

CHAPTER 308

**HEALTH**

**SENATE BILL 94-139**

BY SENATORS Meiklejohn, Johnson, Norton, Ament, Casey, Mutzebaugh, Owens, Tebedo, and Wattenberg;  
also REPRESENTATIVES Foster, Acquafresca, Armstrong, Chlouber, George, Kerns, Morrison, Pankey, Reeser, Schauer, and Taylor.

**AN ACT**

**CONCERNING ENVIRONMENTAL SELF-EVALUATION, AND, IN CONNECTION THEREWITH, CREATING AN ENVIRONMENTAL SELF-EVALUATION PRIVILEGE AND CREATING A PRESUMPTION AGAINST THE IMPOSITION OF ANY ADMINISTRATIVE, CIVIL, OR CRIMINAL PENALTIES FOR VOLUNTARY DISCLOSURES ARISING OUT OF ANY ENVIRONMENTAL SELF-EVALUATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Article 25 of title 13, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**13-25-126.5. Documents arising from environmental self-evaluation - admissibility in evidence.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT PROTECTION OF THE ENVIRONMENT IS ENHANCED BY THE PUBLIC'S VOLUNTARY COMPLIANCE WITH ENVIRONMENTAL LAWS AND THAT THE PUBLIC WILL BENEFIT FROM INCENTIVES TO IDENTIFY AND REMEDY ENVIRONMENTAL COMPLIANCE ISSUES. IT IS FURTHER DECLARED THAT LIMITED EXPANSION OF THE PROTECTION AGAINST DISCLOSURE WILL ENCOURAGE SUCH VOLUNTARY COMPLIANCE AND IMPROVE ENVIRONMENTAL QUALITY AND THAT THE VOLUNTARY PROVISIONS OF THIS ACT WILL NOT INHIBIT THE EXERCISE OF THE REGULATORY AUTHORITY BY THOSE ENTRUSTED WITH PROTECTING OUR ENVIRONMENT.

(2) FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADMINISTRATIVE LAW JUDGE" MEANS ANY PERSON APPOINTED TO BE AN ADMINISTRATIVE LAW JUDGE PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24, C.R.S.

---

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(b) "ENVIRONMENTAL AUDIT REPORT" MEANS ANY DOCUMENT, INCLUDING ANY REPORT, FINDING, COMMUNICATION, OR OPINION OR ANY DRAFT OF A REPORT, FINDING, COMMUNICATION, OR OPINION, RELATED TO AND PREPARED AS A RESULT OF A VOLUNTARY SELF-EVALUATION THAT IS DONE IN GOOD FAITH.

(c) "ENVIRONMENTAL LAW" MEANS ANY REQUIREMENT CONTAINED IN ARTICLES 7, 8, 11, 15, AND 18 OF TITLE 25, C.R.S., OR ARTICLE 20 OF TITLE 30, C.R.S., IN REGULATIONS PROMULGATED UNDER SUCH PROVISIONS, OR IN ANY ORDERS, PERMITS, LICENSES, OR CLOSURE PLANS UNDER SUCH PROVISIONS.

(d) "IN CAMERA REVIEW" MEANS A HEARING OR REVIEW IN A COURTROOM, HEARING ROOM, OR CHAMBERS TO WHICH THE GENERAL PUBLIC IS NOT ADMITTED. AFTER SUCH HEARING OR REVIEW, THE CONTENT OF THE ORAL AND OTHER EVIDENCE AND STATEMENTS OF THE JUDGE AND COUNSEL SHALL BE HELD IN CONFIDENCE BY THOSE PARTICIPATING IN OR PRESENT AT THE HEARING OR REVIEW, AND ANY TRANSCRIPT OF THE HEARING OR REVIEW SHALL BE SEALED AND NOT CONSIDERED A PUBLIC RECORD, UNTIL AND UNLESS ITS CONTENTS ARE DISCLOSED BY A COURT OR ADMINISTRATIVE LAW JUDGE HAVING JURISDICTION OVER THE MATTER.

