

SB3147



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3147

Introduced 1/12/2022, by Sen. Celina Villanueva

SYNOPSIS AS INTRODUCED:

415 ILCS 5/42

from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. Makes changes to the amounts of civil penalties for specified violations. Provides that any person who fails to provide notice as required by the Act shall be liable for a civil penalty of up to \$100 for the first violation and up to \$500 for a second or subsequent violation. Provides that any person who engages in demolition activity in violation of the Act shall be liable for a civil penalty of up to \$50,000 for the first violation and up to \$250,000 for a second or subsequent violation. Effective immediately.

LRB102 22894 CPF 32047 b

A BILL FOR

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 changing Section 42 as follows:

6 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

7 Sec. 42. Civil penalties.

8 (a) Except as provided in this Section, any person that
9 violates any provision of this Act or any regulation adopted
10 by the Board, or any permit or term or condition thereof, or
11 that violates any order of the Board pursuant to this Act,
12 shall be liable for a civil penalty of not to exceed \$100,000
13 ~~\$50,000~~ for the violation and an additional civil penalty of
14 not to exceed \$25,000 ~~\$10,000~~ for each day during which the
15 violation continues; such penalties may, upon order of the
16 Board or a court of competent jurisdiction, be made payable to
17 the Environmental Protection Trust Fund, to be used in
18 accordance with the provisions of the Environmental Protection
19 Trust Fund Act.

20 (b) Notwithstanding the provisions of subsection (a) of
21 this Section:

22 (1) Any person that violates Section 12(f) of this Act
23 or any NPDES permit or term or condition thereof, or any

1 filing requirement, regulation or order relating to the
2 NPDES permit program, shall be liable to a civil penalty
3 of not to exceed \$25,000 ~~\$10,000~~ per day of violation.

4 (2) Any person that violates Section 12(g) of this Act
5 or any UIC permit or term or condition thereof, or any
6 filing requirement, regulation or order relating to the
7 State UIC program for all wells, except Class II wells as
8 defined by the Board under this Act, shall be liable to a
9 civil penalty not to exceed \$5,000 ~~\$2,500~~ per day of
10 violation; provided, however, that any person who commits
11 such violations relating to the State UIC program for
12 Class II wells, as defined by the Board under this Act,
13 shall be liable to a civil penalty of not to exceed \$10,000
14 for the violation and an additional civil penalty of not
15 to exceed \$1,000 for each day during which the violation
16 continues.

17 (3) Any person that violates Sections 21(f), 21(g),
18 21(h) or 21(i) of this Act, or any RCRA permit or term or
19 condition thereof, or any filing requirement, regulation
20 or order relating to the State RCRA program, shall be
21 liable to a civil penalty of not to exceed \$50,000 ~~\$25,000~~
22 per day of violation.

23 (4) In an administrative citation action under Section
24 31.1 of this Act, any person found to have violated any
25 provision of subsection (o) of Section 21 of this Act
26 shall pay a civil penalty of \$500 for each violation of

1 each such provision, plus any hearing costs incurred by
2 the Board and the Agency. Such penalties shall be made
3 payable to the Environmental Protection Trust Fund, to be
4 used in accordance with the provisions of the
5 Environmental Protection Trust Fund Act; except that if a
6 unit of local government issued the administrative
7 citation, 50% of the civil penalty shall be payable to the
8 unit of local government.

9 (4-5) In an administrative citation action under
10 Section 31.1 of this Act, any person found to have
11 violated any provision of subsection (p) of Section 21,
12 Section 22.38, Section 22.51, Section 22.51a, or
13 subsection (k) of Section 55 of this Act shall pay a civil
14 penalty of \$1,500 for each violation of each such
15 provision, plus any hearing costs incurred by the Board
16 and the Agency, except that the civil penalty amount shall
17 be \$3,000 for each violation of any provision of
18 subsection (p) of Section 21, Section 22.38, Section
19 22.51, Section 22.51a, or subsection (k) of Section 55
20 that is the person's second or subsequent adjudication
21 violation of that provision. The penalties shall be
22 deposited into the Environmental Protection Trust Fund, to
23 be used in accordance with the provisions of the
24 Environmental Protection Trust Fund Act; except that if a
25 unit of local government issued the administrative
26 citation, 50% of the civil penalty shall be payable to the

1 unit of local government.

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

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

15 (7) Any person who violates Section 52.5 of this Act
16 shall be liable for a civil penalty of up to \$1,000 for the
17 first violation of that Section and a civil penalty of up
18 to \$2,500 for a second or subsequent violation of that
19 Section.

20 (8) Any person who fails to provide notice as required
21 by this Act shall be liable for a civil penalty of up to
22 \$100 for the first violation and up to \$500 for a second or
23 subsequent violation.

24 (9) Any person who engages in demolition activity in
25 violation of this Act shall be liable for a civil penalty
26 of up to \$50,000 for the first violation and up to \$250,000

1 for a second or subsequent violation.

2 (b.5) In lieu of the penalties set forth in subsections
3 (a) and (b) of this Section, any person who fails to file, in a
4 timely manner, toxic chemical release forms with the Agency
5 pursuant to Section 25b-2 of this Act shall be liable for a
6 civil penalty of \$500 ~~\$100~~ per day for each day the forms are
7 late, not to exceed a maximum total penalty of \$10,000 ~~\$6,000~~.
8 This daily penalty shall begin accruing on the thirty-first
9 day after the date that the person receives the warning notice
10 issued by the Agency pursuant to Section 25b-6 of this Act; and
11 the penalty shall be paid to the Agency. The daily accrual of
12 penalties shall cease as of January 1 of the following year.
13 All penalties collected by the Agency pursuant to this
14 subsection shall be deposited into the Environmental
15 Protection Permit and Inspection Fund.

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

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

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

1 violation occurred, or the Attorney General, may, at the
2 request of the Agency or on his own motion, institute a civil
3 action for an injunction, prohibitory or mandatory, to
4 restrain violations of this Act, any rule or regulation
5 adopted under this Act, any permit or term or condition of a
6 permit, or any Board order, or to require such other actions as
7 may be necessary to address violations of this Act, any rule or
8 regulation adopted under this Act, any permit or term or
9 condition of a permit, or any Board order.

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

23 Any funds collected under this subsection (f) in which the
24 Attorney General has prevailed shall be deposited in the
25 Hazardous Waste Fund created in Section 22.2 of this Act. Any
26 funds collected under this subsection (f) in which a State's

1 Attorney has prevailed shall be retained by the county in
2 which he serves.

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

12 (h) In determining the appropriate civil penalty to be
13 imposed under subdivisions (a), (b) (1), (b) (2), (b) (3),
14 (b) (5), (b) (6), or (b) (7) of this Section, the Board is
15 authorized to consider any matters of record in mitigation or
16 aggravation of penalty, including, but not limited to, the
17 following factors:

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

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

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

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

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

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

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

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

22 In determining the appropriate civil penalty to be imposed
23 under subsection (a) or paragraph (1), (2), (3), (5), (6), or
24 (7) of subsection (b) of this Section, the Board shall ensure,
25 in all cases, that the penalty is at least as great as the
26 economic benefits, if any, accrued by the respondent as a

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

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

12 (1) that either the regulated entity is a small entity
13 or 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
10 fashion;

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

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

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

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

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

1 judicial or administrative order, or consent agreement.

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

7 For the purposes of this subsection (i), "small entity"
8 has the same meaning as in Section 221 of the federal Small
9 Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C.
10 601).

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

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

20 (Source: P.A. 102-310, eff. 8-6-21.)

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