

HB2813



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB2813

Introduced 2/22/2005, by Rep. Tom Cross

SYNOPSIS AS INTRODUCED:

415 ILCS 5/42

from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. Makes a technical change in a Section concerning civil penalties.

LRB094 09617 RSP 39871 b

A BILL FOR

1 AN ACT concerning safety.

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

4 Section 5. The Environmental Protection Act is amended by
5 changing Section 42 as follows:

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

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

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

27 (2) Any person that violates Section 12(g) of this Act
28 or any UIC permit or term or condition thereof, or any
29 filing requirement, regulation or order relating to the
30 State UIC program for all wells, except Class II wells as
31 defined by the Board under this Act, shall be liable to a
32 civil penalty not to exceed \$2,500 per day of violation;

1 provided, however, that any person who commits such
2 violations relating to the State UIC program for Class II
3 wells, as defined by the Board under this Act, shall be
4 liable to a civil penalty of not to exceed \$10,000 for the
5 violation and an additional civil penalty of not to exceed
6 \$1,000 for each day during which the violation continues.

7 (3) Any person that violates Sections 21(f), 21(g),
8 21(h) or 21(i) of this Act, or any RCRA permit or term or
9 condition thereof, or any filing requirement, regulation
10 or order relating to the State RCRA program, shall be
11 liable to a civil penalty of not to exceed \$25,000 per day
12 of violation.

13 (4) In an administrative citation action under Section
14 31.1 of this Act, any person found to have violated any
15 provision of subsection (o) of Section 21 of this Act shall
16 pay a civil penalty of \$500 for each violation of each such
17 provision, plus any hearing costs incurred by the Board and
18 the Agency. Such penalties shall be made payable to the
19 Environmental Protection Trust Fund, to be used in
20 accordance with the provisions of the Environmental
21 Protection Trust Fund Act; except that if a unit of local
22 government issued the administrative citation, 50% of the
23 civil penalty shall be payable to the unit of local
24 government.

25 (4-5) In an administrative citation action under
26 Section 31.1 of this Act, any person found to have violated
27 any provision of subsection (p) of Section 21 of this Act
28 shall pay a civil penalty of \$1,500 for each violation of
29 each such provision, plus any hearing costs incurred by the
30 Board and the Agency, except that the civil penalty amount
31 shall be \$3,000 for each violation of any provision of
32 subsection (p) of Section 21 that is the person's second or
33 subsequent adjudication violation of that provision. The
34 penalties shall be deposited into the Environmental
35 Protection Trust Fund, to be used in accordance with the
36 provisions of the Environmental Protection Trust Fund Act;

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

4 (5) Any person who violates subsection 6 of Section
5 39.5 of this Act or any CAAPP permit, or term or condition
6 thereof, or any fee or filing requirement, or any duty to
7 allow or carry out inspection, entry or monitoring
8 activities, or any regulation or order relating to the
9 CAAPP shall be liable for a civil penalty not to exceed
10 \$10,000 per day of violation.

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

25 (c) Any person that violates this Act, any rule or
26 regulation adopted under this Act, any permit or term or
27 condition of a permit, or any Board order and causes the death
28 of fish or aquatic life shall, in addition to the other
29 penalties provided by this Act, be liable to pay to the State
30 an additional sum for the reasonable value of the fish or
31 aquatic life destroyed. Any money so recovered shall be placed
32 in the Wildlife and Fish Fund in the State Treasury.

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

35 (e) The State's Attorney of the county in which the
36 violation occurred, or the Attorney General, may, at the

1 request of the Agency or on his own motion, institute a civil
2 action for an injunction, prohibitory or mandatory, to restrain
3 violations of this Act, any rule or regulation adopted under
4 this Act, any permit or term or condition of a permit, or any
5 Board order, or to require such other actions as may be
6 necessary to address violations of this Act, any rule or
7 regulation adopted under this Act, any permit or term or
8 condition of a permit, or any Board order.

