



Rep. Ann M. Williams

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10300HB2788ham002

LRB103 29482 LNS 59193 a

1 AMENDMENT TO HOUSE BILL 2788

2 AMENDMENT NO. _____. Amend House Bill 2788, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Environmental Protection Act is amended by
6 changing Section 31 as follows:

7 (415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)

8 Sec. 31. Notice; complaint; hearing.

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

16 (A) a notification to the person complained against of

1 the requirement to submit a written response addressing
2 the violations alleged and the option to meet with
3 appropriate agency personnel to resolve any alleged
4 violations that could lead to the filing of a formal
5 complaint;

6 (B) a detailed explanation by the Agency of the
7 violations alleged;

8 (C) an explanation by the Agency of the actions that
9 the Agency believes may resolve the alleged violations,
10 including an estimate of a reasonable time period for the
11 person complained against to complete the suggested
12 resolution; and

13 (D) an explanation of any alleged violation that the
14 Agency believes cannot be resolved without the involvement
15 of the Office of the Illinois Attorney General or the
16 State's Attorney of the county in which the alleged
17 violation occurred and the basis for the Agency's belief.

18 (2) A written response to the violations alleged shall be
19 submitted to the Agency, by certified mail, within 45 days
20 after receipt of notice by the person complained against, or
21 within an extended time period as agreed to by the Agency and
22 person complained against unless the Agency agrees to an
23 ~~extension~~. The written response shall include:

24 (A) information in rebuttal, explanation or
25 justification of each alleged violation;

26 (B) if the person complained against desires to enter

1 into a Compliance Commitment Agreement, proposed terms for
2 a Compliance Commitment Agreement that includes specified
3 times for achieving each commitment and which may consist
4 of a statement indicating that the person complained
5 against believes that compliance has been achieved; and

6 (C) a request for a meeting with appropriate Agency
7 personnel if a meeting is desired by the person complained
8 against.

9 (3) If the person complained against fails to respond in
10 accordance with the requirements of subdivision (2) of this
11 subsection (a), the failure to respond shall be considered a
12 waiver of the requirements of this subsection (a) and nothing
13 in this Section shall preclude the Agency from proceeding
14 pursuant to subsection (b) of this Section.

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

1 (5) If a meeting requested pursuant to subdivision (2) of
2 this subsection (a) is held, the person complained against
3 shall, within 21 days following the meeting or within an
4 extended time period as agreed to by the Agency and person
5 complained against, submit by certified mail to the Agency a
6 written response to the alleged violations. The written
7 response shall include:

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

10 (B) if the person complained against desires to enter
11 into a Compliance Commitment Agreement, proposed terms for
12 a Compliance Commitment Agreement that includes specified
13 times for achieving each commitment and which may consist
14 of a statement indicating that the person complained
15 against believes that compliance has been achieved; and

16 (C) a statement indicating that, should the person
17 complained against so wish, the person complained against
18 chooses to rely upon the initial written response
19 submitted pursuant to subdivision (2) of this subsection
20 (a).

21 (6) If the person complained against fails to respond in
22 accordance with the requirements of subdivision (5) of this
23 subsection (a), the failure to respond shall be considered a
24 waiver of the requirements of this subsection (a) and nothing
25 in this Section shall preclude the Agency from proceeding
26 pursuant to subsection (b) of this Section.

1 (7) Within 30 days after the Agency's receipt of a written
2 response submitted by the person complained against pursuant
3 to subdivision (2) of this subsection (a) if a meeting is not
4 requested or pursuant to subdivision (5) of this subsection
5 (a) if a meeting is held, or within a later time period as
6 agreed to by the Agency and the person complained against, the
7 Agency shall issue and serve, by certified mail, upon the
8 person complained against (i) a proposed Compliance Commitment
9 Agreement or (ii) a notice that one or more violations cannot
10 be resolved without the involvement of the Office of the
11 Attorney General or the State's Attorney of the county in
12 which the alleged violation occurred and that no proposed
13 Compliance Commitment Agreement will be issued by the Agency
14 for those violations. The Agency shall include terms and
15 conditions in the proposed Compliance Commitment Agreement
16 that are, in its discretion, necessary to bring the person
17 complained against into compliance with the Act, any rule
18 adopted under the Act, any permit granted by the Agency, or any
19 condition of such a permit. The Agency shall take into
20 consideration the proposed terms for the proposed Compliance
21 Commitment Agreement that were provided under subdivision
22 (a) (2) (B) or (a) (5) (B) of this Section by the person
23 complained against.

