

105TH CONGRESS
1ST SESSION

S. 866

To amend title 28, United States Code, to provide that certain voluntary disclosures of violations of Federal law made as a result of a voluntary environmental audit shall not be subject to discovery or admitted into evidence during a judicial or administrative proceeding, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 10, 1997

Mrs. HUTCHISON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide that certain voluntary disclosures of violations of Federal law made as a result of a voluntary environmental audit shall not be subject to discovery or admitted into evidence during a judicial or administrative proceeding, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Environmental Protec-
5 tion Partnership Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) it is in the interest of the United States to
4 promote voluntary efforts to maximize compliance
5 with environmental laws and to increase protection
6 of the environment and public health;

7 (2) voluntary environmental audit and compli-
8 ance management systems have greatly enhanced
9 compliance with environmental laws and should be
10 encouraged by the Federal Government;

11 (3) 2 means of directly encouraging voluntary
12 environmental audit and compliance management
13 systems are—

14 (A) granting limited protection from dislo-
15 sure of voluntary environmental audits; and

16 (B) granting limited protection for parties
17 that promptly disclose information from vol-
18 untary environmental audits or compliance
19 management systems and correct any non-
20 compliance discovered as a result of the infor-
21 mation;

22 (4) Federal law does not encourage voluntary
23 environmental audit and compliance management
24 systems and may actually create disincentives to
25 conducting voluntary environmental audits or imple-
26 menting compliance management systems;

1 (5) in the interest of increasing environmental
 2 protection, the Federal Government should not im-
 3 pede the efforts of States to encourage voluntary en-
 4 vironmental audit through adoption of State laws
 5 granting limited protection for voluntary efforts to
 6 maximize compliance with environmental laws;

7 (6) State laws granting those protections should
 8 apply in all proceedings in which the State is exer-
 9 cising authority under State or Federal law; and

10 (7) the protections offered under this Act do
 11 not relieve parties from the need to comply with oth-
 12 erwise applicable requirements to disclose informa-
 13 tion under Federal, State, or local environmental
 14 laws.

15 **SEC. 3. VOLUNTARY AUDIT PROTECTION.**

16 (a) IN GENERAL.—Part VI of title 28, United States
 17 Code, is amended by inserting after chapter 176 the fol-
 18 lowing:

19 **“CHAPTER 177—VOLUNTARY AUDIT**
 20 **PROTECTION**

“Sec.

“3601. Admissibility of environmental audit reports.

“3602. Testimony.

“3603. Disclosures.

“3604. Recognition of State efforts to encourage compliance.

“3605. Definitions.

21 **“§ 3601. Admissibility of environmental audit reports**

22 “(a) GENERAL RULE.—

1 “(1) IN GENERAL.—Except as provided in para-
 2 graphs (2) and (3), an environmental audit report
 3 that is prepared in good faith, or a finding, opinion,
 4 or other communication that is made in good faith
 5 by a person or government entity and that is related
 6 to, and essentially constitutes a part of, an environ-
 7 mental audit report, shall not be—

8 “(A) subject to discovery or any other in-
 9 vestigatory procedure; or

10 “(B) admissible as evidence in any judicial
 11 action or administrative proceeding.

12 “(2) EXCLUDED ITEMS.—Paragraph (1) shall
 13 not apply to—

14 “(A) a document, communication, data, re-
 15 port, or other item of information that is re-
 16 quired to be collected, developed, maintained, or
 17 reported to a regulatory agency under a covered
 18 Federal law;

19 “(B) information obtained by observation,
 20 sampling, or monitoring by a regulatory agency;
 21 or

22 “(C) information obtained from a source
 23 independent of the environmental audit.

