

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 31 and 42 as follows:

6 (415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)

7 Sec. 31. Notice; complaint; hearing.

8 (a)(1) Within 180 days after ~~of~~ becoming aware of an
9 alleged violation of the Act, or ~~or~~ any rule adopted under the
10 Act, or ~~or~~ of a permit granted by the Agency, or a condition
11 of such a ~~the~~ permit, the Agency shall issue and serve, by
12 certified mail, upon the person complained against a
13 written notice informing that person that the Agency has
14 evidence of the alleged violation. At a minimum, the
15 written notice shall contain:

16 (A) a notification to the person complained
17 against of the requirement to submit a written response
18 addressing the violations alleged and the option to
19 meet with appropriate agency personnel to resolve any
20 alleged violations that could lead to the filing of a
21 formal complaint;

22 (B) a detailed explanation by the Agency of the
23 violations alleged;

1 (C) an explanation by the Agency of the actions
2 that the Agency believes may resolve the alleged
3 violations, including an estimate of a reasonable time
4 period for the person complained against to complete
5 the suggested resolution; and

6 (D) an explanation of any alleged violation that
7 the Agency believes cannot be resolved without the
8 involvement of the Office of the Illinois Attorney
9 General or the State's Attorney of the county in which
10 the alleged violation occurred and the basis for the
11 Agency's belief.

12 (2) A written response to the violations alleged shall
13 be submitted to the Agency, by certified mail, within 45
14 days after ~~of~~ receipt of notice by the person complained
15 against, unless the Agency agrees to an extension. The
16 written response shall include:

17 (A) information in rebuttal, explanation or
18 justification of each alleged violation;

19 (B) if the person complained against desires to
20 enter into a Compliance Commitment Agreement, proposed
21 terms for a ~~proposed~~ Compliance Commitment Agreement
22 that includes specified times for achieving each
23 commitment and which may consist of a statement
24 indicating that the person complained against believes
25 that compliance has been achieved; and

26 (C) a request for a meeting with appropriate Agency

1 personnel if a meeting is desired by the person
2 complained against.

3 (3) If the person complained against fails to respond
4 in accordance with the requirements of subdivision (2) of
5 this subsection (a), the failure to respond shall be
6 considered a waiver of the requirements of this subsection
7 (a) and nothing in this Section shall preclude the Agency
8 from proceeding pursuant to subsection (b) of this Section.

9 (4) A meeting requested pursuant to subdivision (2) of
10 this subsection (a) shall be held without a representative
11 of the Office of the Illinois Attorney General or the
12 State's Attorney of the county in which the alleged
13 violation occurred, within 60 days after ~~of~~ receipt of
14 notice by the person complained against, unless the Agency
15 agrees to a postponement. At the meeting, the Agency shall
16 provide an opportunity for the person complained against to
17 respond to each alleged violation, suggested resolution,
18 and suggested implementation time frame, and to suggest
19 alternate resolutions.

20 (5) If a meeting requested pursuant to subdivision (2)
21 of this subsection (a) is held, the person complained
22 against shall, within 21 days following the meeting or
23 within an extended time period as agreed to by the Agency,
24 submit by certified mail to the Agency a written response
25 to the alleged violations. The written response shall
26 include:

1 (A) additional information in rebuttal,
2 explanation, or justification of each alleged
3 violation;

4 (B) if the person complained against desires to
5 enter into a Compliance Commitment Agreement, proposed
6 terms for a proposed Compliance Commitment Agreement
7 that includes specified times for achieving each
8 commitment and which may consist of a statement
9 indicating that the person complained against believes
10 that compliance has been achieved; and

11 (C) a statement indicating that, should the person
12 complained against so wish, the person complained
13 against chooses to rely upon the initial written
14 response submitted pursuant to subdivision (2) of this
15 subsection (a).

16 (6) If the person complained against fails to respond
17 in accordance with the requirements of subdivision (5) of
18 this subsection (a), the failure to respond shall be
19 considered a waiver of the requirements of this subsection
20 (a) and nothing in this Section shall preclude the Agency
21 from proceeding pursuant to subsection (b) of this Section.

