



SENATE BILL No. 728

October 18, 1995, Introduced by Senators BENNETT, STEIL, GOUGEON, SCHWARZ, GAST, DUNASKISS, SHUGARS, EMMONS, MCMANUS, CARL and HOFFMAN and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend Act No. 451 of the Public Acts of 1994, entitled "Natural resources and environmental protection act," as amended, being sections 324.101 to 324.90106 of the Michigan Compiled Laws, by adding part 148.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 451 of the Public Acts of 1994, as
2 amended, being sections 324.101 to 324.90106 of the Michigan
3 Compiled Laws, is amended by adding part 148 to read as follows:

4 PART 148 ENVIRONMENTAL AUDIT PRIVILEGE AND IMMUNITY

5 SEC. 14801. AS USED IN THIS PART:

6 (A) "ENVIRONMENTAL AUDIT" MEANS A VOLUNTARY AND INTERNAL
7 EVALUATION CONDUCTED ON OR AFTER THE EFFECTIVE DATE OF THIS PART
8 OF 1 OR MORE FACILITIES OR AN ACTIVITY AT 1 OR MORE FACILITIES
9 REGULATED UNDER STATE, FEDERAL, REGIONAL, OR LOCAL LAWS OR

1 ORDINANCES, OR OF ENVIRONMENTAL MANAGEMENT SYSTEMS OR PROCESSES
2 RELATED TO THE FACILITIES OR ACTIVITY OR OF A SPECIFIC INSTANCE
3 OF NONCOMPLIANCE, THAT IS DESIGNED TO IDENTIFY HISTORICAL OR CUR-
4 RENT NONCOMPLIANCE AND PREVENT NONCOMPLIANCE OR IMPROVE COMPLI-
5 ANCE WITH 1 OR MORE OF THOSE LAWS, OR TO IDENTIFY AN ENVIRONMEN-
6 TAL HAZARD, CONTAMINATION, OR OTHER ADVERSE ENVIRONMENTAL CONDI-
7 TION, OR TO IMPROVE AN ENVIRONMENTAL MANAGEMENT SYSTEM OR
8 PROCESS.

9 (B) "ENVIRONMENTAL AUDIT REPORT" MEANS A DOCUMENT OR A SET
10 OF DOCUMENTS, EACH LABELED "ENVIRONMENTAL AUDIT REPORT: PRIVI-
11 LEGED DOCUMENT" AND CREATED AS A RESULT OF AN ENVIRONMENTAL
12 AUDIT. AN ENVIRONMENTAL AUDIT REPORT SHALL INCLUDE SUPPORTING
13 INFORMATION. SUPPORTING INFORMATION MAY INCLUDE FIELD NOTES,
14 RECORDS OF OBSERVATIONS, FINDINGS, OPINIONS, SUGGESTIONS, CONCLU-
15 SIONS, DRAFTS, MEMORANDA, FOLLOW-UP REPORTS, DRAWINGS, PHOTO-
16 GRAPHS, COMPUTER GENERATED OR ELECTRONICALLY RECORDED INFORMA-
17 TION, MAPS, CHARTS, GRAPHS, AND SURVEYS, IF THE SUPPORTING INFOR-
18 MATION OR DOCUMENTS ARE COLLECTED OR DEVELOPED FOR THE PRIMARY
19 PURPOSE AND IN THE COURSE OF OR AS A RESULT OF AN ENVIRONMENTAL
20 AUDIT. AN ENVIRONMENTAL AUDIT REPORT MAY ALSO INCLUDE AN IMPE-
21 MENTATION PLAN THAT ADDRESSES CORRECTING PAST NONCOMPLIANCE,
22 IMPROVING CURRENT COMPLIANCE, IMPROVING AN ENVIRONMENTAL MANAGE-
23 MENT SYSTEM, AND PREVENTING FUTURE NONCOMPLIANCE, AS
24 APPROPRIATE.

