
By: Delegates Taylor, Guns, and Owings

Introduced and read first time: February 6, 1996

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environmental Audits - Voluntary Disclosure**

3 FOR the purpose of requiring that an environmental audit be conducted in accordance
4 with a regulated entity's written policy; specifying the requirements of the written
5 policy; specifying the requirements for an environmental audit program; specifying
6 the contents of an environmental audit report; prohibiting the Department from
7 imposing certain penalties on a regulated entity for certain environmental violations
8 if the regulated entity discovers the violation under certain circumstances and
9 follows certain conditions; specifying the requirements that must be met to be
10 granted immunity; requiring the Department to promptly verify certain persons
11 concerning certain immunity; specifying the circumstances when immunity will not
12 be granted and certain penalties may be imposed; providing that certain audit
13 reports are deemed inadmissible in certain proceedings under certain
14 circumstances; specifying certain exceptions to a certain privilege; authorizing
15 certain judges to determine applicability of the privilege under certain
16 circumstances; establishing a penalty for a certain violation; establishing a
17 Voluntary Disclosure and Environmental Audit Fund; requiring that certain fees be
18 paid into the Fund; specifying the uses of the Fund; authorizing the Department to
19 adopt certain rules and regulations; and generally relating to environmental audits
20 and voluntary disclosure.

21 BY adding to

22 Article - Environment
23 Section 1-701 through 1-711, inclusive, to be under the new subtitle "Subtitle 7.
24 Environmental Audits; Voluntary Disclosure"
25 Annotated Code of Maryland
26 (1993 Replacement Volume and 1995 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Environment**

2 SUBTITLE 7. ENVIRONMENTAL AUDITS; VOLUNTARY DISCLOSURE.

3 1-701.

4 (A) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (B) "ENVIRONMENTAL AUDIT" MEANS A VOLUNTARY, INTERNAL
7 EVALUATION CONDUCTED BY THE OWNER OR OPERATOR, THE EMPLOYEES OF THE
8 OWNER OR OPERATOR, OR AN INDEPENDENT AUDITOR OF:

9 (1) A FACILITY REGULATED UNDER ANY FEDERAL, STATE, OR LOCAL
10 ENVIRONMENTAL LAW; OR

11 (2) THE MANAGEMENT SYSTEMS RELATED TO A FACILITY DESIGNATED
12 TO IDENTIFY AND PREVENT NONCOMPLIANCE WITH ANY ENVIRONMENTAL
13 STATUTORY OR REGULATORY REQUIREMENT.

14 (C) "ENVIRONMENTAL AUDIT REPORT" MEANS ANY DOCUMENT, WRITTEN
15 REPORT, FINDING, COMMUNICATION, OR OPINION, OR ANY DRAFT THEREOF,
16 RELATED TO AND PREPARED AS A RESULT OF AN ENVIRONMENTAL AUDIT
17 PERFORMED IN GOOD FAITH.

18 (D) (1) "ENVIRONMENTAL LAW" MEANS ANY PROVISION OF THIS ARTICLE
19 OR ANY REGULATION ADOPTED UNDER ANY PROVISION OF THIS ARTICLE.

20 (2) "ENVIRONMENTAL LAW" INCLUDES ANY ADMINISTRATIVE,
21 CONSENT, OR JUDICIAL ORDER OR PERMIT APPLICABLE TO THE REGULATED
22 ENTITY AUTHORIZED UNDER THIS ARTICLE OR ANY REGULATIONS ADOPTED
23 UNDER ANY PROVISION OF THIS ARTICLE.

24 (E) "REGULATED ENTITY" MEANS ANY PERSON WHO IS SUBJECT TO AN
25 ENVIRONMENTAL LAW.

