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1 AMENDMENT TO HOUSE BILL 6120

2 AMENDMENT NO. _____. Amend House Bill 6120 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended by
5 changing Sections 12, 18, 31.1, and 42 as follows:

6 (415 ILCS 5/12) (from Ch. 111 1/2, par. 1012)

7 Sec. 12. Actions prohibited. No person shall:

8 (a) Cause or threaten or allow the discharge of any
9 contaminants into the environment in any State so as to cause
10 or tend to cause water pollution in Illinois, either alone or
11 in combination with matter from other sources, or so as to
12 violate regulations or standards adopted by the Pollution
13 Control Board under this Act.

14 (b) Construct, install, or operate any equipment,
15 facility, vessel, or aircraft capable of causing or
16 contributing to water pollution, or designed to prevent water

1 pollution, of any type designated by Board regulations, without
2 a permit granted by the Agency, or in violation of any
3 conditions imposed by such permit.

4 (c) Increase the quantity or strength of any discharge of
5 contaminants into the waters, or construct or install any sewer
6 or sewage treatment facility or any new outlet for contaminants
7 into the waters of this State, without a permit granted by the
8 Agency.

9 (d) Deposit any contaminants upon the land in such place
10 and manner so as to create a water pollution hazard.

11 (e) Sell, offer, or use any article in any area in which
12 the Board has by regulation forbidden its sale, offer, or use
13 for reasons of water pollution control.

14 (f) Cause, threaten or allow the discharge of any
15 contaminant into the waters of the State, as defined herein,
16 including but not limited to, waters to any sewage works, or
17 into any well or from any point source within the State,
18 without an NPDES permit for point source discharges issued by
19 the Agency under Section 39(b) of this Act, or in violation of
20 any term or condition imposed by such permit, or in violation
21 of any NPDES permit filing requirement established under
22 Section 39(b), or in violation of any regulations adopted by
23 the Board or of any order adopted by the Board with respect to
24 the NPDES program.

25 No permit shall be required under this subsection and under
26 Section 39(b) of this Act for any discharge for which a permit

1 is not required under the Federal Water Pollution Control Act,
2 as now or hereafter amended, and regulations pursuant thereto.

3 For all purposes of this Act, a permit issued by the
4 Administrator of the United States Environmental Protection
5 Agency under Section 402 of the Federal Water Pollution Control
6 Act, as now or hereafter amended, shall be deemed to be a
7 permit issued by the Agency pursuant to Section 39(b) of this
8 Act. However, this shall not apply to the exclusion from the
9 requirement of an operating permit provided under Section
10 13(b) (i).

11 Compliance with the terms and conditions of any permit
12 issued under Section 39(b) of this Act shall be deemed
13 compliance with this subsection except that it shall not be
14 deemed compliance with any standard or effluent limitation
15 imposed for a toxic pollutant injurious to human health.

16 In any case where a permit has been timely applied for
17 pursuant to Section 39(b) of this Act but final administrative
18 disposition of such application has not been made, it shall not
19 be a violation of this subsection to discharge without such
20 permit unless the complainant proves that final administrative
21 disposition has not been made because of the failure of the
22 applicant to furnish information reasonably required or
23 requested in order to process the application.

24 (g) Cause, threaten or allow the underground injection of
25 contaminants without a UIC permit issued by the Agency under
26 Section 39(d) of this Act, or in violation of any term or

1 condition imposed by such permit, or in violation of any
2 regulations or standards adopted by the Board or of any order
3 adopted by the Board with respect to the UIC program.

4 No permit shall be required under this subsection and under
5 Section 39(d) of this Act for any underground injection of
6 contaminants for which a permit is not required under Part C of
7 the Safe Drinking Water Act (P.L. 93-523), as amended, unless a
8 permit is authorized or required under regulations adopted by
9 the Board pursuant to Section 13 of this Act.

10 (h) Introduce contaminants into a sewage works from any
11 nondomestic source except in compliance with the regulations
12 and standards adopted by the Board under this Act.

13 (i) On and after January 1, 2013, construct or install a
14 surface discharging private sewage disposal system that
15 discharges into the waters of the United States, as that term
16 is used in the Federal Water Pollution Control Act, unless he
17 or she has a coverage letter under a NPDES permit issued by the
18 Illinois Environmental Protection Agency or he or she is
19 constructing or installing the surface discharging private
20 sewage disposal system in a jurisdiction in which the local
21 public health department has a general NPDES permit issued by
22 the Illinois Environmental Protection Agency and the surface
23 discharging private sewage disposal system is covered under the
24 general NPDES permit.

25 (j) In violation of this Act, rules adopted under this Act,
26 or a permit or condition of a permit issued by the Agency, fail

1 to do any of the following after a prior written notification
2 has been provided by the Agency:

3 (1) Submit to the Agency a discharge monitoring report
4 as required under an NPDES permit.

