

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 31 as follows:

6 (415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)

7 Sec. 31. Notice; complaint; hearing.

8 (a)(1) Within 180 days after becoming aware of an alleged
9 violation of the Act, any rule adopted under the Act, a
10 permit granted by the Agency, or a condition of such a
11 permit, the Agency shall issue and serve, by certified
12 mail, upon the person complained against a written notice
13 informing that person that the Agency has evidence of the
14 alleged violation. At a minimum, the written notice shall
15 contain:

16 (A) a notification to the person complained
17 against of the requirement to submit a written response
18 addressing the violations alleged and the option to
19 meet with appropriate agency personnel to resolve any
20 alleged violations that could lead to the filing of a
21 formal complaint;

22 (B) a detailed explanation by the Agency of the
23 violations alleged;

1 (C) an explanation by the Agency of the actions
2 that the Agency believes may resolve the alleged
3 violations, including an estimate of a reasonable time
4 period for the person complained against to complete
5 the suggested resolution; and

6 (D) an explanation of any alleged violation that
7 the Agency believes cannot be resolved without the
8 involvement of the Office of the Illinois Attorney
9 General or the State's Attorney of the county in which
10 the alleged violation occurred and the basis for the
11 Agency's belief.

12 (2) A written response to the violations alleged shall
13 be submitted to the Agency, by certified mail, within 45
14 days after receipt of notice by the person complained
15 against, unless the Agency agrees to an extension. The
16 written response shall include:

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

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

26 (C) a request for a meeting with appropriate Agency

1 personnel if a meeting is desired by the person
2 complained against.

3 (3) If the person complained against fails to respond
4 in accordance with the requirements of subdivision (2) of
5 this subsection (a), the failure to respond shall be
6 considered a waiver of the requirements of this subsection
7 (a) and nothing in this Section shall preclude the Agency
8 from proceeding pursuant to subsection (b) of this Section.

9 (4) A meeting requested pursuant to subdivision (2) of
10 this subsection (a) shall be held without a representative
11 of the Office of the Illinois Attorney General or the
12 State's Attorney of the county in which the alleged
13 violation occurred, within 60 days after receipt of notice
14 by the person complained against, unless the Agency agrees
15 to a postponement. At the meeting, the Agency shall provide
16 an opportunity for the person complained against to respond
17 to each alleged violation, suggested resolution, and
18 suggested implementation time frame, and to suggest
19 alternate resolutions.

20 (5) If a meeting requested pursuant to subdivision (2)
21 of this subsection (a) is held, the person complained
22 against shall, within 21 days following the meeting or
23 within an extended time period as agreed to by the Agency,
24 submit by certified mail to the Agency a written response
25 to the alleged violations. The written response shall
26 include:

1 (A) additional information in rebuttal,
2 explanation, or justification of each alleged
3 violation;

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

11 (C) a statement indicating that, should the person
12 complained against so wish, the person complained
13 against chooses to rely upon the initial written
14 response submitted pursuant to subdivision (2) of this
15 subsection (a).

16 (6) If the person complained against fails to respond
17 in accordance with the requirements of subdivision (5) of
18 this subsection (a), the failure to respond shall be
19 considered a waiver of the requirements of this subsection
20 (a) and nothing in this Section shall preclude the Agency
21 from proceeding pursuant to subsection (b) of this Section.

22 (7) Within 30 days after the Agency's receipt of a
23 written response submitted by the person complained
24 against pursuant to subdivision (2) of this subsection (a)
25 if a meeting is not requested or pursuant to subdivision
26 (5) of this subsection (a) if a meeting is held, or within

1 a later time period as agreed to by the Agency and the
2 person complained against, the Agency shall issue and
3 serve, by certified mail, upon the person complained
4 against (i) a proposed Compliance Commitment Agreement or
5 (ii) a notice that one or more violations cannot be
6 resolved without the involvement of the Office of the
7 Attorney General or the State's Attorney of the county in
8 which the alleged violation occurred and that no proposed
9 Compliance Commitment Agreement will be issued by the
10 Agency for those violations. The Agency shall include terms
11 and conditions in the proposed Compliance Commitment
12 Agreement that are, in its discretion, necessary to bring
13 the person complained against into compliance with the Act,
14 any rule adopted under the Act, any permit granted by the
15 Agency, or any condition of such a permit. The Agency shall
16 take into consideration the proposed terms for the proposed
17 Compliance Commitment Agreement that were provided under
18 subdivision (a) (2) (B) or (a) (5) (B) of this Section by the
19 person complained against.

