

2019 Kansas Statutes

60-3338. Rebuttable presumption of immunity for voluntary disclosure of environmental law violation, when; burden of proof; authority to require action or seek relief; immunity; limitations; good faith effort to voluntarily disclose violation; abrogation. (a) If any facility owner or operator makes a voluntary disclosure of a violation of environmental laws, there shall be a rebuttable presumption that the facility owner or operator is immune from any administrative or civil penalties for the violation disclosed if the disclosure is one:

- (1) Made promptly after knowledge of the information disclosed is obtained by the facility owner or operator;
- (2) made to an agency having regulatory authority with regard to the violation disclosed before there is notice of a citizen suit or a legal complaint by a third party;
- (3) arising out of an environmental audit and is related to privileged information as provided in K.S.A. 60-3334, and amendments thereto;
- (4) for which the facility owner or operator making the disclosure initiates action in a reasonable and diligent manner to resolve the violations identified in the disclosure; and
- (5) in which the facility owner or operator making the disclosure cooperates with the appropriate agency in connection with investigation of the issues identified in the disclosure.

(b) A disclosure is not voluntary for purposes of this section if it is required by environmental law to be reported to a regulatory authority.

(c) The presumption recognized in subsection (a) may be rebutted and penalties may be imposed under state law if it is established that:

- (1) The disclosure was not voluntary within the meaning of this section;
- (2) the violation was committed intentionally and willfully by the facility owner or operator making the disclosure;
- (3) the facility owner or operator did not fully correct the violation in a reasonable time; or
- (4) the violation caused serious actual harm or an imminent and substantial endangerment to public health or the environment.

(d) In any enforcement action brought against a facility owner or operator regarding a violation for which the facility owner or operator claims to have made a voluntary disclosure within the meaning of this section, the burden of proof concerning voluntariness of the disclosure shall be allocated as follows:

- (1) The facility owner or operator making the voluntary disclosure claim shall have the burden of establishing a prima facie case that the disclosure was voluntary within the meaning of this section; and
- (2) once a prima facie case of voluntary disclosure is established, the opposing party shall have the burden of rebutting the presumption recognized in subsection (a) by a preponderance of the evidence.

(e) Except as provided in this section, this section does not impair the authority of the appropriate regulatory agency to require technical or remedial action or to seek injunctive relief.

(f) Immunity provided under this section from administrative or civil penalties does not apply under any of the following circumstances:

- (1) If a facility owner or operator has been found in a civil, criminal or administrative proceeding to have committed violations in this state that

constitute a pattern of continuous or repeated violations of environmental law that were due to separate and distinct events giving rise to the violations within the three-year period prior to the date of disclosure.

(2) If a violation of an environmental law, administrative order or judicial decree results in a substantial economic benefit to the violator.

(g) In cases where the conditions of a voluntary disclosure are not met, but a good faith effort was made to voluntarily disclose and resolve a violation detected in an environmental audit, the state regulatory authorities shall consider the nature and extent of any good faith effort in deciding the appropriate enforcement response and shall consider reducing any administrative or civil penalties based on mitigating factors showing that one or more of the conditions for voluntary disclosure have been met.

(h) The immunity provided by this section does not abrogate the responsibility of a person as provided by applicable law to report a violation, to correct the violation, conduct necessary remediation or respond to third-party actions.

History: L. 1995, ch. 204, § 7; L. 2006, ch. 30, § 6; July 1.