



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2103

Introduced 2/20/2009, by Sen. Mattie Hunter

SYNOPSIS AS INTRODUCED:

415 ILCS 5/31.1	from Ch. 111 1/2, par. 1031.1
415 ILCS 5/42	from Ch. 111 1/2, par. 1042
415 ILCS 5/55	from Ch. 111 1/2, par. 1055
415 ILCS 5/55.1	from Ch. 111 1/2, par. 1055.1

Amends the Environmental Protection Act. Authorizes the Environmental Protection Agency to issue an administrative citation and impose a civil penalty if any person (i) causes or allows water to accumulate in used tires, (ii) fails to collect the new or used tire fee as required by Section 55.8, (iii) fails to file a State tax return listing, among other things, the number of tires sold at retail during the past calendar year as required by Section 55.10, or (iv) transports used or waste tires in violation of the registration and vehicle placarding requirements adopted by the Pollution Control Board. Effective immediately.

LRB096 03340 JDS 13382 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 31.1, 42, 55, and 55.1 as follows:

6 (415 ILCS 5/31.1) (from Ch. 111 1/2, par. 1031.1)

7 Sec. 31.1. Administrative citation.

8 (a) The prohibitions specified in subsections (o) and (p)
9 of Section 21 and subsection (k) of Section 55 of this Act
10 shall be enforceable either by administrative citation under
11 this Section or as otherwise provided by this Act.

12 (b) Whenever Agency personnel or personnel of a unit of
13 local government to which the Agency has delegated its
14 functions pursuant to subsection (r) of Section 4 of this Act,
15 on the basis of direct observation, determine that any person
16 has violated any provision of subsection (o) or (p) of Section
17 21 or subsection (k) of Section 55 of this Act, the Agency or
18 such unit of local government may issue and serve an
19 administrative citation upon such person within not more than
20 60 days after the date of the observed violation. Each such
21 citation issued shall be served upon the person named therein
22 or such person's authorized agent for service of process, and
23 shall include the following information:

1 (1) a statement specifying the provisions of
2 subsection (o) or (p) of Section 21 or subsection (k) of
3 Section 55 of which the person was observed to be in
4 violation;

5 (2) a copy of the inspection report in which the Agency
6 or local government recorded the violation, which report
7 shall include the date and time of inspection, and weather
8 conditions prevailing during the inspection;

9 (3) the penalty imposed by subdivision (b)(4) or
10 (b)(4-5) of Section 42 for such violation;

11 (4) instructions for contesting the administrative
12 citation findings pursuant to this Section, including
13 notification that the person has 35 days within which to
14 file a petition for review before the Board to contest the
15 administrative citation; and

16 (5) an affidavit by the personnel observing the
17 violation, attesting to their material actions and
18 observations.

19 (c) The Agency or unit of local government shall file a
20 copy of each administrative citation served under subsection
21 (b) of this Section with the Board no later than 10 days after
22 the date of service.

23 (d) (1) If the person named in the administrative citation
24 fails to petition the Board for review within 35 days from the
25 date of service, the Board shall adopt a final order, which
26 shall include the administrative citation and findings of

1 violation as alleged in the citation, and shall impose the
2 penalty specified in subdivision (b) (4) or (b) (4-5) of Section
3 42.

4 (2) If a petition for review is filed before the Board to
5 contest an administrative citation issued under subsection (b)
6 of this Section, the Agency or unit of local government shall
7 appear as a complainant at a hearing before the Board to be
8 conducted pursuant to Section 32 of this Act at a time not less
9 than 21 days after notice of such hearing has been sent by the
10 Board to the Agency or unit of local government and the person
11 named in the citation. In such hearings, the burden of proof
12 shall be on the Agency or unit of local government. If, based
13 on the record, the Board finds that the alleged violation
14 occurred, it shall adopt a final order which shall include the
15 administrative citation and findings of violation as alleged in
16 the citation, and shall impose the penalty specified in
17 subdivision (b) (4) or (b) (4-5) of Section 42. However, if the
18 Board finds that the person appealing the citation has shown
19 that the violation resulted from uncontrollable circumstances,
20 the Board shall adopt a final order which makes no finding of
21 violation and which imposes no penalty.