25 (C) "PRIVILEGE" MEANS THE PRIVILEGE PROVIDED TO AN ENVIRON-
26 MENTAL AUDIT REPORT AS PROVIDED IN THIS PART.

1 SEC. 14802. (1) THE OWNER OR OPERATOR OF A FACILITY, OR AN
2 EMPLOYEE OR AGENT OF THE OWNER OR OPERATOR ON BEHALF OF THE OWNER
3 OR OPERATOR, AT ANY TIME MAY CONDUCT AN ENVIRONMENTAL AUDIT AND
4 MAY CREATE AN ENVIRONMENTAL AUDIT REPORT.

5 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), AN ENVIRONMENTAL
6 AUDIT REPORT CREATED PURSUANT TO THIS PART IS PRIVILEGED AND PRO-
7 TECTED FROM DISCLOSURE UNDER THIS PART.

8 (3) THE PRIVILEGE DESCRIBED IN SUBSECTION (2) DOES NOT
9 EXTEND TO ANY OF THE FOLLOWING REGARDLESS OF WHETHER OR NOT THEY
10 ARE INCLUDED WITHIN AN ENVIRONMENTAL AUDIT REPORT:

11 (A) DOCUMENTS, COMMUNICATION, DATA, REPORTS, OR OTHER INFOR-
12 MATION REQUIRED TO BE MADE AVAILABLE OR REPORTED TO A REGULATORY
13 AGENCY OR ANY OTHER PERSON BY STATUTE, RULE, ORDINANCE, PERMIT,
14 ORDER, CONSENT AGREEMENT, OR AS OTHERWISE PROVIDED BY LAW.

15 (B) INFORMATION OBTAINED BY OBSERVATION, SAMPLING, OR MONI-
16 TORING BY ANY REGULATORY AGENCY.

17 (C) INFORMATION LEGALLY OBTAINED FROM A SOURCE INDEPENDENT
18 OF THE ENVIRONMENTAL AUDIT.

19 (D) MACHINERY AND EQUIPMENT MAINTENANCE RECORDS.

20 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS PART, A PERSON WHO
21 CONDUCTS AN ENVIRONMENTAL AUDIT AND A PERSON TO WHOM THE ENVIRON-
22 MENTAL AUDIT RESULTS ARE DISCLOSED SHALL NOT BE COMPELLED TO TES-
23 TIFY REGARDING ANY MATTER THAT WAS THE SUBJECT OF THE ENVIRONMEN-
24 TAL AUDIT OR THAT IS A PRIVILEGED PORTION OF THE ENVIRONMENTAL
25 AUDIT REPORT. EXCEPT AS OTHERWISE PROVIDED IN THIS PART, THE
26 PRIVILEGED PORTIONS OF AN ENVIRONMENTAL AUDIT REPORT ARE NOT

1 SUBJECT TO DISCOVERY AND ARE NOT ADMISSIBLE AS EVIDENCE IN ANY
2 CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING.

3 SEC. 14803. (1) THE PRIVILEGE PROVIDED FOR IN THIS PART MAY
4 BE WAIVED BY THE PERSON FOR WHOM THE ENVIRONMENTAL AUDIT REPORT
5 WAS PREPARED. THE WAIVER APPLIES ONLY TO THE PORTION OR PORTIONS
6 OF THE ENVIRONMENTAL AUDIT REPORT THAT ARE SPECIFICALLY WAIVED.

7 (2) DISCLOSURE OF AN ENVIRONMENTAL AUDIT REPORT AND INFORMA-
8 TION GENERATED BY THE ENVIRONMENTAL AUDIT BY THE PERSON FOR WHOM
9 THE ENVIRONMENTAL AUDIT REPORT WAS PREPARED OR BY THE PERSON'S
10 EMPLOYEE OR AGENT TO ANY OF THE FOLLOWING DOES NOT WAIVE THE
11 PRIVILEGE PROVIDED FOR IN THIS PART:

12 (A) AN EMPLOYEE OF THE PERSON.

13 (B) A LEGAL REPRESENTATIVE OF THE PERSON.