(e) "VOLUNTARY SELF-EVALUATION" MEANS A SELF-INITIATED ASSESSMENT, AUDIT, OR REVIEW, NOT OTHERWISE EXPRESSLY REQUIRED BY ENVIRONMENTAL LAW, THAT IS PERFORMED BY ANY PERSON OR ENTITY, FOR ITSELF, EITHER BY AN EMPLOYEE OR EMPLOYEES EMPLOYED BY SUCH PERSON OR ENTITY WHO ARE ASSIGNED THE RESPONSIBILITY OF PERFORMING SUCH ASSESSMENT, AUDIT, OR REVIEW OR BY A CONSULTANT ENGAGED BY SUCH PERSON OR ENTITY EXPRESSLY AND SPECIFICALLY FOR THE PURPOSE OF PERFORMING SUCH ASSESSMENT, AUDIT, OR REVIEW TO DETERMINE WHETHER SUCH PERSON OR ENTITY IS IN COMPLIANCE WITH ENVIRONMENTAL LAWS. ONCE INITIATED, SUCH VOLUNTARY SELF-EVALUATION SHALL BE COMPLETED WITHIN A REASONABLE PERIOD OF TIME. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE UNINTERRUPTED VOLUNTARY SELF-EVALUATIONS.

(3) AN ENVIRONMENTAL AUDIT REPORT IS PRIVILEGED AND IS NOT ADMISSIBLE IN ANY LEGAL ACTION OR ADMINISTRATIVE PROCEEDING AND IS NOT SUBJECT TO ANY DISCOVERY PURSUANT TO THE RULES OF CIVIL PROCEDURE, CRIMINAL PROCEDURE, OR ADMINISTRATIVE PROCEDURE, UNLESS:

(a) THE ENTITY OR PERSON FOR WHOM THE ENVIRONMENTAL AUDIT REPORT WAS PREPARED, WHETHER THE ENVIRONMENTAL AUDIT REPORT WAS PREPARED BY THE ENTITY OR BY A CONSULTANT HIRED BY THE ENTITY, WAIVES THE PRIVILEGE UNDER THIS SECTION;

(b) (I) A COURT OF RECORD, OR, PURSUANT TO SECTION 24-4-105, C.R.S., AN ADMINISTRATIVE LAW JUDGE, AFTER AN IN CAMERA REVIEW, DETERMINES THAT:

(A) THE ENVIRONMENTAL AUDIT REPORT SHOWS EVIDENCE THAT THE PERSON OR ENTITY FOR WHICH THE ENVIRONMENTAL AUDIT REPORT WAS PREPARED IS NOT OR WAS NOT IN COMPLIANCE WITH AN ENVIRONMENTAL LAW; AND

(B) THE PERSON OR ENTITY DID NOT INITIATE APPROPRIATE EFFORTS TO ACHIEVE COMPLIANCE WITH THE ENVIRONMENTAL LAW OR COMPLETE ANY NECESSARY PERMIT

APPLICATION PROMPTLY AFTER THE NONCOMPLIANCE WITH THE ENVIRONMENTAL LAW WAS DISCOVERED AND, AS A RESULT, THE PERSON OR ENTITY DID NOT OR WILL NOT ACHIEVE COMPLIANCE WITH THE ENVIRONMENTAL LAW OR COMPLETE THE NECESSARY PERMIT APPLICATION WITHIN A REASONABLE AMOUNT OF TIME.

(II) FOR THE PURPOSES OF THIS PARAGRAPH (b) ONLY, IF THE EVIDENCE SHOWS NONCOMPLIANCE BY A PERSON OR ENTITY WITH MORE THAN ONE ENVIRONMENTAL LAW, THE PERSON OR ENTITY MAY DEMONSTRATE THAT APPROPRIATE EFFORTS TO ACHIEVE COMPLIANCE WERE OR ARE BEING TAKEN BY INSTITUTING A COMPREHENSIVE PROGRAM THAT ESTABLISHES A PHASED SCHEDULE OF ACTIONS TO BE TAKEN TO BRING THE PERSON OR ENTITY INTO COMPLIANCE WITH ALL OF SUCH ENVIRONMENTAL LAWS.

