

## TITLE XII: PENALTIES

### 415 ILCS 5/42

#### Sec. 42. Civil penalties.

- (h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), or (b)(7) 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;
  - (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; and

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

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), (5), (6), or (7) 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 either the regulated entity is a **small entity** or 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.

For the purposes of this subsection (i), "**small entity**" has the same meaning as in Section 221 of the federal [Small Business Regulatory Enforcement Fairness Act of 1996 \(5 U.S.C. 601\)](#).

5 U.S. Code § 601 – Definitions (*those that are relevant*)

- 3 the term "small business" has the same meaning as the term "**small business concern**" under **section 3 of the Small Business Act**, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
- 4 the term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
- 5 the term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand,

unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;

- 6 the **term "small entity" shall have the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction" defined in paragraphs (3), (4) and (5) of this section;**