

106TH CONGRESS
1ST SESSION

S. 1661

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

SEPTEMBER 29, 1999

Mrs. HUTCHISON (for herself and Mr. LOTT) 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 vol-
21 untary environmental audits or compliance
22 management systems;

23 (4) Federal law does not encourage voluntary
24 environmental audits and compliance management
25 systems and may actually create disincentives to

1 conducting voluntary environmental audits or imple-
 2 menting compliance management systems;

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

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

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

17 **SEC. 3. VOLUNTARY AUDIT PROTECTION.**

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

21 **“CHAPTER 177—VOLUNTARY AUDIT**
 22 **PROTECTION**

“Sec.

“3601. Admissibility of environmental audit reports.

“3602. Testimony.

“3603. Disclosures.

“3604. Recognition of State efforts to encourage compliance.

“3605. Definitions.

1 **“§ 3601. Admissibility of environmental audit reports**

2 “(a) GENERAL RULE.—

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

10 “(A) subject to discovery or any other in-
11 vestigatory procedure; or

12 “(B) admissible as evidence in any judicial
13 action or administrative proceeding.

14 “(2) EXCLUDED ITEMS.—Paragraph (1) shall
15 not apply to—

16 “(A) a document, a communication, data,
17 a report, or any other item of information that
18 is required to be collected, developed, main-
19 tained, or reported to a regulatory agency
20 under a covered Federal law;

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

24 “(C) information obtained from a source
25 independent of the environmental audit.

1 “(3) INAPPLICABILITY.—Paragraph (1) shall
2 not apply to an environmental audit report if, after
3 an in camera hearing under subsection (c), a judge
4 determines that—

5 “(A) the person or government entity that
6 initiated the environmental audit expressly
7 waives, in accordance with subsection (b), the
8 protection provided by paragraph (1);

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

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

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

24 “(b) WAIVER.—

1 “(1) IN GENERAL.—The protection provided by
2 subsection (a)(1) may be waived by the person or
3 government entity for which an environmental audit
4 is prepared.

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

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

14 “(A) the person or government entity for
15 which the environmental audit is prepared or
16 the owner or operator of a facility or activity
17 evaluated in the environmental audit discloses
18 the environmental audit to any person employed
19 by (including a temporary or contract em-
20 ployee), any officer or director of, any partner
21 or joint venturer in, any legal representative of,
22 or any independent contractor retained by the
23 person, government entity, owner, or operator
24 to address an issue raised by the environmental
25 audit; or

1 “(B) the disclosure is pursuant to a con-
2 fidentiality agreement between the person or
3 government entity for which the evaluation was
4 prepared or the owner or operator of a facility
5 or activity evaluated in the environmental audit
6 and—

7 “(i) a business associate or potential
8 business associate;

9 “(ii) a lender or potential lender;

10 “(iii) an insurer or potential insurer;

11 “(iv) a transferee or potential trans-
12 feree; or

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

18 “(c) REVIEW.—

19 “(1) DISCLOSURE AND TESTIMONY.—A judge
20 may, after an in camera hearing, require disclosure
21 of or testimony concerning an audit report, finding,
22 opinion, or other communication for which protec-
23 tion under subsection (a)(1) is asserted if the judge
24 determines that the information subject to the dis-

closure or testimony is not subject to protection under subsection (a)(1).

“(2) CRIMINAL EVIDENCE.—

“(A) SEIZURE.—Based on information obtained from a source independent of an environmental audit report, a law enforcement official may seize an environmental audit report for which protection is asserted under subsection (a)(1) if—

“(i) the seizure is pursuant to a lawful search and seizure; and

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

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

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

“(B) HANDLING OF REPORT.—On taking possession of a report under subparagraph (A), a law enforcement official shall immediately place the report under seal and shall not review, disclose, or otherwise use the contents of the report in any way, unless the person or govern-

1 ment entity for which the report was
2 prepared—

3 “(i) expressly waives protection for
4 the report in accordance with subsection
5 (b); or

6 “(ii) after actual notice of the seizure,
7 does not file a timely petition under sub-
8 paragraph (C).

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

17 “(D) IN CAMERA HEARING.—

18 “(i) IN GENERAL.—On the filing of a
19 petition under subparagraph (C), the court
20 shall issue an order—

21 “(I) scheduling an in camera
22 hearing not later than 45 days after
23 the date of the filing of the petition to
24 determine whether the environmental
25 audit report (or a portion of the re-

1 port) is protected under subsection
2 (a)(1);

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

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

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

15 “(ii) PROTECTION OF INFORMA-
16 TION.—Unless a court finds the informa-
17 tion to be subject to disclosure, any infor-
18 mation used in preparation for an in cam-
19 era hearing—

20 “(I) shall not be used in any in-
21 vestigation or proceeding against the
22 person or government entity for which
23 the environmental audit report was
24 prepared or the owner or operator of

1 the facility or activity evaluated in the
2 environmental audit report; and

3 “(II) shall be kept confidential.

