



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5299

by Rep. Christian L. Mitchell

SYNOPSIS AS INTRODUCED:

415 ILCS 5/30
415 ILCS 5/31

from Ch. 111 1/2, par. 1030
from Ch. 111 1/2, par. 1031

Amends the Enforcement Title of the Environmental Protection Act. Provides that the Environmental Protection Agency shall cause investigations to be made as a result of the Agency's own investigation or knowledge. Provides that in all cases in which an alleged violation may have a continuing effect on the environment, the Agency shall promptly notify the Attorney General and the State's Attorney for the county in which the alleged violation is occurring. Provides that in all cases the Agency shall refer to the Attorney General and the State's Attorney of the county in which the alleged violation occurred information regarding the violation if a violation is continuing to occur or a penalty for past violations may be appropriate. Makes corresponding and other changes. Effective immediately.

LRB100 20112 MJP 35395 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 30 and 31 as follows:

6 (415 ILCS 5/30) (from Ch. 111 1/2, par. 1030)

7 Sec. 30. Investigations. The Agency shall cause
8 investigations to be made upon the request of the Board, as a
9 result of the Agency's own investigation or knowledge, or upon
10 receipt of information concerning an alleged violation of this
11 Act, any rule or regulation adopted under this Act, any permit
12 or term or condition of a permit, or any Board order, and may
13 cause to be made such other investigations as it shall deem
14 advisable. In all cases in which the alleged violation may have
15 a continuing effect on the environment, the Agency shall
16 promptly notify the Attorney General and the State's Attorney
17 for the county in which the alleged violation is occurring.

18 (Source: P.A. 92-574, eff. 6-26-02; 93-152, eff. 7-10-03.)

19 (415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)

20 Sec. 31. Notice; complaint; hearing.

21 (a) (1) Within 180 days after becoming aware of an alleged
22 violation of the Act, any rule adopted under the Act, a

1 permit granted by the Agency, or a condition of such a
2 permit, the Agency shall issue and serve, by certified
3 mail, upon the person complained against a written notice
4 informing that person that the Agency has evidence of the
5 alleged violation. At a minimum, the written notice shall
6 contain:

7 (A) a notification to the person complained
8 against of the requirement to submit a written response
9 addressing the violations alleged and the option to
10 meet with appropriate agency personnel to resolve any
11 alleged violations that could lead to the filing of a
12 formal complaint;

13 (B) a detailed explanation by the Agency of the
14 violations alleged;

15 (C) an explanation by the Agency of the actions
16 that the Agency believes may resolve the alleged
17 violations, including an estimate of a reasonable time
18 period for the person complained against to complete
19 the suggested resolution; and

20 (D) an explanation of any alleged violation that
21 the Agency believes cannot be resolved without the
22 involvement of the Office of the Illinois Attorney
23 General or the State's Attorney of the county in which
24 the alleged violation occurred and the basis for the
25 Agency's belief.

26 (2) A written response to the violations alleged shall

1 be submitted to the Agency, by certified mail, within 45
2 days after receipt of notice by the person complained
3 against, unless the Agency agrees to an extension. The
4 written response shall include:

5 (A) information in rebuttal, explanation or
6 justification of each alleged violation;

7 (B) if the person complained against desires to
8 enter into a Compliance Commitment Agreement, proposed
9 terms for a Compliance Commitment Agreement that
10 includes specified times for achieving each commitment
11 and which may consist of a statement indicating that
12 the person complained against believes that compliance
13 has been achieved; and

14 (C) a request for a meeting with appropriate Agency
15 personnel if a meeting is desired by the person
16 complained against.

17 (3) If the person complained against fails to respond
18 in accordance with the requirements of subdivision (2) of
19 this subsection (a), the failure to respond shall be
20 considered a waiver of the requirements of this subsection
21 (a) and nothing in this Section shall preclude the Agency
22 from proceeding pursuant to subsection (b) of this Section.

23 (4) A meeting requested pursuant to subdivision (2) of
24 this subsection (a) shall be held ~~without a representative~~
25 ~~of the Office of the Illinois Attorney General or the~~
26 ~~State's Attorney of the county in which the alleged~~

1 ~~violation occurred~~, within 60 days after receipt of notice
2 by the person complained against, unless the Agency agrees
3 to a postponement. At the meeting, the Agency shall provide
4 an opportunity for the person complained against to respond
5 to each alleged violation, suggested resolution, and
6 suggested implementation time frame, and to suggest
7 alternate resolutions.

