

HB2174



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB2174

Introduced 2/26/2007, by Rep. Michael J. Madigan - Barbara Flynn Currie - Thomas Holbrook

SYNOPSIS AS INTRODUCED:

415 ILCS 5/42

from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. Makes a technical change in a Section concerning civil penalties.

LRB095 01179 CMK 21181 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 ~~that~~ violates any provision of this Act or any regulation
10 adopted by the Board, or any permit or term or condition
11 thereof, or that violates any order of the Board pursuant to
12 this Act, shall be liable for a civil penalty of not to exceed
13 \$50,000 for the violation and an additional civil penalty of
14 not to exceed \$10,000 for each day during which the violation
15 continues; such penalties may, upon order of the Board or a
16 court of competent jurisdiction, be made payable to the
17 Environmental Protection Trust Fund, to be used in accordance
18 with the provisions of the Environmental Protection Trust Fund
19 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 of
3 not to exceed \$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 \$2,500 per day of violation;
10 provided, however, that any person who commits such
11 violations relating to the State UIC program for Class II
12 wells, as defined by the Board under this Act, shall be
13 liable to a civil penalty of not to exceed \$10,000 for the
14 violation and an additional civil penalty of not to exceed
15 \$1,000 for each day during which the violation continues.

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

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

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

8 (4-5) In an administrative citation action under
9 Section 31.1 of this Act, any person found to have violated
10 any provision of subsection (p) of Section 21 of this Act
11 shall pay a civil penalty of \$1,500 for each violation of
12 each such provision, plus any hearing costs incurred by the
13 Board and the Agency, except that the civil penalty amount
14 shall be \$3,000 for each violation of any provision of
15 subsection (p) of Section 21 that is the person's second or
16 subsequent adjudication violation of that provision. The
17 penalties shall be deposited into the Environmental
18 Protection Trust Fund, to be used in accordance with the
19 provisions of the Environmental Protection Trust Fund Act;
20 except that if a unit of local government issued the
21 administrative citation, 50% of the civil penalty shall be
22 payable to the unit of local government.

23 (5) Any person who violates subsection 6 of Section
24 39.5 of this Act or any CAAPP permit, or term or condition
25 thereof, or any fee or filing requirement, or any duty to
26 allow or carry out inspection, entry or monitoring

1 activities, or any regulation or order relating to the
2 CAAPP shall be liable for a civil penalty not to exceed
3 \$10,000 per day of violation.

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

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

26 (d) The penalties provided for in this Section may be

1 recovered in a civil action.

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

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

25 Any funds collected under this subsection (f) in which the
26 Attorney General has prevailed shall be deposited in the

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

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

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

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

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

24 (3) any economic benefits accrued by the respondent
25 because of delay in compliance with requirements, in which
26 case the economic benefits shall be determined by the

1 lowest cost alternative for achieving compliance;

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

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.

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

1 agreed to by the complainant and the respondent.

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

7 (1) that the non-compliance was discovered through an
8 environmental audit or a compliance management system
9 documented by the regulated entity as reflecting the
10 regulated entity's due diligence in preventing, detecting,
11 and correcting violations;

12 (2) that the non-compliance was disclosed in writing
13 within 30 days of the date on which the person discovered
14 it;

15 (3) that the non-compliance was discovered and
16 disclosed prior to:

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

19 (ii) notice of a citizen suit;

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

23 (iv) the reporting of the non-compliance by an
24 employee of the person without that person's
25 knowledge; or

26 (v) imminent discovery of the non-compliance by

1 the Agency;

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

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

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

10 (7) that the non-compliance did not result in serious
11 actual harm or present an imminent and substantial
12 endangerment to human health or the environment or violate
13 the specific terms of any judicial or administrative order
14 or consent agreement;

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

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

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

26 (j) In addition to an other remedy or penalty that may

1 apply, whether civil or criminal, any person who violates
2 Section 22.52 of this Act shall be liable for an additional
3 civil penalty of up to 3 times the gross amount of any
4 pecuniary gain resulting from the violation.

5 (Source: P.A. 93-152, eff. 7-10-03; 93-575, eff. 1-1-04;
6 93-831, eff. 7-28-04; 94-272, eff. 7-19-05; 94-580, eff.
7 8-12-05; revised 8-19-05.)