4 “(3) BURDEN OF PROOF.—

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

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

23 “(4) SUPPRESSION OF EVIDENCE.—

24 “(A) IN GENERAL.—A judge may suppress
25 any evidence arising or derived from the failure

1 of a government official to comply with this
2 subsection.

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

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

13 **“§ 3602. Testimony**

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

1 **“§ 3603. Disclosures**

2 “(a) IN GENERAL.—If a person or government entity
3 discloses information relating to a covered Federal law to
4 an appropriate official of a Federal or State agency re-
5 sponsible for administering the covered Federal law, the
6 disclosure shall be considered to be a voluntary disclosure
7 subject to protection under subsection (b), regardless of
8 whether the disclosure is required by law, if—

9 “(1) the disclosure arises out of a voluntary en-
10 vironmental audit or the implementation of a vol-
11 untary environmental compliance management sys-
12 tem by the person or government entity;

13 “(2) the disclosure is made promptly after the
14 person or government entity receives knowledge of
15 the information;

16 “(3) the person or government entity initiates
17 an action to address the issues identified in the
18 disclosure—

19 “(A) within a reasonable period of time
20 after receiving knowledge of the information;
21 and

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

1 “(4) the person or government entity reason-
2 ably provides any further relevant information re-
3 quested, as a result of the disclosure, by the appro-
4 priate official of the Federal or State agency respon-
5 sible for administering the covered Federal law, not
6 including information protected by this chapter, the
7 attorney-client privilege, the attorney work product
8 doctrine, or any other applicable privilege.

9 “(b) LIMITED IMMUNITY.—

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

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

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

21 “(2) PERMISSIBLE SANCTIONS AND ADMISSION
22 INTO EVIDENCE.—Paragraph (1) does not
23 preclude—

24 “(A) imposition of a civil sanction in an
25 administrative or civil action to the extent that

1 a violation was committed intentionally and
2 willfully;

3 “(B) imposition of a criminal sanction—

4 “(i) against a natural person, if—

5 “(I) the person committed, or
6 aided or abetted the commission of, a
7 disclosed violation intentionally and
8 willfully; or

9 “(II) the disclosed violation is a
10 knowing endangerment offense de-
11 scribed in section 309(c)(3) of the
12 Federal Water Pollution Control Act
13 (33 U.S.C. 1319(c)(3)), section
14 3008(e) of the Solid Waste Disposal
15 Act (42 U.S.C. 6928(e)), or section
16 113(c)(5) of the Clean Air Act (42
17 U.S.C. 7413(c)(5)); or

18 “(ii) against an entity other than a
19 natural person, if—

20 “(I) the disclosed violation was
21 committed intentionally and willfully
22 by a member of the entity’s senior
23 management;

24 “(II) the disclosed violation is a
25 knowing endangerment offense de-

1 scribed in section 309(c)(3) of the
 2 Federal Water Pollution Control Act
 3 (33 U.S.C. 1319(c)(3)), section
 4 3008(e) of the Solid Waste Disposal
 5 Act (42 U.S.C. 6928(e)), or section
 6 113(c)(5) of the Clean Air Act (42
 7 U.S.C. 7413(c)(5)); or

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

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

17 “(3) MITIGATING CIRCUMSTANCES.—A sanction
 18 under subparagraph (A) or (B) of paragraph (2)
 19 shall, to the extent appropriate, be mitigated by—

20 “(A) factors relating to the nature of the
 21 violation;

22 “(B) circumstances of the disclosure;

23 “(C) efforts of the disclosing person or
 24 government entity to prevent or resolve the vio-
 25 lation; and

1 “(D) other relevant considerations.