26 (F) "VOLUNTARY DISCLOSURE" MEANS A SUBMISSION IN WRITING, NOT
27 OTHERWISE REQUIRED BY AN ENVIRONMENTAL LAW, THAT OCCURS PRIOR TO:

28 (1) THE DEPARTMENT'S DISCOVERY OR KNOWLEDGE OF THE
29 VIOLATION;

30 (2) THE INITIATION OF A JUDICIAL OR ADMINISTRATIVE
31 ENFORCEMENT ACTION BY THE STATE, THE UNITED STATES ENVIRONMENTAL
32 PROTECTION AGENCY, OR AN ENFORCEMENT AGENCY ACTING ON BEHALF OF OR
33 IN CONJUNCTION WITH THE DEPARTMENT; OR

34 (3) THE REGULATED ENTITY'S ACTUAL KNOWLEDGE THAT THE
35 DISCOVERY OF THE VIOLATION BY A REGULATORY AGENCY OR A THIRD PARTY IS
36 IMMINENT.

3

1 1-702.

2 (A) (1) AN ENVIRONMENTAL AUDIT MUST BE CONDUCTED IN ACCORDANCE
3 WITH A REGULATED ENTITY'S WRITTEN POLICY.

4 (2) THE WRITTEN POLICY SHALL REQUIRE THAT THE SCOPE OF THE
5 AUDIT BE ESTABLISHED PRIOR TO THE INITIATION OF THE AUDIT.

6 (B) TO THE EXTENT PRACTICABLE, THE WRITTEN POLICY SHALL INCLUDE:

7 (1) ARTICULATED OBJECTIVES;

8 (2) PROCEDURES TO GUARANTEE THAT THE AUDITING FUNCTION BE
9 FREE FROM INTERFERENCE FROM INQUIRIES AND OBSERVATIONS MADE BY THE
10 PERSON PERFORMING THE AUDIT;

11 (3) PROCEDURES TO ENSURE THAT THE PERSON PERFORMING THE
12 AUDIT BE FREE FROM THREATS OF POTENTIAL RETRIBUTION; AND

13 (4) PROCEDURES FOR PROMPTLY PREPARING CANDID AND
14 APPROPRIATE WRITTEN REPORTS ON AUDIT FINDINGS, CORRECTIVE ACTIONS,
15 SCHEDULES FOR IMPLEMENTATION, AND REPORTING OF VIOLATIONS.

16 (C) (1) THE WRITTEN POLICY SHALL ESTABLISH AN ENVIRONMENTAL
17 AUDIT PROGRAM.

18 (2) THE ENVIRONMENTAL AUDIT PROGRAM SHALL ENCOURAGE
19 COMPLIANCE WITH FACILITY POLICIES, ENVIRONMENTAL PERMIT CONDITIONS,
20 AND ENVIRONMENTAL LAWS.

21 (3) THE ENVIRONMENTAL AUDIT PROGRAM SHALL ENCOURAGE A
22 COMMITMENT TO INVESTIGATE, VERIFY, CORRECT, AND REMEDIATE EXISTING
23 AREAS OF NONCOMPLIANCE WHILE PREVENTING THE RECURRENCE OF IDENTIFIED
24 COMPLIANCE PROBLEMS.

25 1-703.

26 (A) THE ENVIRONMENTAL AUDIT REPORT SHALL BE LABELED
27 "ENVIRONMENTAL AUDIT REPORT".

28 (B) THE AUDIT REPORT SHALL CONTAIN THE DATES THAT THE
29 ENVIRONMENTAL AUDIT WAS INITIATED AND COMPLETED AND IDENTIFY PERSONS
30 INVOLVED WITH CONDUCTING THE AUDIT AND PREPARING THE REPORT.

31 1-704.

32 (A) THE DEPARTMENT MAY NOT IMPOSE CIVIL AND ADMINISTRATIVE
33 PENALTIES ON A REGULATED ENTITY FOR A VIOLATION OF AN ENVIRONMENTAL
34 LAW IF THE REGULATED ENTITY DISCOVERS THE VIOLATION AS A RESULT OF AN
35 ENVIRONMENTAL AUDIT AND COMPLIES WITH THE PROVISIONS OF THIS SECTION.

