



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB2788

Introduced 2/16/2023, by Rep. Ann M. Williams

SYNOPSIS AS INTRODUCED:

415 ILCS 5/31

from Ch. 111 1/2, par. 1031

Amends the Environmental Protection Act. Authorizes the extension of mutually agreed deadlines for the submittal of enforcement-related items. Allows notices, responses, and other items to be submitted or served on a person complained against or the Environmental Protection Agency not only by certified mail but also by personal service or a third-party commercial carrier that requires the receipt of that document to be acknowledged with the recipient's signature. Provides that, whenever a third-party commercial carrier requiring the recipient's signature is used, the date recorded by the third-party commercial carrier that the third-party commercial carrier received the item for delivery shall be deemed the date the item was submitted, and the date recorded by the third-party commercial carrier that the recipient signed for the item shall be deemed the date the item was received by the recipient. Requires records authenticated by a third-party commercial carrier to be considered competent evidence that an item was submitted or received if the item is sent by a third-party commercial carrier requiring the recipient's signature. Effective immediately.

LRB103 29482 CPF 55877 b

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 31 as follows:

6 (415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)

7 Sec. 31. Notice; complaint; hearing.

8 (a) (1) Within 180 days after becoming aware of an alleged
9 violation of the Act, any rule adopted under the Act, a permit
10 granted by the Agency, or a condition of such a permit, the
11 Agency shall issue and serve, by certified mail, upon the
12 person complained against a written notice informing that
13 person that the Agency has evidence of the alleged violation.
14 At a minimum, the written notice shall contain:

15 (A) a notification to the person complained against of
16 the requirement to submit a written response addressing
17 the violations alleged and the option to meet with
18 appropriate agency personnel to resolve any alleged
19 violations that could lead to the filing of a formal
20 complaint;

21 (B) a detailed explanation by the Agency of the
22 violations alleged;

23 (C) an explanation by the Agency of the actions that

1 the Agency believes may resolve the alleged violations,
2 including an estimate of a reasonable time period for the
3 person complained against to complete the suggested
4 resolution; and

5 (D) an explanation of any alleged violation that the
6 Agency believes cannot be resolved without the involvement
7 of the Office of the Illinois Attorney General or the
8 State's Attorney of the county in which the alleged
9 violation occurred and the basis for the Agency's belief.

10 (2) A written response to the violations alleged shall be
11 submitted to the Agency, by certified mail, within 45 days
12 after receipt of notice by the person complained against or
13 within a later time period as agreed to by the Agency and the
14 person complained against , ~~unless the Agency agrees to an~~
15 ~~extension~~. The written response shall include:

16 (A) information in rebuttal, explanation or
17 justification of each alleged violation;

18 (B) if the person complained against desires to enter
19 into a Compliance Commitment Agreement, proposed terms for
20 a Compliance Commitment Agreement that includes specified
21 times for achieving each commitment and which may consist
22 of a statement indicating that the person complained
23 against believes that compliance has been achieved; and

24 (C) a request for a meeting with appropriate Agency
25 personnel if a meeting is desired by the person complained
26 against.

1 (3) If the person complained against fails to respond in
2 accordance with the requirements of subdivision (2) of this
3 subsection (a), the failure to respond shall be considered a
4 waiver of the requirements of this subsection (a) and nothing
5 in this Section shall preclude the Agency from proceeding
6 pursuant to subsection (b) of this Section.

7 (4) A meeting requested pursuant to subdivision (2) of
8 this subsection (a) shall be held without a representative of
9 the Office of the Illinois Attorney General or the State's
10 Attorney of the county in which the alleged violation
11 occurred, within 60 days after receipt of notice by the person
12 complained against or within a later time period as agreed to
13 by the Agency and the person complained against, ~~unless the~~
14 ~~Agency agrees to a postponement~~. At the meeting, the Agency
15 shall provide an opportunity for the person complained against
16 to respond to each alleged violation, suggested resolution,
17 and suggested implementation time frame, and to suggest
18 alternate resolutions.

19 (5) If a meeting requested pursuant to subdivision (2) of
20 this subsection (a) is held, the person complained against
21 shall, within 21 days following the meeting or within a later
22 time period as agreed to by the Agency and the person
23 complained against ~~an extended time period as agreed to by the~~
24 ~~Agency~~, submit by certified mail to the Agency a written
25 response to the alleged violations. The written response shall
26 include:

1 (A) additional information in rebuttal, explanation,
2 or justification of each alleged violation;

3 (B) if the person complained against desires to enter
4 into a Compliance Commitment Agreement, proposed terms for
5 a Compliance Commitment Agreement that includes specified
6 times for achieving each commitment and which may consist
7 of a statement indicating that the person complained
8 against believes that compliance has been achieved; and

9 (C) a statement indicating that, should the person
10 complained against so wish, the person complained against
11 chooses to rely upon the initial written response
12 submitted pursuant to subdivision (2) of this subsection
13 (a).

