

SECOND REGULAR SESSION

# SENATE BILL NO. 567

89TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR GOODE.

Pre-filed December 1, 1997, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2086.011

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## AN ACT

To amend chapter 640, RSMo, by adding two new sections relating to environmental protection, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 640, RSMo, is amended by adding thereto two new sections to be known as sections 640.045 and 640.048, to read as follows:

**640.045. As used in this section and section 640.048, the following terms mean:**

**(1) "Compliance plan", a detailed plan setting forth what actions the facility will implement in order to comply with environmental laws, including a compliance schedule that addresses correcting past violations of environmental laws, improving current compliance, and preventing future violations;**

**(2) "Department", the department of natural resources, its director, and any division, agency, program, commission, or board within the department;**

**(3) "Environmental audit", a documented and objective evaluation of a regulated facility, process, or activity by a knowledgeable and competent facility employee, or by a professional recognized, licensed, or certified by the state of Missouri which includes the following:**

**(a) An evaluation of a facility or an activity at a facility or operations and practices that identifies noncompliance with environmental laws and that improves compliance with environmental laws; and**

**(b) An evaluation of management systems that identifies and prevents noncompliance with environmental laws and that improves compliance with environmental laws;**

**(4) "Environmental audit report", a set of dated documents prepared by a knowledgeable and competent facility employee, or by a professional recognized,**

licensed, or certified by the state of Missouri as a result of an environmental audit and labeled "Environmental Audit Report" that includes:

(a) Field notes, records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer generated or electronically recorded information, maps, charts, graphs, and surveys collected or developed for the primary purpose and in the course of conducting an environmental audit; and

(b) A written description of the scope of the audit, the information gained in the audit, conclusions and recommendations and exhibits and appendices; and

(c) Memoranda and documents analyzing portions or all of the audit report and discussing implementation issues;

(5) "Environmental laws", any requirement of statute, administrative rule, permit or other lawful authority delegated to the department;

(6) "Facility", all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, as the term "person" is defined in section 260.200, RSMo;

(7) "Punitive penalty", that portion of a penalty which exceeds the economic benefit or value gained by the owner or operator of a facility by violating the environmental laws;

(8) "Voluntary disclosure", a disclosure of information including violations of environmental laws to the department in an environmental audit report.

**640.048. 1.** In order to participate in the environmental audit improvement program, an owner or operator of a facility must conduct an environmental audit.

**2.** To qualify for participation in the environmental audit improvement program, an owner or operator of a facility must submit an application to the director of the department within ninety days after the completion of an environmental audit report. The application must contain the following:

(1) Written notice by the owner or the operator of the facility that the facility has conducted an environmental audit;

(2) A dated environmental audit report including disclosure of all violations of environmental laws identified in the environmental audit;

(3) A commitment signed by the owner or operator of the facility to correct the violations of environmental laws as expeditiously as is reasonably practicable; and

(4) A compliance plan, and if more than ninety days will be required to correct the violations of environmental laws, a compliance schedule that identifies the time that will be needed to correct the violations and a brief statement of the reasons that support the time periods set out in the compliance schedule.

**3.** The director of the department shall review and may approve any compliance

**schedule. The compliance plan shall provide for correction of violations defined as minor by the department under this section within ninety days following the date the application is received by the department. The compliance plan shall provide for correction of violations other than those defined as minor under this section within two hundred and seventy days following the date the application is received by the department, except that additional reasonable and necessary extensions of time may be granted at the director's discretion. In reviewing the reasonableness of a compliance schedule the director shall take into account information supplied by the regulated facility and information developed by the agency staff which may include information provided by the public. The decision to approve or disapprove a compliance schedule shall be based on the following factors:**

- (1) The nature of the violations;**
- (2) The environmental and public health consequences of the violations;**
- (3) The economic circumstances of the facility;**
- (4) The availability of personnel, equipment, and material; and**
- (5) The time needed to implement pollution prevention opportunities as an alternative to pollution control approaches to remedying the violations.**

