



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2950

Introduced 2/18/2016, by Sen. Heather A. Steans

SYNOPSIS AS INTRODUCED:

415 ILCS 5/5	from Ch. 111 1/2, par. 1005
415 ILCS 5/29	from Ch. 111 1/2, par. 1029
415 ILCS 5/41	from Ch. 111 1/2, par. 1041
415 ILCS 5/42	from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. Provides that the Board may employ one assistant for each member, and 2 assistants for the Chairman. Provides that special meetings of the Board may be called by the Chairman or by any 2 Board members, upon delivery of 48 (instead of 24) hours written notice to the office of each member. Provides that all Board meetings shall be open to the public, and public notice of all meetings shall be given at least 48 (instead of 24) hours in advance of each meeting. Provides that 3 (instead of 4) members of the Board shall constitute a quorum to transact business; and the affirmative vote of 3 members is necessary to adopt any order. Makes changes concerning judicial review of final orders by the Board. Updates a Public Act reference and deletes obsolete language. Effective immediately.

LRB099 18493 MGM 42872 b

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 Sections 5, 29, 41, and 42 as follows:

6 (415 ILCS 5/5) (from Ch. 111 1/2, par. 1005)

7 Sec. 5. Pollution Control Board.

8 (a) There is hereby created an independent board to be
9 known as the Pollution Control Board.

10 ~~Until July 1, 2003 or when all of the new members to be~~
11 ~~initially appointed under this amendatory Act of the 93rd~~
12 ~~General Assembly have been appointed by the Governor, whichever~~
13 ~~occurs later, the Board shall consist of 7 technically~~
14 ~~qualified members, no more than 4 of whom may be of the same~~
15 ~~political party, to be appointed by the Governor with the~~
16 ~~advice and consent of the Senate.~~

17 ~~The term of each appointed member of the Board who is in~~
18 ~~office on June 30, 2003 shall terminate at the close of~~
19 ~~business on that date or when all of the new members to be~~
20 ~~initially appointed under this amendatory Act of the 93rd~~
21 ~~General Assembly have been appointed by the Governor, whichever~~
22 ~~occurs later.~~

23 On and after August 11, 2003 (the effective date of Public

1 ~~Act 93-509), the Beginning on July 1, 2003 or when all of the~~
2 ~~new members to be initially appointed under this amendatory Act~~
3 ~~of the 93rd General Assembly have been appointed by the~~
4 ~~Governor, whichever occurs later, the Board shall consist of 5~~
5 technically qualified members, no more than 3 of whom may be of
6 the same political party, to be appointed by the Governor with
7 the advice and consent of the Senate. Members shall have
8 verifiable technical, academic, or actual experience in the
9 field of pollution control or environmental law and regulation.

10 One member ~~Of the members initially appointed pursuant to~~
11 ~~this amendatory Act of the 93rd General Assembly, one shall be~~
12 appointed for a term ending July 1, 2004, 2 shall be appointed
13 for terms ending July 1, 2005, and 2 shall be appointed for
14 terms ending July 1, 2006. Thereafter, all members shall hold
15 office for 3 years from the first day of July in the year in
16 which they were appointed, except in case of an appointment to
17 fill a vacancy. In case of a vacancy in the office when the
18 Senate is not in session, the Governor may make a temporary
19 appointment until the next meeting of the Senate, when he or
20 she shall nominate some person to fill such office; and any
21 person so nominated, who is confirmed by the Senate, shall hold
22 the office during the remainder of the term.

23 Members of the Board shall hold office until their
24 respective successors have been appointed and qualified. Any
25 member may resign from office, such resignation to take effect
26 when a successor has been appointed and has qualified.

1 Board members shall be paid \$37,000 per year or an amount
2 set by the Compensation Review Board, whichever is greater, and
3 the Chairman shall be paid \$43,000 per year or an amount set by
4 the Compensation Review Board, whichever is greater. Each
5 member shall devote his or her entire time to the duties of the
6 office, and shall hold no other office or position of profit,
7 nor engage in any other business, employment, or vocation. Each
8 member shall be reimbursed for expenses necessarily incurred
9 and shall make a financial disclosure upon appointment.