9 (f) The State's Attorney of the county in which the
10 violation occurred, or the Attorney General, shall bring such
11 actions in the name of the people of the State of Illinois.
12 Without limiting any other authority which may exist for the
13 awarding of attorney's fees and costs, the Board or a court of
14 competent jurisdiction may award costs and reasonable
15 attorney's fees, including the reasonable costs of expert
16 witnesses and consultants, to the State's Attorney or the
17 Attorney General in a case where he has prevailed against a
18 person who has committed a wilful, knowing or repeated
19 violation of this Act, any rule or regulation adopted under
20 this Act, any permit or term or condition of a permit, or any
21 Board order.

22 Any funds collected under this subsection (f) in which the
23 Attorney General has prevailed shall be deposited in the
24 Hazardous Waste Fund created in Section 22.2 of this Act. Any
25 funds collected under this subsection (f) in which a State's
26 Attorney has prevailed shall be retained by the county in which
27 he serves.

28 (g) All final orders imposing civil penalties pursuant to
29 this Section shall prescribe the time for payment of such
30 penalties. If any such penalty is not paid within the time
31 prescribed, interest on such penalty at the rate set forth in
32 subsection (a) of Section 1003 of the Illinois Income Tax Act,
33 shall be paid for the period from the date payment is due until
34 the date payment is received. However, if the time for payment
35 is stayed during the pendency of an appeal, interest shall not
36 accrue during such stay.

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

6 (1) the duration and gravity of the violation;

7 (2) the presence or absence of due diligence on the
8 part of the respondent in attempting to comply with
9 requirements of this Act and regulations thereunder or to
10 secure relief therefrom as provided by this Act;

11 (3) any economic benefits accrued by the respondent
12 because of delay in compliance with requirements, in which
13 case the economic benefits shall be determined by the
14 lowest cost alternative for achieving compliance;

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

19 (5) the number, proximity in time, and gravity of
20 previously adjudicated violations of this Act by the
21 respondent;

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

25 (7) whether the respondent has agreed to undertake a
26 "supplemental environmental project," which means an
27 environmentally beneficial project that a respondent
28 agrees to undertake in settlement of an enforcement action
29 brought under this Act, but which the respondent is not
30 otherwise legally required to perform.

31 In determining the appropriate civil penalty to be imposed
32 under subsection (a) or paragraph (1), (2), (3), or (5) of
33 subsection (b) of this Section, the Board shall ensure, in all
34 cases, that the penalty is at least as great as the economic
35 benefits, if any, accrued by the respondent as a result of the
36 violation, unless the Board finds that imposition of such

1 penalty would result in an arbitrary or unreasonable financial
2 hardship. However, such civil penalty may be off-set in whole
3 or in part pursuant to a supplemental environmental project
4 agreed to by the complainant and the respondent.

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

10 (1) that the non-compliance was discovered through an
11 environmental audit, as defined in Section 52.2 of this
12 Act, and the person waives the environmental audit
13 privileges as provided in that Section with respect to that
14 non-compliance;

15 (2) that the non-compliance was disclosed in writing
16 within 30 days of the date on which the person discovered
17 it;

18 (3) that the non-compliance was discovered and
19 disclosed prior to:

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

22 (ii) notice of a citizen suit;

23 (iii) the filing of a complaint by a citizen, the
24 Illinois Attorney General, or the State's Attorney of
25 the county in which the violation occurred;

26 (iv) the reporting of the non-compliance by an
27 employee of the person without that person's
28 knowledge; or

29 (v) imminent discovery of the non-compliance by
30 the Agency;

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

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

35 (6) that no related non-compliance events have
36 occurred in the past 3 years at the same facility or in the

1 past 5 years as part of a pattern at multiple facilities
2 owned or operated by the person;

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

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

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

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

19 (Source: P.A. 93-152, eff. 7-10-03; 93-575, eff. 1-1-04;
20 93-831, eff. 7-28-04.)