24 (7.5) Within 30 days after the receipt of the Agency's
25 proposed Compliance Commitment Agreement by the person
26 complained against, or within a later time period not to

1 exceed an additional 30 days as agreed to by the Agency and the
2 person complained against, the person shall either (i) agree
3 to and sign the proposed Compliance Commitment Agreement
4 provided by the Agency and submit the signed Compliance
5 Commitment Agreement to the Agency by certified mail or (ii)
6 notify the Agency in writing by certified mail of the person's
7 rejection of the proposed Compliance Commitment Agreement. If
8 the person complained against fails to respond to the proposed
9 Compliance Commitment Agreement within 30 days as required
10 under this paragraph, the proposed Compliance Commitment
11 Agreement is deemed rejected by operation of law. Any
12 Compliance Commitment Agreement entered into under item (i) of
13 this paragraph may be amended subsequently in writing by
14 mutual agreement between the Agency and the signatory to the
15 Compliance Commitment Agreement, the signatory's legal
16 representative, or the signatory's agent.

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

26 (7.7) Within 30 days after a Compliance Commitment

1 Agreement takes effect or is amended in accordance with
2 paragraph (7.5), the Agency shall publish a copy of the final
3 executed Compliance Commitment Agreement on the Agency's
4 website. The Agency shall maintain an Internet database of all
5 Compliance Commitment Agreements entered on or after the
6 effective date of this amendatory Act of the 100th General
7 Assembly. At a minimum, the database shall be searchable by
8 the following categories: the county in which the facility
9 that is subject to the Compliance Commitment Agreement is
10 located; the date of final execution of the Compliance
11 Commitment Agreement; the name of the respondent; and the
12 media involved, including air, water, land, or public water
13 supply.

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

21 (9) The Agency's failure to respond within 30 days of
22 receipt to a written response submitted pursuant to
23 subdivision (2) of this subsection (a) if a meeting is not
24 requested or pursuant to subdivision (5) of this subsection
25 (a) if a meeting is held, or within the time period otherwise
26 agreed to in writing by the Agency and the person complained

1 against, shall be deemed an acceptance by the Agency of the
2 proposed terms of the Compliance Commitment Agreement for the
3 violations alleged in the written notice issued under
4 subdivision (1) of this subsection (a) as contained within the
5 written response.

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

19 (11) Nothing in this subsection (a) is intended to
20 preclude the person complained against from submitting to the
21 Agency, by certified mail, at any time, notification that the
22 person complained against consents to waiver of the
23 requirements of subsections (a) and (b) of this Section.

24 (12) The Agency shall have the authority to adopt rules
25 for the administration of subsection (a) of this Section. The
26 rules shall be adopted in accordance with the provisions of

1 the Illinois Administrative Procedure Act.

2 (b) For alleged violations that remain the subject of
3 disagreement between the Agency and the person complained
4 against following fulfillment of the requirements of
5 subsection (a) of this Section, and for alleged violations of
6 the terms or conditions of a Compliance Commitment Agreement
7 entered into under subdivision (a)(7.5) of this Section as
8 well as the alleged violations that are the subject of the
9 Compliance Commitment Agreement, and as a precondition to the
10 Agency's referral or request to the Office of the Illinois
11 Attorney General or the State's Attorney of the county in
12 which the alleged violation occurred for legal representation
13 regarding an alleged violation that may be addressed pursuant
14 to subsection (c) or (d) of this Section or pursuant to Section
15 42 of this Act, the Agency shall issue and serve, by certified
16 mail, upon the person complained against a written notice
17 informing that person that the Agency intends to pursue legal
18 action. Such notice shall notify the person complained against
19 of the violations to be alleged and offer the person an
20 opportunity to meet with appropriate Agency personnel in an
21 effort to resolve any alleged violations that could lead to
22 the filing of a formal complaint. The meeting with Agency
23 personnel shall be held within 30 days after receipt of notice
24 served pursuant to this subsection upon the person complained
25 against, unless the Agency agrees to a postponement or the
26 person notifies the Agency that he or she will not appear at a

