



Sen. Omar Aquino

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LRB100 20113 MJP 38507 a

1 AMENDMENT TO SENATE BILL 3156

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3156 by replacing  
3 everything after the enacting clause with the following:

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

1           against of the requirement to submit a written response  
2           addressing the violations alleged and the option to  
3           meet with appropriate agency personnel to resolve any  
4           alleged violations that could lead to the filing of a  
5           formal complaint;

6           (B) a detailed explanation by the Agency of the  
7           violations alleged;

8           (C) an explanation by the Agency of the actions  
9           that the Agency believes may resolve the alleged  
10          violations, including an estimate of a reasonable time  
11          period for the person complained against to complete  
12          the suggested resolution; and

13          (D) an explanation of any alleged violation that  
14          the Agency believes cannot be resolved without the  
15          involvement of the Office of the Illinois Attorney  
16          General or the State's Attorney of the county in which  
17          the alleged violation occurred and the basis for the  
18          Agency's belief.

19          (2) A written response to the violations alleged shall  
20          be submitted to the Agency, by certified mail, within 45  
21          days after receipt of notice by the person complained  
22          against, unless the Agency agrees to an extension. The  
23          written response shall include:

24                 (A) information in rebuttal, explanation or  
25                 justification of each alleged violation;

26                 (B) if the person complained against desires to

1 enter into a Compliance Commitment Agreement, proposed  
2 terms for a Compliance Commitment Agreement that  
3 includes specified times for achieving each commitment  
4 and which may consist of a statement indicating that  
5 the person complained against believes that compliance  
6 has been achieved; and

7 (C) a request for a meeting with appropriate Agency  
8 personnel if a meeting is desired by the person  
9 complained against.

10 (3) If the person complained against fails to respond  
11 in accordance with the requirements of subdivision (2) of  
12 this subsection (a), the failure to respond shall be  
13 considered a waiver of the requirements of this subsection  
14 (a) and nothing in this Section shall preclude the Agency  
15 from proceeding pursuant to subsection (b) of this Section.

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

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

8           (A) additional information in rebuttal,  
9 explanation, or justification of each alleged  
10 violation;

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

18           (C) a statement indicating that, should the person  
19 complained against so wish, the person complained  
20 against chooses to rely upon the initial written  
21 response submitted pursuant to subdivision (2) of this  
22 subsection (a).

23           (6) If the person complained against fails to respond  
24 in accordance with the requirements of subdivision (5) of  
25 this subsection (a), the failure to respond shall be  
26 considered a waiver of the requirements of this subsection

1 (a) and nothing in this Section shall preclude the Agency  
2 from proceeding pursuant to subsection (b) of this Section.

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

1           (7.5) Within 30 days after the receipt of the Agency's  
2 proposed Compliance Commitment Agreement by the person  
3 complained against, the person shall either (i) agree to  
4 and sign the proposed Compliance Commitment Agreement  
5 provided by the Agency and submit the signed Compliance  
6 Commitment Agreement to the Agency by certified mail or  
7 (ii) notify the Agency in writing by certified mail of the  
8 person's rejection of the proposed Compliance Commitment  
9 Agreement. If the person complained against fails to  
10 respond to the proposed Compliance Commitment Agreement  
11 within 30 days as required under this paragraph, the  
12 proposed Compliance Commitment Agreement is deemed  
13 rejected by operation of law. Any Compliance Commitment  
14 Agreement entered into under item (i) of this paragraph may  
15 be amended subsequently in writing by mutual agreement  
16 between the Agency and the signatory to the Compliance  
17 Commitment Agreement, the signatory's legal  
18 representative, or the signatory's agent.

19           (7.6) No person shall violate the terms or conditions  
20 of a Compliance Commitment Agreement entered into under  
21 subdivision (a)(7.5) of this Section. Successful  
22 completion of a Compliance Commitment Agreement or an  
23 amended Compliance Commitment Agreement shall be a factor  
24 to be weighed, in favor of the person completing the  
25 Agreement, by the Office of the Illinois Attorney General  
26 in determining whether to file a complaint for the

1 violations that were the subject of the Agreement.