14 (C) AN AGENT OF THE PERSON RETAINED TO ADDRESS AN ISSUE OR
15 ISSUES RAISED BY THE ENVIRONMENTAL AUDIT.

16 (3) DISCLOSURE OF THE ENVIRONMENTAL AUDIT REPORT OR ANY
17 INFORMATION GENERATED BY THE ENVIRONMENTAL AUDIT UNDER THE FOL-
18 LOWING CIRCUMSTANCES DOES NOT-WAIVE THE PRIVILEGE PROVIDED FOR IN
19 THIS PART:

20 (A) A DISCLOSURE MADE UNDER THE TERMS OF A CONFIDENTIALITY
21 AGREEMENT BETWEEN THE PERSON FOR WHOM THE ENVIRONMENTAL AUDIT
22 REPORT WAS PREPARED AND A PARTNER OR POTENTIAL PARTNER, OR A
23 TRANSFEREE OR POTENTIAL TRANSFEREE-OF, OR A LENDER OR POTENTIAL
24 LENDER FOR, OR A TRUSTEE OF, THE BUSINESS OR FACILITY AUDITED.

25 (B) A DISCLOSURE MADE UNDER THE TERMS OF A CONFIDENTIALITY
26 AGREEMENT BETWEEN GOVERNMENTAL OFFICIALS AND THE PERSON FOR WHOM
27 THE ENVIRONMENTAL AUDIT REPORT WAS PREPARED.

1 SEC. 14804. (1) A REQUEST BY STATE OR LOCAL LAW ENFORCEMENT
2 AUTHORITIES FOR DISCLOSURE OF AN ENVIRONMENTAL AUDIT REPORT SHALL
3 BE MADE BY A WRITTEN REQUEST DELIVERED BY CERTIFIED MAIL OR A
4 DEMAND BY LAWFUL SUBPOENA. WITHIN 60 DAYS AFTER RECEIPT OF A
5 REQUEST FOR DISCLOSURE OR SUBPOENA, THE PERSON ASSERTING THE
6 PRIVILEGE MAY MAKE A WRITTEN OBJECTION TO THE DISCLOSURE OF THE
7 ENVIRONMENTAL AUDIT REPORT ON THE BASIS THAT THE ENVIRONMENTAL
8 AUDIT REPORT IS PRIVILEGED. UPON RECEIPT OF SUCH AN OBJECTION,
9 THE STATE OR LOCAL LAW ENFORCEMENT AUTHORITIES MAY FILE WITH THE
10 CIRCUIT COURT, AND SERVE UPON THE PERSON, A PETITION REQUESTING
11 AN IN CAMERA HEARING ON WHETHER THE ENVIRONMENTAL AUDIT REPORT OR
12 PORTIONS OF THE ENVIRONMENTAL AUDIT REPORT ARE PRIVILEGED OR
13 SUBJECT TO DISCLOSURE. THE MOTION SHALL BE BROUGHT IN CAMERA AND
14 UNDER SEAL. THE CIRCUIT COURT HAS JURISDICTION OVER A PETITION
15 FILED UNDER THIS SUBSECTION REQUESTING A HEARING. FAILURE OF THE
16 PERSON ASSERTING THE PRIVILEGE TO MAKE AN OBJECTION TO DISCLOSURE
17 WAIVES THE PRIVILEGE AS TO THAT PERSON.

18 (2) UPON THE FILING OF A PETITION FOR AN IN CAMERA HEARING
19 UNDER SUBSECTION (1), THE PERSON ASSERTING THE PRIVILEGE IN
20 RESPONSE TO A REQUEST FOR DISCLOSURE OR SUBPOENA UNDER THIS SEC-
21 TION SHALL PROVIDE A COPY OF THE ENVIRONMENTAL AUDIT REPORT TO
22 THE COURT AND SHALL DEMONSTRATE IN THE IN CAMERA HEARING ALL OF
23 THE FOLLOWING:

- 24 (A) THE YEAR THE ENVIRONMENTAL AUDIT REPORT WAS PREPARED.
25 (B) THE IDENTITY OF THE ENTITY CONDUCTING THE AUDIT.
26 (C) THE NAME OF THE AUDITED FACILITY OR FACILITIES.

