

1 AN ACT in relation to environmental protection.

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  
5 by adding Sections 39.6 and 44.5 and amending Section 42 as  
6 follows:

7 (415 ILCS 5/39.6 new)

8 Sec. 39.6. Compliance Record.

9 (a) In considering whether to grant any new, modified,  
10 or renewed permit under this Act, the Agency shall take into  
11 account the compliance record of the applicant (including  
12 that of any parent corporation, subsidiary, or other  
13 corporation related to the applicant by ownership or control)  
14 with any permits that have been issued to the applicant under  
15 this Act in the past. If the applicant (or any parent,  
16 subsidiary, or other corporation related to the applicant by  
17 ownership or control) has a recent history of noncompliance  
18 with permits issued under this Act, the Agency may deny the  
19 requested permit or attach special conditions to the permit  
20 designed to promote future compliance. The Agency may also  
21 consider evidence of noncompliance with the environmental  
22 laws of other states in making permit decisions.

23 (b) The Agency shall not grant a renewal or modification  
24 of an existing permit if the permit holder has substantially  
25 failed to perform testing or monitoring required by the  
26 existing permit. Furthermore, the Agency shall not grant a  
27 new permit or modification of an existing permit if the  
28 applicant is in substantial noncompliance with an existing  
29 permit, unless allowing such renewal or modification has been  
30 shown by the applicant to be necessary for the applicant to  
31 come into compliance.

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

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

15 (b) Notwithstanding the provisions of subsection (a) of  
16 this Section:

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

22 (2) Any person that violates Section 12(g) of this  
23 Act or any UIC permit or term or condition thereof, or  
24 any filing requirement, regulation or order relating to  
25 the State UIC program for all wells, except Class II  
26 wells as defined by the Board under this Act, shall be  
27 liable to a civil penalty not to exceed \$2,500 per day of  
28 violation; provided, however, that any person who commits  
29 such violations relating to the State UIC program for  
30 Class II wells, as defined by the Board under this Act,  
31 shall be liable to a civil penalty of not to exceed  
32 \$10,000 for the violation and an additional civil penalty  
33 of not to exceed \$1,000 for each day during which the  
34 violation continues.

1           (3) Any person that violates Sections 21(f), 21(g),  
2 21(h) or 21(i) of this Act, or any RCRA permit or term or  
3 condition thereof, or any filing requirement, regulation  
4 or order relating to the State RCRA program, shall be  
5 liable to a civil penalty of not to exceed \$25,000 per  
6 day of violation.

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

19           (4-5) In an administrative citation action under  
20 Section 31.1 of this Act, any person found to have  
21 violated any provision of subsection (p) of Section 21 of  
22 this Act shall pay a civil penalty of \$1,500 for a first  
23 offense and \$3,000 for a second or subsequent offense,  
24 plus any hearing costs incurred by the Board and the  
25 Agency. The penalties shall be deposited into 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           (5) Any person who violates subsection 6 of Section  
33 39.5 of this Act or any CAAPP permit, or term or  
34 condition thereof, or any fee or filing requirement, or

1 any duty to allow or carry out inspection, entry or  
2 monitoring activities, or any regulation or order  
3 relating to the CAAPP shall be liable for a civil penalty  
4 not to exceed \$10,000 per day of violation.

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

19 (c) Any person that violates this Act, or an order or  
20 other determination of the Board under this Act and causes  
21 the death of fish or aquatic life shall, in addition to the  
22 other penalties provided by this Act, be liable to pay to the  
23 State an additional sum for the reasonable value of the fish  
24 or aquatic life destroyed. Any money so recovered shall be  
25 placed in the Wildlife and Fish Fund in the State Treasury.

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

28 (e) The State's Attorney of the county in which the  
29 violation occurred, or the Attorney General, may, at the  
30 request of the Agency or on his own motion, institute a civil  
31 action for an injunction to restrain violations of this Act.

32 (f) The State's Attorney of the county in which the  
33 violation occurred, or the Attorney General, shall bring such  
34 actions in the name of the people of the State of Illinois.

1 Without limiting any other authority which may exist for the  
2 awarding of attorney's fees and costs, the Board or a court  
3 of competent jurisdiction may award costs and reasonable  
4 attorney's fees, including the reasonable costs of expert  
5 witnesses and consultants, to the State's Attorney or the  
6 Attorney General in a case where he has prevailed against a  
7 person who has committed a wilful, knowing or repeated  
8 violation of the Act.

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

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

24 (h) In determining the appropriate civil penalty to be  
25 imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or  
26 (b)(5) of this Section, the Board shall in every case ensure  
27 that the economic benefits of the violation shown to have  
28 been realized by the violator do not exceed the monetary  
29 value of the penalties and other relief imposed for the  
30 violation, and it is authorized to consider any matters of  
31 record in mitigation or aggravation of penalty, including but  
32 not limited to the following factors:

- 33 (1) the duration and gravity of the violation;
- 34 (2) the presence or absence of due diligence on the

1 part of the violator in attempting to comply with  
2 requirements of this Act and regulations thereunder or to  
3 secure relief therefrom as provided by this Act;

4 (3) any economic benefits accrued by the violator  
5 because of delay in compliance with requirements;

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

11 (5) the number, proximity in time, and gravity of  
12 previously adjudicated violations of this Act by the  
13 violator.

14 (Source: P.A. 90-773, eff. 8-14-98; 91-82, eff. 1-1-00.)

15 (415 ILCS 5/44.5 new)

16 Sec. 44.5. Violator list.

17 (a) Beginning one year after the effective date of this  
18 Section, the Agency shall publish and periodically update a  
19 violator list that identifies the name of each permittee who,  
20 during the preceding 5 years, has been determined by the  
21 Agency, the Board, or a court to have had 2 or more  
22 significant permit violations under this Act.

23 (b) Within one year after the effective date of this  
24 Section, the Agency shall establish criteria for determining  
25 significant permit violations for the purpose of this  
26 Section.

27 (c) Within 18 months after the effective date of this  
28 Section, the Agency shall promulgate rules providing that, to  
29 the extent allowed by law, persons listed on the violator  
30 list shall be prohibited from receiving any State contract  
31 for as long as they remain on the violator list.

32 Section 99. Effective date. This Act takes effect upon

1 becoming law.