

1 AN ACT in relation to environmental protection.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Illinois Procurement Code is amended by
5 adding Section 50-12 as follows:

6 (30 ILCS 500/50-12 new)

7 Sec. 50-12. Environmental Protection Act violations.

8 (a) Unless otherwise provided, no person or business
9 found by a court or the Pollution Control Board to have
10 committed a willful or knowing violation of Section 42 of the
11 Environmental Protection Act shall do business with the State
12 of Illinois or any State agency from the date of the order
13 containing the finding of violation until 5 years after that
14 date, unless the person or business can show that no person
15 involved in the violation continues to have any involvement
16 with the business.

17 (b) A person or business otherwise barred from doing
18 business with the State of Illinois or any State agency under
19 subsection (a) may be allowed to do business with the State
20 of Illinois or any State agency if it is shown that there is
21 no practicable alternative to the State to contracting with
22 that person or business.

23 (c) Every bid submitted to and contract executed by the
24 State shall contain a certification by the bidder or
25 contractor that the bidder or contractor is not barred from
26 being awarded a contract under this Section and that the
27 contractor acknowledges that the contracting State agency may
28 declare the contract void if the certification completed
29 pursuant to this subsection (c) is false.

30 Section 10. The Environmental Protection Act is amended

1 by changing Sections 39 and 42 as follows:

2 (415 ILCS 5/39) (from Ch. 111 1/2, par. 1039)

3 Sec. 39. Issuance of permits; procedures.

4 (a) When the Board has by regulation required a permit
5 for the construction, installation, or operation of any type
6 of facility, equipment, vehicle, vessel, or aircraft, the
7 applicant shall apply to the Agency for such permit and it
8 shall be the duty of the Agency to issue such a permit upon
9 proof by the applicant that the facility, equipment, vehicle,
10 vessel, or aircraft will not cause a violation of this Act or
11 of regulations hereunder. The Agency shall adopt such
12 procedures as are necessary to carry out its duties under
13 this Section. In making its determinations on permit
14 applications under this Section granting-permits the Agency
15 may consider prior adjudications of noncompliance with this
16 Act by the applicant that involved a release of a contaminant
17 into the environment. In granting permits, the Agency may
18 impose reasonable conditions specifically related to the
19 applicant's past compliance history with this Act as
20 necessary to correct, detect, or prevent noncompliance. The
21 Agency may impose such other conditions as may be necessary
22 to accomplish the purposes of this Act, and as are not
23 inconsistent with the regulations promulgated by the Board
24 hereunder. Except as otherwise provided in this Act, a bond
25 or other security shall not be required as a condition for
26 the issuance of a permit. If the Agency denies any permit
27 under this Section, the Agency shall transmit to the
28 applicant within the time limitations of this Section
29 specific, detailed statements as to the reasons the permit
30 application was denied. Such statements shall include, but
31 not be limited to the following:

32 (i) the Sections of this Act which may be violated
33 if the permit were granted;

1 (ii) the provision of the regulations, promulgated
2 under this Act, which may be violated if the permit were
3 granted;

4 (iii) the specific type of information, if any,
5 which the Agency deems the applicant did not provide the
6 Agency; and

7 (iv) a statement of specific reasons why the Act
8 and the regulations might not be met if the permit were
9 granted.

10 If there is no final action by the Agency within 90 days
11 after the filing of the application for permit, the applicant
12 may deem the permit issued; except that this time period
13 shall be extended to 180 days when (1) notice and opportunity
14 for public hearing are required by State or federal law or
15 regulation, (2) the application which was filed is for any
16 permit to develop a landfill subject to issuance pursuant to
17 this subsection, or (3) the application that was filed is for
18 a MSWLF unit required to issue public notice under subsection
19 (p) of Section 39. The 90-day and 180-day time periods for
20 the Agency to take final action do not apply to NPDES permit
21 applications under subsection (b) of this Section, to RCRA
22 permit applications under subsection (d) of this Section, or
23 to UIC permit applications under subsection (e) of this
24 Section.

