

HB5387



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5387

Introduced 2/5/2010, by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

415 ILCS 5/42

from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. Makes a technical change in a Section concerning civil penalties.

LRB096 18440 JDS 33818 b

A BILL FOR

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 42 as follows:

6 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

7 Sec. 42. Civil penalties.

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

20 (b) Notwithstanding the provisions of subsection (a) of
21 this Section:

22 (1) Any person that violates Section 12(f) of this Act
23 or any NPDES permit or term or condition thereof, or any

1 filing requirement, regulation or order relating to the
2 NPDES permit program, shall be liable to a civil penalty of
3 not to exceed \$10,000 per day of violation.

4 (2) Any person that violates Section 12(g) of this Act
5 or any UIC permit or term or condition thereof, or any
6 filing requirement, regulation or order relating to the
7 State UIC program for all wells, except Class II wells as
8 defined by the Board under this Act, shall be liable to a
9 civil penalty not to exceed \$2,500 per day of violation;
10 provided, however, that any person who commits such
11 violations relating to the State UIC program for Class II
12 wells, as defined by the Board under this Act, shall be
13 liable to a civil penalty of not to exceed \$10,000 for the
14 violation and an additional civil penalty of not to exceed
15 \$1,000 for each day during which the violation continues.

16 (3) Any person that violates Sections 21(f), 21(g),
17 21(h) or 21(i) of this Act, or any RCRA permit or term or
18 condition thereof, or any filing requirement, regulation
19 or order relating to the State RCRA program, shall be
20 liable to a civil penalty of not to exceed \$25,000 per day
21 of violation.

22 (4) In an administrative citation action under Section
23 31.1 of this Act, any person found to have violated any
24 provision of subsection (o) of Section 21 of this Act shall
25 pay a civil penalty of \$500 for each violation of each such
26 provision, plus any hearing costs incurred by the Board and

1 the Agency. Such penalties shall be made payable to the
2 Environmental Protection Trust Fund, to be used in
3 accordance with the provisions of the Environmental
4 Protection Trust Fund Act; except that if a unit of local
5 government issued the administrative citation, 50% of the
6 civil penalty shall be payable to the unit of local
7 government.

8 (4-5) In an administrative citation action under
9 Section 31.1 of this Act, any person found to have violated
10 any provision of subsection (p) of Section 21 or subsection
11 (k) of Section 55 of this Act shall pay a civil penalty of
12 \$1,500 for each violation of each such provision, plus any
13 hearing costs incurred by the Board and the Agency, except
14 that the civil penalty amount shall be \$3,000 for each
15 violation of any provision of subsection (p) of Section 21
16 or subsection (k) of Section 55 that is the person's second
17 or subsequent adjudication violation of that provision.
18 The penalties shall be deposited into the Environmental
19 Protection Trust Fund, to be used in accordance with the
20 provisions of the Environmental Protection Trust Fund Act;
21 except that if a unit of local government issued the
22 administrative citation, 50% of the civil penalty shall be
23 payable to the unit of local government.

24 (5) Any person who violates subsection 6 of Section
25 39.5 of this Act or any CAAPP permit, or term or condition
26 thereof, or any fee or filing requirement, or any duty to

1 allow or carry out inspection, entry or monitoring
2 activities, or any regulation or order relating to the
3 CAAPP shall be liable for a civil penalty not to exceed
4 \$10,000 per day of violation.

5 (6) Any owner or operator of a community water system
6 that violates subsection (b) of Section 18.1 or subsection
7 (a) of Section 25d-3 of this Act shall, for each day of
8 violation, be liable for a civil penalty not to exceed \$5
9 for each of the premises connected to the affected
10 community water system.

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

25 (c) Any person that violates this Act, any rule or
26 regulation adopted under this Act, any permit or term or

1 condition of a permit, or any Board order and causes the death
2 of fish or aquatic life shall, in addition to the other
3 penalties provided by this Act, be liable to pay to the State
4 an additional sum for the reasonable value of the fish or
5 aquatic life destroyed. Any money so recovered shall be placed
6 in the Wildlife and Fish Fund in the State Treasury.

