

**Hall of the House of Representatives**  
86th General Assembly - Regular Session, 2007  
**Amendment Form**

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**Subtitle of House Bill No. 2698**

"THE ENVIRONMENTAL SELF-DISCLOSURE INCENTIVE ACT."

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**Amendment No. 1 to House Bill No. 2698.**

Amend House Bill No. 2698 as originally introduced:

Page 2, delete lines 13 through 36, and substitute the following:

"(1) "Disclosure" means written communication to the Arkansas Department of Environmental Quality by a person or an entity subject to the compliance requirements of state environmental laws or regulations that conveys information concerning a potential environmental violation;

(2) "Environmental audit" means the same as defined in § 8-1302(3);

(3) "Environmental management system" means a voluntarily adopted documented system of procedures or practices through which a person or an entity monitors its environmental performance, including preventing, detecting, and correcting violations, that is not otherwise required by established environmental laws or regulations; and

(4) "Penalty" means a monetary assessment for an environmental violation authorized by any law administered by the department except any penalty assessed under § 15-57-201 et seq., The Arkansas Open Cut Land Reclamation Act, § 15-57-301 et seq., the Arkansas Quarry Operation, Reclamation and Safe Closure Act, § 15-57-401 et seq., and the Arkansas Surface Coal Mining and Reclamation Act of 1975, § 15-58-101 et seq., and any regulations promulgated thereunder.

8-1-404. Incentives for self-disclosure.

(a) Except in the case of habitual noncompliance or as provided otherwise in this subchapter, the Arkansas Department of Environmental Quality shall mitigate a penalty in an administrative enforcement action or a civil enforcement action against a person or an entity for an alleged violation that is either discovered by the person or entity through an environmental audit or under the person or entity's environmental management system if the person or entity voluntarily and timely:

(1) Disclosed the violation to the department within twenty-one (21) calendar days of discovery of the violation;

(2) Upon discovery of the violation takes immediate and reasonable action to correct the violation; and

(3) Within ninety (90) calendar days from the date of discovery of the violation, submits documentation acceptable to the department showing



correction of the violation and measures taken to prevent future noncompliance.

(b) Penalty mitigation under this section shall not be allowed if:

(1) The violation creates an imminent and substantial endangerment to human health or the environment;

(2) The violation creates harm to human health or the environment;

(3) The same type or similar type of violation has occurred within the last three (3) years;

(4) The violation was discovered after the department learns of it or is likely to learn of it imminently;

(5) The violation was deliberate or intentional;

(6) The violation is not corrected within ninety (90) calendar days from the date of discovery, unless a longer period of time is requested and granted by the department within ninety (90) calendar days from the date of discovery;

(7) The violation is prohibited by a judicial order or an administrative order;

(8) The violation is required to be reported by state law, regulation, or permit condition;

(9) The violation does not indicate a lack or reasonable question of the basic good faith attempt to understand and comply with applicable state environmental laws or regulations through environmental management systems appropriate to the size and nature of the activities of the regulated community;

(10) The regulated entity has not realized and will not realize a demonstrable and significant economic or competitive advantage as a result of noncompliance; and

(11) The regulated entity fails to cooperate with the department as the department performs its duties and provides such information as the department reasonably requests to confirm the entity's compliance with these conditions.

(c) Notwithstanding the failure of a regulated entity to meet all of the conditions in subsection (b) of this section, the department will consider the nature and extent of such actions of the regulated entity in mitigation of any administrative penalty or a civil penalty otherwise appropriate. If the regulated entity meets all conditions in subsection (b) of this section except item ten (10) relating to significant economic or competitive advantage, the department may seek an administrative penalty or a civil penalty only to the extent of the economic or competitive advantage gained.

(d) In the event of any conflict, the elimination or mitigation of penalties under subsections (a) and (c) of this section is subject to agreements between the department and the United States Environmental Protection Agency relating to regulatory program delegation or authorization from the United States Environmental Protection Agency to the department."

AND

Page 3, delete lines 1 through 21

The Amendment was read \_\_\_\_\_  
By: Representative Saunders  
LMG/LLG - 03-15-2007 16:50 \_\_\_\_\_  
LMG235 Chief Clerk