5 (2) Perform effluent monitoring as required under an
6 NPDES permit.

7 (3) Obtain a stormwater NPDES permit for a construction
8 site.

9 (4) Renew an NPDES permit.

10 (5) Keep a copy of the stormwater pollution prevention
11 plan at a construction site as required under an NPDES
12 permit.

13 The prohibitions specified in this subsection (j) shall be
14 enforceable by the Agency either by administrative citation
15 under Section 31.1 of this Act or as otherwise provided by the
16 Act. The specific prohibitions in this subsection do not limit
17 the power of the Board to establish regulations or standards
18 applicable to the activities that are the subject of the
19 prohibitions.

20 (Source: P.A. 96-801, eff. 1-1-10.)

21 (415 ILCS 5/18) (from Ch. 111 1/2, par. 1018)

22 Sec. 18. Prohibitions; plugging requirements.

23 (a) No person shall:

24 (1) Knowingly cause, threaten or allow the
25 distribution of water from any public water supply of such

1 quality or quantity as to be injurious to human health; or

2 (2) Violate regulations or standards adopted by the
3 Agency pursuant to Section 15(b) of this Act or by the
4 Board under this Act; or

5 (3) Construct, install or operate any public water
6 supply without a permit granted by the Agency, or in
7 violation of any condition imposed by such a permit.

8 (b) Borings, water monitoring wells, and wells subject to
9 this Act shall, at a minimum, be abandoned and plugged in
10 accordance with the requirements of Sections 16 and 19 of "An
11 Act in relation to oil, gas, coal and other surface and
12 underground resources and to repeal an Act herein named", filed
13 July 29, 1941, as amended, and such rules as are promulgated
14 thereunder. Nothing herein shall preclude the Board from
15 adopting plugging and abandonment requirements which are more
16 stringent than the rules of the Department of Natural Resources
17 where necessary to protect the public health and environment.

18 (c) No person shall fail to do any of the following in
19 violation of this Act, rules adopted under this Act, or a
20 permit or condition of a permit issued by the Agency:

21 (1) Provide public notice of a drinking water
22 violation.

23 (2) Submit to the Agency a monthly operating report.

24 (3) Submit to the Agency a consumer confidence report.

25 (4) Perform monitoring.

26 The prohibitions specified in this subsection (c) shall be

1 enforceable by the Agency either by administrative citation
2 under Section 31.1 of this Act or as otherwise provided by the
3 Act. The specific prohibitions in this subsection do not limit
4 the power of the Board to establish regulations or standards
5 applicable to the activities that are the subject of the
6 prohibitions.

7 (Source: P.A. 89-445, eff. 2-7-96; 90-773, eff. 8-14-98.)

8 (415 ILCS 5/31.1) (from Ch. 111 1/2, par. 1031.1)

9 Sec. 31.1. Administrative citation.

10 (a) The prohibitions specified in subsection (j) of Section
11 12, subsection (c) of Section 18, subsections (o) and (p) of
12 Section 21, and subsection (k) of Section 55 of this Act shall
13 be enforceable either by administrative citation under this
14 Section or as otherwise provided by this Act.

15 (b) Whenever Agency personnel or personnel of a unit of
16 local government to which the Agency has delegated its
17 functions pursuant to subsection (r) of Section 4 of this Act,
18 on the basis of direct observation, determine that any person
19 has violated any provision of subsection (j) of Section 12,
20 subsection (c) of Section 18, subsection (o) or (p) of Section
21 21, or subsection (k) of Section 55 of this Act, the Agency or
22 such unit of local government may issue and serve an
23 administrative citation upon such person within not more than
24 60 days after the date of the observed violation. Each such
25 citation issued shall be served upon the person named therein

1 or such person's authorized agent for service of process, and
2 shall include the following information:

3 (1) a statement specifying the provisions of
4 subsection (j) of Section 12, subsection (c) of Section 18,
5 subsection (o) or (p) of Section 21, or subsection (k) of
6 Section 55 of which the person was observed to be in
7 violation;

8 (2) a copy of the inspection report or other report in
9 which the Agency or local government recorded the
10 violation, and any inspection ~~which~~ report shall include
11 the date and time of inspection, and weather conditions
12 prevailing during the inspection;

13 (3) the penalty imposed by subdivision (b)(4) or
14 (b)(4-5) of Section 42 for such violation;

15 (4) instructions for contesting the administrative
16 citation findings pursuant to this Section, including
17 notification that the person has 35 days within which to
18 file a petition for review before the Board to contest the
19 administrative citation; and

20 (5) an affidavit by the personnel observing the
21 violation, attesting to their material actions and
22 observations.