24 “(3) INAPPLICABILITY.—Paragraph (1) shall
 25 not apply to an environmental audit report if, after

1 an in camera hearing under subsection (c), a judge
2 determines that—

3 “(A) the person or government entity that
4 initiated the environmental audit expressly
5 waives, pursuant to subsection (b), the protec-
6 tion provided by paragraph (1);

7 “(B) the environmental audit provides evi-
8 dence of noncompliance with a covered Federal
9 law and appropriate efforts to achieve compli-
10 ance were not promptly initiated and pursued
11 with reasonable diligence;

12 “(C) the person or government entity that
13 is asserting the applicability of paragraph (1) is
14 doing so for a fraudulent purpose; or

15 “(D) the environmental audit report, find-
16 ing, opinion, or other communication was pre-
17 pared for the purpose of avoiding disclosure of
18 information required for a governmental inves-
19 tigative, administrative, or judicial proceeding
20 that, at the time of preparation, was imminent
21 or in progress.

22 “(b) WAIVER.—

23 “(1) IN GENERAL.—The protection provided by
24 subsection (a)(1) may be waived by the person or

1 government entity for whom an environmental audit
2 is prepared.

3 “(2) PORTIONS WAIVED.—A waiver under para-
4 graph (1) shall apply only to the portion or portions
5 of the environmental audit report, finding, opinion,
6 or other communication that the person or govern-
7 ment entity expressly waives.

8 “(3) CONFIDENTIAL DISCLOSURES.—Disclosure
9 of an environmental audit report shall not constitute
10 a waiver of the protection provided by subsection
11 (a)(1) if—

12 “(A) the person or government entity for
13 whom the environmental audit is prepared or
14 the owner or operator of a facility or activity
15 evaluated in the environmental audit discloses
16 the environmental audit to any person employed
17 by (including temporary or contract employees),
18 officer or director of, partner or joint venturer
19 in, legal representative of, or independent con-
20 tractor retained by the person, government en-
21 tity, owner, or operator to address an issue
22 raised by the environmental audit; or

23 “(B) the disclosure is pursuant to a con-
24 fidentiality agreement between the person or
25 government entity for which the evaluation was

1 prepared or the owner or operator of a facility
 2 or activity evaluated in the environmental audit
 3 and—

4 “(i) a business associate or potential
 5 business associate;

6 “(ii) a lender or potential lender;

7 “(iii) an insurer or potential insurer;

8 “(iv) a transferee or potential trans-
 9 feree; or

10 “(v) any other person or government
 11 entity having environmental or commercial
 12 interests in, similar to, or substantially
 13 aligned with the facility or activity evalu-
 14 ated in the environmental audit.

15 “(c) REVIEW.—

16 “(1) DISCLOSURE AND TESTIMONY.—A judge
 17 may, after an in camera hearing, require disclosure
 18 of or testimony regarding a audit report, finding,
 19 opinion, or other communication for which protec-
 20 tion under subsection (a)(1) is asserted if the judge
 21 determines that the information to be disclosed or
 22 testified about is not subject to protection under
 23 subsection (a)(1).

24 “(2) CRIMINAL EVIDENCE.—

1 “(A) SEIZURE.—Based on information ob-
2 tained from a source independent of an environ-
3 mental audit report, a law enforcement official
4 may seize an environmental audit report for
5 which protection is asserted under subsection
6 (a)(1) if—

7 “(i) the seizure is pursuant to a law-
8 ful search and seizure; and

9 “(ii) the law enforcement official has
10 probable cause to believe that—

11 “(I) a criminal offense has been
12 committed under a covered Federal
13 law; and

14 “(II) the report constitutes, or
15 may lead to discovery of, evidence of
16 the criminal offense.

17 “(B) HANDLING OF REPORT.—On taking
18 possession of a report under subparagraph (A),
19 a law enforcement official shall immediately
20 place the report under seal and shall not review,
21 disclose, or otherwise use the contents of the
22 report in any way, unless the person or govern-
23 ment entity for whom the report was pre-
24 pared—

1 “(i) expressly waives protection for
2 the report pursuant to subsection (b); or

3 “(ii) after actual notice of the seizure,
4 does not file a timely petition under sub-
5 paragraph (C).

6 “(C) PETITION.—Not later than 30 days
7 after receiving actual notice of the seizure of an
8 environmental audit report, the person or gov-
9 ernment entity for whom the report was pre-
10 pared or the owner or operator of the facility or
11 activity evaluated in the report may file with
12 the appropriate court a petition requiring an in
13 camera review under subparagraph (D).

