



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5718

by Rep. Jaime M. Andrade, Jr.

SYNOPSIS AS INTRODUCED:

415 ILCS 5/12
415 ILCS 5/42

from Ch. 111 1/2, par. 1012
from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. Provides that no person shall discharge oil or hazardous substances from a pipeline into, upon, or so as to threaten waters of the State. Provides that any person who is the owner or operator of any facility, vessel, or pipeline from which oil or a hazardous substance is discharged in violation a specified provision of the Act, shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to \$1,000 per barrel (42 gallons) of oil or unit of reportable quantity of hazardous substances discharged. Effective immediately.

LRB099 18356 MGM 42731 b

FISCAL NOTE ACT
MAY APPLY

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 Sections 12 and 42 as follows:

6 (415 ILCS 5/12) (from Ch. 111 1/2, par. 1012)

7 Sec. 12. Actions prohibited. No person shall:

8 (a) Cause or threaten or allow the discharge of any
9 contaminants into the environment in any State so as to cause
10 or tend to cause water pollution in Illinois, either alone or
11 in combination with matter from other sources, or so as to
12 violate regulations or standards adopted by the Pollution
13 Control Board under this Act.

14 (b) Construct, install, or operate any equipment,
15 facility, vessel, or aircraft capable of causing or
16 contributing to water pollution, or designed to prevent water
17 pollution, of any type designated by Board regulations, without
18 a permit granted by the Agency, or in violation of any
19 conditions imposed by such permit.

20 (c) Increase the quantity or strength of any discharge of
21 contaminants into the waters, or construct or install any sewer
22 or sewage treatment facility or any new outlet for contaminants
23 into the waters of this State, without a permit granted by the

1 Agency.

2 (d) Deposit any contaminants upon the land in such place
3 and manner so as to create a water pollution hazard.

4 (e) Sell, offer, or use any article in any area in which
5 the Board has by regulation forbidden its sale, offer, or use
6 for reasons of water pollution control.

7 (f) Cause, threaten or allow the discharge of any
8 contaminant into the waters of the State, as defined herein,
9 including but not limited to, waters to any sewage works, or
10 into any well or from any point source within the State,
11 without an NPDES permit for point source discharges issued by
12 the Agency under Section 39(b) of this Act, or in violation of
13 any term or condition imposed by such permit, or in violation
14 of any NPDES permit filing requirement established under
15 Section 39(b), or in violation of any regulations adopted by
16 the Board or of any order adopted by the Board with respect to
17 the NPDES program.

18 No permit shall be required under this subsection and under
19 Section 39(b) of this Act for any discharge for which a permit
20 is not required under the Federal Water Pollution Control Act,
21 as now or hereafter amended, and regulations pursuant thereto.

22 For all purposes of this Act, a permit issued by the
23 Administrator of the United States Environmental Protection
24 Agency under Section 402 of the Federal Water Pollution Control
25 Act, as now or hereafter amended, shall be deemed to be a
26 permit issued by the Agency pursuant to Section 39(b) of this

1 Act. However, this shall not apply to the exclusion from the
2 requirement of an operating permit provided under Section
3 13(b) (i) .

4 Compliance with the terms and conditions of any permit
5 issued under Section 39(b) of this Act shall be deemed
6 compliance with this subsection except that it shall not be
7 deemed compliance with any standard or effluent limitation
8 imposed for a toxic pollutant injurious to human health.

9 In any case where a permit has been timely applied for
10 pursuant to Section 39(b) of this Act but final administrative
11 disposition of such application has not been made, it shall not
12 be a violation of this subsection to discharge without such
13 permit unless the complainant proves that final administrative
14 disposition has not been made because of the failure of the
15 applicant to furnish information reasonably required or
16 requested in order to process the application.

17 (g) Cause, threaten or allow the underground injection of
18 contaminants without a UIC permit issued by the Agency under
19 Section 39(d) of this Act, or in violation of any term or
20 condition imposed by such permit, or in violation of any
21 regulations or standards adopted by the Board or of any order
22 adopted by the Board with respect to the UIC program.

23 No permit shall be required under this subsection and under
24 Section 39(d) of this Act for any underground injection of
25 contaminants for which a permit is not required under Part C of
26 the Safe Drinking Water Act (P.L. 93-523), as amended, unless a

1 permit is authorized or required under regulations adopted by
2 the Board pursuant to Section 13 of this Act.

3 (h) Introduce contaminants into a sewage works from any
4 nondomestic source except in compliance with the regulations
5 and standards adopted by the Board under this Act.