23 (c) The Agency or unit of local government shall file a
24 copy of each administrative citation served under subsection
25 (b) of this Section with the Board no later than 10 days after
26 the date of service.

1 (d) (1) If the person named in the administrative citation
2 fails to petition the Board for review within 35 days from the
3 date of service, the Board shall adopt a final order, which
4 shall include the administrative citation and findings of
5 violation as alleged in the citation, and shall impose the
6 penalty specified in subdivision (b) (4) or (b) (4-5) of Section
7 42.

8 (2) If a petition for review is filed before the Board to
9 contest an administrative citation issued under subsection (b)
10 of this Section, the Agency or unit of local government shall
11 appear as a complainant at a hearing before the Board to be
12 conducted pursuant to Section 32 of this Act at a time not less
13 than 21 days after notice of such hearing has been sent by the
14 Board to the Agency or unit of local government and the person
15 named in the citation. In such hearings, the burden of proof
16 shall be on the Agency or unit of local government. If, based
17 on the record, the Board finds that the alleged violation
18 occurred, it shall adopt a final order which shall include the
19 administrative citation and findings of violation as alleged in
20 the citation, and shall impose the penalty specified in
21 subdivision (b) (4) or (b) (4-5) of Section 42. However, if the
22 Board finds that the person appealing the citation has shown
23 that the violation resulted from uncontrollable circumstances,
24 the Board shall adopt a final order which makes no finding of
25 violation and which imposes no penalty.

26 (e) Sections 10-25 through 10-60 of the Illinois

1 Administrative Procedure Act shall not apply to any
2 administrative citation issued under subsection (b) of this
3 Section.

4 (f) The other provisions of this Section shall not apply to
5 a sanitary landfill operated by a unit of local government
6 solely for the purpose of disposing of water and sewage
7 treatment plant sludges, including necessary stabilizing
8 materials.

9 (g) All final orders issued and entered by the Board
10 pursuant to this Section shall be enforceable by injunction,
11 mandamus or other appropriate remedy, in accordance with
12 Section 42 of this Act.

13 (Source: P.A. 96-737, eff. 8-25-09.)

14 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

15 Sec. 42. Civil penalties.

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

1 Environmental Protection Trust Fund Act.

2 (b) Notwithstanding the provisions of subsection (a) of
3 this Section:

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

9 (2) Any person that violates Section 12(g) of this Act
10 or any UIC permit or term or condition thereof, or any
11 filing requirement, regulation or order relating to the
12 State UIC program for all wells, except Class II wells as
13 defined by the Board under this Act, shall be liable to a
14 civil penalty not to exceed \$2,500 per day of violation;
15 provided, however, that any person who commits such
16 violations relating to the State UIC program for Class II
17 wells, as defined by the Board under this Act, shall be
18 liable to a civil penalty of not to exceed \$10,000 for the
19 violation and an additional civil penalty of not to exceed
20 \$1,000 for each day during which the violation continues.

21 (3) Any person that violates Sections 21(f), 21(g),
22 21(h) or 21(i) of this Act, or any RCRA permit or term or
23 condition thereof, or any filing requirement, regulation
24 or order relating to the State RCRA program, shall be
25 liable to a civil penalty of not to exceed \$25,000 per day
26 of violation.

1 (4) In an administrative citation action under Section
2 31.1 of this Act, any person found to have violated any
3 provision of subsection (o) of Section 21 of this Act shall
4 pay a civil penalty of \$500 for each violation of each such
5 provision, plus any hearing costs incurred by the Board and
6 the Agency. Such penalties shall be made payable to the
7 Environmental Protection Trust Fund, to be used in
8 accordance with the provisions of the Environmental
9 Protection Trust Fund Act; except that if a unit of local
10 government issued the administrative citation, 50% of the
11 civil penalty shall be payable to the unit of local
12 government.

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

1 administrative citation, 50% of the civil penalty shall be
2 payable to the unit of local government.

3 (4-10) In an administrative citation action under
4 Section 31.1 of this Act, any person found to have violated
5 any provision of subsection (j) of Section 12 or subsection
6 (c) of Section 18 shall pay a civil penalty of \$1,000 for
7 each violation of each such provision, plus any hearing
8 costs incurred by the Board and the Agency, except that the
9 civil penalty amount shall be \$2,000 for such a violation
10 if it is the person's second or subsequent adjudicated
11 violation of that provision. These civil penalties shall be
12 deposited into the Environmental Protection Trust Fund, to
13 be used in accordance with the provisions of the
14 Environmental Protection Trust Fund Act.