22 (e) Sections 10-25 through 10-60 of the Illinois
23 Administrative Procedure Act shall not apply to any
24 administrative citation issued under subsection (b) of this
25 Section.

26 (f) The other provisions of this Section shall not apply to

1 a sanitary landfill operated by a unit of local government
2 solely for the purpose of disposing of water and sewage
3 treatment plant sludges, including necessary stabilizing
4 materials.

5 (g) All final orders issued and entered by the Board
6 pursuant to this Section shall be enforceable by injunction,
7 mandamus or other appropriate remedy, in accordance with
8 Section 42 of this Act.

9 (Source: P.A. 92-16, eff. 6-28-01.)

10 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

11 Sec. 42. Civil penalties.

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

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

25 (1) Any person that violates Section 12(f) of this Act

1 or any NPDES permit or term or condition thereof, or any
2 filing requirement, regulation or order relating to the
3 NPDES permit program, shall be liable to a civil penalty of
4 not to exceed \$10,000 per day of violation.

5 (2) Any person that violates Section 12(g) of this Act
6 or any UIC permit or term or condition thereof, or any
7 filing requirement, regulation or order relating to the
8 State UIC program for all wells, except Class II wells as
9 defined by the Board under this Act, shall be liable to a
10 civil penalty not to exceed \$2,500 per day of violation;
11 provided, however, that any person who commits such
12 violations relating to the State UIC program for Class II
13 wells, as defined by the Board under this Act, shall be
14 liable to a civil penalty of not to exceed \$10,000 for the
15 violation and an additional civil penalty of not to exceed
16 \$1,000 for each day during which the violation continues.

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

23 (4) In an administrative citation action under Section
24 31.1 of this Act, any person found to have violated any
25 provision of subsection (o) of Section 21 of this Act shall
26 pay a civil penalty of \$500 for each violation of each such

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

9 (4-5) In an administrative citation action under
10 Section 31.1 of this Act, any person found to have violated
11 any provision of subsection (p) of Section 21 or subsection
12 (k) of Section 55 of this Act shall pay a civil penalty of
13 \$1,500 for each violation of each such provision, plus any
14 hearing costs incurred by the Board and the Agency, except
15 that the civil penalty amount shall be \$3,000 for each
16 violation of any provision of subsection (p) of Section 21
17 or subsection (k) of Section 55 that is the person's second
18 or subsequent adjudication violation of that provision.
19 The penalties shall be deposited into the Environmental
20 Protection Trust Fund, to be used in accordance with the
21 provisions of the Environmental Protection Trust Fund Act;
22 except that if a unit of local government issued the
23 administrative citation, 50% of the civil penalty shall be
24 payable to the unit of local 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 (b.5) In lieu of the penalties set forth in subsections (a)
7 and (b) of this Section, any person who fails to file, in a
8 timely manner, toxic chemical release forms with the Agency
9 pursuant to Section 25b-2 of this Act shall be liable for a
10 civil penalty of \$100 per day for each day the forms are late,
11 not to exceed a maximum total penalty of \$6,000. This daily
12 penalty shall begin accruing on the thirty-first day after the
13 date that the person receives the warning notice issued by the
14 Agency pursuant to Section 25b-6 of this Act; and the penalty
15 shall be paid to the Agency. The daily accrual of penalties
16 shall cease as of January 1 of the following year. All
17 penalties collected by the Agency pursuant to this subsection
18 shall be deposited into the Environmental Protection Permit and
19 Inspection Fund.

20 (c) Any person that violates this Act, any rule or
21 regulation adopted under this Act, any permit or term or
22 condition of a permit, or any Board order and causes the death
23 of fish or aquatic life shall, in addition to the other
24 penalties provided by this Act, be liable to pay to the State
25 an additional sum for the reasonable value of the fish or
26 aquatic life destroyed. Any money so recovered shall be placed

1 in the Wildlife and Fish Fund in the State Treasury.

