

House BILL NO. *293*

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INTRODUCED BY

ORR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CERTAIN VOLUNTARY ENVIRONMENTAL AUDITS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 6] may be cited as the "Voluntary Environmental Audit Act".

NEW SECTION. Section 2. Purpose. The legislature finds that environmental protection and environmental quality will be enhanced by incentives to voluntarily identify and remedy violations of environmental laws and that the public will be benefited by the voluntary identification and remedy. The legislature further finds that nothing in [sections 3 through 6] is intended to inhibit or to be a substitute for the exercise of the regulatory authority by those agencies entrusted with protecting Montana's environment.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 6], the following definitions apply:

- (1) "Department" means the:
 - (a) department of justice provided for in 2-15-2001;
 - (b) department of agriculture provided for in 2-15-3001; or
 - (c) department of environmental quality provided for in 2-15-3501.
- (2) "Environmental audit" is a periodic, documented, voluntary internal assessment, evaluation, or review not required by law, rule, or permit that is conducted by a regulated entity or its agent and initiated by the regulated entity for the purpose of determining compliance with environmental law, rule, or permit enforced by the department.

NEW SECTION. Section 4. Immunity from imposition of civil, criminal, or administrative penalties

1 **for violations found and disclosed.** Except for a violation of Title 82, chapter 4, parts 1 and 2, the
2 department may not pursue civil or administrative penalties or criminal prosecution or penalties against a
3 regulated entity or its agent acting within the scope of the agent's authority for violations discovered during
4 an environmental audit and disclosed to the department in writing within 30 days after the violation is
5 determined to exist if the following conditions are met:

6 (1) a written compliance schedule is negotiated between the department and the regulated entity
7 to promptly correct violations disclosed unless the violation has been resolved to the satisfaction of the
8 department at the time of the disclosure;

9 (2) the regulated entity takes steps to prevent recurrence of the violation; and

10 (3) the regulated entity cooperates with the department and provides information that is necessary
11 for the implementation of [sections 1 through 6].

12
13 **NEW SECTION. Section 5. Submission and use of environmental audit information.** (1) If a
14 regulated entity discloses a violation to the department that is found during an environmental audit, the
15 disclosure must be submitted on a form provided by the department and must include all information
16 requested on the department form.

17 (2) (a) The department may not request an environmental audit. Information compiled by the
18 regulated entity as a result of an environmental audit is subject to discovery according to the rules of civil
19 or criminal procedure. Any information contained in an environmental audit form pertaining to violations
20 that were discovered as a result of the audit and disclosed and corrected as required by [sections 1 through
21 6] may not be used by the department against the regulated entity in any administrative hearing or judicial
22 action.

23 (b) The prohibition in subsection (2)(a) does not apply to the use of voluntary statements made in
24 connection with the information when offered for impeachment purposes or in a subsequent action for
25 perjury, false statement, or contempt.

26 (3) Documents, communications, compliance data, reports, or other information required to be
27 collected, developed, maintained, or reported to the department according to state law, rule, or permit are
28 not covered by the provisions of [sections 1 through 6].

29
30 **NEW SECTION. Section 6. Limitations on applicability.** (1) [Sections 1 through 6] do not apply

1 if:

2 (a) the regulated entity purposely or knowingly violated state or federal environmental law, rule,
3 regulation, or permit;

4 (b) the regulated entity has established a pattern of repeatedly violating an environmental law, rule,
5 regulation, permit, order, or compliance schedule within the 3 years before the date of the disclosure at the
6 same facility;

7 (c) the regulated entity has not corrected the violations according to the negotiated compliance
8 schedule described in [sections 1 through 6];

9 (d) before the date of the environmental audit through which a violation was discovered, an
10 investigation or an administrative or judicial proceeding regarding the specific voluntarily disclosed violation
11 is initiated by the department;

12 (e) after [the effective date of this act], a federal agency specifically prohibits the use of
13 environmental audits as a condition for maintaining or obtaining primacy over a federally delegated program;
14 or

15 (f) the violation disclosed to the department by the regulated entity caused substantial damage to
16 human health or the environment.

17 (2) An environmental audit may not be used to prevent the department from carrying out its
18 statutory or regulatory functions.

19

20 **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
22 applications, the part remains in effect in all valid applications that are severable from the invalid
23 applications.

24

25 **NEW SECTION. Section 8. Saving clause.** [This act] does not affect rights and duties that
26 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
27 act].