15 (5) Any person who violates subsection 6 of Section
16 39.5 of this Act or any CAAPP permit, or term or condition
17 thereof, or any fee or filing requirement, or any duty to
18 allow or carry out inspection, entry or monitoring
19 activities, or any regulation or order relating to the
20 CAAPP shall be liable for a civil penalty not to exceed
21 \$10,000 per day of violation.

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

1 community water system.

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

16 (c) Any person that violates 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 and causes the death
19 of fish or aquatic life shall, in addition to the other
20 penalties provided by this Act, be liable to pay to the State
21 an additional sum for the reasonable value of the fish or
22 aquatic life destroyed. Any money so recovered shall be placed
23 in the Wildlife and Fish Fund in the State Treasury.

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

26 (e) The State's Attorney of the county in which the

1 violation occurred, or the Attorney General, may, at the
2 request of the Agency or on his own motion, institute a civil
3 action for an injunction, prohibitory or mandatory, to restrain
4 violations of this Act, any rule or regulation adopted under
5 this Act, any permit or term or condition of a permit, or any
6 Board order, or to require such other actions as may be
7 necessary to address violations of this Act, any rule or
8 regulation adopted under this Act, any permit or term or
9 condition of a permit, or any Board order.

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

23 Any funds collected under this subsection (f) in which the
24 Attorney General has prevailed shall be deposited in the
25 Hazardous Waste Fund created in Section 22.2 of this Act. Any
26 funds collected under this subsection (f) in which a State's

1 Attorney has prevailed shall be retained by the county in which
2 he serves.

3 (g) All final orders imposing civil penalties pursuant to
4 this Section shall prescribe the time for payment of such
5 penalties. If any such penalty is not paid within the time
6 prescribed, interest on such penalty at the rate set forth in
7 subsection (a) of Section 1003 of the Illinois Income Tax Act,
8 shall be paid for the period from the date payment is due until
9 the date payment is received. However, if the time for payment
10 is stayed during the pendency of an appeal, interest shall not
11 accrue during such stay.

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

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

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

22 (3) any economic benefits accrued by the respondent
23 because of delay in compliance with requirements, in which
24 case the economic benefits shall be determined by the
25 lowest cost alternative for achieving compliance;

26 (4) the amount of monetary penalty which will serve to

1 deter further violations by the respondent and to otherwise
2 aid in enhancing voluntary compliance with this Act by the
3 respondent and other persons similarly subject to the Act;

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

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

10 (7) whether the respondent has agreed to undertake a
11 "supplemental environmental project," which means an
12 environmentally beneficial project that a respondent
13 agrees to undertake in settlement of an enforcement action
14 brought under this Act, but which the respondent is not
15 otherwise legally required to perform.

16 In determining the appropriate civil penalty to be imposed
17 under subsection (a) or paragraph (1), (2), (3), or (5) of
18 subsection (b) of this Section, the Board shall ensure, in all
19 cases, that the penalty is at least as great as the economic
20 benefits, if any, accrued by the respondent as a result of the
21 violation, unless the Board finds that imposition of such
22 penalty would result in an arbitrary or unreasonable financial
23 hardship. However, such civil penalty may be off-set in whole
24 or in part pursuant to a supplemental environmental project
25 agreed to by the complainant and the respondent.

26 (i) A person who voluntarily self-discloses non-compliance

1 to the Agency, of which the Agency had been unaware, is
2 entitled to a 100% reduction in the portion of the penalty that
3 is not based on the economic benefit of non-compliance if the
4 person can establish the following:

5 (1) that the non-compliance was discovered through an
6 environmental audit or a compliance management system
7 documented by the regulated entity as reflecting the
8 regulated entity's due diligence in preventing, detecting,
9 and correcting violations;

10 (2) that the non-compliance was disclosed in writing
11 within 30 days of the date on which the person discovered
12 it;

13 (3) that the non-compliance was discovered and
14 disclosed prior to:

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

17 (ii) notice of a citizen suit;

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

21 (iv) the reporting of the non-compliance by an
22 employee of the person without that person's
23 knowledge; or

24 (v) imminent discovery of the non-compliance by
25 the Agency;

26 (4) that the non-compliance is being corrected and any

1 environmental harm is being remediated in a timely fashion;

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

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

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

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

15 (9) that the non-compliance was identified voluntarily
16 and not through a monitoring, sampling, or auditing
17 procedure that is required by statute, rule, permit,
18 judicial or administrative order, or consent agreement.

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

24 (j) In addition to an other remedy or penalty that may
25 apply, whether civil or criminal, any person who violates
26 Section 22.52 of this Act shall be liable for an additional

1 civil penalty of up to 3 times the gross amount of any
2 pecuniary gain resulting from the violation.

3 (Source: P.A. 95-331, eff. 8-21-07; 96-603, eff. 8-24-09;
4 96-737, eff. 8-25-09; revised 9-15-09.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.".