1 (D) A BRIEF DESCRIPTION OF THE PORTION OR PORTIONS OF THE
2 ENVIRONMENTAL AUDIT REPORT FOR WHICH PRIVILEGE IS CLAIMED.

3 (3) UPON THE FILING OF A PETITION FOR AN IN CAMERA HEARING
4 UNDER SUBSECTION (1), THE COURT SHALL ISSUE AN ORDER UNDER SEAL
5 SCHEDULING, WITHIN 45 DAYS AFTER THE FILING OF THE PETITION, AN
6 IN CAMERA HEARING TO DETERMINE WHETHER THE ENVIRONMENTAL AUDIT
7 REPORT OR PORTIONS OF THE ENVIRONMENTAL AUDIT REPORT ARE PRIVI-
8 LEGED OR SUBJECT TO DISCLOSURE.

9 (4) THE COURT, AFTER IN CAMERA REVIEW, MAY REQUIRE DISCLO-
10 SURE OF MATERIAL FOR WHICH PRIVILEGE IS ASSERTED, IF THE COURT
11 DETERMINES THAT 1 OR MORE OF THE FOLLOWING EXIST:

12 (A) THE PRIVILEGE IS ASSERTED FOR A FRAUDULENT PURPOSE.

13 (B) THE MATERIAL IS NOT SUBJECT TO THE PRIVILEGE.

14 (C) EVEN IF SUBJECT TO THE PRIVILEGE, THE MATERIAL SHOWS
15 EVIDENCE OF NONCOMPLIANCE WITH STATE, FEDERAL, REGIONAL, OR LOCAL
16 ENVIRONMENTAL LAWS, PERMITS, CONSENT AGREEMENTS, REGULATIONS,
17 ORDINANCES, OR ORDERS AND THE OWNER OR OPERATOR FAILED TO TAKE
18 CORRECTIVE ACTION OR ELIMINATE ANY VIOLATION OF LAW IDENTIFIED
19 DURING THE ENVIRONMENTAL AUDIT WITHIN A REASONABLE TIME.

20 (5) IF THE COURT DETERMINES UNDER SUBSECTION (4) THAT THE
21 MATERIAL IS NOT PRIVILEGED, BUT THE PARTY ASSERTING THE PRIVILEGE
22 FILES AN APPEAL OF THIS FINDING, THE MATERIAL, MOTIONS, AND
23 PLEADINGS SHALL BE KEPT UNDER SEAL DURING THE PENDENCY OF THE
24 APPEAL.

25 SEC. 14805. (1) TO THE EXTENT AUTHORIZED BY THE CODE OF
26 CRIMINAL PROCEDURE, ACT NO. 175 OF THE PUBLIC ACTS OF 1927, BEING
27 SECTIONS 760.1 TO 760.21 OF THE MICHIGAN COMPILED LAWS, STATE OR