36 (B) THE REGULATED ENTITY SHALL VOLUNTARILY DISCLOSE THE NATURE
37 AND DATE OF THE DISCOVERY OF THE VIOLATION AND, WITHIN A REASONABLE

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1 TIME OF THE DISCOVERY, SUBMIT THE ENVIRONMENTAL AUDIT REPORT TO THE
2 DEPARTMENT, INCLUDING:

3 (1) ALL INFORMATION AVAILABLE TO THE REGULATED ENTITY UP TO
4 THE TIME DISCLOSURE IS MADE CONCERNING THE VIOLATION;

5 (2) AN ESTIMATE OF HOW LONG THE VIOLATION HAS BEEN IN EFFECT;
6 AND

7 (3) ANY ACTUAL OR POTENTIAL HARM TO PUBLIC HEALTH AND
8 SAFETY AND THE ENVIRONMENT CAUSED BY THE VIOLATION.

9 (C) WITHIN 60 DAYS OF THE DISCOVERY OF THE VIOLATION OR IN
10 ACCORDANCE WITH A REASONABLE SCHEDULE APPROVED OR ORDERED IN
11 WRITING BY THE DEPARTMENT, THE REGULATED ENTITY SHALL CORRECT THE
12 CONDITION OR ACTIVITY CAUSING THE VIOLATION, REMEDY ANY DAMAGE
13 CAUSED BY THE VIOLATION, AND ACHIEVE COMPLIANCE WITH THE APPLICABLE
14 ENVIRONMENTAL LAW.

15 (D) THE REGULATED ENTITY SHALL TAKE APPROPRIATE, DOCUMENTED
16 STEPS TO PREVENT THE RECURRENCE OF THE VIOLATION, IMPLEMENT TIMELY
17 MEASURES TO PREVENT FURTHER HARM FROM OCCURRING AS A RESULT OF THE
18 VIOLATION, AND REPORT THESE ACTIONS TO THE DEPARTMENT IN WRITING
19 WITHIN A REASONABLE TIME.

20 (E) THE REGULATED ENTITY SHALL COOPERATE WITH THE DEPARTMENT
21 OR AN ENFORCEMENT AGENCY ACTING ON BEHALF OF OR IN CONJUNCTION WITH
22 THE DEPARTMENT IN THE FURTHER INVESTIGATION OF THE VIOLATION AND WITH
23 EFFORTS TO ENSURE THAT THE CONDITION OR ACTIVITY THAT CAUSED THE
24 VIOLATION IS PROPERLY CORRECTED AND REMEDIATED.

25 (F) (1) A REGULATED ENTITY SHALL SUBMIT A NONREFUNDABLE
26 PROCESSING FEE TO THE DEPARTMENT ON SUBMISSION OF THE AUDIT REPORT.

27 (2) THE PROCESSING FEE FOR A REGULATED ENTITY WITH 50 OR
28 FEWER EMPLOYEES IS \$100 AND FOR A REGULATED ENTITY WITH MORE THAN 50
29 EMPLOYEES IS \$500.

30 (3) THE REGULATED ENTITY MUST SUBMIT A SIGNED STATEMENT
31 VERIFYING THE NUMBER OF EMPLOYEES.

32 1-705.

33 (A) ON RECEIPT OF THE ENVIRONMENTAL AUDIT REPORT, THE
34 DEPARTMENT SHALL PROMPTLY VERIFY TO THE REGULATED ENTITY THAT THE
35 CONDITIONS SPECIFIED IN § 1-704 OF THIS SUBTITLE HAVE BEEN MET AND
36 IMMUNITY HAS BEEN GRANTED.

37 (B) THE DEPARTMENT MAY NOT UNREASONABLY WITHHOLD VERIFICATION.

38 1-706.

