



Sen. A. J. Wilhelmi

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09700SB1357sam001

LRB097 00021 JDS 54343 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 or an
5 amended Compliance Commitment Agreement shall be a factor
6 to be weighed, in favor of the person completing the
7 Agreement, by the Office of the Illinois Attorney General
8 in determining whether to file a complaint for the
9 violations that were the subject of the Agreement.

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

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

1 issued under subdivision (1) of this subsection (a) as
2 contained within the written response.

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

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

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

1 provisions of the Illinois Administrative Procedure Act.

2 (b) For alleged violations that remain the subject of
3 disagreement between the Agency and the person complained
4 against following fulfillment of the requirements of
5 subsection (a) of this Section, and for alleged violations of
6 the terms or conditions of a Compliance Commitment Agreement
7 entered into under subdivision (a) (7.5) of this Section as well
8 as the alleged violations that are the subject of the
9 Compliance Commitment Agreement, and as a precondition to the
10 Agency's referral or request to the Office of the Illinois
11 Attorney General or the State's Attorney of the county in which
12 the alleged violation occurred for legal representation
13 regarding an alleged violation that may be addressed pursuant
14 to subsection (c) or (d) of this Section or pursuant to Section
15 42 of this Act, the Agency shall issue and serve, by certified
16 mail, upon the person complained against a written notice
17 informing that person that the Agency intends to pursue legal
18 action. Such notice shall notify the person complained against
19 of the violations to be alleged and offer the person an
20 opportunity to meet with appropriate Agency personnel in an
21 effort to resolve any alleged violations that could lead to the
22 filing of a formal complaint. The meeting with Agency personnel
23 shall be held within 30 days after ~~of~~ receipt of notice served
24 pursuant to this subsection upon the person complained against,
25 unless the Agency agrees to a postponement or the person
26 notifies the Agency that he or she will not appear at a meeting

1 within the 30-day time period. Nothing in this subsection is
2 intended to preclude the Agency from following the provisions
3 of subsection (c) or (d) of this Section or from requesting the
4 legal representation of the Office of the Illinois Attorney
5 General or the State's Attorney of the county in which the
6 alleged violations occurred for alleged violations which
7 remain the subject of disagreement between the Agency and the
8 person complained against after the provisions of this
9 subsection are fulfilled.

10 (c) (1) For alleged violations which remain the subject of
11 disagreement between the Agency and the person complained
12 against following waiver, pursuant to subdivision (10) of
13 subsection (a) of this Section, or fulfillment of the
14 requirements of subsections (a) and (b) of this Section,
15 the Office of the Illinois Attorney General or the State's
16 Attorney of the county in which the alleged violation
17 occurred shall issue and serve upon the person complained
18 against a written notice, together with a formal complaint,
19 which shall specify the provision of the Act, ~~or the rule,~~
20 ~~or~~ regulation, ~~or~~ permit, or term or condition thereof
21 under which such person is said to be in violation, and a
22 statement of the manner in, and the extent to which such
23 person is said to violate the Act, ~~or such rule,~~ ~~or~~
24 regulation, ~~or~~ permit, or term or condition thereof and
25 shall require the person so complained against to answer
26 the charges of such formal complaint at a hearing before

1 the Board at a time not less than 21 days after the date of
2 notice by the Board, except as provided in Section 34 of
3 this Act. Such complaint shall be accompanied by a
4 notification to the defendant that financing may be
5 available, through the Illinois Environmental Facilities
6 Financing Act, to correct such violation. A copy of such
7 notice of such hearings shall also be sent to any person
8 that has complained to the Agency respecting the respondent
9 within the six months preceding the date of the complaint,
10 and to any person in the county in which the offending
11 activity occurred that has requested notice of enforcement
12 proceedings; 21 days notice of such hearings shall also be
13 published in a newspaper of general circulation in such
14 county. The respondent may file a written answer, and at
15 such hearing the rules prescribed in Sections 32 and 33 of
16 this Act shall apply. In the case of actual or threatened
17 acts outside Illinois contributing to environmental damage
18 in Illinois, the extraterritorial service-of-process
19 provisions of Sections 2-208 and 2-209 of the Code of Civil
20 Procedure shall apply.

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

1 if applicable, and the current status of the matter.

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

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

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

1 time; or

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

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

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

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

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

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

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

15 Sec. 42. Civil penalties.

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

1 Environmental Protection Trust Fund Act.

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

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

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

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

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

13 (4-5) In an administrative citation action under
14 Section 31.1 of this Act, any person found to have violated
15 any provision of subsection (p) of Section 21, Section
16 22.51, Section 22.51a, or subsection (k) of Section 55 of
17 this Act shall pay a civil penalty of \$1,500 for each
18 violation of each such provision, plus any hearing costs
19 incurred by the Board and the Agency, except that the civil
20 penalty amount shall be \$3,000 for each violation of any
21 provision of subsection (p) of Section 21, Section 22.51,
22 Section 22.51a, or subsection (k) of Section 55 that is the
23 person's second or subsequent adjudication violation of
24 that provision. The penalties shall be deposited into 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 (5) Any person who violates subsection 6 of Section
6 39.5 of this Act or any CAAPP permit, or term or condition
7 thereof, or any fee or filing requirement, or any duty to
8 allow or carry out inspection, entry or monitoring
9 activities, or any regulation or order relating to the
10 CAAPP shall be liable for a civil penalty not to exceed
11 \$10,000 per day of violation.

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

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

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

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

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

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

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

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

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

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

1 accrue during such stay.

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

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

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

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

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

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

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

26 (7) whether the respondent has agreed to undertake a

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

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

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

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

25 (1) that the non-compliance was discovered through an
26 environmental audit or a compliance management system

1 documented by the regulated entity as reflecting the
2 regulated entity's due diligence in preventing, detecting,
3 and correcting violations;

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

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

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

11 (ii) notice of a citizen suit;

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

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

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

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

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

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

1 owned or operated by the person;

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

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

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

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

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

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

1 (Source: P.A. 95-331, eff. 8-21-07; 96-603, eff. 8-24-09;
2 96-737, eff. 8-25-09; 96-1000, eff. 7-2-10; 96-1416, eff.
3 7-30-10.)

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