(c) A COURT OF RECORD, OR, PURSUANT TO SECTION 24-4-105, C.R.S., AN ADMINISTRATIVE LAW JUDGE, AFTER AN IN CAMERA REVIEW, DETERMINES THAT COMPELLING CIRCUMSTANCES EXIST THAT MAKE IT NECESSARY TO ADMIT THE ENVIRONMENTAL AUDIT REPORT INTO EVIDENCE OR THAT MAKE IT NECESSARY TO SUBJECT THE ENVIRONMENTAL AUDIT REPORT TO DISCOVERY PROCEDURES;

(d) A COURT OF RECORD, OR, PURSUANT TO SECTION 24-4-105, C.R.S., AN ADMINISTRATIVE LAW JUDGE, AFTER AN IN CAMERA REVIEW, DETERMINES THAT THE PRIVILEGE IS BEING ASSERTED FOR A FRAUDULENT PURPOSE OR THAT THE ENVIRONMENTAL AUDIT REPORT WAS PREPARED TO AVOID DISCLOSURE OF INFORMATION IN AN INVESTIGATIVE, ADMINISTRATIVE, OR JUDICIAL PROCEEDING THAT WAS UNDERWAY, THAT WAS IMMINENT, OR FOR WHICH THE ENTITY OR PERSON HAD BEEN PROVIDED WRITTEN NOTIFICATION THAT AN INVESTIGATION INTO A SPECIFIC VIOLATION HAD BEEN INITIATED; OR

(e) A COURT OF RECORD, OR, PURSUANT TO SECTION 24-4-105, C.R.S., AN ADMINISTRATIVE LAW JUDGE, AFTER AN IN CAMERA REVIEW, DETERMINES THAT THE INFORMATION CONTAINED IN THE ENVIRONMENTAL AUDIT REPORT DEMONSTRATES A CLEAR, PRESENT, AND IMPENDING DANGER TO THE PUBLIC HEALTH OR THE ENVIRONMENT IN AREAS OUTSIDE OF THE FACILITY PROPERTY.

(4) THE SELF-EVALUATION PRIVILEGE CREATED BY THIS SECTION DOES NOT APPLY TO:

(a) DOCUMENTS OR INFORMATION REQUIRED TO BE DEVELOPED, MAINTAINED, OR REPORTED PURSUANT TO ANY ENVIRONMENTAL LAW OR ANY OTHER LAW OR REGULATION;

(b) DOCUMENTS OR OTHER INFORMATION REQUIRED TO BE AVAILABLE OR FURNISHED TO A REGULATORY AGENCY PURSUANT TO ANY ENVIRONMENTAL LAW OR ANY OTHER LAW OR REGULATION;

(c) INFORMATION OBTAINED BY A REGULATORY AGENCY THROUGH OBSERVATION, SAMPLING, OR MONITORING;

(d) INFORMATION OBTAINED THROUGH ANY SOURCE INDEPENDENT OF THE ENVIRONMENTAL AUDIT REPORT OR ANY PERSON COVERED UNDER SECTION 13-90-107

(1) (j) (I) (A), C.R.S.;

(e) DOCUMENTS EXISTING PRIOR TO THE COMMENCEMENT OF AND INDEPENDENT OF THE VOLUNTARY SELF-EVALUATION;

(f) DOCUMENTS PREPARED SUBSEQUENT TO THE COMPLETION OF AND INDEPENDENT OF THE VOLUNTARY SELF-EVALUATION; OR

(g) ANY INFORMATION, NOT OTHERWISE PRIVILEGED, INCLUDING THE PRIVILEGE CREATED BY THIS SECTION, THAT IS DEVELOPED OR MAINTAINED IN THE COURSE OF REGULARLY CONDUCTED BUSINESS ACTIVITY OR REGULAR PRACTICE.

