



Sen. Laura Ellman

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10300SB1933sam002

LRB103 24925 LNS 59194 a

1 AMENDMENT TO SENATE BILL 1933

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1933, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Environmental Protection Act is amended by  
6 changing Section 31 as follows:

7 (415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)

8 Sec. 31. Notice; complaint; hearing.

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

16 (A) a notification to the person complained against of

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

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

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

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

18 (2) A written response to the violations alleged shall be  
19 submitted to the Agency, by certified mail, within 45 days  
20 after receipt of notice by the person complained against, or  
21 within an extended time period as agreed to by the Agency and  
22 person complained against ~~unless the Agency agrees to an~~  
23 ~~extension~~. The 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 enter

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

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

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

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

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

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

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

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

21           (6) If the person complained against fails to respond in  
22 accordance with the requirements of subdivision (5) of this  
23 subsection (a), the failure to respond shall be considered a  
24 waiver of the requirements of this subsection (a) and nothing  
25 in this Section shall preclude the Agency from proceeding  
26 pursuant to subsection (b) of this Section.

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

24           (7.5) Within 30 days after the receipt of the Agency's  
25 proposed Compliance Commitment Agreement by the person  
26 complained against, or within a later time period not to

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

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

26 (7.7) Within 30 days after a Compliance Commitment

1 Agreement takes effect or is amended in accordance with  
2 paragraph (7.5), the Agency shall publish a copy of the final  
3 executed Compliance Commitment Agreement on the Agency's  
4 website. The Agency shall maintain an Internet database of all  
5 Compliance Commitment Agreements entered on or after the  
6 effective date of this amendatory Act of the 100th General  
7 Assembly. At a minimum, the database shall be searchable by  
8 the following categories: the county in which the facility  
9 that is subject to the Compliance Commitment Agreement is  
10 located; the date of final execution of the Compliance  
11 Commitment Agreement; the name of the respondent; and the  
12 media involved, including air, water, land, or public water  
13 supply.

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

21 (9) The Agency's failure to respond within 30 days of  
22 receipt to a written response submitted pursuant to  
23 subdivision (2) of this subsection (a) if a meeting is not  
24 requested or pursuant to subdivision (5) of this subsection  
25 (a) if a meeting is held, or within the time period otherwise  
26 agreed to in writing by the Agency and the person complained

1 against, shall be deemed an acceptance by the Agency of the  
2 proposed terms of the Compliance Commitment Agreement for the  
3 violations alleged in the written notice issued under  
4 subdivision (1) of this subsection (a) as contained within the  
5 written response.

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

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

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



1 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  
8 well 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  
12 which 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  
22 the filing of a formal complaint. The meeting with Agency  
23 personnel shall be held within 30 days after receipt of notice  
24 served pursuant to this subsection upon the person complained  
25 against, unless the Agency agrees to a postponement or the  
26 person notifies the Agency that he or she will not appear at a

1 meeting within the 30-day time period. Nothing in this  
2 subsection is intended to preclude the Agency from following  
3 the provisions of subsection (c) or (d) of this Section or from  
4 requesting the legal representation of the Office of the  
5 Illinois Attorney General or the State's Attorney of the  
6 county in which the alleged violations occurred for alleged  
7 violations which remain the subject of disagreement between  
8 the Agency and the person complained against after the  
9 provisions of this 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, the  
15 Office of the Illinois Attorney General or the State's  
16 Attorney of the county in which the alleged violation occurred  
17 shall issue and serve upon the person complained against a  
18 written notice, together with a formal complaint, which shall  
19 specify the provision of the Act, rule, regulation, permit, or  
20 term or condition thereof under which such person is said to be  
21 in violation and a statement of the manner in and the extent to  
22 which such person is said to violate the Act, rule,  
23 regulation, permit, or term or condition thereof and shall  
24 require the person so complained against to answer the charges  
25 of such formal complaint at a hearing before the Board at a  
26 time not less than 21 days after the date of notice by the

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

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

26 (2) Notwithstanding the provisions of subdivision (1) of

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

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

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

25 (B) the Agency believes that the violation poses a  
26 substantial and imminent danger to the public health or

1 welfare or the environment. For the purposes of this item

2 (B), "substantial and imminent danger" means a danger with  
3 a likelihood of serious or irreversible harm.

4 (d)(1) Any person may file with the Board a complaint,  
5 meeting the requirements of subsection (c) of this Section,  
6 against any person allegedly violating 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. The complainant  
9 shall immediately serve a copy of such complaint upon the  
10 person or persons named therein. Unless the Board determines  
11 that such complaint is duplicative or frivolous, it shall  
12 schedule a hearing and serve written notice thereof upon the  
13 person or persons named therein, in accord with subsection (c)  
14 of this Section.

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

23 (e) In hearings before the Board under this Title the  
24 burden shall be on the Agency or other complainant to show  
25 either that the respondent has caused or threatened to cause  
26 air or water pollution or that the respondent has violated or

1 threatens to violate any provision of this Act or any rule or  
2 regulation of the Board or permit or term or condition  
3 thereof. If such proof has been made, the burden shall be on  
4 the respondent to show that compliance with the Board's  
5 regulations would impose an arbitrary or unreasonable  
6 hardship.

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

10 (Source: P.A. 100-1080, eff. 8-24-18.)

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law."