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

4 (e) The State's Attorney of the county in which the
5 violation occurred, or the Attorney General, may, at the
6 request of the Agency or on his own motion, institute a civil
7 action for an injunction, prohibitory or mandatory, to restrain
8 violations 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, or to require such other actions as may be
11 necessary to address violations of this Act, any rule or
12 regulation adopted under this Act, any permit or term or
13 condition of a permit, or any Board order.

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

1 Any funds collected under this subsection (f) in which the
2 Attorney General has prevailed shall be deposited in the
3 Hazardous Waste Fund created in Section 22.2 of this Act. Any
4 funds collected under this subsection (f) in which a State's
5 Attorney has prevailed shall be retained by the county in which
6 he serves.

7 (g) All final orders imposing civil penalties pursuant to
8 this Section shall prescribe the time for payment of such
9 penalties. If any such penalty is not paid within the time
10 prescribed, interest on such penalty at the rate set forth in
11 subsection (a) of Section 1003 of the Illinois Income Tax Act,
12 shall be paid for the period from the date payment is due until
13 the date payment is received. However, if the time for payment
14 is stayed during the pendency of an appeal, interest shall not
15 accrue during such stay.

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

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

22 (2) the presence or absence of due diligence on the
23 part of the respondent in attempting to comply with
24 requirements of this Act and regulations thereunder or to
25 secure relief therefrom as provided by this Act;

26 (3) any economic benefits accrued by the respondent

1 because of delay in compliance with requirements, in which
2 case the economic benefits shall be determined by the
3 lowest cost alternative for achieving compliance;

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

8 (5) the number, proximity in time, and gravity of
9 previously adjudicated violations of this Act by the
10 respondent;

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

14 (7) whether the respondent has agreed to undertake a
15 "supplemental environmental project," which means an
16 environmentally beneficial project that a respondent
17 agrees to undertake in settlement of an enforcement action
18 brought under this Act, but which the respondent is not
19 otherwise legally required to perform.

20 In determining the appropriate civil penalty to be imposed
21 under subsection (a) or paragraph (1), (2), (3), or (5) of
22 subsection (b) of this Section, the Board shall ensure, in all
23 cases, that the penalty is at least as great as the economic
24 benefits, if any, accrued by the respondent as a result of the
25 violation, unless the Board finds that imposition of such
26 penalty would result in an arbitrary or unreasonable financial

1 hardship. However, such civil penalty may be off-set in whole
2 or in part pursuant to a supplemental environmental project
3 agreed to by the complainant and the respondent.

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

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

14 (2) that the non-compliance was disclosed in writing
15 within 30 days of the date on which the person discovered
16 it;

17 (3) that the non-compliance was discovered and
18 disclosed prior to:

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

21 (ii) notice of a citizen suit;

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

25 (iv) the reporting of the non-compliance by an
26 employee of the person without that person's

1 knowledge; or

2 (v) imminent discovery of the non-compliance by
3 the Agency;

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

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

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

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

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

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

23 If a person can establish all of the elements under this
24 subsection except the element set forth in paragraph (1) of
25 this subsection, the person is entitled to a 75% reduction in
26 the portion of the penalty that is not based upon the economic

1 benefit of non-compliance.

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

7 (Source: P.A. 94-272, eff. 7-19-05; 94-580, eff. 8-12-05;
8 95-331, eff. 8-21-07.)

9 (415 ILCS 5/55) (from Ch. 111 1/2, par. 1055)

10 Sec. 55. Prohibited activities.

11 (a) No person shall:

12 (1) Cause or allow the open dumping of any used or
13 waste tire.

14 (2) Cause or allow the open burning of any used or
15 waste tire.

16 (3) Except at a tire storage site which contains more
17 than 50 used tires, cause or allow the storage of any used
18 tire unless the tire is altered, reprocessed, converted,
19 covered, or otherwise prevented from accumulating water.

20 (4) Cause or allow the operation of a tire storage site
21 except in compliance with Board regulations.