28

29 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 6] are intended to be
30 codified as an integral part of Titles 75 and 80, and the provisions of Titles 75 and 80 apply to [sections

1 1 through 6].

2

-END-

1 HOUSE BILL NO. 293

2 INTRODUCED BY ORR

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CERTAIN VOLUNTARY ENVIRONMENTAL
5 AUDITS."

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10 Environmental Audit Act".

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12 NEW SECTION. **Section 2. Purpose.** The legislature finds that environmental protection and
13 environmental quality will be enhanced by incentives to voluntarily identify and remedy violations of
14 environmental laws and that the public will be benefited by the voluntary identification and remedy. The
15 legislature further finds that nothing in [sections 3 through 6] is intended to inhibit or to be a substitute for
16 the exercise of the regulatory authority by those agencies entrusted with protecting Montana's
17 environment.

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19 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 6], the following definitions
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24 (c) department of environmental quality provided for in 2-15-3501.

25 (2) "Environmental audit" is a periodic, documented, voluntary internal assessment, evaluation, or
26 review not required by law, rule, or permit that is conducted by a regulated entity or its agent and initiated
27 by the regulated entity for the purpose of determining compliance with environmental law, rule, or permit
28 enforced by the department.

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30 NEW SECTION. **Section 4. Immunity from imposition of civil, criminal, or administrative penalties**

1 **for violations found and disclosed.** ~~Except for a violation of Title 82, chapter 4, parts 1 and 2, THE STATE~~
 2 OR the department may not pursue civil or administrative penalties or criminal prosecution or penalties
 3 against a regulated entity or its agent acting within the scope of the agent's authority for violations
 4 discovered during an environmental audit and disclosed WITHIN 30 DAYS IN WRITING to the department
 5 ~~in writing within 30 days~~ after the violation is determined to exist if the following conditions are met:

6 (1) a written compliance schedule is negotiated between the department and the regulated entity
 7 to promptly correct violations disclosed unless the violation has been resolved to the satisfaction of the
 8 department at the time of the disclosure;

9 (2) the regulated entity takes steps to prevent recurrence of the violation; and

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 11 for the implementation of [sections 1 through 6].

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 13 **NEW SECTION. Section 5. Submission and use of environmental audit information.** (1) If a
 14 regulated entity discloses a violation to the department that is found during an environmental audit, the
 15 disclosure must be submitted on a form provided by the department ~~and must include all information~~
 16 ~~requested on the department form~~ THAT REQUIRES SUBMITTAL OF THE FOLLOWING INFORMATION:

17 (A) THE DATE OF DISCOVERY OF THE VIOLATION;

18 (B) THE NAME AND LOCATION OF THE REGULATED ENTITY;

19 (C) IDENTIFICATION OF THE LAW OR RULE VIOLATED;

20 (D) A DESCRIPTION OF THE CONDITIONS RELATING TO OR AFFECTING THE VIOLATION;

21 (E) COMPLIANCE EFFORTS MADE TO CORRECT OR ELIMINATE THE VIOLATION;

22 (F) RECOMMENDATIONS FOR ADDITIONAL COMPLIANCE EFFORTS, IF NECESSARY, TO
 23 CORRECT OR ELIMINATE THE VIOLATION; AND

24 (G) RECOMMENDATIONS NECESSARY TO PREVENT REOCCURRENCE OF THE VIOLATION.

25 (2) (a) The FORM SUBMITTED TO THE DEPARTMENT IN SUBSECTION (1) IS PUBLIC
 26 INFORMATION, BUT THE department may not request ~~an~~ THE environmental audit. ~~Information compiled~~
 27 ~~by the regulated entity as a result of an~~ THE environmental audit REPORT AND ITS RELEVANT
 28 UNDERLYING DATA is subject to discovery according to the rules of civil or criminal procedure. Any
 29 information contained in an environmental audit form pertaining to violations that were discovered as a
 30 result of the audit and disclosed and corrected as required by [sections 1 through 6] may not be used by

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10 **TO A VIOLATION** if:

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12 ~~regulation, or permit~~ **COMMITTED THE VIOLATION**;

13 (b) the regulated entity has ~~established a pattern of repeatedly violating an~~ **VIOLATED A SPECIFIC**
14 **STATE OR FEDERAL** environmental law, rule, regulation, permit, order, or compliance schedule within the
15 3 years before the date of the disclosure at the same facility;

16 (c) the regulated entity has not corrected the ~~violations~~ **VIOLATION** according to ~~the negotiated~~
17 **ANY** compliance schedule ~~described in~~ **NEGOTIATED PURSUANT TO** [sections 1 through ~~6~~ **SECTION 4**];