22 (7) Within 30 days after ~~of~~ the Agency's receipt of a
23 written response submitted by the person complained
24 against pursuant to subdivision (2) of this subsection (a) ~~if~~
25 if a meeting is not requested ~~if~~ or pursuant to subdivision
26 (5) of this subsection (a) ~~if~~ if a meeting is held, or within

1 a later time period as agreed to by the Agency and the
2 person complained against, the Agency shall issue and
3 serve, by certified mail, upon the person complained
4 against (i) a written notice informing the person of its
5 acceptance, rejection, or proposed modification to the
6 proposed Compliance Commitment Agreement or (ii) a notice
7 that one or more violations cannot be resolved without the
8 involvement of the Office of the Attorney General or the
9 State's Attorney of the county in which the alleged
10 violation occurred and that no proposed Compliance
11 Commitment Agreement will be issued by the Agency for those
12 violations. The Agency shall include terms and conditions
13 in the proposed Compliance Commitment Agreement that are,
14 in its discretion, necessary to bring the person complained
15 against into compliance with the Act, any rule adopted
16 under the Act, any permit granted by the Agency, or any
17 condition of such a permit. The Agency shall take into
18 consideration the proposed terms for the proposed
19 Compliance Commitment Agreement that were provided under
20 subdivision (a) (2) (B) or (a) (5) (B) of this Section by the
21 person complained against as contained within the written
22 response.

23 (7.5) Within 30 days after the receipt of the Agency's
24 proposed Compliance Commitment Agreement by the person
25 complained against, the person shall either (i) agree to
26 and sign the proposed Compliance Commitment Agreement

1 provided by the Agency and submit the signed Compliance
2 Commitment Agreement to the Agency by certified mail or
3 (ii) notify the Agency in writing by certified mail of the
4 person's rejection of the proposed Compliance Commitment
5 Agreement. If the person complained against fails to
6 respond to the proposed Compliance Commitment Agreement
7 within 30 days as required under this paragraph, the
8 proposed Compliance Commitment Agreement is deemed
9 rejected by operation of law. Any Compliance Commitment
10 Agreement entered into under item (i) of this paragraph may
11 be amended subsequently in writing by mutual agreement
12 between the Agency and the signatory to the Compliance
13 Commitment Agreement, the signatory's legal
14 representative, or the signatory's agent.

15 (7.6) No person shall violate the terms or conditions
16 of a Compliance Commitment Agreement entered into under
17 subdivision (a)(7.5) of this Section. Successful
18 completion of a Compliance Commitment Agreement or an
19 amended Compliance Commitment Agreement shall be a factor
20 to be weighed, in favor of the person completing the
21 Agreement, by the Office of the Illinois Attorney General
22 in determining whether to file a complaint for the
23 violations that were the subject of the Agreement.

24 (8) Nothing in this subsection (a) is intended to
25 require the Agency to enter into Compliance Commitment
26 Agreements for any alleged violation that the Agency

1 believes cannot be resolved without the involvement of the
2 Office of the Attorney General or the State's Attorney of
3 the county in which the alleged violation occurred, for,
4 among other purposes, the imposition of statutory
5 penalties.

6 (9) The Agency's failure to respond within 30 days to a
7 written response submitted pursuant to subdivision (2) of
8 this subsection (a) ~~7~~ if a meeting is not requested ~~7~~ or
9 pursuant to subdivision (5) of this subsection (a) ~~7~~ if a
10 meeting is held, ~~within 30 days~~ ~~7~~ or within the time period
11 otherwise agreed to in writing by the Agency and the person
12 complained against, shall be deemed an acceptance by the
13 Agency of the proposed terms of the Compliance Commitment
14 Agreement for the violations alleged in the written notice
15 issued under subdivision (1) of this subsection (a) as
16 contained within the written response.

17 (10) If the person complained against complies with the
18 terms of a Compliance Commitment Agreement accepted
19 pursuant to this subsection (a), the Agency shall not refer
20 the alleged violations which are the subject of the
21 Compliance Commitment Agreement to the Office of the
22 Illinois Attorney General or the State's Attorney of the
23 county in which the alleged violation occurred. However,
24 nothing in this subsection is intended to preclude the
25 Agency from continuing negotiations with the person
26 complained against or from proceeding pursuant to the

1 provisions of subsection (b) of this Section for alleged
2 violations that ~~which~~ remain the subject of disagreement
3 between the Agency and the person complained against
4 following fulfillment of the requirements of this
5 subsection (a).