10 ~~The Each Board member~~ may employ ~~one secretary and one~~
11 assistant for each member, and 2 assistants for the Chairman
12 ~~one secretary and 2 assistants~~. The Board also may employ and
13 compensate hearing officers to preside at hearings under this
14 Act, and such other personnel as may be necessary. Hearing
15 officers shall be attorneys licensed to practice law in
16 Illinois.

17 The Board may have an Executive Director; if so, the
18 Executive Director shall be appointed by the Governor with the
19 advice and consent of the Senate. The salary and duties of the
20 Executive Director shall be fixed by the Board.

21 The Governor shall designate one Board member to be
22 Chairman, who shall serve at the pleasure of the Governor.

23 The Board shall hold at least one meeting each month and
24 such additional meetings as may be prescribed by Board rules.
25 In addition, special meetings may be called by the Chairman or
26 by any 2 Board members, upon delivery of 48 ~~24~~ hours written

1 notice to the office of each member. All Board meetings shall
2 be open to the public, and public notice of all meetings shall
3 be given at least 48 ~~24~~ hours in advance of each meeting. In
4 emergency situations in which a majority of the Board certifies
5 that exigencies of time require the requirements of public
6 notice and of 24 hour written notice to members may be
7 dispensed with, and Board members shall receive such notice as
8 is reasonable under the circumstances.

9 Three ~~If there is no vacancy on the Board,~~ 4 members of the
10 Board shall constitute a quorum to transact business; and the
11 affirmative vote of 3 members is necessary to adopt any order
12 ~~otherwise, a majority of the Board shall constitute a quorum to~~
13 ~~transact business, and no vacancy shall impair the right of the~~
14 ~~remaining members to exercise all of the powers of the Board.~~
15 ~~Every action approved by a majority of the members of the Board~~
16 ~~shall be deemed to be the action of the Board.~~ The Board shall
17 keep a complete and accurate record of all its meetings.

18 (b) The Board shall determine, define and implement the
19 environmental control standards applicable in the State of
20 Illinois and may adopt rules and regulations in accordance with
21 Title VII of this Act.

22 (c) The Board shall have authority to act for the State in
23 regard to the adoption of standards for submission to the
24 United States under any federal law respecting environmental
25 protection. Such standards shall be adopted in accordance with
26 Title VII of the Act and upon adoption shall be forwarded to

1 the Environmental Protection Agency for submission to the
2 United States pursuant to subsections (l) and (m) of Section 4
3 of this Act. Nothing in this paragraph shall limit the
4 discretion of the Governor to delegate authority granted to the
5 Governor under any federal law.

6 (d) The Board shall have authority to conduct proceedings
7 upon complaints charging violations of this Act, any rule or
8 regulation adopted under this Act, any permit or term or
9 condition of a permit, or any Board order; upon administrative
10 citations; upon petitions for variances or adjusted standards;
11 upon petitions for review of the Agency's final determinations
12 on permit applications in accordance with Title X of this Act;
13 upon petitions to remove seals under Section 34 of this Act;
14 and upon other petitions for review of final determinations
15 which are made pursuant to this Act or Board rule and which
16 involve a subject which the Board is authorized to regulate.
17 The Board may also conduct other proceedings as may be provided
18 by this Act or any other statute or rule.

19 (e) In connection with any proceeding pursuant to
20 subsection (b) or (d) of this Section, the Board may subpoena
21 and compel the attendance of witnesses and the production of
22 evidence reasonably necessary to resolution of the matter under
23 consideration. The Board shall issue such subpoenas upon the
24 request of any party to a proceeding under subsection (d) of
25 this Section or upon its own motion.

26 (f) The Board may prescribe reasonable fees for permits

1 required pursuant to this Act. Such fees in the aggregate may
2 not exceed the total cost to the Agency for its inspection and
3 permit systems. The Board may not prescribe any permit fees
4 which are different in amount from those established by this
5 Act.