25 The Agency shall publish notice of all final permit
26 determinations for development permits for MSWLF units and
27 for significant permit modifications for lateral expansions
28 for existing MSWLF units one time in a newspaper of general
29 circulation in the county in which the unit is or is proposed
30 to be located.

31 After January 1, 1994 and until July 1, 1998, operating
32 permits issued under this Section by the Agency for sources
33 of air pollution permitted to emit less than 25 tons per year
34 of any combination of regulated air pollutants, as defined in

1 Section 39.5 of this Act, shall be required to be renewed
2 only upon written request by the Agency consistent with
3 applicable provisions of this Act and regulations promulgated
4 hereunder. Such operating permits shall expire 180 days
5 after the date of such a request. The Board shall revise its
6 regulations for the existing State air pollution operating
7 permit program consistent with this provision by January 1,
8 1994.

9 After June 30, 1998, operating permits issued under this
10 Section by the Agency for sources of air pollution that are
11 not subject to Section 39.5 of this Act and are not required
12 to have a federally enforceable State operating permit shall
13 be required to be renewed only upon written request by the
14 Agency consistent with applicable provisions of this Act and
15 its rules. Such operating permits shall expire 180 days
16 after the date of such a request. Before July 1, 1998, the
17 Board shall revise its rules for the existing State air
18 pollution operating permit program consistent with this
19 paragraph and shall adopt rules that require a source to
20 demonstrate that it qualifies for a permit under this
21 paragraph.

22 (b) The Agency may issue NPDES permits exclusively under
23 this subsection for the discharge of contaminants from point
24 sources into navigable waters, all as defined in the Federal
25 Water Pollution Control Act, as now or hereafter amended,
26 within the jurisdiction of the State, or into any well.

27 All NPDES permits shall contain those terms and
28 conditions, including but not limited to schedules of
29 compliance, which may be required to accomplish the purposes
30 and provisions of this Act.

31 The Agency may issue general NPDES permits for discharges
32 from categories of point sources which are subject to the
33 same permit limitations and conditions. Such general permits
34 may be issued without individual applications and shall

1 conform to regulations promulgated under Section 402 of the
2 Federal Water Pollution Control Act, as now or hereafter
3 amended.

4 The Agency may include, among such conditions, effluent
5 limitations and other requirements established under this
6 Act, Board regulations, the Federal Water Pollution Control
7 Act, as now or hereafter amended, and regulations pursuant
8 thereto, and schedules for achieving compliance therewith at
9 the earliest reasonable date.

10 The Agency shall adopt filing requirements and procedures
11 which are necessary and appropriate for the issuance of NPDES
12 permits, and which are consistent with the Act or regulations
13 adopted by the Board, and with the Federal Water Pollution
14 Control Act, as now or hereafter amended, and regulations
15 pursuant thereto.

16 The Agency, subject to any conditions which may be
17 prescribed by Board regulations, may issue NPDES permits to
18 allow discharges beyond deadlines established by this Act or
19 by regulations of the Board without the requirement of a
20 variance, subject to the Federal Water Pollution Control Act,
21 as now or hereafter amended, and regulations pursuant
22 thereto.

23 (c) Except for those facilities owned or operated by
24 sanitary districts organized under the Metropolitan Water
25 Reclamation District Act, no permit for the development or
26 construction of a new pollution control facility may be
27 granted by the Agency unless the applicant submits proof to
28 the Agency that the location of the facility has been
29 approved by the County Board of the county if in an
30 unincorporated area, or the governing body of the
31 municipality when in an incorporated area, in which the
32 facility is to be located in accordance with Section 39.2 of
33 this Act.

