
By: **Delegate Taylor**
Introduced and read first time: February 8, 2002
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
4 accordance with a regulated entity's written policy; specifying the requirements
5 of the written policy; specifying the requirements for an environmental audit
6 program; specifying the contents of an environmental audit report; prohibiting
7 the Department of the Environment from imposing certain penalties on a
8 regulated entity for certain environmental violations if the regulated entity
9 discovers the violation under certain circumstances and follows certain
10 conditions; specifying the requirements that must be met to be granted
11 immunity; requiring the Department to promptly verify certain persons
12 concerning certain immunity; specifying the circumstances when immunity will
13 not be granted and certain penalties may be imposed; providing that certain
14 audit reports are deemed inadmissible in certain proceedings under certain
15 circumstances; specifying certain exceptions to a certain privilege; authorizing
16 certain judges to determine applicability of the privilege under certain
17 circumstances; establishing a penalty for a certain violation; establishing a
18 Voluntary Disclosure and Environmental Audit Fund; requiring that certain
19 fees be paid into the Fund; specifying the uses of the Fund; authorizing the
20 Department to adopt certain rules and regulations; and generally relating to
21 environmental audits and voluntary disclosure.

22 BY adding to
23 Article - Environment
24 Section 1-701 through 1-711, inclusive, to be under the new subtitle "Subtitle 7.
25 Environmental Audits; Voluntary Disclosure"
26 Annotated Code of Maryland
27 (1996 Replacement Volume and 2001 Supplement)

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

1 **Article - Environment**

2 SUBTITLE 7. ENVIRONMENTAL AUDITS; VOLUNTARY DISCLOSURE.

3 1-701.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.6 (B) "ENVIRONMENTAL AUDIT" MEANS A VOLUNTARY, INTERNAL EVALUATION
7 CONDUCTED BY THE OWNER OR OPERATOR, THE EMPLOYEES OF THE OWNER OR
8 OPERATOR, OR AN INDEPENDENT AUDITOR OF:9 (1) A FACILITY REGULATED UNDER ANY FEDERAL, STATE, OR LOCAL
10 ENVIRONMENTAL LAW; OR11 (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 ENTITY
22 AUTHORIZED UNDER THIS ARTICLE OR ANY REGULATIONS ADOPTED UNDER ANY
23 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 ENFORCEMENT
31 ACTION BY THE STATE, THE UNITED STATES ENVIRONMENTAL PROTECTION
32 AGENCY, OR AN ENFORCEMENT AGENCY ACTING ON BEHALF OF OR IN
33 CONJUNCTION WITH THE DEPARTMENT; OR34 (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.

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, AND
20 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.

1 (B) THE REGULATED ENTITY SHALL VOLUNTARILY DISCLOSE THE NATURE
2 AND DATE OF THE DISCOVERY OF THE VIOLATION AND, WITHIN A REASONABLE TIME
3 OF THE DISCOVERY, SUBMIT THE ENVIRONMENTAL AUDIT REPORT TO THE
4 DEPARTMENT, INCLUDING:

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

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

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

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

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

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

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

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

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

34 1-705.

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

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

2 1-706.

3 THE IMMUNITY ESTABLISHED IN § 1-704 OF THIS SECTION DOES NOT APPLY TO
4 A FEDERAL ENVIRONMENTAL PROGRAM IF GRANTING IMMUNITY WOULD RESULT IN
5 A FORMAL NOTIFICATION FROM THE DELEGATING FEDERAL AGENCY OF THE
6 AGENCY'S INTENTION TO PROPOSE RECISION OF THE DEPARTMENT'S GOVERNANCE
7 OVER THE FEDERAL ENVIRONMENTAL PROGRAM.

8 1-707.

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

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

16 (2) AN IMMINENT THREAT TO THE PUBLIC HEALTH OR THE
17 ENVIRONMENT EXISTS; OR

18 (3) THE VOLUNTARY DISCLOSURE MADE IN SUPPORT OF IMMUNITY WAS
19 FRAUDULENT.

20 (B) A REGULATED ENTITY REQUESTING IMMUNITY HAS THE BURDEN OF
21 PROVING THAT IT EXERCISED REASONABLE CARE.

22 1-708.

23 (A) (1) ON RECEIPT OF THE WRITTEN VERIFICATION FROM THE
24 DEPARTMENT THAT THE REGULATED ENTITY COMPLIED WITH THE PROVISIONS OF §
25 1-704 OF THIS SUBTITLE, THE ENVIRONMENTAL AUDIT REPORT IS DEEMED
26 INADMISSIBLE AND IS NOT SUBJECT TO ANY DISCOVERY IN ANY CIVIL OR
27 ADMINISTRATIVE PROCEEDING.

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

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

33 (1) THE INFORMATION CONTAINED IN THE ENVIRONMENTAL AUDIT
34 REPORT WAS REQUIRED TO BE DEVELOPED, MAINTAINED, REPORTED, OR
35 FURNISHED TO THE DEPARTMENT UNDER AN ENVIRONMENTAL LAW OR ANY OTHER
36 APPLICABLE LAW;

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

3 (3) THE REGULATED ENTITY WAIVES THE PRIVILEGE.

4 (C) INFORMATION OBTAINED FROM VERIFYING COMPLIANCE WITH
5 ENVIRONMENTAL LAWS INDEPENDENTLY OF AN ENVIRONMENTAL AUDIT REPORT IS
6 NOT PRIVILEGED, INCLUDING INFORMATION OBTAINED THROUGH OBSERVATION,
7 SAMPLING, OR MONITORING.

8 (D) IF ANY PARTY, BASED ON INDEPENDENT EVIDENCE, ASSERTS PROBABLE
9 CAUSE TO BELIEVE THAT THE PRIVILEGE GRANTED IN SUBSECTION (A) OF THIS
10 SECTION DOES NOT APPLY TO AN ENVIRONMENTAL AUDIT REPORT, A CIRCUIT
11 COURT OR ADMINISTRATIVE LAW JUDGE SHALL CONDUCT A HEARING TO
12 DETERMINE THE APPLICABILITY OF THE PRIVILEGE AND THE ADMISSIBILITY OF THE
13 ENVIRONMENTAL AUDIT REPORT.

14 1-709.

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

20 (B) THE VIOLATION SHALL ACCRUE FROM THE DATE THE ENVIRONMENTAL
21 AUDIT WAS INITIATED TO THE DATE THAT THE VIOLATION IS CORRECTED AND
22 REMEDIATED, AND COMPLIANCE IS ACHIEVED IN ACCORDANCE WITH THE
23 APPLICABLE ENVIRONMENTAL LAW.

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

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

30 1-710.

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

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

35 (C) THE DEPARTMENT SHALL USE THE VOLUNTARY DISCLOSURE AND
36 ENVIRONMENTAL AUDIT FUND FOR ANY EXPENSES, INCLUDING ADMINISTRATIVE
37 AND PERSONNEL EXPENSES AND EQUIPMENT COSTS, INCURRED BY THE
38 DEPARTMENT DURING:

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

3 (2) THE REVIEW AND SUPERVISION OF A COMPLIANCE PLAN;

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

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

8 1-711.

9 THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS
10 OF THIS SUBTITLE.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2002.