1 LOCAL LAW ENFORCEMENT AUTHORITIES MAY SEIZE AN ENVIRONMENTAL
2 AUDIT REPORT FOR WHICH PRIVILEGE IS ASSERTED, PURSUANT TO A
3 LAWFUL SEARCH WARRANT. UPON SEIZURE, THE LAW ENFORCEMENT AUTHOR-
4 ITIES SHALL IMMEDIATELY PLACE THE ENVIRONMENTAL AUDIT REPORT
5 UNDER SEAL AND SHALL IMMEDIATELY FILE IT WITH THE COURT THAT
6 AUTHORIZED THE SEARCH WARRANT. THE LAW ENFORCEMENT AUTHORITIES
7 OR THE COURT SHALL ALSO PROVIDE NOTICE OF THE FILING TO ANY
8 PERSON WHO IS ELIGIBLE UNDER THIS PART TO ASSERT THE PRIVILEGE.
9 UNLESS AND UNTIL THE COURT ORDERS DISCLOSURE UNDER SECTION 14804,
10 OR THE PRIVILEGE HAS BEEN WAIVED PURSUANT TO SECTION 14803, THE
11 LAW ENFORCEMENT AUTHORITIES SHALL NOT INSPECT, REVIEW, OR DIS-
12 CLOSE THE CONTENTS OF THE ENVIRONMENTAL AUDIT REPORT. WITHIN 60
13 DAYS AFTER THE NOTICE OF THE FILING HAS BEEN PROVIDED, THE PERSON
14 ASSERTING THE PRIVILEGE MAY MAKE A WRITTEN OBJECTION TO THE DIS-
15 CLOSURE OF THE ENVIRONMENTAL AUDIT REPORT ON THE BASIS THAT THE
16 ENVIRONMENTAL AUDIT REPORT IS PRIVILEGED. UPON RECEIPT OF SUCH
17 AN OBJECTION, THE STATE OR LOCAL LAW ENFORCEMENT AUTHORITIES MAY
18 FILE WITH THE CIRCUIT COURT, AND SERVE UPON THE PERSON, A PETI-
19 TION REQUESTING AN IN CAMERA HEARING ON WHETHER THE ENVIRONMENTAL
20 AUDIT REPORT OR PORTIONS OF THE REPORT ARE PRIVILEGED OR SUBJECT
21 TO DISCLOSURE. FAILURE OF THE PERSON ASSERTING THE PRIVILEGE TO
22 MAKE AN OBJECTION TO DISCLOSURE WAIVES THE PRIVILEGE AS TO THAT
23 PERSON.

24 (2) UPON THE FILING OF A PETITION REQUESTING AN IN CAMERA
25 HEARING UNDER SUBSECTION (1), THE PERSON ASSERTING THE PRIVILEGE
26 SHALL DEMONSTRATE IN THE IN CAMERA HEARING ALL OF THE FOLLOWING:

1 (A) THE YEAR THE ENVIRONMENTAL AUDIT REPORT WAS PREPARED.

2 (B) THE IDENTITY OF THE PERSON CONDUCTING THE AUDIT.

3 (C) THE NAME OF THE AUDITED FACILITY OR FACILITIES.

4 (D) A BRIEF DESCRIPTION OF THE PORTION OR PORTIONS OF THE
5 ENVIRONMENTAL AUDIT REPORT FOR WHICH PRIVILEGE IS CLAIMED.

6 (3) UPON THE FILING OF A PETITION FOR AN IN CAMERA HEARING
7 UNDER SUBSECTION (1), THE COURT SHALL ISSUE AN ORDER UNDER SEAL
8 SCHEDULING, WITHIN 45 DAYS AFTER THE FILING OF THE PETITION, AN
9 IN CAMERA HEARING TO DETERMINE WHETHER THE ENVIRONMENTAL AUDIT
10 REPORT OR PORTIONS OF THE ENVIRONMENTAL AUDIT REPORT ARE PRIVI-
11 LEGED OR SUBJECT TO DISCLOSURE.

12 (4) THE COURT, AFTER IN CAMERA REVIEW, MAY REQUIRE DISCLO-
13 SURE OF MATERIAL FOR WHICH PRIVILEGE IS ASSERTED, IF THE COURT
14 DETERMINES THAT 1 OR MORE OF THE FOLLOWING EXIST:

15 (A) THE PRIVILEGE IS ASSERTED FOR A FRAUDULENT PURPOSE.

16 (B) THE MATERIAL IS NOT SUBJECT TO THE PRIVILEGE.