6 (11) Nothing in this subsection (a) is intended to
7 preclude the person complained against from submitting to
8 the Agency, by certified mail, at any time, notification
9 that the person complained against consents to waiver of
10 the requirements of subsections (a) and (b) of this
11 Section.

12 (12) The Agency shall have the authority to adopt rules
13 for the administration of subsection (a) of this Section.
14 The rules shall be adopted in accordance with the
15 provisions of the Illinois Administrative Procedure Act.

16 (b) For alleged violations that remain the subject of
17 disagreement between the Agency and the person complained
18 against following fulfillment of the requirements of
19 subsection (a) of this Section, and for alleged violations of
20 the terms or conditions of a Compliance Commitment Agreement
21 entered into under subdivision (a) (7.5) of this Section as well
22 as the alleged violations that are the subject of the
23 Compliance Commitment Agreement, and as a precondition to the
24 Agency's referral or request to the Office of the Illinois
25 Attorney General or the State's Attorney of the county in which
26 the alleged violation occurred for legal representation

1 regarding an alleged violation that may be addressed pursuant
2 to subsection (c) or (d) of this Section or pursuant to Section
3 42 of this Act, the Agency shall issue and serve, by certified
4 mail, upon the person complained against a written notice
5 informing that person that the Agency intends to pursue legal
6 action. Such notice shall notify the person complained against
7 of the violations to be alleged and offer the person an
8 opportunity to meet with appropriate Agency personnel in an
9 effort to resolve any alleged violations that could lead to the
10 filing of a formal complaint. The meeting with Agency personnel
11 shall be held within 30 days after ~~of~~ receipt of notice served
12 pursuant to this subsection upon the person complained against,
13 unless the Agency agrees to a postponement or the person
14 notifies the Agency that he or she will not appear at a meeting
15 within the 30-day time period. Nothing in this subsection is
16 intended to preclude the Agency from following the provisions
17 of subsection (c) or (d) of this Section or from requesting the
18 legal representation of the Office of the Illinois Attorney
19 General or the State's Attorney of the county in which the
20 alleged violations occurred for alleged violations which
21 remain the subject of disagreement between the Agency and the
22 person complained against after the provisions of this
23 subsection are fulfilled.

24 (c) (1) For alleged violations which remain the subject of
25 disagreement between the Agency and the person complained
26 against following waiver⁷ pursuant to subdivision (10) of

1 subsection (a) of this Section~~7~~ or fulfillment of the
2 requirements of subsections (a) and (b) of this Section,
3 the Office of the Illinois Attorney General or the State's
4 Attorney of the county in which the alleged violation
5 occurred shall issue and serve upon the person complained
6 against a written notice, together with a formal complaint,
7 which shall specify the provision of the Act~~,~~ ~~or the rule,~~
8 ~~or~~ regulation~~,~~ ~~or~~ permit~~,~~ or term or condition thereof
9 under which such person is said to be in violation~~7~~ and a
10 statement of the manner in~~7~~ and the extent to which such
11 person is said to violate the Act~~,~~ ~~or such rule,~~ ~~or~~
12 regulation~~,~~ ~~or~~ permit~~,~~ or term or condition thereof and
13 shall require the person so complained against to answer
14 the charges of such formal complaint at a hearing before
15 the Board at a time not less than 21 days after the date of
16 notice by the Board, except as provided in Section 34 of
17 this Act. Such complaint shall be accompanied by a
18 notification to the defendant that financing may be
19 available, through the Illinois Environmental Facilities
20 Financing Act, to correct such violation. A copy of such
21 notice of such hearings shall also be sent to any person
22 that has complained to the Agency respecting the respondent
23 within the six months preceding the date of the complaint,
24 and to any person in the county in which the offending
25 activity occurred that has requested notice of enforcement
26 proceedings; 21 days notice of such hearings shall also be

1 published in a newspaper of general circulation in such
2 county. The respondent may file a written answer, and at
3 such hearing the rules prescribed in Sections 32 and 33 of
4 this Act shall apply. In the case of actual or threatened
5 acts outside Illinois contributing to environmental damage
6 in Illinois, the extraterritorial service-of-process
7 provisions of Sections 2-208 and 2-209 of the Code of Civil
8 Procedure shall apply.

