



Sen. A. J. Wilhelmi

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09700SB1357sam002

LRB097 00021 JDS 54364 a

1 AMENDMENT TO SENATE BILL 1357

2 AMENDMENT NO. _____. Amend Senate Bill 1357 by replacing
3 everything after the enacting clause with the following:

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~~ 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

1 against of the requirement to submit a written response
2 addressing the violations alleged and the option to
3 meet with appropriate agency personnel to resolve any
4 alleged violations that could lead to the filing of a
5 formal complaint;

6 (B) a detailed explanation by the Agency of the
7 violations alleged;

8 (C) an explanation by the Agency of the actions
9 that the Agency believes may resolve the alleged
10 violations, including an estimate of a reasonable time
11 period for the person complained against to complete
12 the suggested resolution; and

13 (D) an explanation of any alleged violation that
14 the Agency believes cannot be resolved without the
15 involvement of the Office of the Illinois Attorney
16 General or the State's Attorney of the county in which
17 the alleged violation occurred and the basis for the
18 Agency's belief.

19 (2) A written response to the violations alleged shall
20 be submitted to the Agency, by certified mail, within 45
21 days after ~~of~~ receipt of notice by the person complained
22 against, unless the Agency agrees to an extension. The
23 written response shall include:

24 (A) information in rebuttal, explanation or
25 justification of each alleged violation;

26 (B) if the person complained against desires to

1 enter into a Compliance Commitment Agreement, proposed
2 terms for a ~~proposed~~ Compliance Commitment Agreement
3 that includes specified times for achieving each
4 commitment and which may consist of a statement
5 indicating that the person complained against believes
6 that compliance has been achieved; and

7 (C) a request for a meeting with appropriate Agency
8 personnel if a meeting is desired by the person
9 complained against.

10 (3) If the person complained against fails to respond
11 in accordance with the requirements of subdivision (2) of
12 this subsection (a), the failure to respond shall be
13 considered a waiver of the requirements of this subsection
14 (a) and nothing in this Section shall preclude the Agency
15 from proceeding pursuant to subsection (b) of this Section.

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

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

8 (A) additional information in rebuttal,
9 explanation, or justification of each alleged
10 violation;

11 (B) if the person complained against desires to
12 enter into a Compliance Commitment Agreement, proposed
13 terms for a ~~proposed~~ Compliance Commitment Agreement
14 that includes specified times for achieving each
15 commitment and which may consist of a statement
16 indicating that the person complained against believes
17 that compliance has been achieved; and

18 (C) a statement indicating that, should the person
19 complained against so wish, the person complained
20 against chooses to rely upon the initial written
21 response submitted pursuant to subdivision (2) of this
22 subsection (a).

23 (6) If the person complained against fails to respond
24 in accordance with the requirements of subdivision (5) of
25 this subsection (a), the failure to respond shall be
26 considered a waiver of the requirements of this subsection

1 (a) and nothing in this Section shall preclude the Agency
2 from proceeding pursuant to subsection (b) of this Section.

3 (7) Within 30 days after ~~of~~ the Agency's receipt of a
4 written response submitted by the person complained
5 against pursuant to subdivision (2) of this subsection (a),
6 if a meeting is not requested, or pursuant to subdivision
7 (5) of this subsection (a), if a meeting is held, or within
8 a later time period as agreed to by the Agency and the
9 person complained against, the Agency shall issue and
10 serve, by certified mail, upon the person complained
11 against (i) a written notice informing the person of its
12 acceptance, rejection, or proposed modification to the
13 proposed Compliance Commitment Agreement or (ii) a notice
14 that one or more violations cannot be resolved without the
15 involvement of the Office of the Attorney General or the
16 State's Attorney of the county in which the alleged
17 violation occurred and that no proposed Compliance
18 Commitment Agreement will be issued by the Agency for those
19 violations. The Agency shall include terms and conditions
20 in the proposed Compliance Commitment Agreement that are,
21 in its discretion, necessary to bring the person complained
22 against into compliance with the Act, any rule adopted
23 under the Act, any permit granted by the Agency, or any
24 condition of such a permit. The Agency shall take into
25 consideration the proposed terms for the proposed
26 Compliance Commitment Agreement that were provided under

1 subdivision (a) (2) (B) or (a) (5) (B) of this Section by the
2 person complained against as contained within the written
3 response.

