

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Walsh, Marian (SEN)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to efficiency and fairness in environmental law enforcement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Walsh, Marian (SEN)	Suffolk and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00560 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

**AN ACT RELATIVE TO EFFICIENCY AND FAIRNESS IN ENVIRONMENTAL LAW
ENFORCEMENT.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

1 SECTION 1. Section 16 of chapter 21A of the General Laws, as appearing in the 2000
2 Official Edition, is hereby amended by inserting after the definition of "Department," the
3 following definition:-

4 "Environmentally beneficial", primarily benefiting the public health, safety or welfare, or the
5 environment.

6 SECTION 2. Said section 16 of said chapter 21A, as so appearing, is hereby further amended by
7 inserting after the definition of "Person" the following definition:-

8 "Supplemental environmental project", any environmentally beneficial project or actions
9 approved by the commissioner that a regulated entity agrees to undertake in settlement of an
10 enforcement action brought by the department and is not otherwise required to perform.

11 SECTION 3. Said section 16 of said chapter 21A, as so appearing, is hereby further amended by
12 striking out, in lines 136 and 137, the words "making compliance less costly than non-
13 compliance" and inserting in place thereof the following words:-

14 a person's commitment to perform a supplemental environmental project and the cost of that
15 project; the economic benefit realized by a person for non-compliance; the need to make non-
16 compliance more costly than compliance in order to ensure compliance.

17 SECTION 4. Said section 16 of said chapter 21A, as so appearing, is hereby further amended by
18 inserting after the words "the department may require that the amount of a civil administrative
19 penalty imposed pursuant to this section," the following words:-

20 or supplemental environmental projects undertaken in settlement of an enforcement action

21 SECTION 5. Said section 16 of said chapter 21A, as so appearing, is hereby further amended by
22 inserting after the words "exceed the economic benefit realized by a person for noncompliance,"
23 the following sentence:-

24 For any supplemental environmental project undertaken in settlement of an assessment for non-
25 compliance, the department shall make reasonable efforts to determine the monetary cost of the
26 supplemental environmental project.

27 SECTION 6. Said section 16 of said chapter 21A, as so appearing, is hereby further amended, by
28 adding the following paragraph:-

29 The department may recommend a supplemental environmental project to a person from whom it
30 is seeking a civil administrative penalty, and may accept the performance of a supplemental

31 environmental project or projects in lieu of payment for a portion of the monetary penalties that
32 the department would otherwise seek to impose, equal to the cost of performing the supplemental
33 environmental project. The department may also impose the maximum penalties as set forth in
34 this section in addition to approving a supplemental environmental project.

35 SECTION 7. Section 18 of said chapter 21A, as so appearing, is hereby amended by inserting in
36 the first paragraph, after the definition of "Department," the following definition:-

37 "Environmentally beneficial", primarily benefiting the public health, safety or welfare, or the
38 environment.

39 SECTION 8. Said section 18 of said chapter 21A, as so appearing, is hereby further amended by
40 inserting in the first paragraph after the definition of "Person" the following:-

41 "Supplemental environmental project", any environmentally beneficial project or actions
42 approved by the commissioner that a regulated entity agrees to undertake in settlement of an
43 enforcement action brought by the department and is not otherwise required to perform.

44 SECTION 9. Subsection (i) of said section 18 of said chapter 21A, as so appearing, is hereby
45 amended by inserting after paragraph (5) the following paragraph:-

46 (6) On or before November 1 of each year, the commissioner, after consultation with the
47 advisory committee on fees and program improvements, shall prepare a recommended schedule
48 of annual compliance assurance fees that must be charged to entities regulated by the department
49 that would generate sufficient revenue to defray the costs of inspection, compliance monitoring
50 and enforcement pursuant to all environmental statutes, regulations, orders, licenses, permits or

51 approvals and submit that schedule to the secretary of environmental affairs, the secretary of
52 administration and finance, the joint committee on natural resources and agriculture and the
53 house and senate committees on ways and means.