34 In the event that siting approval granted pursuant to

1 Section 39.2 has been transferred to a subsequent owner or
2 operator, that subsequent owner or operator may apply to the
3 Agency for, and the Agency may grant, a development or
4 construction permit for the facility for which local siting
5 approval was granted. Upon application to the Agency for a
6 development or construction permit by that subsequent owner
7 or operator, the permit applicant shall cause written notice
8 of the permit application to be served upon the appropriate
9 county board or governing body of the municipality that
10 granted siting approval for that facility and upon any party
11 to the siting proceeding pursuant to which siting approval
12 was granted. In that event, the Agency shall conduct an
13 evaluation of the subsequent owner or operator's prior
14 experience in waste management operations in the manner
15 conducted under subsection (i) of Section 39 of this Act.

16 Beginning August 20, 1993, if the pollution control
17 facility consists of a hazardous or solid waste disposal
18 facility for which the proposed site is located in an
19 unincorporated area of a county with a population of less
20 than 100,000 and includes all or a portion of a parcel of
21 land that was, on April 1, 1993, adjacent to a municipality
22 having a population of less than 5,000, then the local siting
23 review required under this subsection (c) in conjunction with
24 any permit applied for after that date shall be performed by
25 the governing body of that adjacent municipality rather than
26 the county board of the county in which the proposed site is
27 located; and for the purposes of that local siting review,
28 any references in this Act to the county board shall be
29 deemed to mean the governing body of that adjacent
30 municipality; provided, however, that the provisions of this
31 paragraph shall not apply to any proposed site which was, on
32 April 1, 1993, owned in whole or in part by another
33 municipality.

34 In the case of a pollution control facility for which a

1 development permit was issued before November 12, 1981, if an
2 operating permit has not been issued by the Agency prior to
3 August 31, 1989 for any portion of the facility, then the
4 Agency may not issue or renew any development permit nor
5 issue an original operating permit for any portion of such
6 facility unless the applicant has submitted proof to the
7 Agency that the location of the facility has been approved by
8 the appropriate county board or municipal governing body
9 pursuant to Section 39.2 of this Act.

10 After January 1, 1994, if a solid waste disposal
11 facility, any portion for which an operating permit has been
12 issued by the Agency, has not accepted waste disposal for 5
13 or more consecutive calendar years, before that facility may
14 accept any new or additional waste for disposal, the owner
15 and operator must obtain a new operating permit under this
16 Act for that facility unless the owner and operator have
17 applied to the Agency for a permit authorizing the temporary
18 suspension of waste acceptance. The Agency may not issue a
19 new operation permit under this Act for the facility unless
20 the applicant has submitted proof to the Agency that the
21 location of the facility has been approved or re-approved by
22 the appropriate county board or municipal governing body
23 under Section 39.2 of this Act after the facility ceased
24 accepting waste.

25 Except for those facilities owned or operated by sanitary
26 districts organized under the Metropolitan Water Reclamation
27 District Act, and except for new pollution control facilities
28 governed by Section 39.2, and except for fossil fuel mining
29 facilities, the granting of a permit under this Act shall not
30 relieve the applicant from meeting and securing all necessary
31 zoning approvals from the unit of government having zoning
32 jurisdiction over the proposed facility.

33 Before beginning construction on any new sewage treatment
34 plant or sludge drying site to be owned or operated by a

1 sanitary district organized under the Metropolitan Water
2 Reclamation District Act for which a new permit (rather than
3 the renewal or amendment of an existing permit) is required,
4 such sanitary district shall hold a public hearing within the
5 municipality within which the proposed facility is to be
6 located, or within the nearest community if the proposed
7 facility is to be located within an unincorporated area, at
8 which information concerning the proposed facility shall be
9 made available to the public, and members of the public shall
10 be given the opportunity to express their views concerning
11 the proposed facility.