14 “(D) IN CAMERA HEARING.—

15 “(i) IN GENERAL.—On the filing of a
16 petition under subparagraph (C), the court
17 shall issue an order—

18 “(I) scheduling an in camera re-
19 view not later than 45 days after the
20 date of the filing of the petition to de-
21 termine whether the environmental
22 audit report (or a portion of the re-
23 port) is protected under subsection
24 (a)(1);

1 “(II) allowing the law enforce-
2 ment official to remove the seal from
3 the report to review the report;

4 “(III) allowing the law enforce-
5 ment official to consult with an en-
6 forcement agency regarding the con-
7 tents of the report to prepare for the
8 in camera hearing; and

9 “(IV) placing appropriate limita-
10 tions on distribution and review of the
11 report to protect against unnecessary
12 disclosure.

13 “(ii) PROTECTION OF INFORMA-
14 TION.—Unless a court finds the informa-
15 tion subject to disclosure, any information
16 used in preparation for an in camera hear-
17 ing—

18 “(I) shall not be used in any in-
19 vestigation or proceeding against the
20 person or government entity for whom
21 the environmental audit report was
22 prepared or the owner or operator of
23 the facility or activity evaluated in the
24 environmental audit report; and

25 “(II) shall be kept confidential.

1 “(3) BURDEN OF PROOF.—

2 “(A) BURDEN OF PRODUCING EVI-
3 DENCE.—In an in camera hearing under para-
4 graph (1) or (2), the person asserting the pro-
5 tection of subsection (a)(1) shall have the bur-
6 den of demonstrating a prima facie basis for
7 the application of subsection (a)(1). If there is
8 evidence of noncompliance with a covered law,
9 the prima facie basis shall include, to the extent
10 that the noncompliance was identified by the
11 environmental audit report, evidence that ap-
12 propriate efforts to achieve compliance were
13 promptly initiated and pursued with reasonable
14 diligence.

15 “(B) BURDEN OF PERSUASION.—In an in
16 camera hearing under paragraph (1) or (2), the
17 person seeking the disclosure of information has
18 the burden of persuasion that the protection
19 provided by subsection (a)(1) does not apply.

20 “(4) SUPPRESSION OF EVIDENCE.—

21 “(A) IN GENERAL.—A judge may suppress
22 any evidence arising or derived from the failure
23 of a government official to comply with this
24 subsection.

1 “(B) BURDEN OF PROOF.—A government
 2 official who fails to comply with this subsection
 3 shall have the burden of proving that any prof-
 4 ferred evidence did not arise and was not derived
 5 from the failure.

6 “(d) EFFECT ON OTHER RULES.—Nothing in this
 7 chapter limits, waives, or abrogates the scope or nature
 8 of any statutory or common law protection against the dis-
 9 covery or admissibility of evidence, including the attorney-
 10 client privilege and the work product doctrine.

11 **“§ 3602. Testimony**

12 “A person or government entity (including a present
 13 or former officer, employee, agent, or contractor of the
 14 person or government entity) that performs an environ-
 15 mental audit may not give testimony concerning the envi-
 16 ronmental audit in any judicial or administrative proceed-
 17 ing that relates to a nondelegated covered Federal law
 18 without the consent of the person or government entity
 19 that initiated the audit, including testimony concerning an
 20 environmental audit report, finding, opinion, or other com-
 21 munication with respect to which section 3601(a)(1) ap-
 22 plies.

