



Adopted in House Comm. on Mar 31, 2004

09300HB5823ham001

LRB093 16833 RAS 49336 a

1 AMENDMENT TO HOUSE BILL 5823

2 AMENDMENT NO. _____. Amend House Bill 5823 by replacing
3 everything after the enacting clause with the following:

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

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

21 (1) Any person that violates Section 12(f) of this Act
22 or any NPDES permit or term or condition thereof, or any
23 filing requirement, regulation or order relating to the
24 NPDES permit program, shall be liable to a civil penalty of

1 not to exceed \$10,000 per day of violation.

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

14 (3) Any person that violates Sections 21(f), 21(g),
15 21(h) or 21(i) of this Act, or any RCRA permit or term or
16 condition thereof, or any filing requirement, regulation
17 or order relating to the State RCRA program, shall be
18 liable to a civil penalty of not to exceed \$25,000 per day
19 of violation.

20 (4) In an administrative citation action under Section
21 31.1 of this Act, any person found to have violated any
22 provision of subsection (o) of Section 21 of this Act shall
23 pay a civil penalty of \$500 for each violation of each such
24 provision, plus any hearing costs incurred by the Board and
25 the Agency. Such penalties shall be made payable to the
26 Environmental Protection Trust Fund, to be used in
27 accordance with the provisions of the Environmental
28 Protection Trust Fund Act; except that if a unit of local
29 government issued the administrative citation, 50% of the
30 civil penalty shall be payable to the unit of local
31 government.

32 (4-5) In an administrative citation action under
33 Section 31.1 of this Act, any person found to have violated
34 any provision of subsection (p) of Section 21 of this Act

1 shall pay a civil penalty of \$1,500 for each violation of
2 each such provision, plus any hearing costs incurred by the
3 Board and the Agency, except that the civil penalty amount
4 shall ~~be~~ ~~be a~~ \$3,000 for each violation of any provision of
5 subsection (p) of Section 21 that is the person's second ~~a~~
6 ~~second~~ or subsequent adjudication violation of that
7 provision. The penalties shall be deposited into the
8 Environmental Protection Trust Fund, to be used in
9 accordance with the provisions of the Environmental
10 Protection Trust Fund Act; except that if a unit of local
11 government issued the administrative citation, 50% of the
12 civil penalty shall be payable to the unit of local
13 government.

14 (5) Any person who violates subsection 6 of Section
15 39.5 of this Act or any CAAPP permit, or term or condition
16 thereof, or any fee or filing requirement, or any duty to
17 allow or carry out inspection, entry or monitoring
18 activities, or any regulation or order relating to the
19 CAAPP shall be liable for a civil penalty not to exceed
20 \$10,000 per day of violation.

21 (b.5) In lieu of the penalties set forth in subsections (a)
22 and (b) of this Section, any person who fails to file, in a
23 timely manner, toxic chemical release forms with the Agency
24 pursuant to Section 25b-2 of this Act shall be liable for a
25 civil penalty of \$100 per day for each day the forms are late,
26 not to exceed a maximum total penalty of \$6,000. This daily
27 penalty shall begin accruing on the thirty-first day after the
28 date that the person receives the warning notice issued by the
29 Agency pursuant to Section 25b-6 of this Act; and the penalty
30 shall be paid to the Agency. The daily accrual of penalties
31 shall cease as of January 1 of the following year. All
32 penalties collected by the Agency pursuant to this subsection
33 shall be deposited into the Environmental Protection Permit and
34 Inspection Fund.

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

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

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

21 (f) The State's Attorney of the county in which the
22 violation occurred, or the Attorney General, shall bring such
23 actions in the name of the people of the State of Illinois.
24 Without limiting any other authority which may exist for the
25 awarding of attorney's fees and costs, the Board or a court of
26 competent jurisdiction may award costs and reasonable
27 attorney's fees, including the reasonable costs of expert
28 witnesses and consultants, to the State's Attorney or the
29 Attorney General in a case where he has prevailed against a
30 person who has committed a wilful, knowing or repeated
31 violation of this Act, any rule or regulation adopted under
32 this Act, any permit or term or condition of a permit, or any
33 Board order.

34 Any funds collected under this subsection (f) in which the

1 Attorney General has prevailed shall be deposited in the
2 Hazardous Waste Fund created in Section 22.2 of this Act. Any
3 funds collected under this subsection (f) in which a State's
4 Attorney has prevailed shall be retained by the county in which
5 he serves.

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

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

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

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

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

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

33 (5) the number, proximity in time, and gravity of
34 previously adjudicated violations of this Act by the

1 respondent;

2 (6) whether the respondent voluntarily self-disclosed,
3 in accordance with subsection (i) of this Section, the
4 non-compliance to the Agency; and

5 (7) whether the respondent has agreed to undertake a
6 "supplemental environmental project," which means an
7 environmentally beneficial project that a respondent
8 agrees to undertake in settlement of an enforcement action
9 brought under this Act, but which the respondent is not
10 otherwise legally required to perform.

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

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

26 (1) that the non-compliance was discovered through an
27 environmental audit, as defined in Section 52.2 of this
28 Act, and the person waives the environmental audit
29 privileges as provided in that Section with respect to that
30 non-compliance;

31 (2) that the non-compliance was disclosed in writing
32 within 30 days of the date on which the person discovered
33 it;

34 (3) that the non-compliance was discovered and

1 disclosed prior to:

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

4 (ii) notice of a citizen suit;

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

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

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

13 (4) that the non-compliance is being corrected and any
14 environmental harm is being remediated in a timely 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
27 by the Agency after the disclosure; and

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

32 If a person can establish all of the elements under this
33 subsection except the element set forth in paragraph (1) of
34 this subsection, the person is entitled to a 75% reduction in

1 the portion of the penalty that is not based upon the economic
2 benefit of non-compliance.

3 (Source: P.A. 93-152, eff. 7-10-03; 93-575, eff. 1-1-04;
4 revised 9-11-03.)

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