



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6120

Introduced 2/11/2010, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

415 ILCS 5/12	from Ch. 111 1/2, par. 1012
415 ILCS 5/18	from Ch. 111 1/2, par. 1018
415 ILCS 5/31.1	from Ch. 111 1/2, par. 1031.1
415 ILCS 5/42	from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. Makes it a violation of the Act to fail to (1) submit to the Agency a discharge monitoring report as required under an NPDES permit, (2) perform monitoring as required under an NPDES permit, (3) obtain a stormwater NPDES permit for a construction site, (4) renew an NPDES permit, and (5) maintain at a construction site a stormwater pollution prevention plan as required under an NPDES permit. Authorizes certain violations of the Act and rules adopted under its authority to be enforced by administrative citation. Effective immediately.

LRB096 20354 JDS 35990 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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 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
17 pollution, of any type designated by Board regulations, without
18 a permit granted by the Agency, or in violation of any
19 conditions imposed by such permit.

20 (c) Increase the quantity or strength of any discharge of
21 contaminants into the waters, or construct or install any sewer
22 or sewage treatment facility or any new outlet for contaminants
23 into the waters of this State, without a permit granted by the

1 Agency.

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

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

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

18 No permit shall be required under this subsection and under
19 Section 39(b) of this Act for any discharge for which a permit
20 is not required under the Federal Water Pollution Control Act,
21 as now or hereafter amended, and regulations pursuant thereto.

22 For all purposes of this Act, a permit issued by the
23 Administrator of the United States Environmental Protection
24 Agency under Section 402 of the Federal Water Pollution Control
25 Act, as now or hereafter amended, shall be deemed to be a
26 permit issued by the Agency pursuant to Section 39(b) of this

1 Act. However, this shall not apply to the exclusion from the
2 requirement of an operating permit provided under Section
3 13(b) (i).

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

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

17 (g) Cause, threaten or allow the underground injection of
18 contaminants without a UIC permit issued by the Agency under
19 Section 39(d) of this Act, or in violation of any term or
20 condition imposed by such permit, or in violation of any
21 regulations or standards adopted by the Board or of any order
22 adopted by the Board with respect to the UIC program.

23 No permit shall be required under this subsection and under
24 Section 39(d) of this Act for any underground injection of
25 contaminants for which a permit is not required under Part C of
26 the Safe Drinking Water Act (P.L. 93-523), as amended, unless a

1 permit is authorized or required under regulations adopted by
2 the Board pursuant to Section 13 of this Act.

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

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

18 (j) In violation of this Act, rules adopted under this Act,
19 or a permit or condition of a permit issued by the Agency, fail
20 to do any of the following:

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

23 (2) Perform monitoring as required under an NPDES
24 permit.

25 (3) Obtain a stormwater NPDES permit for a construction
26 site.

1 (4) Renew an NPDES permit.

2 (5) Maintain at a construction site a stormwater
3 pollution prevention plan as required under an NPDES
4 permit.

5 The prohibitions specified in this subsection (j) shall be
6 enforceable by the Agency either by administrative citation
7 under Section 31.1 of this Act or as otherwise provided by the
8 Act. The specific prohibitions in this subsection do not limit
9 the power of the Board to establish regulations or standards
10 applicable to the activities that are the subject of the
11 prohibitions.

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

13 (415 ILCS 5/18) (from Ch. 111 1/2, par. 1018)

14 Sec. 18. Prohibitions; plugging requirements.

15 (a) No person shall:

16 (1) Knowingly cause, threaten or allow the
17 distribution of water from any public water supply of such
18 quality or quantity as to be injurious to human health; or

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

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

25 (b) Borings, water monitoring wells, and wells subject to

1 this Act shall, at a minimum, be abandoned and plugged in
2 accordance with the requirements of Sections 16 and 19 of "An
3 Act in relation to oil, gas, coal and other surface and
4 underground resources and to repeal an Act herein named", filed
5 July 29, 1941, as amended, and such rules as are promulgated
6 thereunder. Nothing herein shall preclude the Board from
7 adopting plugging and abandonment requirements which are more
8 stringent than the rules of the Department of Natural Resources
9 where necessary to protect the public health and environment.

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

13 (1) Provide public notice of a drinking water
14 violation.

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

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

17 (4) Perform monitoring.

18 The prohibitions specified in this subsection (c) shall be
19 enforceable by the Agency either by administrative citation
20 under Section 31.1 of this Act or as otherwise provided by the
21 Act. The specific prohibitions in this subsection do not limit
22 the power of the Board to establish regulations or standards
23 applicable to the activities that are the subject of the
24 prohibitions.

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

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

2 Sec. 31.1. Administrative citation.

3 (a) The prohibitions specified in subsection (j) of Section
4 12, subsection (c) of Section 18, subsections (o) and (p) of
5 Section 21, and subsection (k) of Section 55 of this Act shall
6 be enforceable either by administrative citation under this
7 Section or as otherwise provided by this Act.

8 (b) Whenever Agency personnel or personnel of a unit of
9 local government to which the Agency has delegated its
10 functions pursuant to subsection (r) of Section 4 of this Act,
11 on the basis of direct observation, determine that any person
12 has violated any provision of subsection (j) of Section 12,
13 subsection (c) of Section 18, subsection (o) or (p) of Section
14 21, or subsection (k) of Section 55 of this Act, the Agency or
15 such unit of local government may issue and serve an
16 administrative citation upon such person within not more than
17 60 days after the date of the observed violation. Each such
18 citation issued shall be served upon the person named therein
19 or such person's authorized agent for service of process, and
20 shall include the following information:

21 (1) a statement specifying the provisions of
22 subsection (j) of Section 12, subsection (c) of Section 18,
23 subsection (o) or (p) of Section 21, or subsection (k) of
24 Section 55 of which the person was observed to be in
25 violation;

26 (2) a copy of the inspection report or other report in

1 which the Agency or local government recorded the
2 violation, and any inspection ~~which~~ report shall include
3 the date and time of inspection, and weather conditions
4 prevailing during the inspection;

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

7 (4) instructions for contesting the administrative
8 citation findings pursuant to this Section, including
9 notification that the person has 35 days within which to
10 file a petition for review before the Board to contest the
11 administrative citation; and

12 (5) an affidavit by the personnel observing the
13 violation, attesting to their material actions and
14 observations.

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

19 (d) (1) If the person named in the administrative citation
20 fails to petition the Board for review within 35 days from the
21 date of service, the Board shall adopt a final order, which
22 shall include the administrative citation and findings of
23 violation as alleged in the citation, and shall impose the
24 penalty specified in subdivision (b)(4) or (b)(4-5) of Section
25 42.

26 (2) If a petition for review is filed before the Board to

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

18 (e) Sections 10-25 through 10-60 of the Illinois
19 Administrative Procedure Act shall not apply to any
20 administrative citation issued under subsection (b) of this
21 Section.

22 (f) The other provisions of this Section shall not apply to
23 a sanitary landfill operated by a unit of local government
24 solely for the purpose of disposing of water and sewage
25 treatment plant sludges, including necessary stabilizing
26 materials.

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

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

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

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

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

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

13 (3) Any person that violates Sections 21(f), 21(g),
14 21(h) or 21(i) of this Act, or any RCRA permit or term or
15 condition thereof, or any filing requirement, regulation
16 or order relating to the State RCRA program, shall be
17 liable to a civil penalty of not to exceed \$25,000 per day
18 of violation.

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

1 Protection Trust Fund Act; except that if a unit of local
2 government issued the administrative citation, 50% of the
3 civil penalty shall be payable to the unit of local
4 government.

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

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.