(5) (a) UPON A SHOWING BY ANY PARTY, BASED UPON INDEPENDENT KNOWLEDGE, THAT PROBABLE CAUSE EXISTS TO BELIEVE THAT AN EXCEPTION TO THE SELF-EVALUATION PRIVILEGE UNDER SUBSECTION (3) OF THIS SECTION IS APPLICABLE TO AN ENVIRONMENTAL AUDIT REPORT OR THAT THE PRIVILEGE DOES NOT APPLY TO THE ENVIRONMENTAL AUDIT REPORT PURSUANT TO THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION, THEN A COURT OF RECORD OR, PURSUANT TO SECTION 24-4-105, C.R.S., ANY ADMINISTRATIVE LAW JUDGE, MAY ALLOW SUCH PARTY LIMITED ACCESS TO THE ENVIRONMENTAL AUDIT REPORT FOR THE PURPOSES OF AN IN CAMERA REVIEW ONLY. THE COURT OF RECORD OR THE ADMINISTRATIVE LAW JUDGE MAY GRANT SUCH LIMITED ACCESS TO ALL OR PART OF THE ENVIRONMENTAL AUDIT REPORT UNDER THE PROVISIONS OF THIS SUBSECTION (5) UPON SUCH CONDITIONS AS MAY BE NECESSARY TO PROTECT THE CONFIDENTIALITY OF THE ENVIRONMENTAL AUDIT REPORT. A MOVING PARTY WHO OBTAINS ACCESS TO AN ENVIRONMENTAL AUDIT REPORT PURSUANT TO THE PROVISIONS OF THIS SUBSECTION (5) MAY NOT DIVULGE ANY INFORMATION FROM THE REPORT EXCEPT AS SPECIFICALLY ALLOWED BY THE COURT OR ADMINISTRATIVE LAW JUDGE.

(b) (I) IF ANY PARTY DIVULGES ALL OR ANY PART OF THE INFORMATION CONTAINED IN AN ENVIRONMENTAL AUDIT REPORT IN VIOLATION OF THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (5) OR IF ANY OTHER PERSON OR ENTITY KNOWINGLY DIVULGES OR DISSEMINATES ALL OR ANY PART OF THE INFORMATION CONTAINED IN AN ENVIRONMENTAL AUDIT REPORT THAT WAS PROVIDED TO SUCH PERSON OR ENTITY IN VIOLATION OF THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (5), SUCH PARTY OR OTHER PERSON OR ENTITY IS LIABLE FOR ANY DAMAGES CAUSED BY THE DIVULGENCE OR DISSEMINATION OF THE INFORMATION THAT ARE INCURRED BY THE PERSON OR ENTITY FOR WHICH THE ENVIRONMENTAL AUDIT REPORT WAS PREPARED.

(II) IF ANY PUBLIC ENTITY, PUBLIC EMPLOYEE, OR PUBLIC OFFICIAL DIVULGES ALL OR ANY PART OF THE INFORMATION CONTAINED IN AN ENVIRONMENTAL AUDIT REPORT IN VIOLATION OF THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (5) OR KNOWINGLY DIVULGES OR DISSEMINATES ALL OR ANY PART OF THE INFORMATION CONTAINED IN AN ENVIRONMENTAL AUDIT REPORT THAT WAS PROVIDED TO SUCH PUBLIC ENTITY, PUBLIC EMPLOYEE, OR PUBLIC OFFICIAL IN VIOLATION OF THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (5), SUCH PUBLIC ENTITY, PUBLIC EMPLOYEE, OR PUBLIC OFFICIAL SHALL BE GUILTY OF A CLASS 1 MISDEMEANOR, MAY BE FOUND IN CONTEMPT OF COURT BY A COURT OF RECORD, AND MAY BE ASSESSED A PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS BY A COURT OF RECORD OR AN ADMINISTRATIVE LAW JUDGE.