23 **“§ 3603. Disclosures**

24 “(a) IN GENERAL.—If a person or government entity
 25 discloses information relating to a covered Federal law to

1 an appropriate official of a Federal or State agency re-
2 sponsible for administering the covered Federal law, the
3 disclosure shall be considered to be a voluntary disclosure
4 subject to protection under subsection (b), regardless of
5 whether the disclosure is required by law, if—

6 “(1) the disclosure arises out of a voluntary en-
7 vironmental audit or the operation of a voluntary en-
8 vironmental compliance management system by the
9 person or government entity;

10 “(2) the disclosure is made promptly after the
11 person or government entity receives knowledge of
12 the information;

13 “(3) the person or government entity initiates
14 an action to address the issues identified in the dis-
15 closure—

16 “(A) within a reasonable period of time
17 after receiving knowledge of the information;
18 and

19 “(B) within a period of time that is ade-
20 quate to achieve compliance with the require-
21 ments of the covered Federal law that is the
22 subject of the action; and

23 “(4) the person or government entity reason-
24 ably provides any further relevant information re-
25 quested, as a result of the disclosure, by the appro-

1 piate official of the Federal or State agency respon-
 2 sible for administering the covered Federal law, not
 3 including information protected by this chapter, the
 4 attorney-client privilege, the attorney work product
 5 doctrine, or any other applicable privilege.

6 “(b) LIMITED IMMUNITY.—

7 “(1) IN GENERAL.—Subject to paragraph (2),
 8 if a person or government entity makes a voluntary
 9 disclosure under subsection (a)—

10 “(A) the person or government entity shall
 11 be immune from any enforcement action
 12 brought as a result of the disclosure; and

13 “(B) the disclosed information shall not, in
 14 any court or administrative proceeding, be sub-
 15 ject to discovery or be admissible against the
 16 person or government entity that made the dis-
 17 closure.

18 “(2) PERMISSIBLE SANCTIONS AND ADMISSION
 19 INTO EVIDENCE.—Paragraph (1) does not pre-
 20 clude—

21 “(A) imposition of a civil sanction in an
 22 administrative or civil action to the extent that
 23 a violation was committed intentionally and
 24 willfully;

25 “(B) imposition of a criminal sanction—

1 “(i) against a natural person, if—

2 “(I) the person committed, or
3 aided or abetted the commission of, a
4 disclosed violation intentionally and
5 willfully; or

6 “(II) the disclosed violation is a
7 knowing endangerment offense de-
8 scribed in section 309(c)(3) of the
9 Federal Water Pollution Control Act
10 (33 U.S.C. 1319(c)(3)), section
11 3008(e) of the Solid Waste Disposal
12 Act (42 U.S.C. 6928(e)), or section
13 113(c)(5) of the Clean Air Act (42
14 U.S.C. 7413(c)(5)); or

15 “(ii) against an entity other than a
16 natural person, if—

17 “(I) the disclosed violation was
18 committed intentionally and willfully
19 by a member of the entity’s senior
20 management;

21 “(II) the disclosed violation is a
22 knowing endangerment offense de-
23 scribed in section 309(c)(3) of the
24 Federal Water Pollution Control Act
25 (33 U.S.C. 1319(c)(3)), section

1 3008(e) of the Solid Waste Disposal
2 Act (42 U.S.C. 6928(e)), or section
3 113(c)(5) of the Clean Air Act (42
4 U.S.C. 7413(c)(5)); or

5 “(III) the entity’s policies or lack
6 of preventive actions or systems con-
7 tributed materially to the occurrence
8 of the violation; or

9 “(C) admission of information into evi-
10 dence for the purpose of seeking injunctive re-
11 lief against the person or government entity to
12 remedy a continuing adverse public health or
13 environmental effect of a violation.

14 “(3) MITIGATING CIRCUMSTANCES.—A sanction
15 under subparagraph (A) or (B) of paragraph (2)
16 shall, to the extent appropriate, be mitigated by fac-
17 tors relating to the nature of the violation, cir-
18 cumstances of the disclosure, efforts of the disclos-
19 ing person or government entity to prevent or re-
20 solve the violation, and other relevant considerations.

