

SB1433



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1433

Introduced 2/9/2017, by Sen. Paul Schimpf

SYNOPSIS AS INTRODUCED:

415 ILCS 5/42

from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. Provides that a person who voluntarily self-discloses non-compliance to the Agency, of which the Agency had been unaware, is entitled to a 100% reduction in the portion of the penalty that is not based on the economic benefit of non-compliance if the regulated entity is a small entity as defined by a specified provision of the federal Small Business Regulatory Enforcement Fairness Act of 1996. Effective immediately.

LRB100 08750 MJP 18888 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 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

1 NPDES permit program, shall be liable to a civil penalty of
2 not to exceed \$10,000 per day of violation.

3 (2) Any person that violates Section 12(g) of this Act
4 or any UIC permit or term or condition thereof, or any
5 filing requirement, regulation or order relating to the
6 State UIC program for all wells, except Class II wells as
7 defined by the Board under this Act, shall be liable to a
8 civil penalty not to exceed \$2,500 per day of violation;
9 provided, however, that any person who commits such
10 violations relating to the State UIC program for Class II
11 wells, as defined by the Board under this Act, shall be
12 liable to a civil penalty of not to exceed \$10,000 for the
13 violation and an additional civil penalty of not to exceed
14 \$1,000 for each day during which the violation continues.

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

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

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

7 (4-5) In an administrative citation action under
8 Section 31.1 of this Act, any person found to have violated
9 any provision of subsection (p) of Section 21, Section
10 22.51, Section 22.51a, or subsection (k) of Section 55 of
11 this Act shall pay a civil penalty of \$1,500 for each
12 violation of each such provision, plus any hearing costs
13 incurred by the Board and the Agency, except that the civil
14 penalty amount shall be \$3,000 for each violation of any
15 provision of subsection (p) of Section 21, Section 22.51,
16 Section 22.51a, or subsection (k) of Section 55 that is the
17 person's second or subsequent adjudication violation of
18 that provision. The penalties shall be deposited into the
19 Environmental Protection Trust Fund, to be used in
20 accordance with the provisions of the Environmental
21 Protection Trust Fund Act; except that if a unit of local
22 government issued the administrative citation, 50% of the
23 civil penalty shall be payable to the unit of local
24 government.

25 (5) Any person who violates subsection 6 of Section
26 39.5 of this Act or any CAAPP permit, or term or condition

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

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

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

17 (b.5) In lieu of the penalties set forth in subsections (a)
18 and (b) of this Section, any person who fails to file, in a
19 timely manner, toxic chemical release forms with the Agency
20 pursuant to Section 25b-2 of this Act shall be liable for a
21 civil penalty of \$100 per day for each day the forms are late,
22 not to exceed a maximum total penalty of \$6,000. This daily
23 penalty shall begin accruing on the thirty-first day after the
24 date that the person receives the warning notice issued by the
25 Agency pursuant to Section 25b-6 of this Act; and the penalty
26 shall be paid to the Agency. The daily accrual of penalties

1 shall cease as of January 1 of the following year. All
2 penalties collected by the Agency pursuant to this subsection
3 shall be deposited into the Environmental Protection Permit and
4 Inspection Fund.

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

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

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

25 (f) The State's Attorney of the county in which the
26 violation occurred, or the Attorney General, shall bring such

1 actions in the name of the people of the State of Illinois.
2 Without limiting any other authority which may exist for the
3 awarding of attorney's fees and costs, the Board or a court of
4 competent jurisdiction may award costs and reasonable
5 attorney's fees, including the reasonable costs of expert
6 witnesses and consultants, to the State's Attorney or the
7 Attorney General in a case where he has prevailed against a
8 person who has committed a wilful, knowing or repeated
9 violation of this Act, any rule or regulation adopted under
10 this Act, any permit or term or condition of a permit, or any
11 Board order.

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

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

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

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

7 (2) the presence or absence of due diligence on the
8 part of the respondent in attempting to comply with
9 requirements of this Act and regulations thereunder or to
10 secure relief therefrom as provided by this Act;

11 (3) any economic benefits accrued by the respondent
12 because of delay in compliance with requirements, in which
13 case the economic benefits shall be determined by the
14 lowest cost alternative for achieving compliance;

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

19 (5) the number, proximity in time, and gravity of
20 previously adjudicated violations of this Act by the
21 respondent;

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

25 (7) whether the respondent has agreed to undertake a
26 "supplemental environmental project," which means an

1 environmentally beneficial project that a respondent
2 agrees to undertake in settlement of an enforcement action
3 brought under this Act, but which the respondent is not
4 otherwise legally required to perform; and

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

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

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

24 (1) that either the regulated entity is a small entity
25 or the non-compliance was discovered through an
26 environmental audit or a compliance management system

1 documented by the regulated entity as reflecting the
2 regulated entity's due diligence in preventing, detecting,
3 and correcting violations;

4 (2) that the non-compliance was disclosed in writing
5 within 30 days of the date on which the person discovered
6 it;

7 (3) that the non-compliance was discovered and
8 disclosed prior to:

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

11 (ii) notice of a citizen suit;

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

15 (iv) the reporting of the non-compliance by an
16 employee of the person without that person's
17 knowledge; or

18 (v) imminent discovery of the non-compliance by
19 the Agency;

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

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

24 (6) that no related non-compliance events have
25 occurred in the past 3 years at the same facility or in the
26 past 5 years as part of a pattern at multiple facilities

1 owned or operated by the person;

2 (7) that the non-compliance did not result in serious
3 actual harm or present an imminent and substantial
4 endangerment to human health or the environment or violate
5 the specific terms of any judicial or administrative order
6 or consent agreement;

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

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

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

18 For the purposes of this subsection (i), "small entity" has
19 the same meaning as in Section 221 of the federal Small
20 Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C.
21 671).

22 (j) In addition to any other remedy or penalty that may
23 apply, whether civil or criminal, any person who violates
24 Section 22.52 of this Act shall be liable for an additional
25 civil penalty of up to 3 times the gross amount of any
26 pecuniary gain resulting from the violation.

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

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

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