4 (7.5) Within 30 days after the receipt of the Agency's
5 proposed Compliance Commitment Agreement by the person
6 complained against, the person shall either (i) agree to
7 and sign the proposed Compliance Commitment Agreement
8 provided by the Agency and submit the signed Compliance
9 Commitment Agreement to the Agency by certified mail or
10 (ii) notify the Agency in writing by certified mail of the
11 person's rejection of the proposed Compliance Commitment
12 Agreement. If the person complained against fails to
13 respond to the proposed Compliance Commitment Agreement
14 within 30 days as required under this paragraph, the
15 proposed Compliance Commitment Agreement is deemed
16 rejected by operation of law. Any Compliance Commitment
17 Agreement entered into under item (i) of this paragraph may
18 be amended subsequently in writing by mutual agreement
19 between the Agency and the signatory to the Compliance
20 Commitment Agreement, the signatory's legal
21 representative, or the signatory's agent.

22 (7.6) No person shall violate the terms or conditions
23 of a Compliance Commitment Agreement entered into under
24 subdivision (a) (7.5) of this Section. However,
25 notwithstanding any other provision of this Act to the
26 contrary, a person may cure a violation of this subdivision

1 (a) (7.6) by entering into a mutually agreed upon written
2 amendment to a Compliance Commitment Agreement under
3 subdivision (a) (7.5) of this Section. Successful
4 completion of a Compliance Commitment Agreement may be
5 considered by the Board or a court as an affirmative
6 defense against an action taken for violations of the Act
7 that were the subject of the Compliance Commitment
8 Agreement.

9 (8) Nothing in this subsection (a) is intended to
10 require the Agency to enter into Compliance Commitment
11 Agreements for any alleged violation that the Agency
12 believes cannot be resolved without the involvement of the
13 Office of the Attorney General or the State's Attorney of
14 the county in which the alleged violation occurred, for,
15 among other purposes, the imposition of statutory
16 penalties.

17 (9) The Agency's failure to respond within 30 days to a
18 written response submitted pursuant to subdivision (2) of
19 this subsection (a) ~~if a meeting is not requested,~~ or
20 pursuant to subdivision (5) of this subsection (a) ~~if a~~
21 meeting is held, ~~within 30 days,~~ or within the time period
22 otherwise agreed to in writing by the Agency and the person
23 complained against, shall be deemed an acceptance by the
24 Agency of the proposed terms of the Compliance Commitment
25 Agreement for the violations alleged in the written notice
26 issued under subdivision (1) of this subsection (a) as

1 contained within the written response.

2 (10) If the person complained against complies with the
3 terms of a Compliance Commitment Agreement accepted
4 pursuant to this subsection (a), the Agency shall not refer
5 the alleged violations which are the subject of the
6 Compliance Commitment Agreement to the Office of the
7 Illinois Attorney General or the State's Attorney of the
8 county in which the alleged violation occurred. However,
9 nothing in this subsection is intended to preclude the
10 Agency from continuing negotiations with the person
11 complained against or from proceeding pursuant to the
12 provisions of subsection (b) of this Section for alleged
13 violations that ~~which~~ remain the subject of disagreement
14 between the Agency and the person complained against
15 following fulfillment of the requirements of this
16 subsection (a).

17 (11) Nothing in this subsection (a) is intended to
18 preclude the person complained against from submitting to
19 the Agency, by certified mail, at any time, notification
20 that the person complained against consents to waiver of
21 the requirements of subsections (a) and (b) of this
22 Section.

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

1 (b) For alleged violations that remain the subject of
2 disagreement between the Agency and the person complained
3 against following fulfillment of the requirements of
4 subsection (a) of this Section, and for alleged violations of
5 the terms or conditions of a Compliance Commitment Agreement
6 entered into under subdivision (a)(7.5) of this Section as well
7 as the alleged violations that are the subject of the
8 Compliance Commitment Agreement, and as a precondition to the
9 Agency's referral or request to the Office of the Illinois
10 Attorney General or the State's Attorney of the county in which
11 the alleged violation occurred for legal representation
12 regarding an alleged violation that may be addressed pursuant
13 to subsection (c) or (d) of this Section or pursuant to Section
14 42 of this Act, the Agency shall issue and serve, by certified
15 mail, upon the person complained against a written notice
16 informing that person that the Agency intends to pursue legal
17 action. Such notice shall notify the person complained against
18 of the violations to be alleged and offer the person an
19 opportunity to meet with appropriate Agency personnel in an
20 effort to resolve any alleged violations that could lead to the
21 filing of a formal complaint. The meeting with Agency personnel
22 shall be held within 30 days after ~~of~~ receipt of notice served
23 pursuant to this subsection upon the person complained against,
24 unless the Agency agrees to a postponement or the person
25 notifies the Agency that he or she will not appear at a meeting
26 within the 30-day time period. Nothing in this subsection is

1 intended to preclude the Agency from following the provisions
2 of subsection (c) or (d) of this Section or from requesting the
3 legal representation of the Office of the Illinois Attorney
4 General or the State's Attorney of the county in which the
5 alleged violations occurred for alleged violations which
6 remain the subject of disagreement between the Agency and the
7 person complained against after the provisions of this
8 subsection are fulfilled.