1 meeting within the 30-day time period. Nothing in this
2 subsection is intended to preclude the Agency from following
3 the provisions of subsection (c) or (d) of this Section or from
4 requesting the legal representation of the Office of the
5 Illinois Attorney General or the State's Attorney of the
6 county in which the alleged violations occurred for alleged
7 violations which remain the subject of disagreement between
8 the Agency and the person complained against after the
9 provisions of this subsection are fulfilled.

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

1 Board, except as provided in Section 34 of this Act. Such
2 complaint shall be accompanied by a notification to the
3 defendant that financing may be available, through the
4 Illinois Environmental Facilities Financing Act, to correct
5 such violation. A copy of such notice of such hearings shall
6 also be sent to any person that has complained to the Agency
7 respecting the respondent within the six months preceding the
8 date of the complaint, and to any person in the county in which
9 the offending activity occurred that has requested notice of
10 enforcement proceedings; 21 days notice of such hearings shall
11 also be published in a newspaper of general circulation in
12 such county. The respondent may file a written answer, and at
13 such hearing the rules prescribed in Sections 32 and 33 of this
14 Act shall apply. In the case of actual or threatened acts
15 outside Illinois contributing to environmental damage in
16 Illinois, the extraterritorial service-of-process provisions
17 of Sections 2-208 and 2-209 of the Code of Civil Procedure
18 shall apply.

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

26 (2) Notwithstanding the provisions of subdivision (1) of

1 this subsection (c), whenever a complaint has been filed on
2 behalf of the Agency or by the People of the State of Illinois,
3 the parties may file with the Board a stipulation and proposal
4 for settlement accompanied by a request for relief from the
5 requirement of a hearing pursuant to subdivision (1). Unless
6 the Board, in its discretion, concludes that a hearing will be
7 held, the Board shall cause notice of the stipulation,
8 proposal and request for relief to be published and sent in the
9 same manner as is required for hearing pursuant to subdivision
10 (1) of this subsection. The notice shall include a statement
11 that any person may file a written demand for hearing within 21
12 days after receiving the notice. If any person files a timely
13 written demand for hearing, the Board shall deny the request
14 for relief from a hearing and shall hold a hearing in
15 accordance with the provisions of subdivision (1).

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

22 (A) the person fails to take corrective action or
23 eliminate the reported violation within a reasonable time;
24 or

25 (B) the Agency believes that the violation poses a
26 substantial and imminent danger to the public health or

1 welfare or the environment. For the purposes of this item

2 (B), "substantial and imminent danger" means a danger with
3 a likelihood of serious or irreversible harm.

4 (d)(1) Any person may file with the Board a complaint,
5 meeting the requirements of subsection (c) of this Section,
6 against any person allegedly violating this Act, any rule or
7 regulation adopted under this Act, any permit or term or
8 condition of a permit, or any Board order. The complainant
9 shall immediately serve a copy of such complaint upon the
10 person or persons named therein. Unless the Board determines
11 that such complaint is duplicative or frivolous, it shall
12 schedule a hearing and serve written notice thereof upon the
13 person or persons named therein, in accord with subsection (c)
14 of this Section.

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

23 (e) In hearings before the Board under this Title the
24 burden shall be on the Agency or other complainant to show
25 either that the respondent has caused or threatened to cause
26 air or water pollution or that the respondent has violated or

1 threatens to violate any provision of this Act or any rule or
2 regulation of the Board or permit or term or condition
3 thereof. If such proof has been made, the burden shall be on
4 the respondent to show that compliance with the Board's
5 regulations would impose an arbitrary or unreasonable
6 hardship.

7 (f) The provisions of this Section shall not apply to
8 administrative citation actions commenced under Section 31.1
9 of this Act.

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

11 Section 99. Effective date. This Act takes effect upon
12 becoming law."