



## Ohio Revised Code

### Section 3745.72 Voluntary disclosure of information - immunity.

Effective: September 29, 2013

Legislation: House Bill 59 - 130th General Assembly

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(A) The owner or operator of a facility or property who conducts an environmental audit of the facility or property and promptly and voluntarily discloses information contained in or derived from an audit report that is based on the audit and concerns an alleged violation of environmental laws to the director of the state agency that has jurisdiction over the alleged violation is immune from any administrative and civil penalties for the specific violation disclosed, except that where the disclosed violation has resulted in significant economic benefit to the owner or operator of the facility or property, there is no immunity for the economic benefit component of the administrative and civil penalties for that violation. An owner or operator asserting entitlement to such immunity has the burden of proving that entitlement by a preponderance of the evidence.

(B) For the purposes of this section, a disclosure of information is voluntary with respect to an alleged violation of environmental laws only if all of the following apply:

(1) The disclosure is made promptly after the information is obtained through the environmental audit by the owner or operator who conducts the environmental audit.

(2) A reasonable, good faith effort is made to achieve compliance as quickly as practicable with environmental laws applicable to the information disclosed.

(3) Compliance with environmental laws applicable to the information disclosed is achieved as quickly as practicable or within such period as is reasonably ordered by the director of the state agency that has jurisdiction over the alleged violation.

(4) The owner or operator cooperates with the director of the state agency that has jurisdiction over the alleged violation in investigating the cause, nature, extent, and effects of the noncompliance.

(5) The disclosure is not required by law, prior litigation, or an order by a court or a government agency.



(6) The owner or operator who makes the disclosure does not know or have reason to know that a government agency charged with enforcing environmental laws has commenced an investigation or enforcement action that concerns a violation of such laws involving the activity.

(C) For the purposes of this section, a disclosure shall be in writing, dated, and hand delivered or sent by certified mail to the director of the state agency that has jurisdiction over the alleged violation, and shall contain all of the following in a printed letter attached to the front of the disclosure:

(1) The name, address, and telephone number of the owner or operator making the disclosure;

(2) The name, title, address, and telephone number of one or more persons associated with the owner or operator who may be contacted regarding the disclosure;

(3) A brief summary of the alleged violation of environmental laws, including, without limitation, the nature, date, and location of the alleged violation to the extent that the information is known by the owner or operator;

(4) A statement that the information is part of an environmental audit report and is being disclosed under section 3745.72 of the Revised Code in order to obtain the immunity provided by that section.

(D) This section does not provide immunity from the payment of damages for harm to persons, property, or the environment; the payment of reasonable costs incurred by a government agency in responding to a disclosure; or responsibility for the remediation or cleanup of environmental harm under environmental laws.

(E) The immunity provided by this section does not apply under any of the following circumstances:

(1) Within the three-year period prior to disclosure, the owner or operator of a facility or property has committed significant violations that constitute a pattern of continuous or repeated violations of environmental laws, environmental related settlement agreements, or environmental related judicial



orders and that arose from separate and distinct events. For the purposes of division (E)(1) of this section, a pattern of continuous or repeated violations also may be demonstrated by multiple settlement agreements related to substantially the same alleged significant violations that occurred within the three-year period immediately prior to the voluntary disclosure. Determination of whether a person has a pattern of continuous or repeated violations under division (E)(1) of this section shall be based on the compliance history of the property or specific facility at issue.

(2) With respect to a specific violation, the violation resulted in serious harm or in imminent and substantial endangerment to human health or the environment.

(3) With respect to a specific violation, the violation is of a specific requirement of an administrative or judicial order.

(F) The immunity provided by this section applies only to disclosures made concerning environmental audits initiated after March 13, 1997, in accordance with the time frames specified in division (A) of section 3745.70 of the Revised Code.

(G) The immunity provided by this section applies to a person who makes a good faith disclosure to a state agency under this section even though another state agency is determined to have jurisdiction over an alleged violation of environmental laws indicated in the disclosure.

(H) Each state agency that receives a disclosure under this section promptly shall record receipt of the disclosure, determine whether it has jurisdiction over the alleged violation of environmental laws indicated in the disclosure, and, if it does not have such jurisdiction, deliver the disclosure documents to the director of a state agency that has jurisdiction over the alleged violation. If a disclosure indicates alleged violations of environmental laws that are under the jurisdiction of more than one state agency, the state agency that first receives the disclosure and has jurisdiction over any of the alleged violations promptly shall notify the director of each state agency that has jurisdiction over any of such alleged violations. The director of each state agency that receives a disclosure under this section, or is notified by another state agency that the director's agency has jurisdiction over an alleged violation of environmental laws indicated in the disclosure, promptly shall deliver written notice of that fact by certified mail to the owner or operator who made the disclosure. The notice shall identify the state agency that sends the notice; state the name, title,



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address, and telephone number of a person in the agency whom the owner or operator may contact regarding the disclosure; and state the name, address, and telephone number of the director of any other state agency notified about the disclosure because that agency has jurisdiction over an alleged violation of environmental laws indicated in the disclosure.