6 (i) Beginning January 1, 2013 or 6 months after the date of
7 issuance of a general NPDES permit for surface discharging
8 private sewage disposal systems by the Illinois Environmental
9 Protection Agency or by the United States Environmental
10 Protection Agency, whichever is later, construct or install a
11 surface discharging private sewage disposal system that
12 discharges into the waters of the United States, as that term
13 is used in the Federal Water Pollution Control Act, unless he
14 or she has a coverage letter under a NPDES permit issued by the
15 Illinois Environmental Protection Agency or by the United
16 States Environmental Protection Agency or he or she is
17 constructing or installing the surface discharging private
18 sewage disposal system in a jurisdiction in which the local
19 public health department has a general NPDES permit issued by
20 the Illinois Environmental Protection Agency or by the United
21 States Environmental Protection Agency and the surface
22 discharging private sewage disposal system is covered under the
23 general NPDES permit.

24 (j) Discharge oil or hazardous substances from a pipeline
25 into, upon, or so as to threaten waters of the State. As used
26 in this subsection (j), "discharge" means an emission, other

1 than natural seepage, intentional or unintentional, and
2 includes, but is not limited to, spilling, leaking, pumping,
3 pouring, emitting, emptying, or dumping. As used in this
4 subsection (j), "oil" means oil of any kind or in any form,
5 including, but not limited to, petroleum and any fraction
6 thereof, fuel oil, sludge, oil refuse, and oil mixed with waste
7 other than dredged spoil.

8 (Source: P.A. 96-801, eff. 1-1-10; 97-1081, eff. 8-24-12.)

9 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

10 Sec. 42. Civil penalties.

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

22 (b) Notwithstanding the provisions of subsection (a) of
23 this Section:

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

26 (5) Any person who violates subsection 6 of Section

1 39.5 of this Act or any CAAPP permit, or term or condition
2 thereof, or any fee or filing requirement, or any duty to
3 allow or carry out inspection, entry or monitoring
4 activities, or any regulation or order relating to the
5 CAAPP shall be liable for a civil penalty not to exceed
6 \$10,000 per day of violation.

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

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

18 (8) Any person who is the owner or operator of any
19 facility, vessel, or pipeline from which oil or a hazardous
20 substance is discharged in violation of subsection (j) of
21 Section 12 of this Act, shall be subject to a civil penalty
22 in an amount up to \$25,000 per day of violation or an
23 amount up to \$1,000 per barrel (42 gallons) of oil or unit
24 of reportable quantity of hazardous substances discharged.

25 (b.5) In lieu of the penalties set forth in subsections (a)
26 and (b) of this Section, any person who fails to file, in a

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

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

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

23 (e) The State's Attorney of the county in which the
24 violation occurred, or the Attorney General, may, at the
25 request of the Agency or on his own motion, institute a civil
26 action for an injunction, prohibitory or mandatory, to restrain

1 violations of this Act, any rule or regulation adopted under
2 this Act, any permit or term or condition of a permit, or any
3 Board order, or to require such other actions as may be
4 necessary to address violations of this Act, any rule or
5 regulation adopted under this Act, any permit or term or
6 condition of a permit, or any Board order.

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

20 Any funds collected under this subsection (f) in which the
21 Attorney General has prevailed shall be deposited in the
22 Hazardous Waste Fund created in Section 22.2 of this Act. Any
23 funds collected under this subsection (f) in which a State's
24 Attorney has prevailed shall be retained by the county in which
25 he serves.

26 (g) All final orders imposing civil penalties pursuant to

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

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

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

15 (2) the presence or absence of due diligence on the
16 part of the respondent in attempting to comply with
17 requirements of this Act and regulations thereunder or to
18 secure relief therefrom as provided by this Act;

19 (3) any economic benefits accrued by the respondent
20 because of delay in compliance with requirements, in which
21 case the economic benefits shall be determined by the
22 lowest cost alternative for achieving compliance;

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

1 (5) the number, proximity in time, and gravity of
2 previously adjudicated violations of this Act by the
3 respondent;

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

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

13 (8) whether the respondent has successfully completed
14 a Compliance Commitment Agreement under subsection (a) of
15 Section 31 of this Act to remedy the violations that are
16 the subject of the complaint.

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

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

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

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

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

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

18 (ii) notice of a citizen suit;

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

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

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

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

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

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

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

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

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

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

25 (j) In addition to any other remedy or penalty that may
26 apply, whether civil or criminal, any person who violates

1 Section 22.52 of this Act shall be liable for an additional
2 civil penalty of up to 3 times the gross amount of any
3 pecuniary gain resulting from the violation.

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

8 (Source: P.A. 97-519, eff. 8-23-11; 98-638, eff. 1-1-15.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.