**4. The department shall defer for at least ninety days any civil or criminal enforcement action for voluntarily disclosed violations of environmental laws against the owner or operator of a facility if an application that meets the requirements of subsection 2 of this section has been submitted to the director of the department. If a compliance schedule was submitted and approved, the department shall defer civil or criminal enforcement actions for voluntarily disclosed violations of environmental laws for the term of the approved compliance schedule unless the facility fails to meet an interim performance date contained in the schedule. Provisions of section 556.036, RSMo, to the contrary notwithstanding, in determining the period of limitation within which prosecution of an offense or the filing of a civil action by a private entity must be commenced, time shall start to run on the earliest day on which an enforcement action may be filed pursuant to this section.**

**5. If an owner or operator of a facility has corrected all violations pursuant to an approved compliance plan within ninety days or by the date specified in the compliance plan, whichever is later, the department shall not impose or seek to impose punitive penalties in a civil case or monetary punitive penalties in a criminal case involving ordinary negligence against the owner or operator of the facility for the voluntarily disclosed violations of environmental laws.**

**6. During the time that an owner or operator of a facility applies to and participates in the environmental audit improvement program, the director of the department shall be authorized by law to close, for a period of no more than ninety**

days in the aggregate, records of the application to the department and the environmental audit report as provided by section 610.021, RSMo, as confidential records upon request by the owner or operator unless closing such records is contrary to the interests of justice or the public safety or welfare.

7. The confidential records described in subsection 6 of this section shall not include:

(1) Those items identified in paragraph (a) of subdivision (4) of section 640.045 of this act;

(2) Documents, communications, data, reports or other information required to be collected, developed, maintained, reported or otherwise made available to the department pursuant to environmental laws, state or federal law, permits, orders, settlement agreements, or compliance agreements; and

(3) Information obtained independent of the application or the environmental audit report.

8. Nothing in section 640.045 or this section shall be construed to prevent the state from bringing:

(1) A criminal enforcement action against any entity who commits a violation other than a negligent violation;

(2) A civil enforcement action, if the owner or operator of a facility:

(a) Failed to correct all violations in ninety days or within the time specified in an approved compliance schedule, whichever is later;

(b) Is found to have committed a violation of environmental law, which shall not include a minor violation as defined under section 643.005, RSMo, or a late filing or other paperwork violation unless such paperwork violation is a continuing violation for which the owner or operator has received notice from the department, within the three year period prior to submission of the application provided for in subsection 2 of this section; or

(c) Caused serious harm to public health or the environment; or

(3) An action against the owner or operator of a facility to enjoin an imminent threat to the public health or the environment.

9. If the director of the department finds that the owner or operator of a facility acted in good faith, the director shall give consideration to the fact that the owner or operator of a facility applied to and participated in the environmental audit improvement program in deciding whether to pursue a civil enforcement action, or what, if any, penalty should be imposed. In assessing the amount of any non-punitive penalty, the director may give credit to the owner or operator after considering at least the following factors:

(1) Whether the cost to the person of corrective actions to achieve compliance

**exceeds the economic benefit of the noncompliance; and**

**(2) The financial savings, to the person, obtained by having not complied with the applicable standard over the period of time of noncompliance.**

**10. In determining whether the owner or operator of a facility acted in good faith the director may consider whether:**

**(1) When violations of environmental laws were discovered, the owner or operator of the facility took corrective action which was timely under the circumstances;**

**(2) The owner or operator of the facility exercised reasonable care in attempting to ensure compliance with respect to where violations of environmental laws occurred;**

**(3) The violations of environmental laws resulted in a significant economic benefit to the owner or operator of the facility;**

**(4) Prior to conducting the environmental audit, the facility had a history of good faith efforts to comply with environmental laws; and**

**(5) The owner or operator of the facility demonstrated good faith efforts to achieve compliance with environmental laws.**

**11. Nothing in section 640.045 or this section shall preclude the state from taking any enforcement action for violations of environmental laws which were known by the state prior to the time the owner or operator of a facility submitted an application meeting the requirements of subsection 2 of this section to the director of the department.**

**12. Nothing in section 640.045 or this section shall alter the obligation of any regulated facility to report releases, violations or other matters that are required to be reported by environmental laws, state or federal law, permits, orders, settlement agreements or compliance agreements.**

**13. Nothing in section 640.045 or this section shall limit, expand, waive or abrogate the scope or nature of any statutory or common law civil cause of action or privilege, including the work product doctrine and the attorney-client privilege.**

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