14 (6) If the person complained against fails to respond in
15 accordance with the requirements of subdivision (5) of this
16 subsection (a), the failure to respond shall be considered a
17 waiver of the requirements of this subsection (a) and nothing
18 in this Section shall preclude the Agency from proceeding
19 pursuant to subsection (b) of this Section.

20 (7) Within 30 days after the Agency's receipt of a written
21 response submitted by the person complained against pursuant
22 to subdivision (2) of this subsection (a) if a meeting is not
23 requested or pursuant to subdivision (5) of this subsection
24 (a) if a meeting is held, or within a later time period as
25 agreed to by the Agency and the person complained against, the
26 Agency shall issue and serve, by certified mail, upon the

1 person complained against (i) a proposed Compliance Commitment
2 Agreement or (ii) a notice that one or more violations cannot
3 be resolved without the involvement of the Office of the
4 Attorney General or the State's Attorney of the county in
5 which the alleged violation occurred and that no proposed
6 Compliance Commitment Agreement will be issued by the Agency
7 for those violations. The Agency shall include terms and
8 conditions in the proposed Compliance Commitment Agreement
9 that are, in its discretion, necessary to bring the person
10 complained against into compliance with the Act, any rule
11 adopted under the Act, any permit granted by the Agency, or any
12 condition of such a permit. The Agency shall take into
13 consideration the proposed terms for the proposed Compliance
14 Commitment Agreement that were provided under subdivision
15 (a) (2) (B) or (a) (5) (B) of this Section by the person
16 complained against.

17 (7.5) Within 30 days after the receipt of the Agency's
18 proposed Compliance Commitment Agreement by the person
19 complained against or within a later time period as agreed to
20 by the Agency and the person complained against, the person
21 shall either (i) agree to and sign the proposed Compliance
22 Commitment Agreement provided by the Agency and submit the
23 signed Compliance Commitment Agreement to the Agency by
24 certified mail or (ii) notify the Agency in writing by
25 certified mail of the person's rejection of the proposed
26 Compliance Commitment Agreement. If the person complained

1 against fails to respond to the proposed Compliance Commitment
2 Agreement within 30 days or within the later time period
3 agreed to by the Agency and the person complained against as
4 required under this paragraph, the proposed Compliance
5 Commitment Agreement is deemed rejected by operation of law.
6 Any Compliance Commitment Agreement entered into under item
7 (i) of this paragraph may be amended subsequently in writing
8 by mutual agreement between the Agency and the signatory to
9 the Compliance Commitment Agreement, the signatory's legal
10 representative, or the signatory's agent.

11 (7.6) No person shall violate the terms or conditions of a
12 Compliance Commitment Agreement entered into under subdivision
13 (a)(7.5) of this Section. Successful completion of a
14 Compliance Commitment Agreement or an amended Compliance
15 Commitment Agreement shall be a factor to be weighed, in favor
16 of the person completing the Agreement, by the Office of the
17 Illinois Attorney General in determining whether to file a
18 complaint for the violations that were the subject of the
19 Agreement.

20 (7.7) Within 30 days after a Compliance Commitment
21 Agreement takes effect or is amended in accordance with
22 paragraph (7.5), the Agency shall publish a copy of the final
23 executed Compliance Commitment Agreement on the Agency's
24 website. The Agency shall maintain an Internet database of all
25 Compliance Commitment Agreements entered on or after the
26 effective date of this amendatory Act of the 100th General

1 Assembly. At a minimum, the database shall be searchable by
2 the following categories: the county in which the facility
3 that is subject to the Compliance Commitment Agreement is
4 located; the date of final execution of the Compliance
5 Commitment Agreement; the name of the respondent; and the
6 media involved, including air, water, land, or public water
7 supply.

8 (8) Nothing in this subsection (a) is intended to require
9 the Agency to enter into Compliance Commitment Agreements for
10 any alleged violation that the Agency believes cannot be
11 resolved without the involvement of the Office of the Attorney
12 General or the State's Attorney of the county in which the
13 alleged violation occurred, for, among other purposes, the
14 imposition of statutory penalties.

