

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.