2 “(c) INVOLUNTARY DISCLOSURES.—A disclosure of
3 information to an official of a Federal or State agency
4 shall not be considered to be a voluntary disclosure under
5 subsection (a)(1) if the person or government entity mak-
6 ing the disclosure is found under subsection (e) to have
7 committed a pattern of significant repeated violations of
8 Federal or State law, or orders on consent, relating to en-
9 vironmental quality, on the basis of the occurrence of sep-
10 arate and distinct events giving rise to the violations, dur-
11 ing the 3-year period preceding the date of the disclosure,
12 if the violations—

13 “(1) did not result from the same underlying
14 cause;

15 “(2) involved the same legal requirement as the
16 violation being disclosed;

17 “(3) are determined to have occurred through
18 final court or agency determinations or through ad-
19 missions by the person or government entity in con-
20 sent agreements, arrived at after opportunity for an
21 adjudicative hearing and not subject to further ap-
22 peal; and

23 “(4)(A) occurred at the same facility or oc-
24 curred at 2 or more facilities under common control;
25 and

1 “(B) senior management of the disclosing per-
2 son or government entity had actual knowledge of
3 the violations and failed to take timely corrective
4 measures.

5 “(d) PRESUMPTION OF APPLICABILITY.—

6 “(1) IN GENERAL.—Subject to subsection (c),
7 there shall be a rebuttable presumption that a dis-
8 closure by a person or government entity of a viola-
9 tion of a covered Federal law to an appropriate offi-
10 cial of a Federal or State agency responsible for ad-
11 ministering the covered Federal law is a voluntary
12 disclosure described in subsection (a), if the person
13 or government entity provides information at the
14 time of the disclosure supporting a claim that the in-
15 formation is a voluntary disclosure.

16 “(2) CONCLUSIVE APPLICABILITY.—Unless the
17 appropriate official of the Federal or State agency to
18 whom a disclosure is made under paragraph (1)
19 issues a written response under paragraph (3), the
20 presumption under paragraph (1) shall be conclu-
21 sive.

22 “(3) DISPUTES.—If, not later than 60 days
23 after receiving the disclosure in writing, the appro-
24 priate official of the Federal or State agency to
25 whom a disclosure is made under paragraph (1)

1 issues a written response disputing that the disclo-
2 sure is a voluntary disclosure, the issue shall be
3 resolved—

4 “(A) by settlement between the disclosing
5 person or government entity and the appro-
6 priate official; or

7 “(B) in an enforcement action against the
8 disclosing person or government entity in ac-
9 cordance with subsection (e).

10 “(e) RESOLUTION OF IMMUNITY DISPUTES.—

11 “(1) IN GENERAL.—In an enforcement action
12 brought against a person or government entity con-
13 cerning an alleged violation for which the person or
14 government entity claims to have made a disclosure
15 to which this section applies, the judge shall deter-
16 mine the application of this section.

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

19 “(A) the person or government entity mak-
20 ing the disclosure shall have the burden of es-
21 tablishing a prima facie case that the disclosure
22 was consistent with the requirements of sub-
23 section (a)(1); and

24 “(B) if a prima facie case is established,
25 the plaintiff shall have the burden of showing,

1 by a preponderance of the evidence or, in a
 2 criminal case, by proof beyond a reasonable
 3 doubt, that this section does not apply.

4 “(f) STATUTORY CONSTRUCTION.—Except as ex-
 5 pressly provided in this section, nothing in this section af-
 6 fects the authority of a Federal or State agency respon-
 7 sible for administering a covered Federal law to carry out
 8 any requirement of the law associated with information
 9 disclosed in a voluntary disclosure described in subsection
 10 (a)(1).

11 **“§ 3604. Recognition of State efforts to encourage**
 12 **compliance**

13 “(a) STATE LAWS ENCOURAGING VOLUNTARY ENVI-
 14 RONMENTAL AUDITS.—

15 “(1) LIMITED PROTECTION FROM DISCLO-
 16 SURE.—Except as provided in paragraph (3), a
 17 State law may provide that, under appropriate con-
 18 ditions, a voluntary environmental audit report, or a
 19 finding, opinion, or other communication relating to
 20 and constituting part of a voluntary environmental
 21 audit report, shall not be—

22 “(A) subject to discovery or any other in-
 23 vestigatory procedure governed by State or local
 24 law; or

1 “(B) admissible as evidence in any State
2 or local judicial action or administrative pro-
3 ceeding.

4 “(2) LIMITED PROTECTION FOR TESTIMONY.—
5 Except as provided in paragraph (3), a State law
6 may provide that, under appropriate conditions, no
7 individual that performs a voluntary environmental
8 audit shall be required to give testimony in any
9 State or local judicial action or administrative pro-
10 ceeding concerning the voluntary environmental
11 audit.

12 “(3) REQUIRED DISCLOSURES UNAFFECTED.—
13 The protections described in paragraphs (1) and (2)
14 shall not apply to the extent that any information is
15 otherwise required to be disclosed under Federal,
16 State, or local law.