39 THE IMMUNITY ESTABLISHED IN § 1-704 OF THIS SECTION DOES NOT APPLY TO
40 A FEDERAL ENVIRONMENTAL PROGRAM IF GRANTING IMMUNITY WOULD RESULT

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1 IN A FORMAL NOTIFICATION FROM THE DELEGATING FEDERAL AGENCY OF THE
2 AGENCY'S INTENTION TO PROPOSE RECISION OF THE DEPARTMENT'S GOVERNANCE
3 OVER THE FEDERAL ENVIRONMENTAL PROGRAM.

4 1-707.

5 (A) THE IMMUNITY ESTABLISHED IN § 1-704 OF THIS SUBTITLE DOES NOT
6 APPLY, AND A CIVIL OR ADMINISTRATIVE PENALTY MAY BE IMPOSED UNDER
7 APPLICABLE LAW, IF:

8 (1) THE VIOLATION INVOLVES INTENTIONAL, WILLFUL, WANTON, OR
9 RECKLESS CONDUCT, OR GROSSLY NEGLIGENT CONDUCT RESULTING FROM A
10 REGULATED ENTITY'S LACK OF REASONABLE CARE IN TRAINING OR SUPERVISING
11 ITS EMPLOYEES;

12 (2) AN IMMINENT THREAT TO THE PUBLIC HEALTH OR THE
13 ENVIRONMENT EXISTS; OR

14 (3) THE VOLUNTARY DISCLOSURE MADE IN SUPPORT OF IMMUNITY
15 WAS FRAUDULENT.

16 (B) A PERSON REQUESTING IMMUNITY HAS THE BURDEN OF PROVING THAT
17 IT EXERCISED REASONABLE CARE.

18 1-708.

19 (A) (1) ON RECEIPT OF THE WRITTEN VERIFICATION FROM THE
20 DEPARTMENT THAT THE REGULATED ENTITY COMPLIED WITH THE PROVISIONS OF
21 § 1-704 OF THIS SUBTITLE, THE ENVIRONMENTAL AUDIT REPORT IS DEEMED
22 INADMISSIBLE AND IS NOT SUBJECT TO ANY DISCOVERY IN ANY CIVIL OR
23 ADMINISTRATIVE PROCEEDING.

24 (2) THIS SUBSECTION MAY NOT BE CONSTRUED TO AFFECT THE RIGHT
25 OF ANY PERSON TO ACQUIRE A COPY OF THE ENVIRONMENTAL AUDIT REPORT
26 UNDER TITLE 10, SUBTITLE 6 OF THE STATE GOVERNMENT ARTICLE.

27 (B) THE PRIVILEGE ESTABLISHED IN SUBSECTION (A) OF THIS SECTION DOES
28 NOT APPLY IF THE:

29 (1) INFORMATION CONTAINED IN THE ENVIRONMENTAL AUDIT
30 REPORT WAS REQUIRED TO BE DEVELOPED, MAINTAINED, REPORTED, OR
31 FURNISHED TO THE DEPARTMENT UNDER AN ENVIRONMENTAL LAW OR ANY
32 OTHER APPLICABLE LAW;

33 (2) DOCUMENT EXISTED PRIOR TO THE COMMENCEMENT OF THE
34 ENVIRONMENTAL AUDIT; OR

35 (3) REGULATED ENTITY WAIVES THE PRIVILEGE.

36 (C) INFORMATION OBTAINED FROM VERIFYING COMPLIANCE WITH
37 ENVIRONMENTAL LAWS INDEPENDENTLY OF AN ENVIRONMENTAL AUDIT REPORT
38 IS NOT PRIVILEGED, INCLUDING INFORMATION OBTAINED THROUGH
39 OBSERVATION, SAMPLING, OR MONITORING.