22 (5) Abandon, dump or dispose of any used or waste tire
23 on private or public property, except in a sanitary
24 landfill approved by the Agency pursuant to regulations
25 adopted by the Board.

1 (6) Fail to submit required reports, tire removal
2 agreements, or Board regulations.

3 (b) (Blank.)

4 (b-1) Beginning January 1, 1995, no person shall knowingly
5 mix any used or waste tire, either whole or cut, with municipal
6 waste, and no owner or operator of a sanitary landfill shall
7 accept any used or waste tire for final disposal; except that
8 used or waste tires, when separated from other waste, may be
9 accepted if: (1) the sanitary landfill provides and maintains a
10 means for shredding, slitting, or chopping whole tires and so
11 treats whole tires and, if approved by the Agency in a permit
12 issued under this Act, uses the used or waste tires for
13 alternative uses, which may include on-site practices such as
14 lining of roadways with tire scraps, alternative daily cover,
15 or use in a leachate collection system or (2) the sanitary
16 landfill, by its notification to the Illinois Industrial
17 Materials Exchange Service, makes available the used or waste
18 tire to an appropriate facility for reuse, reprocessing, or
19 converting, including use as an alternate energy fuel. If,
20 within 30 days after notification to the Illinois Industrial
21 Materials Exchange Service of the availability of waste tires,
22 no specific request for the used or waste tires is received by
23 the sanitary landfill, and the sanitary landfill determines it
24 has no alternative use for those used or waste tires, the
25 sanitary landfill may dispose of slit, chopped, or shredded
26 used or waste tires in the sanitary landfill. In the event the

1 physical condition of a used or waste tire makes shredding,
2 slitting, chopping, reuse, reprocessing, or other alternative
3 use of the used or waste tire impractical or infeasible, then
4 the sanitary landfill, after authorization by the Agency, may
5 accept the used or waste tire for disposal.

6 Sanitary landfills and facilities for reuse, reprocessing,
7 or converting, including use as alternative fuel, shall (i)
8 notify the Illinois Industrial Materials Exchange Service of
9 the availability of and demand for used or waste tires and (ii)
10 consult with the Department of Commerce and Economic
11 Opportunity regarding the status of marketing of waste tires to
12 facilities for reuse.

13 (c) Any person who sells new or used tires at retail or
14 operates a tire storage site or a tire disposal site which
15 contains more than 50 used or waste tires shall give notice of
16 such activity to the Agency. Any person engaging in such
17 activity for the first time after January 1, 1990, shall give
18 notice to the Agency within 30 days after the date of
19 commencement of the activity. The form of such notice shall be
20 specified by the Agency and shall be limited to information
21 regarding the following:

22 (1) the name and address of the owner and operator;

23 (2) the name, address and location of the operation;

24 (3) the type of operations involving used and waste
25 tires (storage, disposal, conversion or processing); and

26 (4) the number of used and waste tires present at the

1 location.

2 (d) Beginning January 1, 1992, no person shall cause or
3 allow the operation of:

4 (1) a tire storage site which contains more than 50
5 used tires, unless the owner or operator, by January 1,
6 1992 (or the January 1 following commencement of operation,
7 whichever is later) and January 1 of each year thereafter,
8 (i) registers the site with the Agency, (ii) certifies to
9 the Agency that the site complies with any applicable
10 standards adopted by the Board pursuant to Section 55.2,
11 (iii) reports to the Agency the number of tires
12 accumulated, the status of vector controls, and the actions
13 taken to handle and process the tires, and (iv) pays the
14 fee required under subsection (b) of Section 55.6; or

15 (2) a tire disposal site, unless the owner or operator
16 (i) has received approval from the Agency after filing a
17 tire removal agreement pursuant to Section 55.4, or (ii)
18 has entered into a written agreement to participate in a
19 consensual removal action under Section 55.3.

20 The Agency shall provide written forms for the annual
21 registration and certification required under this subsection
22 (d).

23 (e) No person shall cause or allow the storage, disposal,
24 treatment or processing of any used or waste tire in violation
25 of any regulation or standard adopted by the Board.

