



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3628

Introduced 2/17/2023, by Rep. Nicholas K. Smith

SYNOPSIS AS INTRODUCED:

415 ILCS 5/42

from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. To the extent allowed under federal law, caps the civil penalties that can be levied against a municipality for NPDES-related violations of the Act at \$50,000. Provides that, if the Agency brings an enforcement action under the Act against a municipality for an NPDES-related violation, then it is the affirmative obligation of the Environmental Protection Agency (i) to provide the municipality with all technical assistance requested by the municipality and necessary to resolve the environmental condition that is responsible for the violation and (ii) to make available to the municipality financial assistance that the Agency is authorized under State or federal law to supply to the municipality to resolve that condition. Requires the Agency, before seeking civil penalties against a municipality under the Act or before taking any other legal action against a municipality under this Act, to hold a public hearing within the municipality to explain the rationale for the enforcement action. Requires public notice of the meeting to be published by the Agency in a newspaper of general circulation in the affected municipality.

LRB103 30370 DTM 56800 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 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
10 by the Board, or any permit or term or condition thereof, or
11 that violates any order of the Board pursuant to this Act,
12 shall be liable for a civil penalty of not to exceed \$50,000
13 for the violation and an additional civil penalty of not to
14 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
3 of 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
25 shall pay a civil penalty of \$500 for each violation of
26 each such provision, plus any hearing costs incurred by

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

8 (4-5) In an administrative citation action under
9 Section 31.1 of this Act, any person found to have
10 violated any provision of subsection (p) of Section 21,
11 Section 22.38, Section 22.51, Section 22.51a, or
12 subsection (k) of Section 55 of this Act shall pay a civil
13 penalty of \$1,500 for each violation of each such
14 provision, plus any hearing costs incurred by the Board
15 and the Agency, except that the civil penalty amount shall
16 be \$3,000 for each violation of any provision of
17 subsection (p) of Section 21, Section 22.38, Section
18 22.51, Section 22.51a, or subsection (k) of Section 55
19 that is the person's second or subsequent adjudication
20 violation of that provision. The penalties shall be
21 deposited into the Environmental Protection Trust Fund, to
22 be used in accordance with the provisions of the
23 Environmental Protection Trust Fund Act; except that if a
24 unit of local government issued the administrative
25 citation, 50% of the civil penalty shall be payable to the
26 unit of local government.

1 (5) Any person who violates subsection 6 of Section
2 39.5 of this Act or any CAAPP permit, or term or condition
3 thereof, or any fee or filing requirement, or any duty to
4 allow or carry out inspection, entry or monitoring
5 activities, or any regulation or order relating to the
6 CAAPP shall be liable for a civil penalty not to exceed
7 \$10,000 per day of violation.

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

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

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

1 Agency pursuant to Section 25b-6 of this Act; and the penalty
2 shall be paid to the Agency. The daily accrual of penalties
3 shall cease as of January 1 of the following year. All
4 penalties collected by the Agency pursuant to this subsection
5 shall be deposited into the Environmental Protection Permit
6 and Inspection Fund.

7 (b.7) Unless required by federal law, no more than \$50,000
8 in civil penalties may be imposed under this Section or any
9 other provision of this Act against a municipality for
10 violations of Section 12(f), violations of NPDES permit terms
11 and conditions, and violations of NPDES permit program rules.
12 If the Agency brings an enforcement action under this Act
13 against a municipality for a violation of Section 12(f), a
14 violation of an NPDES permit term or condition, or a violation
15 of an NPDES permit program rule, it is the affirmative
16 obligation of the Agency (i) to provide the municipality with
17 all technical assistance requested by the municipality and
18 necessary to resolve the environmental condition that is
19 responsible for the violation and (ii) to make available to
20 the municipality financial assistance that the Agency is
21 authorized under State or federal law to supply to the
22 municipality to resolve that condition. Furthermore, before
23 seeking civil penalties against a municipality under this Act
24 or before taking any other legal action against a municipality
25 under this Act, the Agency shall hold a public hearing within
26 the municipality to explain the rationale for the enforcement

1 action. Public notice of the meeting shall be provided by
2 publication of an advertisement in a newspaper of general
3 circulation in the affected municipality.

4 (c) Any person that violates 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 and causes the death
7 of fish or aquatic life shall, in addition to the other
8 penalties provided by this Act, be liable to pay to the State
9 an additional sum for the reasonable value of the fish or
10 aquatic life destroyed. Any money so recovered shall be placed
11 in the Wildlife and Fish Fund in the State Treasury.

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

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

24 (f) The State's Attorney of the county in which the
25 violation occurred, or the Attorney General, shall bring such
26 actions in the name of the people of the State of Illinois.

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

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

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

26 (h) In determining the appropriate civil penalty to be

1 imposed under subdivisions (a), (b) (1), (b) (2), (b) (3),
2 (b) (5), (b) (6), or (b) (7) of this Section, the Board is
3 authorized to consider any matters of record in mitigation or
4 aggravation of penalty, including, but not limited to, the
5 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
17 otherwise aid in enhancing voluntary compliance with this
18 Act by the respondent and other persons similarly subject
19 to the Act;

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

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

26 (7) whether the respondent has agreed to undertake a

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

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

10 In determining the appropriate civil penalty to be imposed
11 under subsection (a) or paragraph (1), (2), (3), (5), (6), or
12 (7) of subsection (b) of this Section, the Board shall ensure,
13 in all cases, that the penalty is at least as great as the
14 economic benefits, if any, accrued by the respondent as a
15 result of the violation, unless the Board finds that
16 imposition of such penalty would result in an arbitrary or
17 unreasonable financial hardship. However, such civil penalty
18 may be off-set in whole or in part pursuant to a supplemental
19 environmental project agreed to by the complainant and the
20 respondent.

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

26 (1) that either the regulated entity is a small entity

1 or the non-compliance was discovered through an
2 environmental audit or a compliance management system
3 documented by the regulated entity as reflecting the
4 regulated entity's due diligence in preventing, detecting,
5 and correcting violations;

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

9 (3) that the non-compliance was discovered and
10 disclosed prior to:

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

13 (ii) notice of a citizen suit;

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

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

20 (v) imminent discovery of the non-compliance by
21 the Agency;

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

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

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

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

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

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

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

21 For the purposes of this subsection (i), "small entity"
22 has the same meaning as in Section 221 of the federal Small
23 Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C.
24 601).

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. 102-310, eff. 8-6-21.)