12 The Agency may issue a permit for a municipal waste
13 transfer station without requiring approval pursuant to
14 Section 39.2 provided that the following demonstration is
15 made:

16 (1) the municipal waste transfer station was in
17 existence on or before January 1, 1979 and was in
18 continuous operation from January 1, 1979 to January 1,
19 1993;

20 (2) the operator submitted a permit application to
21 the Agency to develop and operate the municipal waste
22 transfer station during April of 1994;

23 (3) the operator can demonstrate that the county
24 board of the county, if the municipal waste transfer
25 station is in an unincorporated area, or the governing
26 body of the municipality, if the station is in an
27 incorporated area, does not object to resumption of the
28 operation of the station; and

29 (4) the site has local zoning approval.

30 (d) The Agency may issue RCRA permits exclusively under
31 this subsection to persons owning or operating a facility for
32 the treatment, storage, or disposal of hazardous waste as
33 defined under this Act.

34 All RCRA permits shall contain those terms and

1 conditions, including but not limited to schedules of
2 compliance, which may be required to accomplish the purposes
3 and provisions of this Act. The Agency may include among
4 such conditions standards and other requirements established
5 under this Act, Board regulations, the Resource Conservation
6 and Recovery Act of 1976 (P.L. 94-580), as amended, and
7 regulations pursuant thereto, and may include schedules for
8 achieving compliance therewith as soon as possible. The
9 Agency shall require that a performance bond or other
10 security be provided as a condition for the issuance of a
11 RCRA permit.

12 In the case of a permit to operate a hazardous waste or
13 PCB incinerator as defined in subsection (k) of Section 44,
14 the Agency shall require, as a condition of the permit, that
15 the operator of the facility perform such analyses of the
16 waste to be incinerated as may be necessary and appropriate
17 to ensure the safe operation of the incinerator.

18 The Agency shall adopt filing requirements and procedures
19 which are necessary and appropriate for the issuance of RCRA
20 permits, and which are consistent with the Act or regulations
21 adopted by the Board, and with the Resource Conservation and
22 Recovery Act of 1976 (P.L. 94-580), as amended, and
23 regulations pursuant thereto.

24 The applicant shall make available to the public for
25 inspection all documents submitted by the applicant to the
26 Agency in furtherance of an application, with the exception
27 of trade secrets, at the office of the county board or
28 governing body of the municipality. Such documents may be
29 copied upon payment of the actual cost of reproduction during
30 regular business hours of the local office. The Agency shall
31 issue a written statement concurrent with its grant or denial
32 of the permit explaining the basis for its decision.

33 (e) The Agency may issue UIC permits exclusively under
34 this subsection to persons owning or operating a facility for

1 the underground injection of contaminants as defined under
2 this Act.

3 All UIC permits shall contain those terms and conditions,
4 including but not limited to schedules of compliance, which
5 may be required to accomplish the purposes and provisions of
6 this Act. The Agency may include among such conditions
7 standards and other requirements established under this Act,
8 Board regulations, the Safe Drinking Water Act (P.L. 93-523),
9 as amended, and regulations pursuant thereto, and may include
10 schedules for achieving compliance therewith. The Agency
11 shall require that a performance bond or other security be
12 provided as a condition for the issuance of a UIC permit.

13 The Agency shall adopt filing requirements and procedures
14 which are necessary and appropriate for the issuance of UIC
15 permits, and which are consistent with the Act or regulations
16 adopted by the Board, and with the Safe Drinking Water Act
17 (P.L. 93-523), as amended, and regulations pursuant thereto.

18 The applicant shall make available to the public for
19 inspection, all documents submitted by the applicant to the
20 Agency in furtherance of an application, with the exception
21 of trade secrets, at the office of the county board or
22 governing body of the municipality. Such documents may be
23 copied upon payment of the actual cost of reproduction during
24 regular business hours of the local office. The Agency shall
25 issue a written statement concurrent with its grant or denial
26 of the permit explaining the basis for its decision.

