

AN ACT concerning safety.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Environmental Protection Act is amended by changing Sections 31.1, 42, 55, and 55.1 as follows:

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

Sec. 31.1. Administrative citation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 42. Civil penalties.

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

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

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

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

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

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

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

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

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

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

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

(b.5) In lieu of the penalties set forth in subsections (a) and (b) of this Section, any person who fails to file, in a timely manner, toxic chemical release forms with the Agency pursuant to Section 25b-2 of this Act shall be liable for a civil penalty of \$100 per day for each day the forms are late, not to exceed a maximum total penalty of \$6,000. This daily penalty shall begin accruing on the thirty-first day after the date that the person receives the warning notice issued by the Agency pursuant to Section 25b-6 of this Act; and the penalty shall be paid to the Agency. The daily accrual of penalties shall cease as of January 1 of the following year. All penalties collected by the Agency pursuant to this subsection shall be deposited into the Environmental Protection Permit and Inspection Fund.

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

in the Wildlife and Fish Fund in the State Treasury.

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

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

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

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

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

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

(1) the duration and gravity of the violation;

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

(3) any economic benefits accrued by the respondent

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

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

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

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

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

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

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

(i) 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 person can establish the following:

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

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

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

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

(ii) notice of a citizen suit;

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

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

knowledge; or

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

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

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

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

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

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

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

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

benefit of non-compliance.

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

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

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

Sec. 55. Prohibited activities.

(a) No person shall:

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

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

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

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

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

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

(b) (Blank.)

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

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

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

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

- (1) the name and address of the owner and operator;
- (2) the name, address and location of the operation;
- (3) the type of operations involving used and waste tires (storage, disposal, conversion or processing); and
- (4) the number of used and waste tires present at the

location.

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

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

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

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

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

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

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

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

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

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

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

(k) No person shall:

(1) Cause or allow water to accumulate in used or waste tires. The prohibition set forth in this paragraph (1) of subsection (k) shall not apply to used or waste tires located at a residential household, as long as not more than 12 used or waste tires are located at the site.

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

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

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

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

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

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

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

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

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

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

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

(2) the collected tires are transported to a facility

permitted by the Agency to store, process or dispose of used or waste tires within 7 days after collection; and

(3) the collection does not occur as a continuous business operation.

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

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

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

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

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

For purposes of determining the applicability of this subsection, any municipality with a population over 1,000,000 may certify to the Agency by January 1, 1990 that it operates

an established program. Upon the filing of such a certification, the established program shall be deemed to satisfy the provisions of subdivisions (1) and (2) of this subsection.

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

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

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