9 With respect to notices served pursuant to this
10 subsection (c)(1) that ~~which~~ involve hazardous material or
11 wastes in any manner, the Agency shall annually publish a
12 list of all such notices served. The list shall include the
13 date the investigation commenced, the date notice was sent,
14 the date the matter was referred to the Attorney General,
15 if applicable, and the current status of the matter.

16 (2) Notwithstanding the provisions of subdivision (1)
17 of this subsection (c), whenever a complaint has been filed
18 on behalf of the Agency or by the People of the State of
19 Illinois, the parties may file with the Board a stipulation
20 and proposal for settlement accompanied by a request for
21 relief from the requirement of a hearing pursuant to
22 subdivision (1). Unless the Board, in its discretion,
23 concludes that a hearing will be held, the Board shall
24 cause notice of the stipulation, proposal and request for
25 relief to be published and sent in the same manner as is
26 required for hearing pursuant to subdivision (1) of this

1 subsection. The notice shall include a statement that any
2 person may file a written demand for hearing within 21 days
3 after receiving the notice. If any person files a timely
4 written demand for hearing, the Board shall deny the
5 request for relief from a hearing and shall hold a hearing
6 in accordance with the provisions of subdivision (1).

7 (3) Notwithstanding the provisions of subdivision (1)
8 of this subsection (c), if the Agency becomes aware of a
9 violation of this Act arising from, or as a result of,
10 voluntary pollution prevention activities, the Agency
11 shall not proceed with the written notice required by
12 subsection (a) of this Section unless:

13 (A) the person fails to take corrective action or
14 eliminate the reported violation within a reasonable
15 time; or

16 (B) the Agency believes that the violation poses a
17 substantial and imminent danger to the public health or
18 welfare or the environment. For the purposes of this
19 item (B), "substantial and imminent danger" means a
20 danger with a likelihood of serious or irreversible
21 harm.

22 (d) (1) Any person may file with the Board a complaint,
23 meeting the requirements of subsection (c) of this Section,
24 against any person allegedly violating this Act, any rule
25 or regulation adopted under this Act, any permit or term or
26 condition of a permit, or any Board order. The complainant

1 shall immediately serve a copy of such complaint upon the
2 person or persons named therein. Unless the Board
3 determines that such complaint is duplicative or
4 frivolous, it shall schedule a hearing and serve written
5 notice thereof upon the person or persons named therein, in
6 accord with subsection (c) of this Section.

7 (2) Whenever a complaint has been filed by a person
8 other than the Attorney General or the State's Attorney,
9 the parties may file with the Board a stipulation and
10 proposal for settlement accompanied by a request for relief
11 from the hearing requirement of subdivision (c)(1) of this
12 Section. Unless the Board, in its discretion, concludes
13 that a hearing should be held, no hearing on the
14 stipulation and proposal for settlement is required.

15 (e) In hearings before the Board under this Title the
16 burden shall be on the Agency or other complainant to show
17 either that the respondent has caused or threatened to cause
18 air or water pollution or that the respondent has violated or
19 threatens to violate any provision of this Act or any rule or
20 regulation of the Board or permit or term or condition thereof.
21 If such proof has been made, the burden shall be on the
22 respondent to show that compliance with the Board's regulations
23 would impose an arbitrary or unreasonable hardship.

24 (f) The provisions of this Section shall not apply to
25 administrative citation actions commenced under Section 31.1
26 of this Act.

1 (Source: P.A. 92-574, eff. 6-26-02; 93-152, eff. 7-10-03.)

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

3 Sec. 42. Civil penalties.

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

15 (b) Notwithstanding the provisions of subsection (a) of
16 this Section:

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

22 (2) Any person that violates Section 12(g) of this Act
23 or any UIC permit or term or condition thereof, or any
24 filing requirement, regulation or order relating to the
25 State UIC program for all wells, except Class II wells as

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

9 (3) Any person that violates Sections 21(f), 21(g),
10 21(h) or 21(i) of this Act, or any RCRA permit or term or
11 condition thereof, or any filing requirement, regulation
12 or order relating to the State RCRA program, shall be
13 liable to a civil penalty of not to exceed \$25,000 per day
14 of violation.

