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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

May 14, 1982

FILE NO. 82-009

ENVIRONMENTAL PROTECTION:
Whether Monies from the Illinois
Hazardous Waste Fund May Be Used
As the State Match for Federal Funds
Provided for Cleanup Purposes
Pursuant to the Comprehensive
Environmental Response, Compensation and
Liability Act of 1980

Richard J. Carlson, Director
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

Dear Mr. Carlson:

I have your letter wherein you inquire whether monies from the Illinois Hazardous Waste Fund may be used as the State match for Federal funds provided pursuant to section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC § 9604) for a cleanup program at

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certain sites where hazardous wastes have been stored or disposed. For the reasons hereinafter stated, it is my opinion that, in accordance with certain statutory conditions, monies from the Illinois Hazardous Waste Fund may be used for the purpose in question.

Pursuant to section 104 of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, certain Federal monies may, upon the authorization of the President, be provided for cleanup and remedial action whenever any hazardous waste is released, where there is a substantial threat of such release into the environment or whenever there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. "Pollutant or contaminant", for the purposes of the Act, is defined in subsection 104(a)(2) thereof (42 U.S.C. §§ 9604(a)(2)). "Hazardous substance", for the purposes of the Act, is defined in subsection 101(14) thereof (42 USC §§ 9601).

Subsection 104(c)(3) of the Federal Act (42 U.S.C. §§ 9604(c)(3)) also provides in pertinent part that:

"(c)(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the

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State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act [42 USCS §§ 6921 et seq.] for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. * * *." (Emphasis added.)

Section 22.2 of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1980 Supp., ch. 111 1/2, par. 1022.2) provides in pertinent part that:

"(a) There are hereby created within the State Treasury two special funds to be known respectively as the 'Hazardous Waste Fund' and the 'Hazardous Waste Research Fund', constituted from the fees collected pursuant to this Section.

(b) The Agency shall collect, from the owner or operator of each hazardous waste disposal site, a fee in the amount of 1¢ per gallon or \$2.02 per cubic yard of hazardous waste received on and after the effective date of procedures established by the Agency under subparagraph (c) of this Section. Notwithstanding the provisions of this subsection (b) sludge from a publicly-owned sewage works generated in Illinois, coal mining wastes and refuse generated in Illinois, bottom boiler ash, flyash and flue gas desulphurization sludge from public utility electric generating facilities located in Illinois and bottom boiler ash and flyash from all incinerators which process solely municipal waste shall not be subject to the fee.

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(d) The Agency shall deposit all such receipts prior to January 1, 1981, and 75% of all such receipts thereafter in the State Treasury to the credit of the Hazardous Waste Fund established by this Act. All monies in such Fund shall be used by and under the direction of the Agency for the purpose of taking whatever preventive or corrective action is necessary or appropriate in circumstances certified by the Governor and the Director to exist at sites in which hazardous wastes have been stored or disposed which will or may cause an immediate or long-term danger to the environment or to the public health or to the welfare of the People of the State of Illinois; provided, (i) the Agency shall expend no more than \$1,000,000 on any single incident without appropriation by the General Assembly; (ii) any monies used from the fund for preventative or corrective action associated with non-permitted sites shall be reimbursed from the General Revenue Fund upon appropriation by the General Assembly. Monies in the Hazardous Waste Fund shall not be used for preventive or corrective action associated with those materials exempted from the fee in subsection (b) of this Section. Neither the State, nor the Director, nor any State employee shall be liable for any damages or injury arising out of or resulting from any action taken under this Section. The Director of the Agency is authorized to enter into such contracts and agreements as necessary and as expeditiously as necessary to carry out the Agency's duties under this subsection." (Emphasis added.)

As emphasized above, section 22.2 of the Illinois Environmental Protection Act specifically provides that "All monies in such Fund shall be used by and under the direction of the Agency for the purpose of taking whatever preventive or corrective action is necessary or appropriate in circumstances certified by the Governor and the Director to exist at sites in which hazardous wastes have been stored or disposed which will or may cause an immediate or long-term danger to the environment or to the public health or to the welfare of the People of

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the State of Illinois". Moreover, the Illinois Act specifically provides that "The Director of the Agency is authorized to enter into such contracts and agreements as necessary and as expeditiously as necessary to carry out the Agency's duties under this subsection". Because the purposes of the Federal Act and the purposes for which the Illinois Hazardous Waste Fund may be expended are compatible, it is my opinion that monies from the Illinois Hazardous Waste Fund may be used as the State match under a contract or cooperative agreement with the appropriate Federal authority.

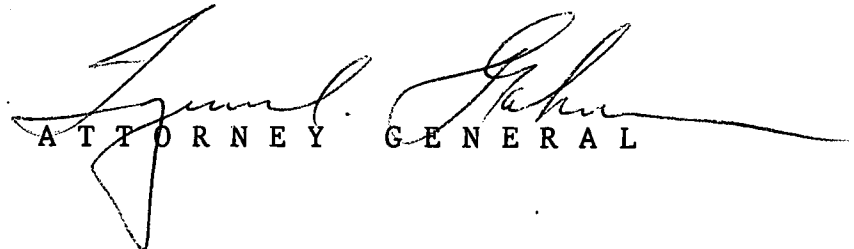
However, in subsection 22.2(d) of the Illinois Environmental Protection Act, the General Assembly has placed the following limitations on the use of monies of the Hazardous Waste Fund:

"* * * All monies in such Fund shall be used by and under the direction of the Agency for the purpose of taking whatever preventive or corrective action is necessary or appropriate in circumstances certified by the Governor and the Director to exist at sites in which hazardous wastes have been stored or disposed which will or may cause an immediate or long-term danger to the environment or to the public health or to the welfare of the People of the State of Illinois; provided, (i) the Agency shall expend no more than \$1,000,000 on any single incident without appropriation by the General Assembly; (ii) any monies used from the fund for preventative or corrective action associated with non-permitted sites shall be reimbursed from the General Revenue Fund upon appropriation by the General Assembly. Monies in the Hazardous Waste Fund shall not be used for preventive or corrective action associated with those materials exempted from the fee in subsection (b) of this Section. * * *"

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Assuming that the above limitations and conditions are observed, that the proposed preventive or corrective action involves a hazardous waste the cleanup of which is a permitted use of the Fund, and that necessary certification has been given by both the Governor and the Director of the Agency, monies in the Illinois Hazardous Waste Fund may be used pursuant to a Federal contract or cooperative agreement as the State match for funds which the Federal authorities may provide for the purpose of removal and remedial actions associated with the release or the threat of the release of hazardous wastes which pose or may cause danger to the environment or public health.

Very truly yours,


ATTORNEY GENERAL