2 (7.7) Within 30 days after a Compliance Commitment  
3 Agreement takes effect or is amended in accordance with  
4 paragraph (7.5), the Agency shall publish a copy of the  
5 final executed Compliance Commitment Agreement on the  
6 Agency's website. The Agency shall maintain an Internet  
7 database of all Compliance Commitment Agreements entered  
8 on or after the effective date of this amendatory Act of  
9 the 100th General Assembly. At a minimum, the database  
10 shall be searchable by the following categories: the county  
11 in which the facility that is subject to the Compliance  
12 Commitment Agreement is located; the date of final  
13 execution of the Compliance Commitment Agreement; the name  
14 of the respondent; and the media involved, including air,  
15 water, land, or public water supply.

16 (8) Nothing in this subsection (a) is intended to  
17 require the Agency to enter into Compliance Commitment  
18 Agreements for any alleged violation that the Agency  
19 believes cannot be resolved without the involvement of the  
20 Office of the Attorney General or the State's Attorney of  
21 the county in which the alleged violation occurred, for,  
22 among other purposes, the imposition of statutory  
23 penalties.

24 (9) The Agency's failure to respond within 30 days to a  
25 written response submitted pursuant to subdivision (2) of  
26 this subsection (a) if a meeting is not requested or

1           pursuant to subdivision (5) of this subsection (a) if a  
2           meeting is held, or within the time period otherwise agreed  
3           to in writing by the Agency and the person complained  
4           against, shall be deemed an acceptance by the Agency of the  
5           proposed terms of the Compliance Commitment Agreement for  
6           the violations alleged in the written notice issued under  
7           subdivision (1) of this subsection (a) as contained within  
8           the written response.

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

23          (11) Nothing in this subsection (a) is intended to  
24          preclude the person complained against from submitting to  
25          the Agency, by certified mail, at any time, notification  
26          that the person complained against consents to waiver of



1           the requirements of subsections (a) and (b) of this  
2           Section.

3           (12) The Agency shall have the authority to adopt rules  
4           for the administration of subsection (a) of this Section.  
5           The rules shall be adopted in accordance with the  
6           provisions of the Illinois Administrative Procedure Act.

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

1 filing of a formal complaint. The meeting with Agency personnel  
2 shall be held within 30 days after receipt of notice served  
3 pursuant to this subsection upon the person complained against,  
4 unless the Agency agrees to a postponement or the person  
5 notifies the Agency that he or she will not appear at a meeting  
6 within the 30-day time period. Nothing in this subsection is  
7 intended to preclude the Agency from following the provisions  
8 of subsection (c) or (d) of this Section or from requesting the  
9 legal representation of the Office of the Illinois Attorney  
10 General or the State's Attorney of the county in which the  
11 alleged violations occurred for alleged violations which  
12 remain the subject of disagreement between the Agency and the  
13 person complained against after the provisions of this  
14 subsection are fulfilled.

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

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

26 With respect to notices served pursuant to this

1 subsection (c)(1) that involve hazardous material or  
2 wastes in any manner, the Agency shall annually publish a  
3 list of all such notices served. The list shall include the  
4 date the investigation commenced, the date notice was sent,  
5 the date the matter was referred to the Attorney General,  
6 if applicable, and the current status of the matter.

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

24 (3) Notwithstanding the provisions of subdivision (1)  
25 of this subsection (c), if the Agency becomes aware of a  
26 violation of this Act arising from, or as a result of,

1 voluntary pollution prevention activities, the Agency  
2 shall not proceed with the written notice required by  
3 subsection (a) of this Section unless:

4 (A) the person fails to take corrective action or  
5 eliminate the reported violation within a reasonable  
6 time; or

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

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

24 (2) Whenever a complaint has been filed by a person  
25 other than the Attorney General or the State's Attorney,  
26 the parties may file with the Board a stipulation and

1           proposal for settlement accompanied by a request for relief  
2           from the hearing requirement of subdivision (c)(1) of this  
3           Section. Unless the Board, in its discretion, concludes  
4           that a hearing should be held, no hearing on the  
5           stipulation and proposal for settlement is required.

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

15          (f) The provisions of this Section shall not apply to  
16          administrative citation actions commenced under Section 31.1  
17          of this Act.

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

19          Section 99. Effective date. This Act takes effect upon  
20          becoming law."