17 “(4) LIMITED PROTECTION FOR DISCLOSURE
18 OF VOLUNTARY ENVIRONMENTAL AUDIT INFORMA-
19 TION.—A State law may provide that, under appro-
20 priate conditions, a person or entity that promptly
21 discloses information concerning noncompliance with
22 a covered Federal law or other environmental law
23 discovered as a result of a voluntary environmental
24 audit or implementation of an environmental compli-
25 ance management system to an appropriate Federal,

1 State, or local official may be protected in whole or
2 in part from an enforcement action for the non-
3 compliance in a State or local judicial action or ad-
4 ministrative proceeding.

5 “(b) EXCLUSIVITY OF STATE PROTECTION.—In any
6 State or local judicial action or administrative proceeding
7 to enforce a State or local law or covered Federal law,
8 if a State law provides any of the protections referred to
9 in subsection (a), a person or entity qualifying for the pro-
10 tection shall receive the protection afforded by the applica-
11 ble State law in lieu of any protection provided by sections
12 3601 through 3603.

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

15 “(1) refuse to delegate a covered Federal law to
16 a State or local agency or refuse to approve or au-
17 thorize a State or local program under a covered
18 Federal law because the State has in effect a law re-
19 ferred to in subsection (a);

20 “(2) make a permit, license, or other authoriza-
21 tion, a contract, or a consent decree or other settle-
22 ment agreement contingent on a person waiving any
23 protection of a State law referred to in subsection
24 (a); or

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

4 **“§ 3605. Definitions**

5 “In this chapter:

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

8 “(A) means—

9 “(i) the Federal Insecticide, Fun-
10 gicide, and Rodenticide Act (7 U.S.C. 136
11 et seq.);

12 “(ii) the Toxic Substances Control Act
13 (15 U.S.C. 2601 et seq.);

14 “(iii) the Federal Water Pollution
15 Control Act (33 U.S.C. 1251 et seq.);

16 “(iv) the Oil Pollution Act of 1990
17 (33 U.S.C. 2701 et seq.);

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

20 “(vi) the Noise Control Act of 1972
21 (42 U.S.C. 4901 et seq.);

22 “(vii) the Solid Waste Disposal Act
23 (42 U.S.C. 6901 et seq.);

24 “(viii) the Clean Air Act (42 U.S.C.
25 7401 et seq.);

1 “(ix) the Comprehensive Environ-
2 mental Response, Compensation, and Li-
3 ability Act of 1980 (42 U.S.C. 9601 et
4 seq.);

5 “(x) the Emergency Planning and
6 Community Right-To-Know Act of 1986
7 (42 U.S.C. 11001 et seq.);

8 “(xi) the Pollution Prevention Act of
9 1990 (42 U.S.C. 13101 et seq.);

10 “(xii) the Endangered Species Act of
11 1973 (16 U.S.C. 1531 et seq.);

12 “(xiii) chapter 51 of title 49, United
13 States Code;

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

22 “(xv) the Surface Mining Control and
23 Reclamation Act of 1977 (30 U.S.C. 1201
24 et seq.); and

1 “(xvi) any other Federal law enacted
2 after the date of enactment of this chapter
3 that addresses subject matter similar to a
4 law listed in clauses (i) through (xv);

5 “(B) includes a regulation or other binding
6 agency action issued under a law listed in sub-
7 paragraph (A);

8 “(C) includes the terms and conditions of
9 a permit issued or other administrative action
10 taken under a law listed in subparagraph (A);
11 and

12 “(D) includes a State law that operates as
13 a federally enforceable law under a law listed in
14 subparagraph (A) as a result of the delegation,
15 approval, or authorization of a State activity or
16 program.

17 “(2) DELEGATED COVERED FEDERAL LAW.—
18 The term ‘delegated covered Federal law’ means a
19 covered Federal law with respect to which a State
20 has been delegated primary authority for enforce-
21 ment in accordance with the covered Federal law, to
22 the extent that the State has been delegated the au-
23 thority.

24 “(3) ENFORCEMENT ACTION.—

1 “(A) IN GENERAL.—The term ‘enforce-
2 ment action’ means a criminal, civil, or admin-
3 istrative action for the purpose of imposing a
4 penalty or any other punitive sanction, includ-
5 ing imposition of a restriction on providing to
6 or receiving from the United States or any
7 State or political subdivision a good, material,
8 service, grant, license, permit, or other approval
9 or benefit.

10 “(B) EXCLUSION.—The term ‘enforcement
11 action’ does not include an action solely for the
12 purpose of seeking injunctive relief to remedy a
13 continuing adverse public health or environ-
14 mental effect of a violation.