6 (Source: P.A. 95-331, eff. 8-21-07.)

7 (415 ILCS 5/29) (from Ch. 111 1/2, par. 1029)

8 Sec. 29. (a) Any person adversely affected or threatened by
9 any rule or regulation of the Board may obtain a determination
10 of the validity or application of such rule or regulation by
11 petition ~~for review~~ under Section 41 of this Act for judicial
12 review of the Board's final order adopting the rule or
13 regulation. The effective date of the rule or regulation
14 pursuant to the Illinois Administrative Procedure Act is deemed
15 to be the date of service of the Board's final order for
16 purposes of judicial review under Section 41 of this Act.

17 (b) Action by the Board in adopting any regulation for
18 which judicial review could have been obtained under Section 41
19 of this Act shall not be subject to review regarding the
20 regulation's validity or application in any subsequent
21 proceeding under Title VIII, Title IX or Section 40 of this
22 Act.

23 (Source: P.A. 85-1048.)

24 (415 ILCS 5/41) (from Ch. 111 1/2, par. 1041)

1 Sec. 41. Judicial review.

2 (a) Any party to a Board hearing, any person who filed a
3 complaint on which a hearing was denied, any person who has
4 been denied a variance or permit under this Act, any party
5 adversely affected by a final order or determination of the
6 Board, and any person who participated in the public comment
7 process under subsection (8) of Section 39.5 of this Act may
8 obtain judicial review, by filing a petition for review within
9 35 days from the date that a copy of the order or other final
10 action sought to be reviewed was served upon the party affected
11 by the order or other final Board action complained of, under
12 the provisions of the Administrative Review Law, as amended and
13 the rules adopted pursuant thereto, except that review shall be
14 afforded directly in the Appellate Court for the District in
15 which the cause of action arose and not in the Circuit Court.
16 For purposes of this subsection (a), the date of service of the
17 Board's final order is the date on which the party received a
18 copy of the order from the Board. Review of any rule or
19 regulation promulgated by the Board shall not be limited by
20 this section but may also be had as provided in Section 29 of
21 this Act.

22 (b) Any final order of the Board under this Act shall be
23 based solely on the evidence in the record of the particular
24 proceeding involved, and any such final order for permit
25 appeals, enforcement actions and variance proceedings, shall
26 be invalid if it is against the manifest weight of the

1 evidence. Notwithstanding this subsection, the Board may
2 include such conditions in granting a variance and may adopt
3 such rules and regulations as the policies of this Act may
4 require. If an objection is made to a variance condition, the
5 board shall reconsider the condition within not more than 75
6 days from the date of the objection.

7 (c) No challenge to the validity of a Board order shall be
8 made in any enforcement proceeding under Title XII of this Act
9 as to any issue that could have been raised in a timely
10 petition for review under this Section.

11 (d) If there is no final action by the Board within 120
12 days on a request for a variance which is subject to subsection
13 (c) of Section 38 or a permit appeal which is subject to
14 paragraph (a) (3) of Section 40 or paragraph (d) of Section
15 40.2 or Section 40.3, the petitioner shall be entitled to an
16 Appellate Court order under this subsection. If a hearing is
17 required under this Act and was not held by the Board, the
18 Appellate Court shall order the Board to conduct such a
19 hearing, and to make a decision within 90 days from the date of
20 the order. If a hearing was held by the Board, or if a hearing
21 is not required under this Act and was not held by the Board,
22 the Appellate Court shall order the Board to make a decision
23 within 90 days from the date of the order.

24 The Appellate Court shall retain jurisdiction during the
25 pendency of any further action conducted by the Board under an
26 order by the Appellate Court. The Appellate Court shall have

1 jurisdiction to review all issues of law and fact presented
2 upon appeal.

3 (Source: P.A. 99-463, eff. 1-1-16.)