17 (C) EVEN IF SUBJECT TO THE PRIVILEGE, THE MATERIAL SHOWS
18 EVIDENCE OF NONCOMPLIANCE WITH STATE, FEDERAL, REGIONAL, OR LOCAL
19 ENVIRONMENTAL LAWS, REGULATIONS, ORDINANCES, OR ORDERS AND THE
20 OWNER OR OPERATOR FAILED TO TAKE CORRECTIVE ACTION OR ELIMINATE
21 ANY VIOLATION OF LAW IDENTIFIED DURING THE ENVIRONMENTAL AUDIT
22 WITHIN A REASONABLE TIME.

23- (5) IF THE COURT DETERMINES UNDER SUBSECTION (4) THAT THE
24 MATERIAL IS NOT PRIVILEGED, BUT THE PARTY ASSERTING THE PRIVILEGE
25 FILES AN APPEAL OF THIS FINDING, THE MATERIAL, MOTIONS, AND
26 PLEADINGS SHALL BE KEPT UNDER SEAL DURING THE PENDENCY OF THE
27 APPEAL.

1 SEC. 14806. (1) A PERSON ASSERTING THE PRIVILEGE UNDER THIS
2 PART HAS THE BURDEN OF PROVING A PRIMA FACIE CASE AS TO THE
3 PRIVILEGE. A PERSON SEEKING DISCLOSURE OF AN ENVIRONMENTAL AUDIT
4 REPORT HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVI-
5 DENCE THAT PRIVILEGE DOES NOT EXIST UNDER THIS PART.

6 (2) THE PARTIES DISPUTING THE EXISTENCE OF THE PRIVILEGE MAY
7 AT ANY TIME STIPULATE TO ENTRY OF AN ORDER DIRECTING THAT SPE-
8 CIFIC INFORMATION CONTAINED IN AN ENVIRONMENTAL AUDIT REPORT IS
9 OR IS NOT SUBJECT TO THE PRIVILEGE.

10 (3) UPON MAKING A DISCLOSURE DETERMINATION UNDER
11 SECTION 14804 OR 14805, THE COURT MAY COMPEL THE DISCLOSURE ONLY
12 OF THOSE PORTIONS OF AN ENVIRONMENTAL AUDIT REPORT RELEVANT TO
13 ISSUES IN DISPUTE IN THE PROCEEDING.

14 SEC. 14807. A PERSON WHO KNOWINGLY DIVULGES OR DISSEMINATES
15 ALL OR PART OF THE PRIVILEGED INFORMATION CONTAINED IN AN ENVI-
16 RONMENTAL AUDIT REPORT IN VIOLATION OF THIS PART, OR KNOWINGLY
17 DIVULGES OR DISSEMINATES ALL OR PART OF THE INFORMATION CONTAINED
18 IN AN ENVIRONMENTAL AUDIT REPORT THAT WAS PROVIDED TO THE PERSON
19 IN VIOLATION OF THIS PART, IS GUILTY OF A MISDEMEANOR PUNISHABLE
20 BY A FINE OF NOT MORE THAN \$25,000.00. IN ADDITION, THE COURT
21 MAY SANCTION THE PERSON THROUGH CONTEMPT PROCEEDINGS AND MAY
22 ORDER OTHER RELIEF, INCLUDING DISMISSAL OR SUPPRESSION OF EVI-
23 DENCE, AS THE COURT DETERMINES APPROPRIATE. THIS SECTION IS NOT
24 INTENDED TO LIMIT ANY RIGHTS THE AGGRIEVED PARTY MAY HAVE.

25 SEC. 14808. THIS PART DOES NOT LIMIT, WAIVE, OR ABROGATE
26 THE SCOPE OR NATURE OF ANY STATUTORY OR COMMON LAW PRIVILEGE,

