities that a violation

1 of Board standards is likely to occur. Such decisions shall
2 be made in accordance with rules adopted by the Board. Until
3 such rules are adopted, the Agency shall use its best
4 professional judgment.

5 (c) If IEMA or the Agency, as applicable, determines
6 that subsequent remediation activities are required, such
7 agency shall refer all records regarding the release to the
8 bureau within the Environmental Protection Agency that has
9 primary responsibility for the environmental medium most
10 affected by such release.

11 (d) Upon receipt of a referral under subsection (c) of
12 this Section or pursuant to the provisions of subsection (b),
13 the bureau of the Agency that regularly handles matters that
14 involve the medium affected by the release shall review the
15 incident and, if necessary, seek additional information to
16 determine what, if any, subsequent remediation is necessary.
17 Such information requests shall be in accordance with Board
18 rules and be limited to that which is related to the specific
19 materials released and to the area impacted by the release.

20 (e) If the Agency determines, in accordance with Board
21 rules, that subsequent remediation is necessary to assure
22 that no additional residual risk to human health or the
23 environment remains as a direct result of the release, the
24 Agency may notify the person of this determination and
25 require such remediation in accordance with rules adopted by
26 the Board. If the Agency determines that subsequent
27 remediation is necessary, a person may, within 35 days of the
28 Agency's determination, file an appeal to the Board in
29 accordance with rules to be proposed by the Agency and
30 adopted by the Board. Until rules detailing the manner in
31 which subsequent remediation must be conducted are adopted,
32 remediation of land shall be in accordance with the
33 provisions of the site remediation program. Remediation of
34 air and water shall be conducted in accordance with the best

1 professional judgment of the bureau of the Agency that
2 regularly handles matters involving the affected medium.

3 (f) Response actions that are required by and conducted
4 in accordance with federal law and regulations are not
5 subject to review by IEMA or the Agency under this Section.

6 (415 ILCS 5/59.5 new)

7 Section 59.5. Damages suffered by a private party.
8 Nothing in this Title shall preclude a private party from
9 filing a civil action against a discharger to recover costs
10 incurred by that private party as a direct result of an
11 accidental or unintended release covered by this Title.

12 (415 ILCS 5/59.6 new)

13 Section 59.6. Causation review.

14 (a) The Agency may assist a facility in assessing the
15 root cause of a release subject to the following provisions
16 of this Section. The Agency may require a facility to submit
17 for Agency review any chemical or process safety or spill
18 prevention plan that such facility is required to prepare
19 under any federal or State law, or regulation, or rule.

20 (b) The Agency may review such plans and make
21 recommendations for improvement to such plans if, in the
22 Agency's opinion, such changes would mitigate releases of the
23 type under review.

24 (c) The facility shall, within 90 days of the receipt of
25 such recommendations, either make such changes or respond to
26 the Agency as to why it believes changes are unnecessary.

27 (d) In no event shall such changes be a requirement nor
28 shall they be a mandatory part of any remediation effort
29 required by the Agency under Section 59.4.

30 (415 ILCS 5/59.7 new)

31 Section 59.7. Regulatory process.

1 (a) No later than 2 months after the effective date of
2 this amendatory Act of the 92nd General Assembly, the Agency,
3 after consideration of the recommendations of the Site
4 Remediation Advisory Committee established under Section
5 58.11 of this Act, shall propose rules implementing the
6 provisions of subsections (a), (b), and (c) of Section 59.4.
7 Within 9 months of the Board's receipt of the proposed rules,
8 the Board shall adopt, pursuant to Sections 27 and 28 of this
9 Act, rules that implement the provisions of subsections (a),
10 (b), and (c) of Section 59.4.

11 (b) The rules described in subsection (a) of this
12 Section must specify the following:

13 (1) The procedures for review of follow-up reports
14 filed by a discharger reporting a release and the
15 criteria that IEMA must utilize in order to determine
16 whether subsequent remediation is necessary.

17 (2) The procedures the Agency must follow to
18 determine whether subsequent remediation is necessary in
19 the event that the Agency has provided on-site assistance
20 under subsection (b)(3) of Section 59.3. These rules
21 must address the criteria the Agency must follow in
22 making a determination that additional remediation is
23 necessary.

24 (3) The information that the Agency may request
25 that a discharger provide regarding a release covered by
26 this Title in the event that the Agency determines that
27 subsequent remediation of a release is necessary.

28 (4) The procedures that a person must follow in
29 order to appeal a final determination of the Agency that
30 subsequent remediation of a release is necessary.

31 (415 ILCS 5/59.8 new)

32 Sec. 59.8. Enforcement.

33 (a) A release subject to the provisions of this Section

1 is not in and of itself an event that constitutes a violation
2 of this Act or any rules thereunder. A release that a person
3 is required by federal law and regulation to report, respond
4 to, and remediate does not constitute a violation of this Act
5 or rules adopted pursuant to this Act if the response and
6 remediation are conducted in accordance with federal law and
7 regulations.

8 (b) A responsible person that fails to comply with a
9 request for information from the Agency pursuant to
10 subsection (d) of Section 59.4 and the rules adopted pursuant
11 to that subsection is subject to an enforcement action under
12 this Act.

13 (c) A person that fails to take remedial action or
14 follow a remedial plan required by subsection (e) of Section
15 59.4 and the rules adopted pursuant to that subsection is
16 subject to an enforcement action under this Act.

17 (d) For enforceable events, the Agency may initiate
18 enforcement action pursuant to and in accordance with Title
19 XII of this Act.

20 (e) For purposes of subsection (c) of this Section, the
21 180 day provision in subsection (a)(1) of Section 31 shall
22 commence on the date that the Agency formally requires
23 additional remediation under subsection (e) of Section
24 59.4."