



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1344

Introduced 2/10/2009, by Sen. Gary G. Dahl

SYNOPSIS AS INTRODUCED:

65 ILCS 5/1-2-1
415 ILCS 5/42

from Ch. 24, par. 1-2-1
from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. Provides that a municipality may impose a penalty against any person or organization owning or leasing property that releases a hazardous substance or any other contaminate that the unit of local government finds injures the public health and the safety of the community. Provides that the penalty may not exceed \$50,000 for the violation and an additional \$10,000 for each day during which the violation continues. Amends the Illinois Municipal Code to make conforming changes. Effective immediately.

LRB096 01710 HLH 11718 b

FISCAL NOTE ACT
MAY APPLY

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 Illinois Municipal Code is amended by
5 changing Section 1-2-1 as follows:

6 (65 ILCS 5/1-2-1) (from Ch. 24, par. 1-2-1)

7 Sec. 1-2-1. The corporate authorities of each municipality
8 may pass all ordinances and make all rules and regulations
9 proper or necessary, to carry into effect the powers granted to
10 municipalities, with such fines or penalties as may be deemed
11 proper. No fine or penalty, however, except civil penalties
12 provided for failure to make returns or to pay any taxes levied
13 by the municipality and penalties imposed under subsection (k)
14 of Section 42 of the Environmental Protection Act, shall exceed
15 \$750 and no imprisonment authorized in Section 1-2-9 for
16 failure to pay any fine, penalty or cost shall exceed 6 months
17 for one offense.

18 A penalty imposed for violation of an ordinance may
19 include, or consist of, a requirement that the defendant
20 perform some reasonable public service work such as but not
21 limited to the picking up of litter in public parks or along
22 public highways or the maintenance of public facilities.

23 A default in the payment of a fine or any installment of a

1 fine may be collected by any means authorized for the
2 collection of monetary judgments. The municipal attorney of the
3 municipality in which the fine was imposed may retain attorneys
4 and private collection agents for the purpose of collecting any
5 default in payment of any fine or installment of that fine. Any
6 fees or costs incurred by the municipality with respect to
7 attorneys or private collection agents retained by the
8 municipal attorney under this Section shall be charged to the
9 offender.

10 (Source: P.A. 95-389, eff. 1-1-08.)

11 Section 10. The Environmental Protection Act is amended by
12 changing Section 42 as follows:

13 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

14 Sec. 42. Civil penalties.

15 (a) Except as provided in this Section, any person that
16 violates any provision of this Act or any regulation adopted by
17 the Board, or any permit or term or condition thereof, or that
18 violates any order of the Board pursuant to this Act, shall be
19 liable for a civil penalty of not to exceed \$50,000 for the
20 violation and an additional civil penalty of not to exceed
21 \$10,000 for each day during which the violation continues; such
22 penalties may, upon order of the Board or a court of competent
23 jurisdiction, be made payable to the Environmental Protection
24 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 of this Act
16 shall pay a civil penalty of \$1,500 for each violation of
17 each such provision, plus any hearing costs incurred by the
18 Board and the Agency, except that the civil penalty amount
19 shall be \$3,000 for each violation of any provision of
20 subsection (p) of Section 21 that is the person's second or
21 subsequent adjudication violation of that provision. The
22 penalties shall be deposited into the Environmental
23 Protection Trust Fund, to be used in accordance with the
24 provisions of the Environmental Protection Trust Fund Act;
25 except that if a unit of local government issued the
26 administrative citation, 50% of the civil penalty shall be

1 payable to the unit of local government.

2 (5) Any person who violates subsection 6 of Section
3 39.5 of this Act or any CAAPP permit, or term or condition
4 thereof, or any fee or filing requirement, or any duty to
5 allow or carry out inspection, entry or monitoring
6 activities, or any regulation or order relating to the
7 CAAPP shall be liable for a civil penalty not to exceed
8 \$10,000 per day of violation.

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

23 (c) Any person that violates this Act, any rule or
24 regulation adopted under this Act, any permit or term or
25 condition of a permit, or any Board order and causes the death
26 of fish or aquatic life shall, in addition to the other

1 penalties provided by this Act, be liable to pay to the State
2 an additional sum for the reasonable value of the fish or
3 aquatic life destroyed. Any money so recovered shall be placed
4 in the Wildlife and Fish Fund in the State Treasury.

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

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

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

1 violation of this Act, any rule or regulation adopted under
2 this Act, any permit or term or condition of a permit, or any
3 Board order.

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

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

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

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

25 (2) the presence or absence of due diligence on the
26 part of the respondent in attempting to comply with

1 requirements of this Act and regulations thereunder or to
2 secure relief therefrom as provided by this Act;

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

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

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

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

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

23 In determining the appropriate civil penalty to be imposed
24 under subsection (a) or paragraph (1), (2), (3), or (5) of
25 subsection (b) of this Section, the Board shall ensure, in all
26 cases, that the penalty is at least as great as the economic

1 benefits, if any, accrued by the respondent as a result of the
2 violation, unless the Board finds that imposition of such
3 penalty would result in an arbitrary or unreasonable financial
4 hardship. However, such civil penalty may be off-set in whole
5 or in part pursuant to a supplemental environmental project
6 agreed to by the complainant and the respondent.

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

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

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

20 (3) that the non-compliance was discovered and
21 disclosed prior to:

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

24 (ii) notice of a citizen suit;

25 (iii) the filing of a complaint by a citizen, the
26 Illinois Attorney General, or the State's Attorney of

1 the county in which the violation occurred;

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

5 (v) imminent discovery of the non-compliance by
6 the Agency;

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

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

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

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

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

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

26 If a person can establish all of the elements under this

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

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

10 (k) In addition to remedies afforded the State of Illinois
11 under this Act, a unit of local government is specifically
12 authorized to adopt an ordinance imposing a civil penalty
13 against any person or organization owning or leasing property
14 that releases any hazardous substance, as defined in Section
15 3.215 of this Act, or any other contaminate that the unit of
16 local government finds injures the public health and the safety
17 of the community. The penalty may not exceed \$50,000 for the
18 violation and an additional \$10,000 for each day during which
19 the violation continues.

20 (Source: P.A. 94-272, eff. 7-19-05; 94-580, eff. 8-12-05;
21 95-331, eff. 8-21-07.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.