4 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

5 Sec. 42. Civil penalties.

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

18 (b) Notwithstanding the provisions of subsection (a) of
19 this Section:

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

25 (2) Any person that violates Section 12(g) of this Act

1 or any UIC permit or term or condition thereof, or any
2 filing requirement, regulation or order relating to the
3 State UIC program for all wells, except Class II wells as
4 defined by the Board under this Act, shall be liable to a
5 civil penalty not to exceed \$2,500 per day of violation;
6 provided, however, that any person who commits such
7 violations relating to the State UIC program for Class II
8 wells, as defined by the Board under this Act, shall be
9 liable to a civil penalty of not to exceed \$10,000 for the
10 violation and an additional civil penalty of not to exceed
11 \$1,000 for each day during which the violation continues.

12 (3) Any person that violates Sections 21(f), 21(g),
13 21(h) or 21(i) of this Act, or any RCRA permit or term or
14 condition thereof, or any filing requirement, regulation
15 or order relating to the State RCRA program, shall be
16 liable to a civil penalty of not to exceed \$25,000 per day
17 of violation.

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

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

4 (4-5) In an administrative citation action under
5 Section 31.1 of this Act, any person found to have violated
6 any provision of subsection (p) of Section 21, Section
7 22.51, Section 22.51a, or subsection (k) of Section 55 of
8 this Act shall pay a civil penalty of \$1,500 for each
9 violation of each such provision, plus any hearing costs
10 incurred by the Board and the Agency, except that the civil
11 penalty amount shall be \$3,000 for each violation of any
12 provision of subsection (p) of Section 21, Section 22.51,
13 Section 22.51a, or subsection (k) of Section 55 that is the
14 person's second or subsequent adjudication violation of
15 that provision. The penalties shall be deposited into the
16 Environmental Protection Trust Fund, to be used in
17 accordance with the provisions of the Environmental
18 Protection Trust Fund Act; except that if a unit of local
19 government issued the administrative citation, 50% of the
20 civil penalty shall be payable to the unit of local
21 government.

22 (5) Any person who violates subsection 6 of Section
23 39.5 of this Act or any CAAPP permit, or term or condition
24 thereof, or any fee or filing requirement, or any duty to
25 allow or carry out inspection, entry or monitoring
26 activities, or any regulation or order relating to the

1 CAAPP shall be liable for a civil penalty not to exceed
2 \$10,000 per day of violation.

3 (6) Any owner or operator of a community water system
4 that violates subsection (b) of Section 18.1 or subsection
5 (a) of Section 25d-3 of this Act shall, for each day of
6 violation, be liable for a civil penalty not to exceed \$5
7 for each of the premises connected to the affected
8 community water system.

9 (7) Any person who violates Section 52.5 of this Act
10 shall be liable for a civil penalty of up to \$1,000 for the
11 first violation of that Section and a civil penalty of up
12 to \$2,500 for a second or subsequent violation of that
13 Section.

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

1 Inspection Fund.

2 (c) Any person that violates this Act, any rule or
3 regulation adopted under this Act, any permit or term or
4 condition of a permit, or any Board order and causes the death
5 of fish or aquatic life shall, in addition to the other
6 penalties provided by this Act, be liable to pay to the State
7 an additional sum for the reasonable value of the fish or
8 aquatic life destroyed. Any money so recovered shall be placed
9 in the Wildlife and Fish Fund in the State Treasury.

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

12 (e) The State's Attorney of the county in which the
13 violation occurred, or the Attorney General, may, at the
14 request of the Agency or on his own motion, institute a civil
15 action for an injunction, prohibitory or mandatory, to restrain
16 violations of this Act, any rule or regulation adopted under
17 this Act, any permit or term or condition of a permit, or any
18 Board order, or to require such other actions as may be
19 necessary to address violations of this Act, any rule or
20 regulation adopted under this Act, any permit or term or
21 condition of a permit, or any Board order.