9 (c) (1) For alleged violations which remain the subject of
10 disagreement between the Agency and the person complained
11 against following waiver~~7~~ pursuant to subdivision (10) of
12 subsection (a) of this Section~~7~~ or fulfillment of the
13 requirements of subsections (a) and (b) of this Section,
14 the Office of the Illinois Attorney General or the State's
15 Attorney of the county in which the alleged violation
16 occurred shall issue and serve upon the person complained
17 against a written notice, together with a formal complaint,
18 which shall specify the provision of the Act~~7~~ ~~or the rule~~~~7~~
19 ~~or~~ regulation~~7~~ ~~or~~ permit~~7~~ or term or condition thereof
20 under which such person is said to be in violation~~7~~ and a
21 statement of the manner in~~7~~ and the extent to which such
22 person is said to violate the Act~~7~~ ~~or such rule~~~~7~~ ~~or~~
23 regulation~~7~~ ~~or~~ permit~~7~~ or term or condition thereof and
24 shall require the person so complained against to answer
25 the charges of such formal complaint at a hearing before
26 the Board at a time not less than 21 days after the date of

1 notice by the Board, except as provided in Section 34 of
2 this Act. Such complaint shall be accompanied by a
3 notification to the defendant that financing may be
4 available, through the Illinois Environmental Facilities
5 Financing Act, to correct such violation. A copy of such
6 notice of such hearings shall also be sent to any person
7 that has complained to the Agency respecting the respondent
8 within the six months preceding the date of the complaint,
9 and to any person in the county in which the offending
10 activity occurred that has requested notice of enforcement
11 proceedings; 21 days notice of such hearings shall also be
12 published in a newspaper of general circulation in such
13 county. The respondent may file a written answer, and at
14 such hearing the rules prescribed in Sections 32 and 33 of
15 this Act shall apply. In the case of actual or threatened
16 acts outside Illinois contributing to environmental damage
17 in Illinois, the extraterritorial service-of-process
18 provisions of Sections 2-208 and 2-209 of the Code of Civil
19 Procedure shall apply.

20 With respect to notices served pursuant to this
21 subsection (c)(1) that ~~which~~ involve hazardous material or
22 wastes in any manner, the Agency shall annually publish a
23 list of all such notices served. The list shall include the
24 date the investigation commenced, the date notice was sent,
25 the date the matter was referred to the Attorney General,
26 if applicable, and the current status of the matter.

1 (2) Notwithstanding the provisions of subdivision (1)
2 of this subsection (c), whenever a complaint has been filed
3 on behalf of the Agency or by the People of the State of
4 Illinois, the parties may file with the Board a stipulation
5 and proposal for settlement accompanied by a request for
6 relief from the requirement of a hearing pursuant to
7 subdivision (1). Unless the Board, in its discretion,
8 concludes that a hearing will be held, the Board shall
9 cause notice of the stipulation, proposal and request for
10 relief to be published and sent in the same manner as is
11 required for hearing pursuant to subdivision (1) of this
12 subsection. The notice shall include a statement that any
13 person may file a written demand for hearing within 21 days
14 after receiving the notice. If any person files a timely
15 written demand for hearing, the Board shall deny the
16 request for relief from a hearing and shall hold a hearing
17 in accordance with the provisions of subdivision (1).

18 (3) Notwithstanding the provisions of subdivision (1)
19 of this subsection (c), if the Agency becomes aware of a
20 violation of this Act arising from, or as a result of,
21 voluntary pollution prevention activities, the Agency
22 shall not proceed with the written notice required by
23 subsection (a) of this Section unless:

24 (A) the person fails to take corrective action or
25 eliminate the reported violation within a reasonable
26 time; or

1 (B) the Agency believes that the violation poses a
2 substantial and imminent danger to the public health or
3 welfare or the environment. For the purposes of this
4 item (B), "substantial and imminent danger" means a
5 danger with a likelihood of serious or irreversible
6 harm.

7 (d) (1) Any person may file with the Board a complaint,
8 meeting the requirements of subsection (c) of this Section,
9 against any person allegedly violating this Act, any rule
10 or regulation adopted under this Act, any permit or term or
11 condition of a permit, or any Board order. The complainant
12 shall immediately serve a copy of such complaint upon the
13 person or persons named therein. Unless the Board
14 determines that such complaint is duplicative or
15 frivolous, it shall schedule a hearing and serve written
16 notice thereof upon the person or persons named therein, in
17 accord with subsection (c) of this Section.

18 (2) Whenever a complaint has been filed by a person
19 other than the Attorney General or the State's Attorney,
20 the parties may file with the Board a stipulation and
21 proposal for settlement accompanied by a request for relief
22 from the hearing requirement of subdivision (c) (1) of this
23 Section. Unless the Board, in its discretion, concludes
24 that a hearing should be held, no hearing on the
25 stipulation and proposal for settlement is required.