15 (9) The Agency's failure to respond within 30 days to a
16 written response submitted pursuant to subdivision (2) of this
17 subsection (a) if a meeting is not requested or pursuant to
18 subdivision (5) of this subsection (a) if a meeting is held, or
19 within a later ~~the~~ time period as ~~otherwise~~ agreed to ~~in~~
20 ~~writing~~ by the Agency and the person complained against, shall
21 be deemed an acceptance by the Agency of the proposed terms of
22 the Compliance Commitment Agreement for the violations alleged
23 in the written notice issued under subdivision (1) of this
24 subsection (a) as contained within the written response.

25 (10) If the person complained against complies with the
26 terms of a Compliance Commitment Agreement accepted pursuant

1 to this subsection (a), the Agency shall not refer the alleged
2 violations which are the subject of the Compliance Commitment
3 Agreement to the Office of the Illinois Attorney General or
4 the State's Attorney of the county in which the alleged
5 violation occurred. However, nothing in this subsection is
6 intended to preclude the Agency from continuing negotiations
7 with the person complained against or from proceeding pursuant
8 to the provisions of subsection (b) of this Section for
9 alleged violations that remain the subject of disagreement
10 between the Agency and the person complained against following
11 fulfillment of the requirements of this subsection (a).

12 (11) Nothing in this subsection (a) is intended to
13 preclude the person complained against from submitting to the
14 Agency, by certified mail, at any time, notification that the
15 person complained against consents to waiver of the
16 requirements of subsections (a) and (b) of this Section.

17 (12) The Agency shall have the authority to adopt rules
18 for the administration of subsection (a) of this Section. The
19 rules shall be adopted in accordance with the provisions of
20 the Illinois Administrative Procedure Act.

21 (b) For alleged violations that remain the subject of
22 disagreement between the Agency and the person complained
23 against following fulfillment of the requirements of
24 subsection (a) of this Section, and for alleged violations of
25 the terms or conditions of a Compliance Commitment Agreement
26 entered into under subdivision (a)(7.5) of this Section as

1 well as the alleged violations that are the subject of the
2 Compliance Commitment Agreement, and as a precondition to the
3 Agency's referral or request to the Office of the Illinois
4 Attorney General or the State's Attorney of the county in
5 which the alleged violation occurred for legal representation
6 regarding an alleged violation that may be addressed pursuant
7 to subsection (c) or (d) of this Section or pursuant to Section
8 42 of this Act, the Agency shall issue and serve, by certified
9 mail, upon the person complained against a written notice
10 informing that person that the Agency intends to pursue legal
11 action. Such notice shall notify the person complained against
12 of the violations to be alleged and offer the person an
13 opportunity to meet with appropriate Agency personnel in an
14 effort to resolve any alleged violations that could lead to
15 the filing of a formal complaint. The meeting with Agency
16 personnel shall be held within 30 days after receipt of notice
17 served pursuant to this subsection upon the person complained
18 against, or within a later time period as agreed to by the
19 Agency and the person complained against, unless ~~the Agency~~
20 ~~agrees to a postponement or~~ the person notifies the Agency
21 that he or she will not appear at a meeting within the 30-day
22 time period or the agreed upon time period. Nothing in this
23 subsection is intended to preclude the Agency from following
24 the provisions of subsection (c) or (d) of this Section or from
25 requesting the legal representation of the Office of the
26 Illinois Attorney General or the State's Attorney of the

1 county in which the alleged violations occurred for alleged
2 violations which remain the subject of disagreement between
3 the Agency and the person complained against after the
4 provisions of this subsection are fulfilled.

5 (c)(1) For alleged violations which remain the subject of
6 disagreement between the Agency and the person complained
7 against following waiver pursuant to subdivision (10) of
8 subsection (a) of this Section or fulfillment of the
9 requirements of subsections (a) and (b) of this Section, the
10 Office of the Illinois Attorney General or the State's
11 Attorney of the county in which the alleged violation occurred
12 shall issue and serve upon the person complained against a
13 written notice, together with a formal complaint, which shall
14 specify the provision of the Act, rule, regulation, permit, or
15 term or condition thereof under which such person is said to be
16 in violation and a statement of the manner in and the extent to
17 which such person is said to violate the Act, rule,
18 regulation, permit, or term or condition thereof and shall
19 require the person so complained against to answer the charges
20 of such formal complaint at a hearing before the Board at a
21 time not less than 21 days after the date of notice by the
22 Board, except as provided in Section 34 of this Act. Such
23 complaint shall be accompanied by a notification to the
24 defendant that financing may be available, through the
25 Illinois Environmental Facilities Financing Act, to correct
26 such violation. A copy of such notice of such hearings shall

1 also be sent to any person that has complained to the Agency
2 respecting the respondent within the six months preceding the
3 date of the complaint, and to any person in the county in which
4 the offending activity occurred that has requested notice of
5 enforcement proceedings; 21 days notice of such hearings shall
6 also be published in a newspaper of general circulation in
7 such county. The respondent may file a written answer, and at
8 such hearing the rules prescribed in Sections 32 and 33 of this
9 Act shall apply. In the case of actual or threatened acts
10 outside Illinois contributing to environmental damage in
11 Illinois, the extraterritorial service-of-process provisions
12 of Sections 2-208 and 2-209 of the Code of Civil Procedure
13 shall apply.