21 “(c) INVOLUNTARY DISCLOSURES.—A disclosure of
22 information to an official of a Federal or State agency
23 shall not be considered to be a voluntary disclosure under
24 subsection (a)(1) if the person or government entity mak-
25 ing the disclosure is found under subsection (f) to have

1 committed a pattern of significant repeated violations of
 2 Federal or State law, or orders on consent, related to envi-
 3 ronmental quality, on the basis of the occurrence of sepa-
 4 rate and distinct events giving rise to the violations, dur-
 5 ing the 3-year period preceding the date of the disclosure,
 6 if the violations—

7 “(1) did not result from the same underlying
 8 cause;

9 “(2) involved the same legal requirement as the
 10 violation being disclosed;

11 “(3) are determined to have occurred in final
 12 court or agency determinations or in admissions by
 13 the person or government entity in consent agree-
 14 ments, arrived at after opportunity for an adjudica-
 15 tive hearing and not subject to further appeal; and

16 “(4)(A) occurred at the same facility; or

17 “(B) occurred at 2 or more facilities under
 18 common control, and senior management of the dis-
 19 closing person or government entity had actual
 20 knowledge of the violations and failed to take timely
 21 corrective measures.

22 “(d) PRESUMPTION OF APPLICABILITY.—

23 “(1) IN GENERAL.—Subject to subsection (c),
 24 there shall be a rebuttable presumption that a dis-
 25 closure by a person or government entity of a viola-

1 tion of a covered Federal law to an appropriate offi-
2 cial of a Federal or State agency responsible for ad-
3 ministering the covered Federal law is a voluntary
4 disclosure described in subsection (a), if the person
5 or government entity provides information at the
6 time of the disclosure supporting a claim that the in-
7 formation is a voluntary disclosure.

8 “(2) CONCLUSIVE APPLICABILITY.—Unless the
9 appropriate official of the Federal or State agency to
10 whom a disclosure is made under paragraph (1) is-
11 sues a written response under paragraph (3), the
12 presumption under paragraph (1) shall be conclu-
13 sive.

14 “(3) DISPUTES.—If, not later than 60 days
15 after receiving the disclosure in writing, the appro-
16 priate official of the Federal or State agency to
17 whom a disclosure is made under paragraph (1) is-
18 sues a written response disputing that the disclosure
19 is a voluntary disclosure, the issue shall be re-
20 solved—

21 “(A) by settlement between the disclosing
22 person or government entity and the appro-
23 priate official; or

1 “(B) in an enforcement action against the
2 disclosing person or government entity in ac-
3 cordance with subsection (f).

4 “(f) RESOLUTION OF IMMUNITY DISPUTE.—

5 “(1) IN GENERAL.—In an enforcement action
6 brought against a person or government entity re-
7 garding an alleged violation for which the person or
8 government entity claims to have made a disclosure
9 to which this section applies, the judge shall deter-
10 mine the application of this section.

11 “(2) BURDEN OF PROOF.—In an action de-
12 scribed in paragraph (1)—

13 “(A) the person or government entity mak-
14 ing the disclosure shall have the burden of es-
15 tablishing a prima facie case that the disclosure
16 was consistent with the requirements of sub-
17 section (a)(1); and

18 “(B) if a prima facie case is established,
19 the plaintiff shall have the burden of showing,
20 by a preponderance of the evidence or, in a
21 criminal case, by proof beyond a reasonable
22 doubt, that this section does not apply.

23 “(g) STATUTORY CONSTRUCTION.—Except as ex-
24 pressly provided in this section, nothing in this section af-
25 fects the authority of a Federal or State agency respon-

1 sible for administering a covered Federal law to carry out
 2 any requirement of the law associated with information
 3 disclosed in a voluntary disclosure described in subsection
 4 (a)(1).

5 **“§ 3604. Recognition of State efforts to encourage**
 6 **compliance**

7 “(a) STATE LAWS ENCOURAGING VOLUNTARY ENVI-
 8 RONMENTAL ASSESSMENTS.—

9 “(1) LIMITED PROTECTION FROM DISCLO-
 10 SURE.—Except as provided in paragraph (3), a
 11 State law may provide that, under appropriate con-
 12 ditions, a voluntary environmental audit report, or a
 13 finding, opinion, or other communication related to
 14 and constituting part of a voluntary environmental
 15 audit report, shall not be—

16 “(A) subject to discovery or any other in-
 17 vestigatory procedure governed by State or local
 18 law; or

19 “(B) admissible as evidence in any State
 20 or local judicial action or administrative pro-
 21 ceeding.