(6) NOTHING IN THIS SECTION LIMITS, WAIVES, OR ABROGATES THE SCOPE OR

## NATURE OF ANY STATUTORY OR COMMON-LAW PRIVILEGE.

(7) A PERSON OR ENTITY ASSERTING A VOLUNTARY SELF-EVALUATION PRIVILEGE HAS THE BURDEN OF PROVING A PRIMA FACIE CASE AS TO THE PRIVILEGE. A PARTY SEEKING DISCLOSURE OF AN ENVIRONMENTAL AUDIT REPORT HAS THE BURDEN OF PROVING THAT SUCH PRIVILEGE DOES NOT EXIST UNDER THIS SECTION.

(8) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, THE EXISTENCE OF AN ENVIRONMENTAL AUDIT REPORT SHALL BE SUBJECT TO DISCOVERY PROCEEDINGS PURSUANT TO THE RULES OF CIVIL PROCEDURE, CRIMINAL PROCEDURE, OR ADMINISTRATIVE PROCEDURE; EXCEPT THAT THE CONTENTS OF SUCH A REPORT OR ANY OTHER PRIVILEGED INFORMATION CONTAINED THEREIN SHALL REMAIN CONFIDENTIAL.

(9) THIS SECTION APPLIES ONLY TO ALL VOLUNTARY SELF-EVALUATIONS THAT ARE PERFORMED DURING THE PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS ACT AND ENDING JUNE 30, 1999.

**SECTION 2.** 13-90-107 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**13-90-107. Who may not testify without consent.** (1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(j) (I) (A) IF ANY PERSON OR ENTITY PERFORMS A VOLUNTARY SELF-EVALUATION, THE PERSON, ANY OFFICER OR EMPLOYEE OF THE ENTITY OR PERSON INVOLVED WITH THE VOLUNTARY SELF-EVALUATION, IF A SPECIFIC RESPONSIBILITY OF SUCH EMPLOYEE WAS THE PERFORMANCE OF OR PARTICIPATION IN THE VOLUNTARY SELF-EVALUATION OR THE PREPARATION OF THE ENVIRONMENTAL AUDIT REPORT, OR ANY CONSULTANT WHO IS HIRED FOR THE PURPOSE OF PERFORMING THE VOLUNTARY SELF-EVALUATION FOR THE PERSON OR ENTITY MAY NOT BE EXAMINED AS TO THE VOLUNTARY SELF-EVALUATION OR ENVIRONMENTAL AUDIT REPORT WITHOUT THE CONSENT OF THE PERSON OR ENTITY, OR UNLESS ORDERED TO DO SO BY ANY COURT OF RECORD, OR, PURSUANT TO SECTION 24-4-105, C.R.S., BY AN ADMINISTRATIVE LAW JUDGE. FOR THE PURPOSES OF THIS PARAGRAPH (j), "VOLUNTARY SELF-EVALUATION" AND "ENVIRONMENTAL AUDIT REPORT" HAVE THE MEANINGS PROVIDED FOR THE TERMS IN SECTION 13-25-126.5 (2).

(B) THIS PARAGRAPH (j) DOES NOT APPLY IF THE VOLUNTARY SELF-EVALUATION IS SUBJECT TO AN EXCEPTION ALLOWING ADMISSION INTO EVIDENCE OR DISCOVERY PURSUANT TO THE PROVISIONS OF SECTION 13-25-126.5 (3) OR (4).

(II) THIS PARAGRAPH (j) APPLIES ONLY TO VOLUNTARY SELF-EVALUATIONS THAT ARE PERFORMED DURING THE PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS ACT AND ENDING JUNE 30, 1999.

