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H. R. 1047

To provide under Federal law a limited privilege from disclosure of certain information acquired pursuant to a voluntary environmental self-evaluation and, if such information is voluntarily disclosed, for limited immunity from penalties.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1995

Mr. HEFLEY (for himself, Mr. HYDE, Mr. SCHAEFER, Mr. CRAPO, Mr. ALLARD, Mr. DELAY, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on the Judiciary and, in addition, to the Committees on Commerce, Transportation and Infrastructure, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide under Federal law a limited privilege from disclosure of certain information acquired pursuant to a voluntary environmental self-evaluation and, if such information is voluntarily disclosed, for limited immunity from penalties.

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 “Voluntary Environ-
5 mental Self-Evaluation Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) enhanced and efficient protection of public
4 health and welfare under Federal environmental
5 laws depends principally on voluntary compliance by
6 the general public, rather than enforcement;

7 (2) both a limited privilege from disclosure and
8 a limited expansion of the protection of members of
9 the general public who voluntarily disclose informa-
10 tion as a result of a voluntary environmental self-
11 evaluation is necessary to encourage voluntary com-
12 pliance with Federal environmental laws and to pro-
13 tect public health and welfare; and

14 (3) the protection referred to in paragraph (2)
15 will not inhibit the carrying out of regulatory au-
16 thority that is mandatory under Federal environ-
17 mental laws by officials who are entrusted with the
18 duty of protecting the environment of the United
19 States.

20 **SEC. 3. DEFINITIONS.**

21 As used in this Act:

22 (1) ADMINISTRATOR.—The term “Adminis-
23 trator” means the Administrator of the Environ-
24 mental Protection Agency.

25 (2) ENTITY.—The term “entity” means a unit
26 of State or local government.

1 (3) FEDERAL AGENCY.—The term “Federal
2 agency” has the meaning provided the term “agen-
3 cy” under section 551 of title 5, United States Code.

4 (4) FEDERAL ENVIRONMENTAL LAW.—The
5 term “Federal environmental law”—

6 (A) means—

7 (i) the Federal Insecticide, Fungicide,
8 and Rodenticide Act (7 U.S.C. 136 et
9 seq.);

10 (ii) the Toxic Substances Control Act
11 (15 U.S.C. 2601 et seq.);

12 (iii) the Federal Water Pollution Con-
13 trol Act (33 U.S.C. 1251 et seq.);

14 (iv) title XIV of the Public Health
15 Service Act (commonly known as the “Safe
16 Drinking Water Act”) (42 U.S.C. 300f et
17 seq.);

18 (v) the Solid Waste Disposal Act (42
19 U.S.C. 6901 et seq.);

20 (vi) the Clean Air Act (42 U.S.C.
21 7401 et seq.);

22 (vii) the Comprehensive Environ-
23 mental Response, Compensation, and Li-
24 ability Act of 1980 (42 U.S.C. 9601 et
25 seq.);

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

4 (ix) the Oil Pollution Act of 1990 (33
5 U.S.C. 2701 et seq.);

6 (x) the Noise Control Act of 1982 (42
7 U.S.C. 4901 et seq.); and

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

10 (B) includes any regulation issued under a
11 law listed in subparagraph (A); and

12 (C) includes the terms and conditions of
13 any permit issued under a law listed in sub-
14 paragraph (A).

15 (5) VOLUNTARY DISCLOSURE.—The term “vol-
16 untary disclosure” means the disclosure of informa-
17 tion related to a voluntary environmental self-evalua-
18 tion with respect to which the protections provided
19 under this Act apply.

20 (6) VOLUNTARY ENVIRONMENTAL SELF-EVAL-
21 UATION.—The term “voluntary environmental self-
22 evaluation” means an assessment, audit, investiga-
23 tion or review that is—

24 (A) initiated by a person or entity;

1 (B) carried out by the person or entity, or
2 a consultant employed by the person or entity,
3 for the express purpose of carrying out the as-
4 sessment, audit, or review; and

5 (C) carried out to determine whether the
6 person or entity is in compliance with Federal
7 environmental laws (including any permit is-
8 sued under a Federal environmental law).

9 **SEC. 4. ADMISSIBILITY OF REPORTS, FINDINGS, OPINIONS,**
10 **OR OTHER COMMUNICATIONS.**

11 (a) IN GENERAL.—Subject to subsection (b) and not-
12 withstanding any other provision of law, a report, finding,
13 opinion, or other communication of a person or entity re-
14 lated to, and essentially constituting a part of, a voluntary
15 environmental self-evaluation that is made in good faith
16 shall not be admissible evidence in any legal action or ad-
17 ministrative procedure under Federal law and shall not be
18 subject to any discovery procedure under Federal law,
19 unless—

20 (1) the person or entity that initiated the self-
21 evaluation expressly waives the right of the person
22 or entity to exclude from the evidence or procedure
23 material subject to this section; or

24 (2) after an in camera hearing, the appropriate
25 Federal court determines that—

1 (A)(i) the report, finding, opinion, or other
2 communication indicates noncompliance with a
3 Federal environmental law; and

4 (ii) the person or entity failed to initiate
5 efforts to achieve compliance with the law with-
6 in a period of time that is reasonable and that
7 is adequate to achieve compliance (including
8 submitting an appropriate permit application);

9 (B) compelling circumstances—

10 (i) make it necessary to admit the en-
11 vironmental audit report, finding, opinion,
12 or other communication into evidence; or

13 (ii) necessitate that the environmental
14 audit report, finding, opinion, or other
15 communication be subject to discovery pro-
16 cedures;

17 (C) the person or entity is asserting the
18 applicability of the exclusion under this sub-
19 section for a fraudulent purpose; or

20 (D) the environmental audit report, find-
21 ing, opinion, or other communication was pre-
22 pared for the purpose of avoiding disclosure of
23 information required for an investigative, ad-
24 ministrative, or judicial proceeding that, at the

1 time of preparation, was imminent or in
2 progress.

