



Rep. Sam Yingling

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10200HB0418ham001

LRB102 03903 CPF 23083 a

1 AMENDMENT TO HOUSE BILL 418

2 AMENDMENT NO. _____. Amend House Bill 418 on page 1, line
3 5, by replacing "adding" with "changing Section 42 and by
4 adding"; and

5 on page 1, immediately below line 5, by inserting the
6 following:

7 "(415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)
8 Sec. 42. Civil penalties.

9 (a) Except as provided in this Section, any person that
10 violates any provision of this Act or any regulation adopted
11 by the Board, or any permit or term or condition thereof, or
12 that violates any order of the Board pursuant to this Act,
13 shall be liable for a civil penalty of not to exceed \$50,000
14 for the violation and an additional civil penalty of not to
15 exceed \$10,000 for each day during which the violation
16 continues; such penalties may, upon order of the Board or a

1 court of competent jurisdiction, be made payable to the
2 Environmental Protection Trust Fund, to be used in accordance
3 with the provisions of the Environmental Protection Trust Fund
4 Act.

5 (b) Notwithstanding the provisions of subsection (a) of
6 this Section:

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

12 (2) Any person that violates Section 12(g) of this Act
13 or any UIC permit or term or condition thereof, or any
14 filing requirement, regulation or order relating to the
15 State UIC program for all wells, except Class II wells as
16 defined by the Board under this Act, shall be liable to a
17 civil penalty not to exceed \$2,500 per day of violation;
18 provided, however, that any person who commits such
19 violations relating to the State UIC program for Class II
20 wells, as defined by the Board under this Act, shall be
21 liable to a civil penalty of not to exceed \$10,000 for the
22 violation and an additional civil penalty of not to exceed
23 \$1,000 for each day during which the violation continues.

24 (3) Any person that violates Sections 21(f), 21(g),
25 21(h) or 21(i) of this Act, or any RCRA permit or term or
26 condition thereof, or any filing requirement, regulation

1 or order relating to the State RCRA program, shall be
2 liable to a civil penalty of not to exceed \$25,000 per day
3 of violation.

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

16 (4-5) In an administrative citation action under
17 Section 31.1 of this Act, any person found to have
18 violated any provision of subsection (p) of Section 21,
19 Section 22.51, Section 22.51a, or subsection (k) of
20 Section 55 of this Act shall pay a civil penalty of \$1,500
21 for each violation of each such provision, plus any
22 hearing costs incurred by the Board and the Agency, except
23 that the civil penalty amount shall be \$3,000 for each
24 violation of any provision of subsection (p) of Section
25 21, Section 22.51, Section 22.51a, or subsection (k) of
26 Section 55 that is the person's second or subsequent

1 adjudication violation of that provision. The penalties
2 shall be deposited into the Environmental Protection Trust
3 Fund, to be used in accordance with the provisions of the
4 Environmental Protection Trust Fund Act; except that if a
5 unit of local government issued the administrative
6 citation, 50% of the civil penalty shall be payable to the
7 unit of local government.

8 (5) Any person who violates subsection 6 of Section
9 39.5 of this Act or any CAAPP permit, or term or condition
10 thereof, or any fee or filing requirement, or any duty to
11 allow or carry out inspection, entry or monitoring
12 activities, or any regulation or order relating to the
13 CAAPP shall be liable for a civil penalty not to exceed
14 \$10,000 per day of violation.

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

21 (7) Any person who violates Section 52.5 of this Act
22 shall be liable for a civil penalty of up to \$1,000 for the
23 first violation of that Section and a civil penalty of up
24 to \$2,500 for a second or subsequent violation of that
25 Section.

26 (8) Any person who violates Section 52.10 of this Act

1 shall be liable for a civil penalty of up to \$500 for the
2 first violation of that Section and a civil penalty of up
3 to \$1,000 for a second or subsequent violation of that
4 Section. The release of 50 balloons or fewer at one time is
5 a single offense under that Section.

6 (b.5) In lieu of the penalties set forth in subsections
7 (a) 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
19 and 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
8 restrain violations of this Act, any rule or regulation
9 adopted under this Act, any permit or term or condition of a
10 permit, or any Board order, or to require such other actions as
11 may be 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 willful, 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
6 which 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),
18 (b)(5), (b)(6), or (b)(7) of this Section, the Board is
19 authorized to consider any matters of record in mitigation or
20 aggravation of penalty, including, but not limited to, the
21 following factors:

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

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

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

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

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

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

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

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

26 In determining the appropriate civil penalty to be imposed

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

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

16 (1) that either the regulated entity is a small entity
17 or the non-compliance was discovered through an
18 environmental audit or a compliance management system
19 documented by the regulated entity as reflecting the
20 regulated entity's due diligence in preventing, detecting,
21 and correcting violations;

22 (2) that the non-compliance was disclosed in writing
23 within 30 days of the date on which the person discovered
24 it;

25 (3) that the non-compliance was discovered and
26 disclosed prior to:

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

3 (ii) notice of a citizen suit;

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

7 (iv) the reporting of the non-compliance by an
8 employee of the person without that person's
9 knowledge; or

10 (v) imminent discovery of the non-compliance by
11 the Agency;

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

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

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

21 (7) that the non-compliance did not result in serious
22 actual harm or present an imminent and substantial
23 endangerment to human health or the environment or violate
24 the specific terms of any judicial or administrative order
25 or consent agreement;

26 (8) that the person cooperates as reasonably requested

1 by the Agency after the disclosure; and

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

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

11 For the purposes of this subsection (i), "small entity"
12 has the same meaning as in Section 221 of the federal Small
13 Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C.
14 601).

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

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

24 (Source: P.A. 99-934, eff. 1-27-17; 100-436, eff. 8-25-17;
25 100-863, eff. 8-14-18.)"; and

1 on page 1, line 17, by deleting "knowingly"; and

2 by deleting lines 3 through 5 on page 2.