15 (4) In an administrative citation action under Section
16 31.1 of this Act, any person found to have violated any
17 provision of subsection (o) of Section 21 of this Act shall
18 pay a civil penalty of \$500 for each violation of each such
19 provision, plus any hearing costs incurred by the Board and
20 the Agency. Such penalties shall be made payable to the
21 Environmental Protection Trust Fund, to be used in
22 accordance with the provisions of the Environmental
23 Protection Trust Fund Act; except that if a unit of local
24 government issued the administrative citation, 50% of the
25 civil penalty shall be payable to the unit of local
26 government.

1 (4-5) In an administrative citation action under
2 Section 31.1 of this Act, any person found to have violated
3 any provision of subsection (p) of Section 21, Section
4 22.51, Section 22.51a, or subsection (k) of Section 55 of
5 this Act shall pay a civil penalty of \$1,500 for each
6 violation of each such provision, plus any hearing costs
7 incurred by the Board and the Agency, except that the civil
8 penalty amount shall be \$3,000 for each violation of any
9 provision of subsection (p) of Section 21, Section 22.51,
10 Section 22.51a, or subsection (k) of Section 55 that is the
11 person's second or subsequent adjudication violation of
12 that provision. The penalties shall be deposited into the
13 Environmental Protection Trust Fund, to be used in
14 accordance with the provisions of the Environmental
15 Protection Trust Fund Act; except that if a unit of local
16 government issued the administrative citation, 50% of the
17 civil penalty shall be payable to the unit of local
18 government.

19 (5) Any person who violates subsection 6 of Section
20 39.5 of this Act or any CAAPP permit, or term or condition
21 thereof, or any fee or filing requirement, or any duty to
22 allow or carry out inspection, entry or monitoring
23 activities, or any regulation or order relating to the
24 CAAPP shall be liable for a civil penalty not to exceed
25 \$10,000 per day of violation.

26 (6) Any owner or operator of a community water system

1 that violates subsection (b) of Section 18.1 or subsection
2 (a) of Section 25d-3 of this Act shall, for each day of
3 violation, be liable for a civil penalty not to exceed \$5
4 for each of the premises connected to the affected
5 community water system.

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

20 (c) Any person that violates this Act, any rule or
21 regulation adopted under this Act, any permit or term or
22 condition of a permit, or any Board order and causes the death
23 of fish or aquatic life shall, in addition to the other
24 penalties provided by this Act, be liable to pay to the State
25 an additional sum for the reasonable value of the fish or
26 aquatic life destroyed. Any money so recovered shall be placed

1 in the Wildlife and Fish Fund in the State Treasury.

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

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

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

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

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

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

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

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

26 (3) any economic benefits accrued by the respondent

1 because of delay in compliance with requirements, in which
2 case the economic benefits shall be determined by the
3 lowest cost alternative for achieving compliance;

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

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

11 (6) whether the respondent voluntarily self-disclosed,
12 in accordance with subsection (i) of this Section, the
13 non-compliance to the Agency; ~~and~~

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

20 (8) whether the respondent has successfully completed
21 a Compliance Commitment Agreement under subsection (a) of
22 Section 31 of this Act to remedy the violations that are
23 the subject of the complaint.

24 In determining the appropriate civil penalty to be imposed
25 under subsection (a) or paragraph (1), (2), (3), or (5) of
26 subsection (b) of this Section, the Board shall ensure, in all

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

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

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

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

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

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

25 (ii) notice of a citizen suit;

26 (iii) the filing of a complaint by a citizen, the

1 Illinois Attorney General, or the State's Attorney of
2 the county in which the violation occurred;

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

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

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

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

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

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

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

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

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

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

11 (k) In addition to any other remedy or penalty that may
12 apply, whether civil or criminal, any person who violates
13 subdivision (a) (7.6) of Section 31 of this Act shall be liable
14 for an additional civil penalty of \$2,000.

15 (Source: P.A. 95-331, eff. 8-21-07; 96-603, eff. 8-24-09;
16 96-737, eff. 8-25-09; 96-1000, eff. 7-2-10; 96-1416, eff.
17 7-30-10.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.