27 (f) In making any determination pursuant to Section 9.1
28 of this Act:

29 (1) The Agency shall have authority to make the
30 determination of any question required to be determined
31 by the Clean Air Act, as now or hereafter amended, this
32 Act, or the regulations of the Board, including the
33 determination of the Lowest Achievable Emission Rate,
34 Maximum Achievable Control Technology, or Best Available

1 Control Technology, consistent with the Board's
2 regulations, if any.

3 (2) The Agency shall, after conferring with the
4 applicant, give written notice to the applicant of its
5 proposed decision on the application including the terms
6 and conditions of the permit to be issued and the facts,
7 conduct or other basis upon which the Agency will rely to
8 support its proposed action.

9 (3) Following such notice, the Agency shall give
10 the applicant an opportunity for a hearing in accordance
11 with the provisions of Sections 10-25 through 10-60 of
12 the Illinois Administrative Procedure Act.

13 (g) The Agency shall include as conditions upon all
14 permits issued for hazardous waste disposal sites such
15 restrictions upon the future use of such sites as are
16 reasonably necessary to protect public health and the
17 environment, including permanent prohibition of the use of
18 such sites for purposes which may create an unreasonable risk
19 of injury to human health or to the environment. After
20 administrative and judicial challenges to such restrictions
21 have been exhausted, the Agency shall file such restrictions
22 of record in the Office of the Recorder of the county in
23 which the hazardous waste disposal site is located.

24 (h) A hazardous waste stream may not be deposited in a
25 permitted hazardous waste site unless specific authorization
26 is obtained from the Agency by the generator and disposal
27 site owner and operator for the deposit of that specific
28 hazardous waste stream. The Agency may grant specific
29 authorization for disposal of hazardous waste streams only
30 after the generator has reasonably demonstrated that,
31 considering technological feasibility and economic
32 reasonableness, the hazardous waste cannot be reasonably
33 recycled for reuse, nor incinerated or chemically, physically
34 or biologically treated so as to neutralize the hazardous

1 waste and render it nonhazardous. In granting authorization
2 under this Section, the Agency may impose such conditions as
3 may be necessary to accomplish the purposes of the Act and
4 are consistent with this Act and regulations promulgated by
5 the Board hereunder. If the Agency refuses to grant
6 authorization under this Section, the applicant may appeal as
7 if the Agency refused to grant a permit, pursuant to the
8 provisions of subsection (a) of Section 40 of this Act. For
9 purposes of this subsection (h), the term "generator" has the
10 meaning given in Section 3.205 of this Act, unless: (1) the
11 hazardous waste is treated, incinerated, or partially
12 recycled for reuse prior to disposal, in which case the last
13 person who treats, incinerates, or partially recycles the
14 hazardous waste prior to disposal is the generator; or (2)
15 the hazardous waste is from a response action, in which case
16 the person performing the response action is the generator.
17 This subsection (h) does not apply to any hazardous waste
18 that is restricted from land disposal under 35 Ill. Adm. Code
19 728.

20 (i) Before issuing any RCRA permit or any permit for a
21 waste storage site, sanitary landfill, waste disposal site,
22 waste transfer station, waste treatment facility, waste
23 incinerator, or any waste-transportation operation, the
24 Agency shall conduct an evaluation of the prospective owner's
25 or operator's prior experience in waste management
26 operations. The Agency may deny such a permit if the
27 prospective owner or operator or any employee or officer of
28 the prospective owner or operator has a history of:

29 (1) repeated violations of federal, State, or local
30 laws, regulations, standards, or ordinances in the
31 operation of waste management facilities or sites; or
32 (2) conviction in this or another State of any
33 crime which is a felony under the laws of this State, or
34 conviction of a felony in a federal court; or

1 (3) proof of gross carelessness or incompetence in
2 handling, storing, processing, transporting or disposing
3 of waste.

4 (j) The issuance under this Act of a permit to engage in
5 the surface mining of any resources other than fossil fuels
6 shall not relieve the permittee from its duty to comply with
7 any applicable local law regulating the commencement,
8 location or operation of surface mining facilities.