22 “(2) LIMITED PROTECTION FOR TESTIMONY.—
 23 Except as provided in paragraph (3), a State law
 24 may provide that, under appropriate conditions, no
 25 individual that performs a voluntary environmental

1 audit shall be required to give testimony in any
2 State or local judicial action or administrative pro-
3 ceeding concerning the environmental audit.

4 “(3) REQUIRED DISCLOSURES UNAFFECTED.—
5 The protections described in paragraphs (1) and (2)
6 shall not apply to the extent that any information is
7 otherwise required to be disclosed under Federal,
8 State, or local law.

9 “(4) LIMITED PROTECTION FOR DISCLOSURE
10 OF VOLUNTARY ENVIRONMENTAL SELF-EVALUATION
11 INFORMATION.—A State law may provide that,
12 under appropriate conditions, a person or entity that
13 promptly discloses information about noncompliance
14 with an environmental law discovered as a result of
15 a voluntary environmental audit or performance of a
16 compliance management system to an appropriate
17 Federal, State, or local official may be protected in
18 whole or in part from an enforcement action for the
19 noncompliance in a State or local judicial action or
20 administrative proceeding.

21 “(b) EXCLUSIVITY OF STATE PROTECTION.—In any
22 State or local judicial action or administrative proceeding
23 to enforce a State or local law (including a covered Federal
24 law), if a State law provides any of the protections re-
25 ferred to in subsection (a), a person or entity qualifying

1 for the protection shall receive the protection afforded by
 2 the applicable State law in lieu of any protection provided
 3 by sections 3601 through 3603.

4 “(c) PROHIBITED IMPEDIMENTS TO STATE LAW.—
 5 A Federal agency shall not—

6 “(1) refuse to delegate a covered Federal law to
 7 a State or local agency or refuse to approve or au-
 8 thorize a State or local program under a covered
 9 Federal law because the State has in effect a law re-
 10 ferred to in subsection (a);

11 “(2) make a permit, license, or other authoriza-
 12 tion, a contract, or a consent decree or other settle-
 13 ment agreement contingent on a person waiving any
 14 protection of a State law referred to in subsection
 15 (a); or

16 “(3) take any other action that has the effect
 17 of requiring a State to rescind or limit any protec-
 18 tion of a State law referred to in subsection (a).

19 **“§ 3605. Definitions**

20 “In this chapter:

21 “(1) COVERED FEDERAL LAW.—The term ‘cov-
 22 ered Federal law’—

23 “(A) means—

1 “(i) the Federal Insecticide, Fun-
2 gicide, and Rodenticide Act (7 U.S.C. 136
3 et seq.);

4 “(ii) the Toxic Substances Control Act
5 (15 U.S.C. 2601 et seq.);

6 “(iii) the Federal Water Pollution
7 Control Act (commonly known as the
8 ‘Clean Water Act’) (33 U.S.C. 1251 et
9 seq.);

10 “(iv) the Oil Pollution Act of 1990
11 (33 U.S.C. 2701 et seq.);

12 “(v) the Safe Drinking Water Act (42
13 U.S.C. 300f et seq.);

14 “(vi) the Noise Control Act of 1972
15 (42 U.S.C. 4901 et seq.);

16 “(vii) the Solid Waste Disposal Act
17 (42 U.S.C. 6901 et seq.);

18 “(viii) the Clean Air Act (42 U.S.C.
19 7401 et seq.);

20 “(ix) the Comprehensive Environ-
21 mental Response, Compensation, and Li-
22 ability Act of 1980 (42 U.S.C. 9601 et
23 seq.);

1 “(x) the Emergency Planning and
2 Community Right-To-Know Act of 1986
3 (42 U.S.C. 11001 et seq.);

4 “(xi) the Pollution Prevention Act of
5 1990 (42 U.S.C. 13101 et seq.);

6 “(xii) the Endangered Species Act of
7 1973 (16 U.S.C. 1531 et seq.);

