§ 8-58.61. (Article has a contingent effective date – see note) Voluntary disclosure; limited immunity from civil and administrative penalties and fines.

(a) An owner or operator of a facility is immune from imposition of civil and administrative penalties and fines for a violation of environmental laws voluntarily disclosed subject to the requirements and criteria set forth in this section. Provided, however, that waiver of penalties and fines shall not be granted until the applicable enforcement agency has certified that the violation was corrected within a reasonable period of time. If compliance is not certified by the enforcement agency, the enforcement agency shall retain discretion to assess penalties and fines for the violation.

(b) If a person or entity makes a voluntary disclosure of a violation of environmental laws discovered through performance of an environmental audit, that person has the burden of proving (i) that the disclosure is voluntary by establishing the elements set forth in subsection (c) of this section and (ii) that the person is therefore entitled to immunity from any administrative or civil penalties associated with the issues disclosed. Nothing in this section may be construed to provide immunity from criminal penalties.

(c) For purposes of this section, disclosure is voluntary if all of the following criteria are met:

(1) The disclosure is made within 14 days following a reasonable investigation of the violation's discovery through the environmental audit.

(2) The disclosure is made to an enforcement agency having regulatory authority over the violation disclosed.

(3) The person or entity making the disclosure initiates an action to resolve the violation identified in the disclosure in a diligent manner.

(4) The person or entity making the disclosure cooperates with the applicable enforcement agency in connection with investigation of the issues identified in the disclosure.

(5) The person or entity making the disclosure diligently pursues compliance and promptly corrects the noncompliance within a reasonable period of time.

(d) A disclosure is not voluntary for purposes of this section if any of the following factors apply:

(1) Specific permit conditions require monitoring or sampling records and reports or assessment plans and management plans to be maintained or submitted to the enforcement agency pursuant to an established schedule.

(2) Environmental laws or specific permit conditions require notification of releases to the environment.

(3) The violation was committed intentionally, willfully, or through criminal negligence by the person or entity making the disclosure.

(4) The violation was not corrected in a diligent manner.

(5) The violation posed or poses a significant threat to public health, safety, and welfare; the environment; and natural resources.

(6) The violation occurred within one year of a similar prior violation at the same facility, and immunity from civil and administrative penalties was granted by the applicable enforcement agency for the prior violation.

(7) The violation has resulted in a substantial economic benefit to the owner or operator of the facility.

(8) The violation is a violation of the specific terms of a judicial or administrative order.

(e) If a person meets the burden of proving that the disclosure is voluntary, the burden shifts to the enforcement agency to prove that the disclosure was not voluntary, based upon the factors set forth in this section. The person claiming immunity from civil or administrative

penalties or fines under this section retains the ultimate burden of proving the violations were voluntarily disclosed.

(f) A voluntary disclosure made pursuant to this section is subject to disclosure pursuant to the Public Records Act in accordance with the provisions of Chapter 132 of the General Statutes. (2015-286, s. 4.1(a).)