20 (7.5) Within 30 days after the receipt of the Agency's
21 proposed Compliance Commitment Agreement by the person
22 complained against, the person shall either (i) agree to
23 and sign the proposed Compliance Commitment Agreement
24 provided by the Agency and submit the signed Compliance
25 Commitment Agreement to the Agency by certified mail or
26 (ii) notify the Agency in writing by certified mail of the

1 person's rejection of the proposed Compliance Commitment
2 Agreement. If the person complained against fails to
3 respond to the proposed Compliance Commitment Agreement
4 within 30 days as required under this paragraph, the
5 proposed Compliance Commitment Agreement is deemed
6 rejected by operation of law. Any Compliance Commitment
7 Agreement entered into under item (i) of this paragraph may
8 be amended subsequently in writing by mutual agreement
9 between the Agency and the signatory to the Compliance
10 Commitment Agreement, the signatory's legal
11 representative, or the signatory's agent.

12 (7.6) No person shall violate the terms or conditions
13 of a Compliance Commitment Agreement entered into under
14 subdivision (a)(7.5) of this Section. Successful
15 completion of a Compliance Commitment Agreement or an
16 amended Compliance Commitment Agreement shall be a factor
17 to be weighed, in favor of the person completing the
18 Agreement, by the Office of the Illinois Attorney General
19 in determining whether to file a complaint for the
20 violations that were the subject of the Agreement.

21 (7.7) Within 30 days after a Compliance Commitment
22 Agreement takes effect or is amended in accordance with
23 paragraph (7.5), the Agency shall publish a copy of the
24 final executed Compliance Commitment Agreement on the
25 Agency's website. The Agency shall maintain an Internet
26 database of all Compliance Commitment Agreements entered

1 on or after the effective date of this amendatory Act of
2 the 100th General Assembly. At a minimum, the database
3 shall be searchable by the following categories: the county
4 in which the facility that is subject to the Compliance
5 Commitment Agreement is located; the date of final
6 execution of the Compliance Commitment Agreement; the name
7 of the respondent; and the media involved, including air,
8 water, land, or public water supply.

9 (8) Nothing in this subsection (a) is intended to
10 require the Agency to enter into Compliance Commitment
11 Agreements for any alleged violation that the Agency
12 believes cannot be resolved without the involvement of the
13 Office of the Attorney General or the State's Attorney of
14 the county in which the alleged violation occurred, for,
15 among other purposes, the imposition of statutory
16 penalties.

17 (9) The Agency's failure to respond within 30 days to a
18 written response submitted pursuant to subdivision (2) of
19 this subsection (a) if a meeting is not requested or
20 pursuant to subdivision (5) of this subsection (a) if a
21 meeting is held, or within the time period otherwise agreed
22 to in writing by the Agency and the person complained
23 against, shall be deemed an acceptance by the Agency of the
24 proposed terms of the Compliance Commitment Agreement for
25 the violations alleged in the written notice issued under
26 subdivision (1) of this subsection (a) as contained within

1 the written response.

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

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

22 (12) The Agency shall have the authority to adopt rules
23 for the administration of subsection (a) of this Section.
24 The rules shall be adopted in accordance with the
25 provisions of the Illinois Administrative Procedure Act.

26 (b) For alleged violations that remain the subject of

1 disagreement between the Agency and the person complained
2 against following fulfillment of the requirements of
3 subsection (a) of this Section, and for alleged violations of
4 the terms or conditions of a Compliance Commitment Agreement
5 entered into under subdivision (a) (7.5) of this Section as well
6 as the alleged violations that are the subject of the
7 Compliance Commitment Agreement, and as a precondition to the
8 Agency's referral or request to the Office of the Illinois
9 Attorney General or the State's Attorney of the county in which
10 the alleged violation occurred for legal representation
11 regarding an alleged violation that may be addressed pursuant
12 to subsection (c) or (d) of this Section or pursuant to Section
13 42 of this Act, the Agency shall issue and serve, by certified
14 mail, upon the person complained against a written notice
15 informing that person that the Agency intends to pursue legal
16 action. Such notice shall notify the person complained against
17 of the violations to be alleged and offer the person an
18 opportunity to meet with appropriate Agency personnel in an
19 effort to resolve any alleged violations that could lead to the
20 filing of a formal complaint. The meeting with Agency personnel
21 shall be held within 30 days after receipt of notice served
22 pursuant to this subsection upon the person complained against,
23 unless the Agency agrees to a postponement or the person
24 notifies the Agency that he or she will not appear at a meeting
25 within the 30-day time period. Nothing in this subsection is
26 intended to preclude the Agency from following the provisions