3 (b) EXCLUSIONS.—Subsection (a) shall not apply
4 to—

5 (1) a document or other information required to
6 be developed, maintained, or reported pursuant to a
7 Federal environmental law;

8 (2) a document or other information required to
9 be available to a Federal agency or a State agency
10 designated to carry out a regulatory activity pursu-
11 ant to a Federal environmental law;

12 (3) information obtained by a Federal agency
13 or State agency referred to in paragraph (2) through
14 observation, sampling, or monitoring; or

15 (4) information obtained by a Federal agency
16 or State agency referred to in paragraph (2) through
17 an independent source.

18 **SEC. 5. TESTIMONY.**

19 Notwithstanding any other provision of law, a person
20 or entity, including any officer or employee of the person
21 or entity, that performs a voluntary environmental self-
22 evaluation may not be required to give testimony in a Fed-
23 eral court or an administrative proceeding of a Federal
24 agency without the consent of the person or entity con-
25 cerning the voluntary environmental self-evaluation, in-

1 cluding an environmental audit report, finding, opinion,
2 or other communication with respect to which section 3(a)
3 applies.

4 **SEC. 6. DISCLOSURES.**

5 (a) IN GENERAL.—The disclosure of information re-
6 lating to a Federal environmental law to the appropriate
7 official of a Federal or State agency responsible for admin-
8 istering a Federal environmental law shall be considered
9 to be a voluntary disclosure if—

10 (1) the disclosure of information arises out of
11 a voluntary environmental self-evaluation;

12 (2) the person or entity that initiates the self-
13 evaluation—

14 (A) ensures that the disclosure is made
15 promptly after receiving knowledge of the infor-
16 mation referred to in paragraph (1); and

17 (B) initiates an action to address the is-
18 sues identified in the disclosure—

19 (i) within a reasonable period of time
20 after receiving knowledge of the informa-
21 tion; and

22 (ii) within a period of time that is
23 adequate to achieve compliance with the
24 requirements of the Federal environmental
25 law that is the subject of the action (in-

1 cluding submitting an application for an
2 applicable permit); and

3 (3) the person or entity that makes the disclo-
4 sure provides any further relevant information re-
5 quested, as a result of the disclosure, by the appro-
6 priate official of the Federal or State agency respon-
7 sible for administering the Federal environmental
8 law.

9 (b) INVOLUNTARY DISCLOSURES.—For the purposes
10 of this Act, a disclosure of information to an appropriate
11 official of a Federal or State agency responsible for admin-
12 istering a Federal environmental law shall not be consid-
13 ered to be a voluntary disclosure if the person or govern-
14 ment entity making the disclosure has been found by a
15 Federal or State court to have committed a pattern of sig-
16 nificant violations of Federal or State laws, or orders on
17 consent, related to environmental quality, due to separate
18 and distinct events giving rise to the violations, during the
19 3-year period prior to the date of disclosure.

20 (c) PRESUMPTION OF APPLICABILITY.—If a person
21 or entity makes a disclosure other than a disclosure re-
22 ferred to in subsection (b) of a violation of a Federal envi-
23 ronmental law to an appropriate official of a Federal or
24 State agency responsible for administering the Federal en-
25 vironmental law—

1 (1) there shall be a presumption that the disclo-
2 sure is a voluntary disclosure, if the person or entity
3 provides information supporting a claim that the in-
4 formation is a voluntary disclosure at the time the
5 person or entity makes the disclosure; and

6 (2) until such time as the presumption is rebut-
7 ted, the person or entity shall be immune from any
8 administrative, civil, or criminal penalty for the vio-
9 lation.

10 (d) REBUTTAL OF PRESUMPTION.—

11 (1) IN GENERAL.—The head of a Federal or
12 State agency described in subsection (c) shall have
13 the burden of rebutting a presumption established
14 under such subsection. If the head of the Federal or
15 State agency fails to rebut the presumption pursu-
16 ant to this subsection—

17 (A) the head of the Federal or State agen-
18 cy may not assess an administrative penalty
19 against a person or entity described in sub-
20 section (c) with respect to the violation by the
21 person or entity and may not issue a cease and
22 desist order for the violation; and

23 (B) no Federal or State court may assess
24 a civil penalty or criminal negligence penalty
25 against the person or entity for the violation.

1 (2) REBUTTAL.—In order to rebut a presump-
2 tion referred to in subsection (c), the appropriate of-
3 ficial of a Federal or State agency responsible for
4 administering the Federal environmental law that is
5 the subject of a violation referred to in such sub-
6 section shall be required to demonstrate, on the
7 basis of the factors described in subsection (a), and
8 to the satisfaction of the head of the Federal or
9 State agency, that the disclosure is not a voluntary
10 disclosure. If the disclosure is made directly to the
11 head of the Federal or State agency, the head of the
12 Federal or State agency shall apply the factors de-
13 scribed in subsection (a) in rebutting the presump-
14 tion. A decision made by the head of the Federal
15 agency under this paragraph shall constitute a final
16 agency action.

17 (e) STATUTORY CONSTRUCTION.—Except as ex-
18 pressly provided in this section, nothing in this section is
19 intended to affect the authority of a Federal or State
20 agency responsible for administering a Federal environ-
21 mental law to carry out any requirement of the law associ-
22 ated with information disclosed in a voluntary disclosure.

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