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

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

1 “(B) assignment of overall responsibility
2 for overseeing compliance with policies, stand-
3 ards, and procedures, and assignment of spe-
4 cific responsibility for ensuring compliance at
5 each facility or operation;

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

9 “(i) a monitoring or auditing system
10 that is reasonably designed to detect and
11 correct a violation;

12 “(ii) a periodic evaluation of the over-
13 all performance of the compliance manage-
14 ment system; and

15 “(iii) a means for an employee or
16 agent to report a violation of an environ-
17 mental requirement without fear of retalia-
18 tion;

19 “(D) an effort to communicate effectively
20 the standards and procedures of the person or
21 government entity to employees and agents of
22 the person or government entity;

23 “(E) an appropriate incentive to managers
24 and employees of the person or government en-
25 tity to perform in accordance with any compli-

ance policy or procedure of the person or government entity, including consistent enforcement through an appropriate disciplinary mechanism; and

“(F) a procedure for—

“(i) the prompt and appropriate correction of any violation of law; and

“(ii) making any necessary modifications to the standards or procedures of the person or government entity to prevent future violations of law.

“(5) ENVIRONMENTAL AUDIT REPORT.—

“(A) IN GENERAL.—The term ‘environmental audit report’ means a document prepared as a result of a voluntary environmental audit.

“(B) INCLUSION.—The term ‘environmental audit report’ includes—

“(i) a field note, draft, memorandum, drawing, photograph, computer software or stored information or electronically recorded information, map, chart, graph, survey, analysis (including a laboratory result, instrument reading, and field analysis), and other information pertaining to

1 an observation, finding, opinion, sugges-
 2 tion, or conclusion, if such supporting in-
 3 formation is collected or developed for the
 4 primary purpose and in the course of cre-
 5 ating an audit;

6 “(ii) a document prepared by the
 7 auditor or evaluator, which may describe
 8 the scope of the evaluation, the informa-
 9 tion learned, any conclusions or rec-
 10 ommendations, and any exhibits or appen-
 11 dices;

12 “(iii) an analysis of a portion or all of
 13 the audit or issues arising from the audit;
 14 and

15 “(iv) an implementation plan or track-
 16 ing system that addresses an action taken
 17 or to be taken by the owner or operator of
 18 the facility as a result of the audit.

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

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

24 “(8) NONDELEGATED COVERED FEDERAL
 25 LAW.—The term ‘nondelegated covered Federal law’

1 means a covered Federal law that is not a delegated
2 covered Federal law, to the extent that the covered
3 Federal law has not been delegated.

4 “(9) VOLUNTARY DISCLOSURE.—The term ‘vol-
5 untary disclosure’ means the disclosure of informa-
6 tion relating to a voluntary environmental audit or
7 voluntary implementation of an environmental com-
8 pliance management system with respect to which
9 the protections provided under section 3603 apply.

10 “(10) VOLUNTARY ENVIRONMENTAL AUDIT.—
11 The term ‘voluntary environmental audit’ means an
12 assessment, audit investigation, or review that is—

13 “(A) initiated by a person or government
14 entity;

15 “(B) carried out by an employee of the
16 person or government entity, or a consultant
17 employed by the person or government entity,
18 for the purpose of carrying out the assessment,
19 evaluation, investigation, or review; and

20 “(C) carried out for the purpose of deter-
21 mining or improving compliance with, or liabil-
22 ity under, a covered Federal law, or assessing
23 the effectiveness of an environmental compli-
24 ance management system.”.

1 (b) TECHNICAL AMENDMENT.—The part analysis for
 2 part VI of title 28, United States Code, is amended by
 3 inserting after the item relating to chapter 176 the fol-
 4 lowing:

“177. Voluntary Audit Protection 3601”.

5 **SEC. 4. ASSISTANCE FROM SMALL BUSINESS DEVELOP-**
 6 **MENT CENTERS.**

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

9 (1) in subparagraph (S), by striking “and” at
 10 the end;

11 (2) in subparagraph (T), by striking the period
 12 at the end and inserting “; and”; and

13 (3) by adding at the end the following:

14 “(U) assisting small businesses in com-
 15 plying with the requirements necessary to re-
 16 ceive protections under chapter 177 of title 28,
 17 United States Code.”.

18 **SEC. 5. APPLICABILITY.**

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

1 **SEC. 6. SUNSET PROVISION.**

2 This Act and the amendments made by this Act shall
3 be effective during the 5-year period beginning on the date
4 of enactment of this Act.

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