

**SB1039**



**94TH GENERAL ASSEMBLY**

**State of Illinois**

**2005 and 2006**

**SB1039**

Introduced 2/18/2005, by Sen. James F. Clayborne, Jr. - Emil Jones, Jr.

**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 04719 RSP 34748 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.)