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1 (D) IF ANY PARTY, BASED ON INDEPENDENT EVIDENCE, ASSERTS PROBABLE
2 CAUSE TO BELIEVE THAT THE PRIVILEGE GRANTED IN SUBSECTION (A) OF THIS
3 SECTION DOES NOT APPLY TO AN ENVIRONMENTAL AUDIT REPORT, A CIRCUIT
4 COURT OR ADMINISTRATIVE LAW JUDGE SHALL CONDUCT A HEARING TO
5 DETERMINE THE APPLICABILITY OF THE PRIVILEGE AND THE ADMISSIBILITY OF
6 THE ENVIRONMENTAL AUDIT REPORT.

7 1-709.

8 (A) A PERSON WHO HAS OR ACQUIRES ACTUAL KNOWLEDGE OF A
9 VIOLATION OF AN ENVIRONMENTAL LAW AS A RESULT OF AN ENVIRONMENTAL
10 AUDIT AND FAILS TO CORRECT OR REMEDIATE A VIOLATION MAY BE SUBJECT TO A
11 PENALTY OF AN AMOUNT NOT EXCEEDING \$25,000 PER DAY FOR EACH DAY THE
12 VIOLATION CONTINUES.

13 (B) THE VIOLATION SHALL ACCRUE FROM THE DATE THE ENVIRONMENTAL
14 AUDIT WAS INITIATED TO THE DATE THAT THE VIOLATION IS CORRECTED AND
15 REMEDIATED, AND COMPLIANCE IS ACHIEVED IN ACCORDANCE WITH THE
16 APPLICABLE ENVIRONMENTAL LAW.

17 (C) (1) IF THE DEPARTMENT ASSESSES A PENALTY UNDER THE PROVISIONS
18 OF THIS SECTION, THE PENALTY MUST BE THE EXCLUSIVE PENALTY SOUGHT FROM
19 THE DATE THE ENVIRONMENTAL AUDIT WAS INITIATED.

20 (2) THE DEPARTMENT MAY ASSESS A PENALTY FOR VIOLATION OF AN
21 ENVIRONMENTAL LAW THAT AROSE PRIOR TO THE DATE THE ENVIRONMENTAL
22 AUDIT WAS INITIATED.

23 1-710.

24 (A) THERE IS A VOLUNTARY DISCLOSURE AND ENVIRONMENTAL AUDIT
25 FUND.

26 (B) THE PROCESSING FEES AND FUNDS COLLECTED BY THE DEPARTMENT
27 UNDER THIS SUBTITLE, INCLUDING ANY CIVIL OR ADMINISTRATIVE PENALTY,
28 SHALL BE PAID INTO THE VOLUNTARY DISCLOSURE AND ENVIRONMENTAL AUDIT
29 FUND.

30 (C) THE DEPARTMENT SHALL USE THE VOLUNTARY DISCLOSURE AND
31 ENVIRONMENTAL AUDIT FUND FOR ANY EXPENSES, INCLUDING ADMINISTRATIVE
32 AND PERSONNEL EXPENSES AND EQUIPMENT COSTS, INCURRED BY THE
33 DEPARTMENT DURING THE:

34 (1) REVIEW AND VERIFICATION OF INFORMATION ASSOCIATED WITH
35 OR SUBMITTED IN SUPPORT OF AN ENVIRONMENTAL AUDIT REPORT;

36 (2) REVIEW AND SUPERVISION OF A COMPLIANCE PLAN;

37 (3) ASSISTANCE IN THE DEVELOPMENT OF COMPLIANCE PLANS AND
38 REMEDIAL ACTIVITIES, INCLUDING POLLUTION PREVENTION ACTIVITIES; OR

39 (4) INSPECTION OF A FACILITY TO CONFIRM THE EXISTENCE OF A
40 CONDITION OR OTHER FACTUAL INFORMATION SPECIFIED IN THE AUDIT REPORT.

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1 1-711.

2 THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THE
3 PROVISIONS OF THIS SUBTITLE.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 1996.