26 (f) No person shall arrange for the transportation of used

1 or waste tires away from the site of generation with a person
2 known to openly dump such tires.

3 (g) No person shall engage in any operation as a used or
4 waste tire transporter except in compliance with Board
5 regulations.

6 (h) No person shall cause or allow the combustion of any
7 used or waste tire in an enclosed device unless a permit has
8 been issued by the Agency authorizing such combustion pursuant
9 to regulations adopted by the Board for the control of air
10 pollution and consistent with the provisions of Section 9.4 of
11 this Act.

12 (i) No person shall cause or allow the use of pesticides to
13 treat tires except as prescribed by Board regulations.

14 (j) No person shall fail to comply with the terms of a tire
15 removal agreement approved by the Agency pursuant to Section
16 55.4.

17 (k) No person shall:

18 (1) Cause or allow water to accumulate in used or waste
19 tires.

20 (2) Fail to collect a fee required under Section 55.8
21 of this Title.

22 (3) Fail to file a return required under Section 55.10
23 of this Title.

24 (4) Transport used or waste tires in violation of the
25 registration and vehicle placarding requirements adopted
26 by the Board.

1 (Source: P.A. 93-32, eff. 6-20-03; 93-52, eff. 6-30-03; 94-793,
2 eff. 5-19-06.)

3 (415 ILCS 5/55.1) (from Ch. 111 1/2, par. 1055.1)

4 Sec. 55.1. (a) The prohibitions set forth in subdivision
5 (a) (3) of Section 55 of this Act shall not apply to used tires:

6 (1) generated and located at a site as a result of the
7 growing and harvesting of agricultural crops or the raising
8 of animals, as long as not more than 20 used tires are
9 located at the site;

10 (2) located at a residential household, as long as not
11 more than 12 used tires are located at the site; or

12 (3) which were placed in service for recreational
13 purposes prior to January 1, 1990 at a school, park or
14 playground, provided that the used tires are altered by
15 January 1, 1992.

16 (b) The prohibitions set forth in subdivisions (a) (3),
17 (a) (4), (c), (d), (e), ~~and (g)~~, and (k) (4) of Section 55 of
18 this Act shall not apply to used or waste tires collected by a
19 not-for-profit corporation if:

20 (1) the collection location has been approved by the
21 applicable general purpose unit of local government;

22 (2) the collected tires are transported to a facility
23 permitted by the Agency to store, process or dispose of
24 used or waste tires within 7 days after collection; and

25 (3) the collection does not occur as a continuous

1 business operation.

2 (c) The prohibitions set forth in subdivisions (a)(3),
3 (a)(4), (c), (d), (e), ~~and (g)~~, and (k)(4) of Section 55 of
4 this Act shall not apply to used or waste tires collected by
5 the State or a unit of local government, provided that:

6 (1) the collection is part of an established program to
7 take preventive or corrective action regarding such tires;

8 (2) any staging sites for handling such tires are
9 reasonably secure and regularly maintained in a safe
10 manner; and

11 (3) the Agency is notified in writing during January of
12 each calendar year regarding the location of the staging
13 sites, the number of such tires accumulated, the status of
14 vector controls, and actions taken to process such tires.

15 The Agency shall provide written confirmation to a State
16 agency or unit of local government regarding the applicability
17 of this subsection upon receipt of a written description of its
18 established program, and each January following receipt of the
19 annual report required under subdivision (c)(3) of this
20 subsection.

21 For purposes of determining the applicability of this
22 subsection, any municipality with a population over 1,000,000
23 may certify to the Agency by January 1, 1990 that it operates
24 an established program. Upon the filing of such a
25 certification, the established program shall be deemed to
26 satisfy the provisions of subdivisions (1) and (2) of this

1 subsection.

2 (d) The prohibitions set forth in subdivision (a)(5) of
3 Section 55 of this Act shall not apply to used tires that are
4 generated and located at a permitted coal mining site after use
5 on specialized coal hauling and extraction vehicles.

6 (Source: P.A. 86-452.)

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