

SB0707, As Passed House, October 22, 1997

Environmental protection; code; modifications to environmental
audit immunity; provide for.

ENVIRONMENTAL PROTECTION: Code; ENVIRONMENTAL PROTECTION: Other

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 14809 (MCL 324.14809), as added by 1996 PA
132.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 14809. (1) A person is immune from any administrative
2 or civil penalties and fines under this act and from criminal
3 penalties and fines for negligent acts or omissions under this
4 act related to a violation of article II and chapters 1 and 3 of
5 article III and the rules promulgated under those articles if the
6 person makes a voluntary disclosure to the appropriate state or
7 local agency. However, the immunity provided for in this section
8 does not apply to any criminal penalties and fines for gross
9 negligence OR TO ANY CRIMINAL PENALTIES AND FINES FOR VIOLATIONS
10 OF PART 301, 303, 315, OR 325 OR SECTION 3108 OR 3115A. ~~The~~ AT

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1 THE TIME THAT THE DISCLOSURE IS MADE TO THE STATE OR LOCAL
2 AGENCY, THE person making the voluntary disclosure under this
3 section shall provide information SHOWING THAT THE CONDITIONS OF
4 SUBDIVISIONS (A) TO (D) ARE MET, supporting his or her claim that
5 the disclosure is voluntary. ~~at the time that the disclosure is~~
6 ~~made to the state or local agency.~~ For the purposes of this sec-
7 tion, a disclosure of information by a person under this section
8 is voluntary if all of the following occur:

9 (a) The disclosure is made promptly after knowledge of the
10 information disclosed is obtained by the person.

11 (b) The person making the disclosure initiates an appropri-
12 ate and good-faith effort to achieve compliance, pursues compli-
13 ance with due diligence, and promptly corrects the noncompliance
14 or condition after discovery of the violation. If evidence shows
15 the noncompliance is the failure to obtain a permit, appropriate
16 and good-faith efforts to correct the noncompliance may be demon-
17 strated by the submittal of a complete permit application within
18 a reasonable time.

19 (c) The disclosure of the information arises out of an envi-
20 ronmental audit.

21 (d) The environmental audit occurs before the person is made
22 aware that he or she is under investigation by a regulatory
23 agency for potential violations of this act.

24 (2) There is a rebuttable presumption that a disclosure made
25 pursuant to AND IN FULL COMPLIANCE WITH this section is
26 voluntary. The presumption of voluntary disclosure under this
27 section may be rebutted by presentation of an adequate showing to

1 the administrative hearing officer or appropriate trier of fact
2 that the disclosure did not satisfy the requirements for a volun-
3 tary disclosure under subsection (1). IN ANY ADMINISTRATIVE OR
4 JUDICIAL PROCEEDING PURSUANT TO THIS SUBSECTION, THE PERSON
5 CLAIMING THAT A DISCLOSURE IS VOLUNTARY SHALL PROVIDE THE SUP-
6 PORTING INFORMATION REQUIRED IN SUBSECTION (1) AND A SHOWING OF
7 THE APPROPRIATE AND GOOD-FAITH EFFORT TO ACHIEVE COMPLIANCE,
8 SHALL PURSUE COMPLIANCE WITH DUE DILIGENCE, AND SHALL PROMPTLY
9 CORRECT THE NONCOMPLIANCE IN THE PERIOD OF TIME SINCE THE DATE OF
10 THE DISCLOSURE. The state or local agency shall bear the burden
11 of rebutting the presumption of voluntariness. Agency action
12 determining that disclosure was not voluntary shall be considered
13 final agency action subject to judicial review.

14 (3) Unless a final determination shows that a voluntary dis-
15 closure has not occurred, a notice of violation or cease and
16 desist order shall not include any administrative or civil pen-
17 alty or fine or any criminal penalty or fine ~~for negligent acts~~
18 ~~or omissions by the person making the voluntary disclosure~~ FOR
19 VIOLATIONS FOR WHICH IMMUNITY IS PROVIDED UNDER THIS SECTION.

20 (4) The elimination of administrative or civil penalties or
21 fines or criminal penalties or fines under this section does not
22 apply if ~~a~~ THE TRIER OF FACT FINDS ANY OF THE FOLLOWING:

23 (A) THE person has ~~been found by a court or administrative~~
24 ~~law judge to have~~ knowingly committed a criminal act. ~~or~~

25 (B) THE PERSON HAS committed ~~serious~~ SIGNIFICANT viola-
26 tions that constitute a pattern of continuous or repeated
27 violations of environmental laws, rules, regulations, permit

1 conditions, settlement agreements, or orders ~~on~~ OF consent or
2 judicial orders and that were due to separate and distinct events
3 giving rise to the violations, within the 3-year period prior to
4 the date of the disclosure. For purposes of this subsection, a
5 pattern of continuous or repeated violations may also be demon-
6 strated by multiple settlement agreements related to substan-
7 tially the same alleged violations concerning serious instances
8 of noncompliance with environmental laws that occurred within the
9 3-year period immediately prior to the date of the voluntary
10 disclosure. In determining whether a person has a pattern of
11 continuous or repeated violations under this subsection, the
12 ~~court or administrative law judge~~ TRIER OF FACT shall base the
13 decision on the compliance history of the specific facility at
14 issue.

15 (C) THE VIOLATION HAS RESULTED IN A SUBSTANTIAL ECONOMIC
16 BENEFIT WHICH GIVES THE VIOLATOR A CLEAR ADVANTAGE OVER ITS BUSI-
17 NESS COMPETITORS.

18 (D) THE INSTANCE OF NONCOMPLIANCE RESULTED IN SERIOUS HARM
19 OR IN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO HUMAN HEALTH OR
20 THE ENVIRONMENT.

21 (E) THE VIOLATION IS OF THE TERMS OF AN ADMINISTRATIVE OR
22 JUDICIAL ORDER.

23 (5) In those cases where the conditions of a voluntary dis-
24 closure are not met but a good-faith effort was made to volun-
25 tarily disclose and resolve a violation detected in a voluntary
26 environmental audit, the state and local environmental and law
27 enforcement authorities shall consider the nature and extent of

1 any good-faith effort in deciding the appropriate enforcement
2 response and shall mitigate any civil penalties based on a show-
3 ing that 1 or more of the conditions for voluntary disclosure
4 have been met.

5 (6) The immunity provided by this section does not abrogate
6 a person's responsibilities as provided by applicable law to cor-
7 rect the violation, conduct necessary remediation, or pay
8 damages.

9 (7) IN ORDER TO RECEIVE IMMUNITY UNDER THIS SECTION, A
10 FACILITY CONDUCTING AN ENVIRONMENTAL AUDIT UNDER THIS PART SHALL
11 GIVE NOTICE TO THE DEPARTMENT OF THE FACT THAT IT IS PLANNING TO
12 COMMENCE THE AUDIT. THE NOTICE SHALL SPECIFY THE FACILITY OR
13 PORTION OF THE FACILITY TO BE AUDITED, THE ANTICIPATED TIME THE
14 AUDIT WILL BEGIN, AND THE GENERAL SCOPE OF THE AUDIT. THE NOTICE
15 MAY PROVIDE NOTIFICATION OF MORE THAN 1 SCHEDULED ENVIRONMENTAL
16 AUDIT AT A TIME.

17 Enacting section 1. This amendatory act does not take
18 effect unless Senate Bill No. _____ or House Bill No. _____
19 (request no. 03336'97 **) of the 89th Legislature is enacted into
20 law.