18 (d) before the date of the environmental audit through which a violation was discovered, an
19 investigation or an administrative or judicial proceeding regarding the specific voluntarily disclosed violation
20 is initiated by the department;

21 (e) after [the effective date of this act], a federal ~~agency specifically~~ **LAW OR FORMALLY**
22 **ADOPTED FEDERAL AGENCY RULE** prohibits the use of ~~environmental audits~~ **[SECTIONS 1 THROUGH 6]**
23 as a condition for maintaining or obtaining primacy over a federally delegated program; or

24 (f) the violation disclosed to the department by the regulated entity caused **ACTUAL** substantial
25 damage to human health or the environment.

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27 statutory or regulatory functions.

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5 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
6 act].

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9 codified as an integral part of Titles 75 and 80, and the provisions of Titles 75 and 80 apply to [sections
10 1 through 6].

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 5 ~~in writing within 30 days~~ after the violation is determined to exist if the following conditions are met:

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18 (B) THE NAME AND LOCATION OF THE REGULATED ENTITY;

19 (C) IDENTIFICATION OF THE LAW OR RULE VIOLATED;

20 (D) A DESCRIPTION OF THE CONDITIONS RELATING TO OR AFFECTING THE VIOLATION;

21 (E) COMPLIANCE EFFORTS MADE TO CORRECT OR ELIMINATE THE VIOLATION;

22 (F) RECOMMENDATIONS FOR ADDITIONAL COMPLIANCE EFFORTS, IF NECESSARY, TO
 23 CORRECT OR ELIMINATE THE VIOLATION; AND

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6 collected, developed, maintained, or reported to the department according to state law, rule, or permit are
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14 **STATE OR FEDERAL** environmental law, rule, regulation, permit, order, or compliance schedule within the
15 3 years before the date of the disclosure at the same facility;

16 (c) the regulated entity has not corrected the ~~violations~~ **VIOLATION** according to the ~~negotiated~~
17 **ANY** compliance schedule ~~described in~~ **NEGOTIATED PURSUANT TO [sections 1 through 6 SECTION 4]**;

18 (d) before the date of the environmental audit through which a violation was discovered, an
19 investigation or an administrative or judicial proceeding regarding the specific voluntarily disclosed violation
20 is initiated by the department;

21 (e) after [the effective date of this act], a federal ~~agency specifically~~ **LAW OR FORMALLY**
22 **ADOPTED FEDERAL AGENCY RULE** prohibits the use of ~~environmental audits~~ **[SECTIONS 1 THROUGH 6]**
23 as a condition for maintaining or obtaining primacy over a federally delegated program; or

24 (f) the violation disclosed to the department by the regulated entity caused **ACTUAL** substantial
25 damage to human health or the environment.

26 (2) An environmental audit may not be used to prevent the department from carrying out its
27 statutory or regulatory functions.

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29 **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are
30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

1 applications, the part remains in effect in all valid applications that are severable from the invalid
2 applications.

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4 NEW SECTION. **Section 8. Saving clause.** [This act] does not affect rights and duties that
5 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
6 act].

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8 NEW SECTION. **Section 9. Codification instruction.** [Sections 1 through 6] are intended to be
9 codified as an integral part of Titles 75 and 80, and the provisions of Titles 75 and 80 apply to [sections
10 1 through 6].

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(2) "Environmental audit" is a periodic, documented, voluntary internal assessment, evaluation, or review not required by law, rule, or permit that is conducted by a regulated entity or its agent and initiated by the regulated entity for the purpose of determining compliance with environmental law, rule, or permit enforced by the department.

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1 ~~for violations found and disclosed. Except for a violation of Title 82, chapter 4, parts 1 and 2, THE STATE~~
 2 ~~OR~~ the department may not pursue civil or administrative penalties ~~or criminal prosecution or penalties~~
 3 UNDER THIS TITLE against a regulated entity or its agent acting within the scope of the agent's authority
 4 for violations discovered during an environmental audit and disclosed WITHIN 30 DAYS IN WRITING to the
 5 department ~~in writing within 30 days~~ after the violation is determined to exist if the following conditions
 6 are met:

- 7 (1) a written compliance schedule is negotiated between the department and the regulated entity
 8 to promptly correct violations disclosed unless the violation has been resolved to the satisfaction of the
 9 department at the time of the disclosure;
- 10 (2) the regulated entity takes steps to prevent recurrence of the violation; and
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 12 for the implementation of [sections 1 through 6].