8 (5) If a meeting requested pursuant to subdivision (2)
9 of this subsection (a) is held, the person complained
10 against shall, within 21 days following the meeting or
11 within an extended time period as agreed to by the Agency,
12 submit by certified mail to the Agency a written response
13 to the alleged violations. The written response shall
14 include:

15 (A) additional information in rebuttal,
16 explanation, or justification of each alleged
17 violation;

18 (B) if the person complained against desires to
19 enter into a Compliance Commitment Agreement, proposed
20 terms for a Compliance Commitment Agreement that
21 includes specified times for achieving each commitment
22 and which may consist of a statement indicating that
23 the person complained against believes that compliance
24 has been achieved; and

25 (C) a statement indicating that, should the person
26 complained against so wish, the person complained

1 against chooses to rely upon the initial written
2 response submitted pursuant to subdivision (2) of this
3 subsection (a).

4 (6) If the person complained against fails to respond
5 in accordance with the requirements of subdivision (5) of
6 this subsection (a), the failure to respond shall be
7 considered a waiver of the requirements of this subsection
8 (a) and nothing in this Section shall preclude the Agency
9 from proceeding pursuant to subsection (b) of this Section.

10 (7) Within 30 days after the Agency's receipt of a
11 written response submitted by the person complained
12 against pursuant to subdivision (2) of this subsection (a)
13 if a meeting is not requested or pursuant to subdivision
14 (5) of this subsection (a) if a meeting is held, or within
15 a later time period as agreed to by the Agency and the
16 person complained against, the Agency shall issue and
17 serve, by certified mail, upon the person complained
18 against (i) a proposed Compliance Commitment Agreement or
19 (ii) a notice that one or more violations cannot be
20 resolved without the involvement of the Office of the
21 Attorney General or the State's Attorney of the county in
22 which the alleged violation occurred and that no proposed
23 Compliance Commitment Agreement will be issued by the
24 Agency for those violations. The Agency shall include terms
25 and conditions in the proposed Compliance Commitment
26 Agreement that are, in its discretion, necessary to bring

1 the person complained against into compliance with the Act,
2 any rule adopted under the Act, any permit granted by the
3 Agency, or any condition of such a permit. The Agency shall
4 take into consideration the proposed terms for the proposed
5 Compliance Commitment Agreement that were provided under
6 subdivision (a) (2) (B) or (a) (5) (B) of this Section by the
7 person complained against.

8 (7.5) Within 30 days after the receipt of the Agency's
9 proposed Compliance Commitment Agreement by the person
10 complained against, the person shall either (i) agree to
11 and sign the proposed Compliance Commitment Agreement
12 provided by the Agency and submit the signed Compliance
13 Commitment Agreement to the Agency by certified mail or
14 (ii) notify the Agency in writing by certified mail of the
15 person's rejection of the proposed Compliance Commitment
16 Agreement. If the person complained against fails to
17 respond to the proposed Compliance Commitment Agreement
18 within 30 days as required under this paragraph, the
19 proposed Compliance Commitment Agreement is deemed
20 rejected by operation of law. Any Compliance Commitment
21 Agreement entered into under item (i) of this paragraph may
22 be amended subsequently in writing by mutual agreement
23 between the Agency and the signatory to the Compliance
24 Commitment Agreement, the signatory's legal
25 representative, or the signatory's agent.

26 (7.6) No person shall violate the terms or conditions

1 of a Compliance Commitment Agreement entered into under
2 subdivision (a)(7.5) of this Section. Successful
3 completion of a Compliance Commitment Agreement or an
4 amended Compliance Commitment Agreement shall be a factor
5 to be weighed, in favor of the person completing the
6 Agreement, by the Office of the Illinois Attorney General
7 in determining whether to file a complaint for the
8 violations that were the subject of the Agreement.

9 (8) In all cases the Agency shall refer to the Attorney
10 General and the State's Attorney of the county in which the
11 alleged violation occurred information regarding the
12 violation if a violation is continuing to occur or a
13 penalty for past violations may be appropriate. Nothing in
14 this subsection (a) is intended to require the Agency to
15 enter into Compliance Commitment Agreements for any
16 alleged violation that the Agency believes cannot be
17 resolved without the involvement of the Office of the
18 Attorney General or the State's Attorney of the county in
19 which the alleged violation occurred, for, among other
20 purposes, the imposition of statutory penalties.