1 INCLUDING THE WORK PRODUCT DOCTRINE AND THE ATTORNEY-CLIENT
2 PRIVILEGE.

3 SEC. 14809. (1) A PERSON IS IMMUNE FROM ANY ADMINISTRATIVE
4 OR CIVIL SANCTIONS AND FINES AND FROM CRIMINAL PENALTIES AND
5 FINES FOR NEGLIGENT ACTS OR OMISSIONS RELATED TO A VIOLATION OF
6 THIS ACT OR THE RULES PROMULGATED UNDER THIS ACT IF THE PERSON
7 MAKES A VOLUNTARY DISCLOSURE TO THE APPROPRIATE STATE OR LOCAL
8 AGENCY. THE PERSON MAKING THE VOLUNTARY DISCLOSURE UNDER THIS
9 SECTION SHALL PROVIDE INFORMATION SUPPORTING HIS OR HER CLAIM
10 THAT THE DISCLOSURE IS VOLUNTARY AT THE TIME THAT THE DISCLOSURE
11 IS MADE TO THE STATE OR LOCAL AGENCY. FOR THE PURPOSES OF THIS
12 SECTION, A DISCLOSURE OF INFORMATION BY A PERSON UNDER THIS SEC-
13 TION IS VOLUNTARY IF ALL OF THE FOLLOWING OCCUR:

14 (A) THE DISCLOSURE IS MADE PROMPTLY AFTER KNOWLEDGE OF THE
15 INFORMATION DISCLOSED IS OBTAINED BY THE PERSON.

16 (B) THE PERSON MAKING THE DISCLOSURE INITIATES AN APPROPRI-
17 ATE AND GOOD-FAITH EFFORT TO ACHIEVE COMPLIANCE, PURSUES COMPLI-
18 ANCE WITH DUE DILIGENCE, AND PROMPTLY CORRECTS THE NONCOMPLIANCE
19 OR CONDITION AFTER DISCOVERY OF THE VIOLATION. IF EVIDENCE SHOWS
20 THE NONCOMPLIANCE IS THE FAILURE TO OBTAIN A PERMIT, APPROPRIATE
21 AND GOOD-FAITH EFFORTS TO CORRECT THE NONCOMPLIANCE MAY BE DEMON-
22 STRATED BY THE SUBMITTAL OF A COMPLETE PERMIT APPLICATION WITHIN
23 A REASONABLE TIME.

24 (C) THE DISCLOSURE OF THE INFORMATION ARISES OUT OF AN ENVI-
25 RONMENTAL AUDIT.

26 (2) THERE IS A REBUTTABLE PRESUMPTION THAT A DISCLOSURE MADE
27 PURSUANT TO THIS SECTION IS VOLUNTARY. THE PRESUMPTION OF

1 VOLUNTARY DISCLOSURE UNDER THIS SECTION MAY BE REBUTTED BY
 2 PRESENTATION OF AN ADEQUATE SHOWING TO THE ADMINISTRATIVE HEARING
 3 OFFICER OR APPROPRIATE TRIER OF FACT THAT THE DISCLOSURE DID NOT
 4 SATISFY THE REQUIREMENTS FOR A VOLUNTARY DISCLOSURE UNDER
 5 SUBSECTION (1). THE STATE OR LOCAL AGENCY SHALL BEAR THE BURDEN
 6 OF REBUTTING THE PRESUMPTION OF VOLUNTARINESS. AGENCY ACTION
 7 DETERMINING THAT DISCLOSURE WAS NOT VOLUNTARY SHALL BE CONSIDERED
 8 FINAL AGENCY ACTION SUBJECT TO JUDICIAL REVIEW.

9 (3) UNLESS A FINAL DETERMINATION SHOWS THAT A VOLUNTARY DIS-
 10 CLOSURE HAS NOT OCCURRED, A NOTICE OF VIOLATION OR CEASE AND
 11 DESIST ORDER SHALL NOT INCLUDE ANY ADMINISTRATIVE OR CIVIL SANC-
 12 TION OR FINE OR ANY CRIMINAL PENALTY OR FINE FOR NEGLIGENT ACTS
 13 OR OMISSIONS BY THE PERSON MAKING THE VOLUNTARY DISCLOSURE.