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 16 disclosure must be submitted on a form provided by the department ~~and must include all information~~
 17 ~~requested on the department form~~ THAT REQUIRES INCLUDES SUBMITTAL OF THE FOLLOWING
 18 INFORMATION:

- 19 (A) THE DATE OF DISCOVERY OF THE VIOLATION;
 20 (B) THE NAME AND LOCATION OF THE REGULATED ENTITY;
 21 (C) IDENTIFICATION OF THE LAW OR RULE VIOLATED;
 22 (D) A DESCRIPTION OF THE CONDITIONS RELATING TO OR AFFECTING THE VIOLATION;
 23 (E) COMPLIANCE EFFORTS MADE TO CORRECT OR ELIMINATE THE VIOLATION;
 24 (F) RECOMMENDATIONS FOR ADDITIONAL COMPLIANCE EFFORTS, IF NECESSARY, TO
 25 CORRECT OR ELIMINATE THE VIOLATION; AND

- 26 (G) RECOMMENDATIONS NECESSARY TO PREVENT REOCCURRENCE OF THE VIOLATION.
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 28 INFORMATION, BUT THE department may not request ~~an~~ THE environmental audit. ~~Information compiled~~
 29 ~~by the regulated entity as a result of an~~ THE DEPARTMENT MAY REQUEST ALL RELEVANT FACTS AND
 30 DATA THAT THE DEPARTMENT NEEDS TO INDEPENDENTLY ESTABLISH THE NATURE AND EXTENT OF

1 THE VIOLATION AND TO DETERMINE WHETHER ALL DAMAGE CREATED BY THE VIOLATION HAS BEEN
 2 CORRECTED. THE environmental audit REPORT AND ITS RELEVANT UNDERLYING DATA is subject to
 3 discovery according to the rules of civil or criminal procedure. Any information contained in an
 4 environmental audit form pertaining to violations that were discovered as a result of the audit and disclosed
 5 and corrected as required by [sections 1 through 6] may not be used by the department against the
 6 regulated entity in any administrative hearing or judicial action.

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 8 connection with the information when offered for impeachment purposes or in a subsequent action for
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 17 ~~regulation, or permit~~ COMMITTED THE VIOLATION;

18 (B) THE VIOLATION WAS THE RESULT OF GROSS NEGLIGENCE OF THE REGULATED ENTITY;

19 ~~(b)(C)~~ (C) the regulated entity has ~~established a pattern of repeatedly violating an~~ VIOLATED
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25 ~~(d)(E)~~ (E) before the date of the environmental audit through which a violation was discovered, an
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 29 ADOPTED FEDERAL AGENCY RULE prohibits the use of environmental audits [SECTIONS 1 THROUGH 6]
 30 ~~as a condition for maintaining or obtaining primacy over a federally delegated program; or~~

1 (F) (I) THE DEPARTMENT HAS ASSUMED PRIMACY OVER THE ADMINISTRATION OF A
 2 FEDERALLY DELEGATED ENVIRONMENTAL LAW OR PROGRAM AND [SECTIONS 1 THROUGH 5] WOULD
 3 CAUSE THE STATE PROGRAM NOT TO MEET THE DELEGATION REQUIREMENTS FOR THAT PROGRAM;
 4 OR

5 (II) [SECTIONS 1 THROUGH 5] WOULD PREVENT THE STATE FROM OBTAINING PRIMACY; OR
 6 ~~(G)~~ the violation disclosed to the department by the regulated entity caused ACTUAL substantial
 7 damage to human health or the environment.

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2 INTRODUCED BY ORR

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7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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21 (C) IDENTIFICATION OF THE LAW OR RULE VIOLATED;

22 (D) A DESCRIPTION OF THE CONDITIONS RELATING TO OR AFFECTING THE VIOLATION;

23 (E) COMPLIANCE EFFORTS MADE TO CORRECT OR ELIMINATE THE VIOLATION;

24 (F) RECOMMENDATIONS FOR ADDITIONAL COMPLIANCE EFFORTS, IF NECESSARY, TO
 25 CORRECT OR ELIMINATE THE VIOLATION; AND

26 (G) RECOMMENDATIONS NECESSARY TO PREVENT REOCCURRENCE OF THE VIOLATION.

