

HOUSE BILL No. 4838

May 27, 1997, Introduced by Reps. Brater, DeHart, Hale, Kaza, Anthony, Martinez, Gubow, Schermesser, Willard, Scott, Schauer, Cherry, Schroer, Parks, Bogardus and Jellema and referred to the Committee on Conservation, Environment and Recreation.

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. The person making the voluntary disclosure under
10 this section shall provide information supporting his or her

1 claim that the disclosure is voluntary at the time that the
2 disclosure is made to the state or local agency. For the pur-
3 poses of this section, a disclosure of information by a person
4 under this section is voluntary if all of the following occur:

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

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

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

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

20 (E) THE DISCLOSURE IS NOT RELATED TO A VIOLATION THAT IS
21 REQUIRED TO BE REPORTED TO A STATE OR FEDERAL AGENCY.

22 (2) There is a rebuttable presumption that a disclosure made
23 pursuant to this section is voluntary. The presumption of volun-
24 tary disclosure under this section may be rebutted by presenta-
25 tion of an adequate showing to the administrative hearing officer
26 or appropriate trier of fact that the disclosure did not satisfy
27 the requirements for a voluntary disclosure under

1 subsection (1). The state or local agency shall bear the burden
2 of rebutting the presumption of voluntariness. Agency action
3 determining that disclosure was not voluntary shall be considered
4 final agency action subject to judicial review.

5 (3) Unless a final determination shows that a voluntary dis-
6 closure has not occurred, a notice of violation or cease and
7 desist order shall not include any administrative or civil pen-
8 alty or fine or any criminal penalty or fine for negligent acts
9 or omissions by the person making the voluntary disclosure.

10 (4) The elimination of administrative or civil penalties or
11 fines or criminal penalties or fines under this section does not
12 apply if a person has been found by a court or administrative law
13 judge to have knowingly committed a criminal act or committed
14 serious violations that constitute a pattern of continuous or
15 repeated violations of environmental laws, rules, regulations,
16 permit conditions, settlement agreements, or orders on consent or
17 judicial orders and that were due to separate and distinct events
18 giving rise to the violations, within the 3-year period prior to
19 the date of the disclosure. For purposes of this subsection, a
20 pattern of continuous or repeated violations may also be demon-
21 strated by multiple settlement agreements related to substan-
22 tially the same alleged violations concerning serious instances
23 of noncompliance with environmental laws that occurred within the
24 3-year period immediately prior to the date of the voluntary
25 disclosure. In determining whether a person has a pattern of
26 continuous or repeated violations under this subsection, the

1 court or administrative law judge shall base the decision on the
2 compliance history of the specific facility at issue.

3 (5) In those cases where the conditions of a voluntary dis-
4 closure are not met but a good faith effort was made to volun-
5 tarily disclose and resolve a violation detected in a voluntary
6 environmental audit, the state and local environmental and law
7 enforcement authorities shall consider the nature and extent of
8 any good faith effort in deciding the appropriate enforcement
9 response and shall mitigate any civil penalties based on a show-
10 ing that 1 or more of the conditions for voluntary disclosure
11 have been met.

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