8 “(xiii) chapter 51 of title 49, United
9 States Code;

10 “(xiv) section 13 or 16 of the Act en-
11 titled “An Act making appropriations for
12 the construction, repair, and preservation
13 of certain public works on rivers and har-
14 bors, and for other purposes”, approved
15 March 3, 1899 (commonly known as the
16 “River and Harbor Act of 1899”) (33
17 U.S.C. 407 or 411);

18 “(xv) the Surface Mining Control and
19 Reclamation Act of 1977 (30 U.S.C. 1201
20 et seq.); and

21 “(xvi) any other law enacted after the
22 date of enactment of this chapter that ad-
23 dresses subject matter similar to a law
24 listed in clauses (i) through (xv);

1 “(B) includes a regulation or other binding
2 agency action issued under a law listed in sub-
3 paragraph (A);

4 “(C) includes the terms and conditions of
5 a permit issued or other administrative action
6 taken under a law listed in subparagraph (A);
7 and

8 “(D) includes a State law that operates as
9 a federally enforceable law under a law listed in
10 subparagraph (A) as a result of the delegation,
11 approval, or authorization of a State activity or
12 program.

13 “(2) DELEGATED COVERED FEDERAL LAW.—
14 The term ‘delegated covered Federal law’ means a
15 covered Federal law with respect to which a State
16 has been delegated primary authority for enforce-
17 ment in accordance with the covered Federal law, to
18 the extent the State has been delegated the author-
19 ity.

20 “(3) ENFORCEMENT ACTION.—

21 “(A) IN GENERAL.—The term ‘enforce-
22 ment action’ means a criminal, civil, or admin-
23 istrative action for the purpose of imposing a
24 penalty or any other punitive sanction, includ-
25 ing imposition of a restriction on providing to

1 or receiving from the United States or any
2 State or political subdivision a good, material,
3 service, grant, license, permit, or other approval
4 or benefit.

5 “(B) EXCLUSION.—The term ‘enforcement
6 action’ does not include an action solely for the
7 purpose of seeking injunctive relief to remedy a
8 continuing adverse public health or environ-
9 mental effect of a violation.

10 “(4) ENVIRONMENTAL COMPLIANCE MANAGE-
11 MENT SYSTEM.—The term ‘environmental compli-
12 ance management system’ means the systematic ef-
13 fort of a person or government entity, appropriate to
14 the size and nature of the person or government en-
15 tity, to prevent, detect, and correct a violation of law
16 through—

17 “(A) a compliance policy, standard, or pro-
18 cedure that identifies how an employee or agent
19 shall meet the requirements of the law;

20 “(B) assignment of overall responsibility
21 for overseeing compliance with policies, stand-
22 ards, and procedures, and assignment of spe-
23 cific responsibility for ensuring compliance at
24 each facility or operation;

1 “(C) a mechanism for systematically en-
2 suring that compliance policies, standards, and
3 procedures are being carried out, including—

4 “(i) a monitoring or auditing system
5 that is reasonably designed to detect and
6 correct a violation;

7 “(ii) a periodic evaluation of the over-
8 all performance of the compliance manage-
9 ment system; and

10 “(iii) a means for an employee or
11 agent to report a violation of an environ-
12 mental requirement without fear of retalia-
13 tion;

14 “(D) an effort to communicate effectively
15 the standards and procedures of the person or
16 government entity to employees and agents of
17 the person or government entity;

18 “(E) an appropriate incentive to managers
19 and employees of the person or government en-
20 tity to perform in accordance with any compli-
21 ance policy or procedure of the person or gov-
22 ernment entity, including consistent enforce-
23 ment through an appropriate disciplinary mech-
24 anism; and

25 “(F) a procedure for—

1 “(i) the prompt and appropriate cor-
 2 rection of any violation of law; and

3 “(ii) making any necessary modifica-
 4 tions to the standards or procedures of the
 5 person or government entity to prevent fu-
 6 ture violations of law.