21 (9) (Blank). ~~The Agency's failure to respond within 30~~
22 ~~days to a written response submitted pursuant to~~
23 ~~subdivision (2) of this subsection (a) if a meeting is not~~
24 ~~requested or pursuant to subdivision (5) of this subsection~~
25 ~~(a) if a meeting is held, or within the time period~~
26 ~~otherwise agreed to in writing by the Agency and the person~~

1 ~~complained against, shall be deemed an acceptance by the~~
2 ~~Agency of the proposed terms of the Compliance Commitment~~
3 ~~Agreement for the violations alleged in the written notice~~
4 ~~issued under subdivision (1) of this subsection (a) as~~
5 ~~contained within the written response.~~

6 (10) Nothing ~~If the person complained against complies~~
7 ~~with the terms of a Compliance Commitment Agreement~~
8 ~~accepted pursuant to this subsection (a), the Agency shall~~
9 ~~not refer the alleged violations which are the subject of~~
10 ~~the Compliance Commitment Agreement to the Office of the~~
11 ~~Illinois Attorney General or the State's Attorney of the~~
12 ~~county in which the alleged violation occurred. However,~~
13 ~~nothing~~ in this subsection is intended to preclude the
14 Agency from continuing negotiations with the person
15 complained against or from proceeding pursuant to the
16 provisions of subsection (b) of this Section for alleged
17 violations that remain the subject of disagreement between
18 the Agency and the person complained against following
19 fulfillment of the requirements of this subsection (a).

20 (11) Nothing in this subsection (a) is intended to
21 preclude the person complained against from submitting to
22 the Agency, by certified mail, at any time, notification
23 that the person complained against consents to waiver of
24 the requirements of subsections (a) and (b) of this
25 Section.

26 (12) The Agency shall have the authority to adopt rules

1 for the administration of subsection (a) of this Section.
2 The rules shall be adopted in accordance with the
3 provisions of the Illinois Administrative Procedure Act.

4 (b) For alleged violations that remain the subject of
5 disagreement between the Agency and the person complained
6 against following fulfillment of the requirements of
7 subsection (a) of this Section, and for alleged violations of
8 the terms or conditions of a Compliance Commitment Agreement
9 entered into under subdivision (a) (7.5) of this Section as well
10 as the alleged violations that are the subject of the
11 Compliance Commitment Agreement, ~~and as a precondition to the~~
12 ~~Agency's referral or request to the Office of the Illinois~~
13 ~~Attorney General or the State's Attorney of the county in which~~
14 ~~the alleged violation occurred for legal representation~~
15 ~~regarding an alleged violation that may be addressed pursuant~~
16 ~~to subsection (c) or (d) of this Section or pursuant to Section~~
17 ~~42 of this Act, the Agency shall issue and serve, by certified~~
18 ~~mail, upon the person complained against a written notice~~
19 ~~informing that person that the Agency intends to pursue legal~~
20 ~~action. Such notice shall notify the person complained against~~
21 ~~of the violations to be alleged and offer the person an~~
22 ~~opportunity to meet with appropriate Agency personnel in an~~
23 ~~effort to resolve any alleged violations that could lead to the~~
24 ~~filing of a formal complaint. The meeting with Agency personnel~~
25 ~~shall be held within 30 days after receipt of notice served~~
26 ~~pursuant to this subsection upon the person complained against,~~

1 ~~unless the Agency agrees to a postponement or the person~~
2 ~~notifies the Agency that he or she will not appear at a meeting~~
3 ~~within the 30 day time period. Nothing in this subsection is~~
4 ~~intended to preclude the Agency from following the provisions~~
5 ~~of subsection (c) or (d) of this Section or from requesting the~~
6 ~~legal representation of the Office of the Illinois Attorney~~
7 ~~General or the State's Attorney of the county in which the~~
8 ~~alleged violations occurred for alleged violations which~~
9 ~~remain the subject of disagreement between the Agency and the~~
10 ~~person complained against after the provisions of this~~
11 ~~subsection are fulfilled.~~

12 (c) (1) For alleged violations, ~~which remain the subject of~~
13 ~~disagreement between the Agency and the person complained~~
14 ~~against following waiver pursuant to subdivision (10) of~~
15 ~~subsection (a) of this Section or fulfillment of the~~
16 ~~requirements of subsections (a) and (b) of this Section,~~
17 the Office of the Illinois Attorney General or the State's
18 Attorney of the county in which the alleged violation
19 occurred shall issue and serve upon the person complained
20 against a written notice, together with a formal complaint,
21 which shall specify the provision of the Act, rule,
22 regulation, permit, or term or condition thereof under
23 which such person is said to be in violation and a
24 statement of the manner in and the extent to which such
25 person is said to violate the Act, rule, regulation,
26 permit, or term or condition thereof and shall require the