14 (4) THE ELIMINATION OF ADMINISTRATIVE OR CIVIL SANCTIONS OR
 15 FINES OR CRIMINAL PENALTIES OR FINES UNDER THIS SECTION DOES NOT
 16 APPLY IF A PERSON HAS BEEN FOUND BY A COURT OR ADMINISTRATIVE LAW
 17 JUDGE TO HAVE COMMITTED SERIOUS VIOLATIONS THAT CONSTITUTE A PAT-
 18 TERN OF CONTINUOUS OR REPEATED VIOLATIONS OF ENVIRONMENTAL LAWS,
 19 RULES, REGULATIONS, PERMIT CONDITIONS, SETTLEMENT AGREEMENTS, OR
 20 ORDERS ON CONSENT AND THAT WERE DUE TO SEPARATE AND DISTINCT
 21 EVENTS GIVING RISE TO THE VIOLATIONS, WITHIN THE 3-YEAR PERIOD
 22 PRIOR TO THE DATE OF THE DISCLOSURE. FOR PURPOSES OF THIS SUB-
 23 SECTION, A PATTERN OF CONTINUOUS OR REPEATED VIOLATIONS MAY ALSO
 24 BE DEMONSTRATED BY MULTIPLE SETTLEMENT AGREEMENTS RELATED TO SUB-
 25 STANTIALLY THE SAME ALLEGED VIOLATIONS CONCERNING SERIOUS
 26 INSTANCES OF NONCOMPLIANCE WITH ENVIRONMENTAL LAWS THAT OCCURRED
 27 WITHIN THE 3-YEAR PERIOD IMMEDIATELY PRIOR TO THE DATE OF THE

1 VOLUNTARY DISCLOSURE. IN DETERMINING WHETHER A PERSON HAS A
2 PATTERN OF CONTINUOUS OR REPEATED VIOLATIONS UNDER THIS SUBSEC-
3 TION, THE COURT OR ADMINISTRATIVE LAW JUDGE SHALL BASE THE DECI-
4 SION ON THE COMPLIANCE HISTORY OF THE SPECIFIC FACILITY AT
5 ISSUE.

6 (5) IN THOSE CASES WHERE THE CONDITIONS OF A VOLUNTARY DIS-
7 CLOSURE ARE NOT MET BUT A GOOD FAITH EFFORT WAS MADE TO VOLUN-
8 TARILY DISCLOSE AND RESOLVE A VIOLATION DETECTED IN A VOLUNTARY
9 ENVIRONMENTAL AUDIT, THE STATE AND LOCAL ENVIRONMENTAL AND LAW
10 ENFORCEMENT AUTHORITIES SHALL CONSIDER THE NATURE AND EXTENT OF
11 ANY GOOD FAITH EFFORT IN DECIDING THE APPROPRIATE ENFORCEMENT
12 RESPONSE AND SHALL MITIGATE ANY PENALTIES BASED ON A SHOWING THAT
13 1 OR MORE OF THE CONDITIONS FOR VOLUNTARY DISCLOSURE HAVE BEEN
14 MET.

15 (6) THE IMMUNITY PROVIDED BY THIS SECTION DOES NOT ABROGATE
16 A PERSON'S RESPONSIBILITIES AS PROVIDED BY LAW TO CORRECT THE
17 VIOLATION, CONDUCT NECESSARY REMEDIATION, OR PAY DAMAGES, WHEN
18 APPROPRIATE.

19 SEC. 14810. WITHIN 5 YEARS AFTER THE EFFECTIVE DATE OF THIS
20 PART, THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL PREPARE AND
21 SUBMIT TO THE STANDING COMMITTEES OF THE LEGISLATURE WITH JURIS-
22 DICTION OVER ISSUES PERTAINING TO NATURAL RESOURCES AND THE ENVI-
23 RONMENT A REPORT EVALUATING THE EFFECTIVENESS OF THIS PART AND
24 SPECIFICALLY DETAILING WHETHER THIS PART HAS BEEN EFFECTIVE IN
25 ENCOURAGING THE USE OF ENVIRONMENTAL AUDITS AND IN IDENTIFYING
26 AND CORRECTING ENVIRONMENTAL PROBLEMS AND CONDITIONS.