

---

**By: Senators Miller, Baker, and Haines**

Introduced and read first time: February 2, 1996

Assigned to: Judicial Proceedings

---

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

4

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

5  
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.

6

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.

7

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.