26 (e) In hearings before the Board under this Title the

1 burden shall be on the Agency or other complainant to show
2 either that the respondent has caused or threatened to cause
3 air or water pollution or that the respondent has violated or
4 threatens to violate any provision of this Act or any rule or
5 regulation of the Board or permit or term or condition thereof.
6 If such proof has been made, the burden shall be on the
7 respondent to show that compliance with the Board's regulations
8 would impose an arbitrary or unreasonable hardship.

9 (f) The provisions of this Section shall not apply to
10 administrative citation actions commenced under Section 31.1
11 of this Act.

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

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
25 Environmental Protection Trust Fund Act.

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

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

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

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

26 (4) In an administrative citation action under Section

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

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

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

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

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

17 (b.5) In lieu of the penalties set forth in subsections (a)
18 and (b) of this Section, any person who fails to file, in a
19 timely manner, toxic chemical release forms with the Agency
20 pursuant to Section 25b-2 of this Act shall be liable for a
21 civil penalty of \$100 per day for each day the forms are late,
22 not to exceed a maximum total penalty of \$6,000. This daily
23 penalty shall begin accruing on the thirty-first day after the
24 date that the person receives the warning notice issued by the
25 Agency pursuant to Section 25b-6 of this Act; and the penalty
26 shall be paid to the Agency. The daily accrual of penalties

1 shall cease as of January 1 of the following year. All
2 penalties collected by the Agency pursuant to this subsection
3 shall be deposited into the Environmental Protection Permit and
4 Inspection Fund.

5 (c) Any person that violates this Act, any rule or
6 regulation adopted under this Act, any permit or term or
7 condition of a permit, or any Board order and causes the death
8 of fish or aquatic life shall, in addition to the other
9 penalties provided by this Act, be liable to pay to the State
10 an additional sum for the reasonable value of the fish or
11 aquatic life destroyed. Any money so recovered shall be placed
12 in the Wildlife and Fish Fund in the State Treasury.

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

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

25 (f) The State's Attorney of the county in which the
26 violation occurred, or the Attorney General, shall bring such

1 actions in the name of the people of the State of Illinois.
2 Without limiting any other authority which may exist for the
3 awarding of attorney's fees and costs, the Board or a court of
4 competent jurisdiction may award costs and reasonable
5 attorney's fees, including the reasonable costs of expert
6 witnesses and consultants, to the State's Attorney or the
7 Attorney General in a case where he has prevailed against a
8 person who has committed a wilful, knowing or repeated
9 violation of this Act, any rule or regulation adopted under
10 this Act, any permit or term or condition of a permit, or any
11 Board order.

12 Any funds collected under this subsection (f) in which the
13 Attorney General has prevailed shall be deposited in the
14 Hazardous Waste Fund created in Section 22.2 of this Act. Any
15 funds collected under this subsection (f) in which a State's
16 Attorney has prevailed shall be retained by the county in which
17 he serves.

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

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

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

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

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

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

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

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

25 (7) whether the respondent has agreed to undertake a
26 "supplemental environmental project," which means an

1 environmentally beneficial project that a respondent
2 agrees to undertake in settlement of an enforcement action
3 brought under this Act, but which the respondent is not
4 otherwise legally required to perform; and -

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

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

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

24 (1) that the non-compliance was discovered through an
25 environmental audit or a compliance management system
26 documented by the regulated entity as reflecting the

1 regulated entity's due diligence in preventing, detecting,
2 and correcting violations;

3 (2) that the non-compliance was disclosed in writing
4 within 30 days of the date on which the person discovered
5 it;

6 (3) that the non-compliance was discovered and
7 disclosed prior to:

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

10 (ii) notice of a citizen suit;

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

14 (iv) the reporting of the non-compliance by an
15 employee of the person without that person's
16 knowledge; or

17 (v) imminent discovery of the non-compliance by
18 the Agency;

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

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

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

1 (7) that the non-compliance did not result in serious
2 actual harm or present an imminent and substantial
3 endangerment to human health or the environment or violate
4 the specific terms of any judicial or administrative order
5 or consent agreement;

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

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

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

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

22 (k) In addition to any other remedy or penalty that may
23 apply, whether civil or criminal, any person who violates
24 subdivision (a)(7.6) of Section 31 of this Act shall be liable
25 for an additional civil penalty of \$3,000.

26 (Source: P.A. 95-331, eff. 8-21-07; 96-603, eff. 8-24-09;

1 96-737, eff. 8-25-09; 96-1000, eff. 7-2-10; 96-1416, eff.
2 7-30-10.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.".