**SECTION 3.** Part 1 of article 1 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**25-1-114.5. Voluntary disclosure arising from self-evaluation - presumption against imposition of administrative, civil, or criminal penalties.** (1) FOR THE PURPOSES OF THIS SECTION, A DISCLOSURE OF INFORMATION BY A PERSON OR ENTITY TO ANY DIVISION OR AGENCY WITHIN THE DEPARTMENT OF HEALTH REGARDING ANY INFORMATION RELATED TO AN ENVIRONMENTAL LAW IS VOLUNTARY IF ALL OF THE FOLLOWING ARE TRUE:

(a) THE DISCLOSURE IS MADE PROMPTLY AFTER KNOWLEDGE OF THE INFORMATION DISCLOSED IS OBTAINED BY THE PERSON OR ENTITY;

(b) THE DISCLOSURE ARISES OUT OF A VOLUNTARY SELF-EVALUATION;

(c) THE PERSON OR ENTITY MAKING THE DISCLOSURE INITIATES THE APPROPRIATE EFFORT TO ACHIEVE COMPLIANCE, PURSUES COMPLIANCE WITH DUE DILIGENCE, AND CORRECTS THE NONCOMPLIANCE WITHIN TWO YEARS AFTER THE COMPLETION OF THE VOLUNTARY SELF-EVALUATION. WHERE SUCH EVIDENCE SHOWS THE NONCOMPLIANCE IS THE FAILURE TO OBTAIN A PERMIT, APPROPRIATE EFFORTS TO CORRECT THE NONCOMPLIANCE MAY BE DEMONSTRATED BY THE SUBMITTAL OF A COMPLETE PERMIT APPLICATION WITHIN A REASONABLE TIME.

(d) THE PERSON OR ENTITY MAKING THE DISCLOSURE COOPERATES WITH THE APPROPRIATE DIVISION OR AGENCY IN THE DEPARTMENT OF HEALTH REGARDING INVESTIGATION OF THE ISSUES IDENTIFIED IN THE DISCLOSURE.

(2) FOR THE PURPOSES OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION, UPON APPLICATION TO AND AT THE DISCRETION OF THE DEPARTMENT OF HEALTH, THE TIME PERIOD WITHIN WHICH THE NONCOMPLIANCE IS REQUIRED TO BE CORRECTED MAY BE EXTENDED IF IT IS NOT PRACTICABLE TO CORRECT THE NONCOMPLIANCE WITHIN THE TWO-YEAR PERIOD. A REQUEST FOR A DE NOVO REVIEW OF THE DECISION OF THE DEPARTMENT OF HEALTH MAY BE MADE TO THE APPROPRIATE DISTRICT COURT OR ADMINISTRATIVE LAW JUDGE.

(3) IF A PERSON OR ENTITY IS REQUIRED TO MAKE A DISCLOSURE TO A DIVISION OR AGENCY WITHIN THE DEPARTMENT OF HEALTH UNDER A SPECIFIC PERMIT CONDITION OR UNDER AN ORDER ISSUED BY THE DIVISION OR AGENCY, THEN THE DISCLOSURE IS NOT VOLUNTARY WITH RESPECT TO THAT DIVISION OR AGENCY.

(4) IF ANY PERSON OR ENTITY MAKES A VOLUNTARY DISCLOSURE OF AN ENVIRONMENTAL VIOLATION TO A DIVISION OR AGENCY WITHIN THE DEPARTMENT OF HEALTH, THEN THERE IS A REBUTTABLE PRESUMPTION THAT THE DISCLOSURE IS VOLUNTARY AND THEREFORE THE PERSON OR ENTITY IS IMMUNE FROM ANY ADMINISTRATIVE AND CIVIL PENALTIES ASSOCIATED WITH THE ISSUES DISCLOSED AND IS IMMUNE FROM ANY CRIMINAL PENALTIES FOR NEGLIGENT ACTS ASSOCIATED WITH THE ISSUES DISCLOSED. THE PERSON OR ENTITY SHALL PROVIDE INFORMATION SUPPORTING ITS CLAIM THAT THE DISCLOSURE IS VOLUNTARY AT THE TIME THAT THE DISCLOSURE IS MADE TO THE DIVISION OR AGENCY.