22 (f) The State's Attorney of the county in which the
23 violation occurred, or the Attorney General, shall bring such
24 actions in the name of the people of the State of Illinois.
25 Without limiting any other authority which may exist for the
26 awarding of attorney's fees and costs, the Board or a court of

1 competent jurisdiction may award costs and reasonable
2 attorney's fees, including the reasonable costs of expert
3 witnesses and consultants, to the State's Attorney or the
4 Attorney General in a case where he has prevailed against a
5 person who has committed a wilful, knowing or repeated
6 violation of this Act, any rule or regulation adopted under
7 this Act, any permit or term or condition of a permit, or any
8 Board order.

9 Any funds collected under this subsection (f) in which the
10 Attorney General has prevailed shall be deposited in the
11 Hazardous Waste Fund created in Section 22.2 of this Act. Any
12 funds collected under this subsection (f) in which a State's
13 Attorney has prevailed shall be retained by the county in which
14 he serves.

15 (g) All final orders imposing civil penalties pursuant to
16 this Section shall prescribe the time for payment of such
17 penalties. If any such penalty is not paid within the time
18 prescribed, interest on such penalty at the rate set forth in
19 subsection (a) of Section 1003 of the Illinois Income Tax Act,
20 shall be paid for the period from the date payment is due until
21 the date payment is received. However, if the time for payment
22 is stayed during the pendency of an appeal, interest shall not
23 accrue during such stay.

24 (h) In determining the appropriate civil penalty to be
25 imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), ~~or~~
26 (b)(5), (b)(6), or (b)(7) of this Section, the Board is

1 authorized to consider any matters of record in mitigation or
2 aggravation of penalty, including but not limited to the
3 following factors:

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

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

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

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

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

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

23 (7) whether the respondent has agreed to undertake a
24 "supplemental environmental project," which means an
25 environmentally beneficial project that a respondent
26 agrees to undertake in settlement of an enforcement action

1 brought under this Act, but which the respondent is not
2 otherwise legally required to perform; and

3 (8) whether the respondent has successfully completed
4 a Compliance Commitment Agreement under subsection (a) of
5 Section 31 of this Act to remedy the violations that are
6 the subject of the complaint.

7 In determining the appropriate civil penalty to be imposed
8 under subsection (a) or paragraph (1), (2), (3), ~~or (5)~~, (6),
9 or (7) of subsection (b) of this Section, the Board shall
10 ensure, in all cases, that the penalty is at least as great as
11 the economic benefits, if any, accrued by the respondent as a
12 result of the violation, unless the Board finds that imposition
13 of such penalty would result in an arbitrary or unreasonable
14 financial hardship. However, such civil penalty may be off-set
15 in whole or in part pursuant to a supplemental environmental
16 project agreed to by the complainant and the respondent.

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

22 (1) that the non-compliance was discovered through an
23 environmental audit or a compliance management system
24 documented by the regulated entity as reflecting the
25 regulated entity's due diligence in preventing, detecting,
26 and correcting violations;

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

4 (3) that the non-compliance was discovered and
5 disclosed prior to:

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

8 (ii) notice of a citizen suit;

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

12 (iv) the reporting of the non-compliance by an
13 employee of the person without that person's
14 knowledge; or

15 (v) imminent discovery of the non-compliance by
16 the Agency;

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

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

21 (6) that no related non-compliance events have
22 occurred in the past 3 years at the same facility or in the
23 past 5 years as part of a pattern at multiple facilities
24 owned or operated by the person;

25 (7) that the non-compliance did not result in serious
26 actual harm or present an imminent and substantial

1 endangerment to human health or the environment or violate
2 the specific terms of any judicial or administrative order
3 or consent agreement;

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

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

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

15 (j) In addition to any other remedy or penalty that may
16 apply, whether civil or criminal, any person who violates
17 Section 22.52 of this Act shall be liable for an additional
18 civil penalty of up to 3 times the gross amount of any
19 pecuniary gain resulting from the violation.

20 (k) In addition to any other remedy or penalty that may
21 apply, whether civil or criminal, any person who violates
22 subdivision (a) (7.6) of Section 31 of this Act shall be liable
23 for an additional civil penalty of \$2,000.

24 (Source: P.A. 97-519, eff. 8-23-11; 98-638, eff. 1-1-15.)

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