14 With respect to notices served pursuant to this subsection
15 (c)(1) that involve hazardous material or wastes in any
16 manner, the Agency shall annually publish a list of all such
17 notices served. The list shall include the date the
18 investigation commenced, the date notice was sent, the date
19 the matter was referred to the Attorney General, if
20 applicable, and the current status of the matter.

21 (2) Notwithstanding the provisions of subdivision (1) of
22 this subsection (c), whenever a complaint has been filed on
23 behalf of the Agency or by the People of the State of Illinois,
24 the parties may file with the Board a stipulation and proposal
25 for settlement accompanied by a request for relief from the
26 requirement of a hearing pursuant to subdivision (1). Unless

1 the Board, in its discretion, concludes that a hearing will be
2 held, the Board shall cause notice of the stipulation,
3 proposal and request for relief to be published and sent in the
4 same manner as is required for hearing pursuant to subdivision
5 (1) of this subsection. The notice shall include a statement
6 that any person may file a written demand for hearing within 21
7 days after receiving the notice. If any person files a timely
8 written demand for hearing, the Board shall deny the request
9 for relief from a hearing and shall hold a hearing in
10 accordance with the provisions of subdivision (1).

11 (3) Notwithstanding the provisions of subdivision (1) of
12 this subsection (c), if the Agency becomes aware of a
13 violation of this Act arising from, or as a result of,
14 voluntary pollution prevention activities, the Agency shall
15 not proceed with the written notice required by subsection (a)
16 of this Section unless:

17 (A) the person fails to take corrective action or
18 eliminate the reported violation within a reasonable time;
19 or

20 (B) the Agency believes that the violation poses a
21 substantial and imminent danger to the public health or
22 welfare or the environment. For the purposes of this item
23 (B), "substantial and imminent danger" means a danger with
24 a likelihood of serious or irreversible harm.

25 (d)(1) Any person may file with the Board a complaint,
26 meeting the requirements of subsection (c) of this Section,

1 against any person allegedly violating 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. The complainant
4 shall immediately serve a copy of such complaint upon the
5 person or persons named therein. Unless the Board determines
6 that such complaint is duplicative or frivolous, it shall
7 schedule a hearing and serve written notice thereof upon the
8 person or persons named therein, in accord with subsection (c)
9 of this Section.

10 (2) Whenever a complaint has been filed by a person other
11 than the Attorney General or the State's Attorney, the parties
12 may file with the Board a stipulation and proposal for
13 settlement accompanied by a request for relief from the
14 hearing requirement of subdivision (c)(1) of this Section.
15 Unless the Board, in its discretion, concludes that a hearing
16 should be held, no hearing on the stipulation and proposal for
17 settlement is required.

18 (e) In hearings before the Board under this Title the
19 burden shall be on the Agency or other complainant to show
20 either that the respondent has caused or threatened to cause
21 air or water pollution or that the respondent has violated or
22 threatens to violate any provision of this Act or any rule or
23 regulation of the Board or permit or term or condition
24 thereof. If such proof has been made, the burden shall be on
25 the respondent to show that compliance with the Board's
26 regulations would impose an arbitrary or unreasonable

1 hardship.

2 (f) The provisions of this Section shall not apply to
3 administrative citation actions commenced under Section 31.1
4 of this Act.

5 (g) Notices, responses, and other items required to be
6 submitted to or served on a person complained against or the
7 Agency by certified mail under this Section may also be served
8 by personal service or by a third-party commercial carrier
9 that requires the receipt of that document to be acknowledged
10 with the recipient's signature.

11 (h) If a third-party commercial carrier requiring the
12 recipient's signature is used to serve an item under
13 subsection (a) or (b), the date recorded by the third-party
14 commercial carrier that the third-party commercial carrier
15 received the item for delivery shall be deemed the date the
16 item was submitted, and the date recorded by the third-party
17 commercial carrier that the recipient signed for the item
18 shall be deemed the date the item was received by the
19 recipient. If an item is sent by a third-party commercial
20 carrier that requires the recipient's signature, a record
21 authenticated by the third-party commercial carrier shall be
22 considered competent evidence that the item was submitted or
23 received.

24 (Source: P.A. 100-1080, eff. 8-24-18.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.