9 (k) A development permit issued under subsection (a) of
10 Section 39 for any facility or site which is required to have
11 a permit under subsection (d) of Section 21 shall expire at
12 the end of 2 calendar years from the date upon which it was
13 issued, unless within that period the applicant has taken
14 action to develop the facility or the site. In the event that
15 review of the conditions of the development permit is sought
16 pursuant to Section 40 or 41, or permittee is prevented from
17 commencing development of the facility or site by any other
18 litigation beyond the permittee's control, such two-year
19 period shall be deemed to begin on the date upon which such
20 review process or litigation is concluded.

21 (l) No permit shall be issued by the Agency under this
22 Act for construction or operation of any facility or site
23 located within the boundaries of any setback zone established
24 pursuant to this Act, where such construction or operation is
25 prohibited.

26 (m) The Agency may issue permits to persons owning or
27 operating a facility for composting landscape waste. In
28 granting such permits, the Agency may impose such conditions
29 as may be necessary to accomplish the purposes of this Act,
30 and as are not inconsistent with applicable regulations
31 promulgated by the Board. Except as otherwise provided in
32 this Act, a bond or other security shall not be required as a
33 condition for the issuance of a permit. If the Agency denies
34 any permit pursuant to this subsection, the Agency shall

1 transmit to the applicant within the time limitations of this
2 subsection specific, detailed statements as to the reasons
3 the permit application was denied. Such statements shall
4 include but not be limited to the following:

5 (1) the Sections of this Act that may be violated
6 if the permit were granted;

7 (2) the specific regulations promulgated pursuant
8 to this Act that may be violated if the permit were
9 granted;

10 (3) the specific information, if any, the Agency
11 deems the applicant did not provide in its application to
12 the Agency; and

13 (4) a statement of specific reasons why the Act and
14 the regulations might be violated if the permit were
15 granted.

16 If no final action is taken by the Agency within 90 days
17 after the filing of the application for permit, the applicant
18 may deem the permit issued. Any applicant for a permit may
19 waive the 90 day limitation by filing a written statement
20 with the Agency.

21 The Agency shall issue permits for such facilities upon
22 receipt of an application that includes a legal description
23 of the site, a topographic map of the site drawn to the scale
24 of 200 feet to the inch or larger, a description of the
25 operation, including the area served, an estimate of the
26 volume of materials to be processed, and documentation that:

27 (1) the facility includes a setback of at least 200
28 feet from the nearest potable water supply well;

29 (2) the facility is located outside the boundary of
30 the 10-year floodplain or the site will be floodproofed;

31 (3) the facility is located so as to minimize
32 incompatibility with the character of the surrounding
33 area, including at least a 200 foot setback from any
34 residence, and in the case of a facility that is

1 developed or the permitted composting area of which is
2 expanded after November 17, 1991, the composting area is
3 located at least 1/8 mile from the nearest residence
4 (other than a residence located on the same property as
5 the facility);

6 (4) the design of the facility will prevent any
7 compost material from being placed within 5 feet of the
8 water table, will adequately control runoff from the
9 site, and will collect and manage any leachate that is
10 generated on the site;

11 (5) the operation of the facility will include
12 appropriate dust and odor control measures, limitations
13 on operating hours, appropriate noise control measures
14 for shredding, chipping and similar equipment, management
15 procedures for composting, containment and disposal of
16 non-compostable wastes, procedures to be used for
17 terminating operations at the site, and recordkeeping
18 sufficient to document the amount of materials received,
19 composted and otherwise disposed of; and

20 (6) the operation will be conducted in accordance
21 with any applicable rules adopted by the Board.

22 The Agency shall issue renewable permits of not longer
23 than 10 years in duration for the composting of landscape
24 wastes, as defined in Section 3.155 of this Act, based on the
25 above requirements.

26 The operator of any facility permitted under this
27 subsection (m) must submit a written annual statement to the
28 Agency on or before April 1 of each year that includes an
29 estimate of the amount of material, in tons, received for
30 composting.