1 of subsection (c) or (d) of this Section or from requesting the
2 legal representation of the Office of the Illinois Attorney
3 General or the State's Attorney of the county in which the
4 alleged violations occurred for alleged violations which
5 remain the subject of disagreement between the Agency and the
6 person complained against after the provisions of this
7 subsection are fulfilled.

8 (c) (1) For alleged violations which remain the subject of
9 disagreement between the Agency and the person complained
10 against following waiver pursuant to subdivision (10) of
11 subsection (a) of this Section or fulfillment of the
12 requirements of subsections (a) and (b) of this Section,
13 the Office of the Illinois Attorney General or the State's
14 Attorney of the county in which the alleged violation
15 occurred shall issue and serve upon the person complained
16 against a written notice, together with a formal complaint,
17 which shall specify the provision of the Act, rule,
18 regulation, permit, or term or condition thereof under
19 which such person is said to be in violation and a
20 statement of the manner in and the extent to which such
21 person is said to violate the Act, rule, regulation,
22 permit, or term or condition thereof and shall require the
23 person so complained against to answer the charges of such
24 formal complaint at a hearing before the Board at a time
25 not less than 21 days after the date of notice by the
26 Board, except as provided in Section 34 of this Act. Such

1 complaint shall be accompanied by a notification to the
2 defendant that financing may be available, through the
3 Illinois Environmental Facilities Financing Act, to
4 correct such violation. A copy of such notice of such
5 hearings shall also be sent to any person that has
6 complained to the Agency respecting the respondent within
7 the six months preceding the date of the complaint, and to
8 any person in the county in which the offending activity
9 occurred that has requested notice of enforcement
10 proceedings; 21 days notice of such hearings shall also be
11 published in a newspaper of general circulation in such
12 county. The respondent may file a written answer, and at
13 such hearing the rules prescribed in Sections 32 and 33 of
14 this Act shall apply. In the case of actual or threatened
15 acts outside Illinois contributing to environmental damage
16 in Illinois, the extraterritorial service-of-process
17 provisions of Sections 2-208 and 2-209 of the Code of Civil
18 Procedure shall apply.

19 With respect to notices served pursuant to this
20 subsection (c)(1) that involve hazardous material or
21 wastes in any manner, the Agency shall annually publish a
22 list of all such notices served. The list shall include the
23 date the investigation commenced, the date notice was sent,
24 the date the matter was referred to the Attorney General,
25 if applicable, and the current status of the matter.

26 (2) Notwithstanding the provisions of subdivision (1)

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

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

23 (A) the person fails to take corrective action or
24 eliminate the reported violation within a reasonable
25 time; or

26 (B) the Agency believes that the violation poses a

1 substantial and imminent danger to the public health or
2 welfare or the environment. For the purposes of this
3 item (B), "substantial and imminent danger" means a
4 danger with a likelihood of serious or irreversible
5 harm.

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

17 (2) Whenever a complaint has been filed by a person
18 other than the Attorney General or the State's Attorney,
19 the parties may file with the Board a stipulation and
20 proposal for settlement accompanied by a request for relief
21 from the hearing requirement of subdivision (c) (1) of this
22 Section. Unless the Board, in its discretion, concludes
23 that a hearing should be held, no hearing on the
24 stipulation and proposal for settlement is required.

25 (e) In hearings before the Board under this Title the
26 burden shall be on the Agency or other complainant to show

1 either that the respondent has caused or threatened to cause
2 air or water pollution or that the respondent has violated or
3 threatens to violate any provision of this Act or any rule or
4 regulation of the Board or permit or term or condition thereof.
5 If such proof has been made, the burden shall be on the
6 respondent to show that compliance with the Board's regulations
7 would impose an arbitrary or unreasonable hardship.

8 (f) The provisions of this Section shall not apply to
9 administrative citation actions commenced under Section 31.1
10 of this Act.

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

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.