27 (2) (a) The FORM SUBMITTED TO THE DEPARTMENT IN SUBSECTION (1) IS PUBLIC
 28 INFORMATION, BUT THE department may not request ~~an~~ THE environmental audit. ~~Information compiled~~
 29 ~~by the regulated entity as a result of an~~ THE DEPARTMENT MAY REQUEST ALL RELEVANT FACTS AND
 30 DATA THAT THE DEPARTMENT NEEDS TO INDEPENDENTLY ESTABLISH THE NATURE AND EXTENT OF

1 THE VIOLATION AND TO DETERMINE WHETHER ALL DAMAGE CREATED BY THE VIOLATION HAS BEEN
 2 CORRECTED. THE environmental audit REPORT AND ITS RELEVANT UNDERLYING DATA is subject to
 3 discovery according to the rules of civil or criminal procedure. Any information contained in an
 4 environmental audit form pertaining to violations that were discovered as a result of the audit and disclosed
 5 and corrected as required by [sections 1 through 6] may not be used by the department against the
 6 regulated entity in any administrative hearing or judicial action.

7 (b) The prohibition in subsection (2)(a) does not apply to the use of voluntary statements made in
 8 connection with the information when offered for impeachment purposes or in a subsequent action for
 9 perjury, false statement, or contempt.

10 (3) Documents, communications, compliance data, reports, or other information required to be
 11 collected, developed, maintained, or reported to the department according to state law, rule, or permit are
 12 not covered by the provisions of [sections 1 through 6].

13
 14 NEW SECTION. Section 6. Limitations on applicability. (1) [Sections 1 through 6 ~~(5)~~ 5] do not
 15 apply TO A VIOLATION if:

16 (a) the regulated entity purposely or knowingly ~~violated state or federal environmental law, rule,~~
 17 ~~regulation, or permit~~ COMMITTED THE VIOLATION;

18 (B) THE VIOLATION WAS THE RESULT OF GROSS NEGLIGENCE OF THE REGULATED ENTITY;

19 ~~(b)(C)~~ (C) the regulated entity has ~~established a pattern of repeatedly violating an~~ VIOLATED
 20 ESTABLISHED A PATTERN OF VIOLATING A SPECIFIC STATE OR FEDERAL environmental law, rule,
 21 regulation, permit, order, or compliance schedule within the 3 years before the date of the disclosure at the
 22 same facility;

23 ~~(d)(D)~~ (D) the regulated entity has not corrected the ~~violations~~ VIOLATION according to the negotiated
 24 ANY compliance schedule ~~described in~~ NEGOTIATED PURSUANT TO [sections 1 through 6 SECTION 4];

25 ~~(d)(E)~~ (E) before the date of the environmental audit through which a violation was discovered, an
 26 investigation or an administrative or judicial proceeding regarding the specific voluntarily disclosed violation
 27 is initiated by the department;

28 ~~(e)~~ (F) after [the effective date of this act], a federal agency specifically LAW OR FORMALLY
 29 ADOPTED FEDERAL AGENCY RULE prohibits the use of environmental audits [SECTIONS 1 THROUGH 6]
 30 ~~as a condition for maintaining or obtaining primacy over a federally delegated program; or~~

1 (F) (I) THE DEPARTMENT HAS ASSUMED PRIMACY OVER THE ADMINISTRATION OF A
2 FEDERALLY DELEGATED ENVIRONMENTAL LAW OR PROGRAM AND [SECTIONS 1 THROUGH 5] WOULD
3 CAUSE THE STATE PROGRAM NOT TO MEET THE DELEGATION REQUIREMENTS FOR THAT PROGRAM;

4 OR

5 (II) [SECTIONS 1 THROUGH 5] WOULD PREVENT THE STATE FROM OBTAINING PRIMACY; OR

6 ~~(#)(G)~~ the violation disclosed to the department by the regulated entity caused ACTUAL substantial
7 damage to human health or the environment.

8 (2) An environmental audit may not be used to prevent the department from carrying out its
9 statutory or regulatory functions.

10

11 NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
13 applications, the part remains in effect in all valid applications that are severable from the invalid
14 applications.

15

16 NEW SECTION. Section 8. Saving clause. [This act] does not affect rights and duties that
17 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
18 act].

19

20 NEW SECTION. Section 9. Codification instruction. [Sections 1 through 6] are intended to be
21 codified as an integral part of Titles 75 and 80, and the provisions of Titles 75 and 80 apply to [sections
22 1 through 6].

23

24 NEW SECTION. SECTION 10. TERMINATION. [THIS ACT] TERMINATES OCTOBER 1, 2001.

25

-END-