31 (n) The Agency shall issue permits jointly with the
32 Department of Transportation for the dredging or deposit of
33 material in Lake Michigan in accordance with Section 18 of
34 the Rivers, Lakes, and Streams Act.

1 (o) (Blank.)

2 (p) (1) Any person submitting an application for a
3 permit for a new MSWLF unit or for a lateral expansion under
4 subsection (t) of Section 21 of this Act for an existing
5 MSWLF unit that has not received and is not subject to local
6 siting approval under Section 39.2 of this Act shall publish
7 notice of the application in a newspaper of general
8 circulation in the county in which the MSWLF unit is or is
9 proposed to be located. The notice must be published at
10 least 15 days before submission of the permit application to
11 the Agency. The notice shall state the name and address of
12 the applicant, the location of the MSWLF unit or proposed
13 MSWLF unit, the nature and size of the MSWLF unit or proposed
14 MSWLF unit, the nature of the activity proposed, the probable
15 life of the proposed activity, the date the permit
16 application will be submitted, and a statement that persons
17 may file written comments with the Agency concerning the
18 permit application within 30 days after the filing of the
19 permit application unless the time period to submit comments
20 is extended by the Agency.

21 When a permit applicant submits information to the Agency
22 to supplement a permit application being reviewed by the
23 Agency, the applicant shall not be required to reissue the
24 notice under this subsection.

25 (2) The Agency shall accept written comments concerning
26 the permit application that are postmarked no later than 30
27 days after the filing of the permit application, unless the
28 time period to accept comments is extended by the Agency.

29 (3) Each applicant for a permit described in part (1) of
30 this subsection shall file a copy of the permit application
31 with the county board or governing body of the municipality
32 in which the MSWLF unit is or is proposed to be located at
33 the same time the application is submitted to the Agency.
34 The permit application filed with the county board or

1 governing body of the municipality shall include all
2 documents submitted to or to be submitted to the Agency,
3 except trade secrets as determined under Section 7.1 of this
4 Act. The permit application and other documents on file with
5 the county board or governing body of the municipality shall
6 be made available for public inspection during regular
7 business hours at the office of the county board or the
8 governing body of the municipality and may be copied upon
9 payment of the actual cost of reproduction.

10 (Source: P.A. 92-574, eff. 6-26-02.)

11 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

12 Sec. 42. Civil penalties.

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

25 (b) Notwithstanding the provisions of subsection (a) of
26 this Section:

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

32 (2) Any person that violates Section 12(g) of this
33 Act or any UIC permit or term or condition thereof, or

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

18 (4) In an administrative citation action under
19 Section 31.1 of this Act, any person found to have
20 violated any provision of subsection (o) of Section 21 of
21 this Act shall pay a civil penalty of \$500 for each
22 violation of each such provision, plus any hearing costs
23 incurred by the Board and the Agency. Such penalties
24 shall be made payable to the Environmental Protection
25 Trust Fund, to be used in accordance with the provisions
26 of the Environmental Protection Trust Fund Act; except
27 that if a unit of local government issued the
28 administrative citation, 50% of the civil penalty shall
29 be payable to the unit of local government.

30 (4-5) In an administrative citation action under
31 Section 31.1 of this Act, any person found to have
32 violated any provision of subsection (p) of Section 21 of
33 this Act shall pay a civil penalty of \$1,500 for a first
34 offense and \$3,000 for a second or subsequent offense,

1 plus any hearing costs incurred by the Board and the
2 Agency. The penalties shall be deposited into the
3 Environmental Protection Trust Fund, to be used in
4 accordance with the provisions of the Environmental
5 Protection Trust Fund Act; except that if a unit of local
6 government issued the administrative citation, 50% of the
7 civil penalty shall be payable to the unit of local
8 government.

9 (5) Any person who violates subsection 6 of Section
10 39.5 of this Act or any CAAPP permit, or term or
11 condition thereof, or any fee or filing requirement, or
12 any duty to allow or carry out inspection, entry or
13 monitoring activities, or any regulation or order
14 relating to the CAAPP shall be liable for a civil penalty
15 not to exceed \$10,000 per day of violation.