54 SECTION 10. Said section 18 of said chapter 21A, as so appearing, is hereby further amended
55 by striking out, in lines 353 and 354, the words: "and a summary of the significant improvements
56 the department has made in its permitting and compliance programs." and inserting in place
57 thereof the following words:-

58 "a summary of the significant improvements the department has made in its permitting and
59 compliance programs; the number of on site inspections conducted; the number of such
60 inspections that were conducted without notice; the number of incidences of non-compliance by
61 category of violation; the number of administrative enforcement actions taken with respect to
62 such non-compliance and the results thereof, including the amount of fines and penalties
63 collected; the number of judicial enforcement actions taken with respect to such non-compliance
64 and the results thereof, including the amount of fines and penalties collected; and a description of
65 any supplemental environmental projects undertaken and the environmental benefits resulting
66 from each project."

67 SECTION 11. Subsection (k) of said section 18 of said chapter 21A, as so appearing, is hereby
68 further amended by adding the following two sentences:-

69 Subject to appropriation, the department shall create and maintain an enforcement database,
70 available for public inspection, which, for every regulated entity, sets forth the compliance and
71 enforcement status, including the frequency and extent of any non-compliance; dates and

72 findings of inspections; compliance assistance provided through state-funded programs; the
73 existence of any non-compliance actions which are ongoing or which have occurred in the
74 previous two years, except where disclosure would jeopardize ongoing investigations or any
75 legal action; results of any enforcement actions, including the provisions of completed consent
76 orders, a description of any supplemental environmental projects undertaken in the previous year
77 and the environmental benefits resulting there from; the status of deadlines for deliverables,
78 including whether the deadlines were met; discharge or emission concentrations reported relative
79 to permitted concentrations, for entities holding discharge or emission permits; and withdrawal
80 volumes relative to permitted volumes for entities holding permits to withdraw water resources.

81 Subsequent to the creation of the database, the department shall submit a report, on or before
82 December 31 of each calendar year, to the joint committee on natural resources and agriculture
83 and to the house and senate committees on ways and means describing the amount of funds
84 necessary to maintain the enforcement database.

85 SECTION 12. Said subsection (k) of said section 18 of said chapter 21A, as so appearing, is
86 hereby further amended by adding the following paragraph:-

87 On or before October 1 of each year, the department shall develop a report that establishes goals
88 for inspection, compliance monitoring and enforcement. In developing the report, the department
89 shall consider existing environmental conditions in the commonwealth, including current
90 methods of compliance monitoring and pending enforcement actions and current assessments for
91 non-compliance. The report shall include, but not be limited to, the number of citizens
92 complaints filed in the last fiscal year; the results of inspection; the incidences of compliance
93 monitoring and enforcement actions across all regional department offices; agency resources for

94 compliance monitoring, including those directed to training enforcement staff; the types of
95 penalties imposed and collected for significant violations; and available systems for tracking
96 ongoing inspection, compliance monitoring and enforcement. On or before October 1 of each
97 year, the department shall forward a copy of its report to the advisory committee.

98 SECTION 13. Section 19G of said chapter 21A, as so appearing, is hereby amended by inserting
99 after subsection (2) the following subsection:-

100 (3) In assessing a civil administrative penalty as provided for in this section, the department may
101 require the monetary costs of such penalties to exceed the economic benefit realized by a person
102 for non-compliance. For any supplemental environmental project undertaken in settlement of an
103 assessment for non-compliance, the department shall make reasonable efforts to determine the
104 monetary cost of the supplemental environmental project.

105 SECTION 14. The department shall prepare a report describing its ability, within its existing
106 resources, to comply with the requirements of section 10 of this act and a detailed estimate of the
107 costs and additional resources needed to create and maintain the database described in this
108 section. The department shall submit the report to the joint committee on natural resources and
109 agriculture and the house and senate committee on ways and means on or before October 1,
110 2008.

111 SECTION 15. Nothing contained in this act shall be construed as limiting any existing remedy
112 for non-compliance available to the department under existing law.