7 “(5) ENVIRONMENTAL AUDIT REPORT.—

8 “(A) IN GENERAL.—The term ‘environ-
 9 mental audit report’ means a document pre-
 10 pared as a result of a voluntary environmental
 11 audit.

12 “(B) INCLUSION.—The term ‘environ-
 13 mental audit report’ includes—

14 “(i) a field note, draft, memorandum,
 15 drawing, photograph, computer software or
 16 stored information or electronically re-
 17 corded information, map, chart, graph,
 18 survey, analysis (including a laboratory re-
 19 sult, instrument reading, and field analy-
 20 sis), and other information pertaining to
 21 an observation, finding, opinion, sugges-
 22 tion, or conclusion, if such supporting in-
 23 formation is collected or developed for the
 24 primary purpose and in the course of cre-
 25 ating an audit;

1 “(ii) a document prepared by the
2 auditor or evaluator, which may describe
3 the scope of the evaluation, the informa-
4 tion learned, any conclusions or rec-
5 ommendations, and any exhibits or appen-
6 dices;

7 “(iii) an analysis of a portion or all of
8 the audit or issues arising from the audit;
9 and

10 “(iv) an implementation plan or track-
11 ing system that addresses an action taken
12 or to be taken by the owner or operator of
13 the facility as a result of the audit.

14 “(6) INTENTIONAL AND WILLFUL.—The term
15 ‘intentional and willful’ refers to a specific intent to
16 violate or disregard the law.

17 “(7) JUDGE.—The term ‘judge’ includes an ad-
18 ministrative law judge.

19 “(8) NONDELEGATED COVERED FEDERAL
20 LAW.—The term ‘nondelegated covered Federal law’
21 means a covered Federal law that is not a delegated
22 covered Federal law, to the extent that the covered
23 Federal law has not been delegated.

24 “(9) VOLUNTARY DISCLOSURE.—The term ‘vol-
25 untary disclosure’ means the disclosure of informa-

1 tion related to a voluntary environmental audit or
 2 voluntary implementation of an environmental com-
 3 pliance management system with respect to which
 4 the protections provided under section 3603 apply.

5 “(10) VOLUNTARY ENVIRONMENTAL SELF-
 6 EVALUATION.—The term ‘voluntary environmental
 7 audit’ means an assessment, audit investigation, or
 8 review that is—

9 “(A) initiated by a person or government
 10 entity;

11 “(B) carried out by an employee of the
 12 person or government entity, or a consultant
 13 employed by the person or government entity,
 14 for the purpose of carrying out the assessment,
 15 evaluation, investigation, or review; and

16 “(C) carried out for the purpose of deter-
 17 mining or improving compliance with, or liabil-
 18 ity under, a covered Federal law, or to assess
 19 the effectiveness of an environmental compli-
 20 ance management system.”.

21 (b) TECHNICAL AMENDMENT.—The part analysis for
 22 part VI of title 28, United States Code, is amended by
 23 inserting after the item relating to chapter 176 the follow-
 24 ing:

“177. Voluntary Audit Protection 3601”.

1 **SEC. 4. ASSISTANCE FROM SMALL BUSINESS DEVELOP-**
 2 **MENT CENTERS.**

3 Section 21(c)(3) of the Small Business Act (15
 4 U.S.C. 648(c)(3)) is amended—

5 (1) in subparagraph (Q), by striking “and” at
 6 the end;

7 (2) in subparagraph (R), by striking the period
 8 at the end and inserting “; and”; and

9 (3) by inserting after subparagraph (R) the fol-
 10 lowing:

11 “(S) assisting small businesses in comply-
 12 ing with the requirements necessary to receive
 13 protections under chapter 177 of title 28, Unit-
 14 ed States Code.”.

15 **SEC. 5. APPLICABILITY.**

16 This Act and the amendments made by this Act shall
 17 apply to each civil or criminal action or administrative pro-
 18 ceeding that has not been finally adjudicated as of the
 19 date of enactment of this Act.

20 **SEC. 6. SUNSET PROVISION.**

21 This Act and the amendments made by this Act shall
 22 be effective during the 5-year period beginning on the date
 23 of enactment of this Act.