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

30 (c) Any person that violates this Act, or an order or
31 other determination of the Board under this Act and causes
32 the death of fish or aquatic life shall, in addition to the
33 other penalties provided by this Act, be liable to pay to the
34 State an additional sum for the reasonable value of the fish

1 or aquatic life destroyed. Any money so recovered shall be
2 placed in the Wildlife and Fish Fund in the State Treasury.

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

5 (e) The State's Attorney of the county in which the
6 violation occurred, or the Attorney General, may, at the
7 request of the Agency or on his own motion, institute a civil
8 action for an injunction to restrain violations of this Act.

9 (f) The State's Attorney of the county in which the
10 violation occurred, or the Attorney General, shall bring such
11 actions in the name of the people of the State of Illinois.
12 Without limiting any other authority which may exist for the
13 awarding of attorney's fees and costs, the Board or a court
14 of competent jurisdiction may award costs and reasonable
15 attorney's fees, including the reasonable costs of expert
16 witnesses and consultants, to the State's Attorney or the
17 Attorney General in a case where he has prevailed against a
18 person who has committed a wilful, knowing or repeated
19 violation of the Act.

20 Any funds collected under this subsection (f) in which
21 the Attorney General has prevailed shall be deposited in the
22 Hazardous Waste Fund created in Section 22.2 of this Act. Any
23 funds collected under this subsection (f) in which a State's
24 Attorney has prevailed shall be retained by the county in
25 which he serves.

26 (g) All final orders imposing civil penalties pursuant
27 to this Section shall prescribe the time for payment of such
28 penalties. If any such penalty is not paid within the time
29 prescribed, interest on such penalty at the rate set forth in
30 subsection (a) of Section 1003 of the Illinois Income Tax
31 Act, shall be paid for the period from the date payment is
32 due until the date payment is received. However, if the time
33 for payment is stayed during the pendency of an appeal,
34 interest shall not accrue during such stay.

1 (h) In determining the appropriate civil penalty to be
2 imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or
3 (b)(5) of this Section, the Board is authorized to consider
4 any matters of record in mitigation or aggravation of
5 penalty, including but not limited to the following factors:

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

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

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

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

21 (5) the number, proximity in time, and gravity of
22 previously adjudicated violations of this Act by the
23 respondent; violator;

24 (6) whether the respondent voluntarily
25 self-disclosed, in accordance with subsection (i) of this
26 Section, the non-compliance to the Agency; and

27 (7) whether the respondent has agreed to undertake
28 a "supplemental environmental project," which means an
29 environmentally beneficial project that a respondent
30 agrees to undertake in settlement of an enforcement
31 action brought under this Act, but which the respondent
32 is not otherwise legally required to perform.

33 In determining the appropriate civil penalty to be
34 imposed under subsection (a) or paragraph (1), (2), (3), or

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

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

15 (1) that the non-compliance was discovered through
16 an environmental audit, as defined in Section 52.2 of
17 this Act, and the person waives the environmental audit
18 privileges as provided in that Section with respect to
19 that non-compliance;

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

23 (3) that the non-compliance was discovered and
24 disclosed prior to:

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

27 (ii) notice of a citizen suit;

28 (iii) the filing of a complaint by a citizen,
29 the Illinois Attorney General, or the State's
30 Attorney of the county in which the violation
31 occurred;

32 (iv) the reporting of the non-compliance by an
33 employee of the person without that person's
34 knowledge; or

1 (v) imminent discovery of the non-compliance
2 by the Agency;

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

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

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

12 (7) that the non-compliance did not result in
13 serious actual harm or present an imminent and
14 substantial endangerment to human health or the
15 environment or violate the specific terms of any judicial
16 or administrative order or consent agreement;

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

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

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

29 (Source: P.A. 90-773, eff. 8-14-98; 91-82, eff. 1-1-00.)