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

9 (e) The State's Attorney of the county in which the
10 violation occurred, or the Attorney General, may, at the
11 request of the Agency or on his own motion, institute a civil
12 action for an injunction, prohibitory or mandatory, to restrain
13 violations of this Act, any rule or regulation adopted under
14 this Act, any permit or term or condition of a permit, or any
15 Board order, or to require such other actions as may be
16 necessary to address violations of this Act, any rule or
17 regulation adopted under this Act, any permit or term or
18 condition of a permit, or any Board order.

19 (f) The State's Attorney of the county in which the
20 violation occurred, or the Attorney General, shall bring such
21 actions in the name of the people of the State of Illinois.
22 Without limiting any other authority which may exist for the
23 awarding of attorney's fees and costs, the Board or a court of
24 competent jurisdiction may award costs and reasonable
25 attorney's fees, including the reasonable costs of expert
26 witnesses and consultants, to the State's Attorney or the

1 Attorney General in a case where he has prevailed against a
2 person who has committed a wilful, knowing or repeated
3 violation of this Act, any rule or regulation adopted under
4 this Act, any permit or term or condition of a permit, or any
5 Board order.

6 Any funds collected under this subsection (f) in which the
7 Attorney General has prevailed shall be deposited in the
8 Hazardous Waste Fund created in Section 22.2 of this Act. Any
9 funds collected under this subsection (f) in which a State's
10 Attorney has prevailed shall be retained by the county in which
11 he serves.

12 (g) All final orders imposing civil penalties pursuant to
13 this Section shall prescribe the time for payment of such
14 penalties. If any such penalty is not paid within the time
15 prescribed, interest on such penalty at the rate set forth in
16 subsection (a) of Section 1003 of the Illinois Income Tax Act,
17 shall be paid for the period from the date payment is due until
18 the date payment is received. However, if the time for payment
19 is stayed during the pendency of an appeal, interest shall not
20 accrue during such stay.

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

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

1 (2) the presence or absence of due diligence on the
2 part of the respondent in attempting to comply with
3 requirements of this Act and regulations thereunder or to
4 secure relief therefrom as provided by this Act;

5 (3) any economic benefits accrued by the respondent
6 because of delay in compliance with requirements, in which
7 case the economic benefits shall be determined by the
8 lowest cost alternative for achieving compliance;

9 (4) the amount of monetary penalty which will serve to
10 deter further violations by the respondent and to otherwise
11 aid in enhancing voluntary compliance with this Act by the
12 respondent and other persons similarly subject to the Act;

13 (5) the number, proximity in time, and gravity of
14 previously adjudicated violations of this Act by the
15 respondent;

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

19 (7) whether the respondent has agreed to undertake a
20 "supplemental environmental project," which means an
21 environmentally beneficial project that a respondent
22 agrees to undertake in settlement of an enforcement action
23 brought under this Act, but which the respondent is not
24 otherwise legally required to perform.

25 In determining the appropriate civil penalty to be imposed
26 under subsection (a) or paragraph (1), (2), (3), or (5) of

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

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

14 (1) that the non-compliance was discovered through an
15 environmental audit or a compliance management system
16 documented by the regulated entity as reflecting the
17 regulated entity's due diligence in preventing, detecting,
18 and correcting violations;

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

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

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

26 (ii) notice of a citizen suit;

1 (iii) the filing of a complaint by a citizen, the
2 Illinois Attorney General, or the State's Attorney of
3 the county in which the violation occurred;

4 (iv) the reporting of the non-compliance by an
5 employee of the person without that person's
6 knowledge; or

7 (v) imminent discovery of the non-compliance by
8 the Agency;

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

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

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

17 (7) that the non-compliance did not result in serious
18 actual harm or present an imminent and substantial
19 endangerment to human health or the environment or violate
20 the specific terms of any judicial or administrative order
21 or consent agreement;

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

24 (9) that the non-compliance was identified voluntarily
25 and not through a monitoring, sampling, or auditing
26 procedure that is required by statute, rule, permit,

1 judicial or administrative order, or consent agreement.

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

7 (j) In addition to an other remedy or penalty that may
8 apply, whether civil or criminal, any person who violates
9 Section 22.52 of this Act shall be liable for an additional
10 civil penalty of up to 3 times the gross amount of any
11 pecuniary gain resulting from the violation.

12 (Source: P.A. 95-331, eff. 8-21-07; 96-603, eff. 8-24-09;
13 96-737, eff. 8-25-09; revised 9-15-09.)