1 person so complained against to answer the charges of such
2 formal complaint at a hearing before the Board at a time
3 not less than 21 days after the date of notice by the
4 Board, except as provided in Section 34 of this Act. Such
5 complaint shall be accompanied by a notification to the
6 defendant that financing may be available, through the
7 Illinois Environmental Facilities Financing Act, to
8 correct such violation. A copy of such notice of such
9 hearings shall also be sent to any person that has
10 complained to the Agency respecting the respondent within
11 the six months preceding the date of the complaint, and to
12 any person in the county in which the offending activity
13 occurred that has requested notice of enforcement
14 proceedings; 21 days notice of such hearings shall also be
15 published in a newspaper of general circulation in such
16 county. The respondent may file a written answer, and at
17 such hearing the rules prescribed in Sections 32 and 33 of
18 this Act shall apply. In the case of actual or threatened
19 acts outside Illinois contributing to environmental damage
20 in Illinois, the extraterritorial service-of-process
21 provisions of Sections 2-208 and 2-209 of the Code of Civil
22 Procedure shall apply.

23 With respect to notices served pursuant to this
24 subsection (c)(1) that involve hazardous material or
25 wastes in any manner, the Agency shall annually publish a
26 list of all such notices served. The list shall include the

1 date the investigation commenced, the date notice was sent,
2 the date the matter was referred to the Attorney General,
3 if applicable, and the current status of the matter.

4 (2) Notwithstanding the provisions of subdivision (1)
5 of this subsection (c), whenever a complaint has been filed
6 on behalf of the Agency or by the People of the State of
7 Illinois, the parties may file with the Board a stipulation
8 and proposal for settlement accompanied by a request for
9 relief from the requirement of a hearing pursuant to
10 subdivision (1). Unless the Board, in its discretion,
11 concludes that a hearing will be held, the Board shall
12 cause notice of the stipulation, proposal and request for
13 relief to be published and sent in the same manner as is
14 required for hearing pursuant to subdivision (1) of this
15 subsection. The notice shall include a statement that any
16 person may file a written demand for hearing within 21 days
17 after receiving the notice. If any person files a timely
18 written demand for hearing, the Board shall deny the
19 request for relief from a hearing and shall hold a hearing
20 in accordance with the provisions of subdivision (1).

21 (3) Notwithstanding the provisions of subdivision (1)
22 of this subsection (c), if the Agency becomes aware of a
23 violation of this Act arising from, or as a result of,
24 voluntary pollution prevention activities, the Agency
25 shall not proceed with the written notice required by
26 subsection (a) of this Section unless:

1 (A) the person fails to take corrective action or
2 eliminate the reported violation within a reasonable
3 time; or

4 (B) the Agency believes that the violation poses a
5 substantial and imminent danger to the public health or
6 welfare or the environment. For the purposes of this
7 item (B), "substantial and imminent danger" means a
8 danger with a likelihood of serious or irreversible
9 harm.

10 (d) (1) Any person may file with the Board a complaint,
11 meeting the requirements of subsection (c) of this Section,
12 against any person allegedly violating this Act, any rule
13 or regulation adopted under this Act, any permit or term or
14 condition of a permit, or any Board order. The complainant
15 shall immediately serve a copy of such complaint upon the
16 person or persons named therein. Unless the Board
17 determines that such complaint is duplicative or
18 frivolous, it shall schedule a hearing and serve written
19 notice thereof upon the person or persons named therein, in
20 accord with subsection (c) of this Section.

21 (2) Whenever a complaint has been filed by a person
22 other than the Attorney General or the State's Attorney,
23 the parties may file with the Board a stipulation and
24 proposal for settlement accompanied by a request for relief
25 from the hearing requirement of subdivision (c) (1) of this
26 Section. Unless the Board, in its discretion, concludes

1 that a hearing should be held, no hearing on the
2 stipulation and proposal for settlement is required.

3 (e) In hearings before the Board under this Title the
4 burden shall be on the Agency or other complainant to show
5 either that the respondent has caused or threatened to cause
6 air or water pollution or that the respondent has violated or
7 threatens to violate any provision of this Act or any rule or
8 regulation of the Board or permit or term or condition thereof.
9 If such proof has been made, the burden shall be on the
10 respondent to show that compliance with the Board's regulations
11 would impose an arbitrary or unreasonable hardship.

12 (f) The provisions of this Section shall not apply to
13 administrative citation actions commenced under Section 31.1
14 of this Act.

15 (Source: P.A. 97-519, eff. 8-23-11.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.