(5) TO REBUT THE PRESUMPTION THAT A DISCLOSURE IS VOLUNTARY, THE APPROPRIATE DIVISION OR AGENCY SHALL SHOW TO THE SATISFACTION OF THE RESPECTIVE COMMISSION IN THE DEPARTMENT OF HEALTH OR THE STATE BOARD OF HEALTH, IF NO RESPECTIVE COMMISSION EXISTS, THAT THE DISCLOSURE WAS NOT

VOLUNTARY BASED UPON THE FACTORS SET FORTH IN SUBSECTIONS (1), (2), AND (3) OF THIS SECTION. A DECISION BY THE COMMISSION OR THE STATE BOARD OF HEALTH, WHICHEVER IS APPROPRIATE, REGARDING THE VOLUNTARY NATURE OF A DISCLOSURE IS FINAL AGENCY ACTION. THE DIVISION OR AGENCY MAY NOT INCLUDE ANY ADMINISTRATIVE OR CIVIL PENALTY OR FINE OR ANY CRIMINAL PENALTY OR FINE FOR NEGLIGENT ACTS IN A NOTICE OF VIOLATION OR IN A CEASE AND DESIST ORDER ON ANY UNDERLYING ENVIRONMENTAL VIOLATION THAT IS ALLEGED ABSENT A FINDING BY THE RESPECTIVE COMMISSION OR THE STATE BOARD OF HEALTH THAT THE DIVISION OR AGENCY HAS REBUTTED THE PRESUMPTION OF VOLUNTARINESS OF THE DISCLOSURE. THE BURDEN TO REBUT THE PRESUMPTION OF VOLUNTARINESS IS ON THE DIVISION OR AGENCY.

(6) THE ELIMINATION OF ADMINISTRATIVE, CIVIL, OR CRIMINAL PENALTIES UNDER THIS SECTION DOES NOT APPLY IF A PERSON OR ENTITY HAS BEEN FOUND BY A COURT OR ADMINISTRATIVE LAW JUDGE TO HAVE COMMITTED SERIOUS VIOLATIONS THAT CONSTITUTE A PATTERN OF CONTINUOUS OR REPEATED VIOLATIONS OF ENVIRONMENTAL LAWS, RULES, REGULATIONS, PERMIT CONDITIONS, SETTLEMENT AGREEMENTS, OR ORDERS ON CONSENT AND THAT WERE DUE TO SEPARATE AND DISTINCT EVENTS GIVING RISE TO THE VIOLATIONS, WITHIN THE THREE-YEAR PERIOD PRIOR TO THE DATE OF THE DISCLOSURE. SUCH A PATTERN OF CONTINUOUS OR REPEATED VIOLATIONS MAY ALSO BE DEMONSTRATED BY MULTIPLE SETTLEMENT AGREEMENTS RELATED TO SUBSTANTIALLY THE SAME ALLEGED VIOLATIONS CONCERNING SERIOUS INSTANCES OF NONCOMPLIANCE WITH ENVIRONMENTAL LAWS THAT OCCURRED WITHIN THE THREE-YEAR PERIOD IMMEDIATELY PRIOR TO THE DATE OF THE VOLUNTARY DISCLOSURE.

(7) EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION, THIS SECTION DOES NOT AFFECT ANY AUTHORITY THE DEPARTMENT OF HEALTH HAS TO REQUIRE ANY ACTION ASSOCIATED WITH THE INFORMATION DISCLOSED IN ANY VOLUNTARY DISCLOSURE OF AN ENVIRONMENTAL VIOLATION.

(8) UNLESS THE CONTEXT OTHERWISE REQUIRES, THE DEFINITIONS CONTAINED IN SECTION 13-25-126.5 (2), C.R.S., APPLY TO THIS SECTION.

(9) THIS SECTION APPLIES ONLY TO VOLUNTARY DISCLOSURES THAT ARE MADE AND VOLUNTARY SELF-EVALUATIONS THAT ARE PERFORMED DURING THE PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS ACT AND ENDING JUNE 30, 1999.

**SECTION 4. Effective date - applicability.** This act shall take effect upon passage and shall apply to all legal actions and administrative proceedings commenced on or after said date.

**SECTION 5. No appropriation.** The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 1994