

Accompanying the second recommendation of the Department of the Attorney General (House, No. 2). The Judiciary.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety.

AN ACT TO AUTHORIZE THE ATTORNEY GENERAL TO CONDUCT CIVIL INVESTIGATIONS TO PROTECT THE ENVIRONMENT.

*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 11D of Chapter 12 of the General Laws is hereby  
2 amended by inserting after the last full paragraph the  
3 following: —

4 (1) The attorney general, whenever he has reasonable cause to  
5 believe that a person has violated, is violating, or is about to  
6 violate any statute, ordinance, by-law or regulation designed to  
7 prevent damage to the environment, may prior to the  
8 commencement of any civil action issue in writing and cause to  
9 be served upon such person or any person who may be in  
10 possession, custody or control of any documentary material or  
11 may have any information relevant to said violation a civil  
12 investigative demand requiring such person to produce  
13 documentary material for inspection and copying, and answer  
14 written interrogatories in writing under oath or to give oral  
15 testimony concerning documentary material or information or to  
16 furnish any combination of such material, answers or testimony.

17 (2) Each demand shall (a) specify the statute, by-laws,  
18 ordinances and regulations under investigation; (b) prescribe a  
19 reasonable return date or dates in no event less than twenty days  
20 from the date of service of the demand; (c) if it is a demand for  
21 production of documentary material, describe the class or classes  
22 of documentary material to be produced with reasonable  
23 specificity so as to permit such material to be fairly identified; (d)

24 if it is a demand for answers to written interrogatories, propound  
25 with reasonable specificity the written interrogatories to be  
26 answered; and (e) if it is a demand for the giving of oral  
27 testimony, prescribe a time and place at which such oral testimony  
28 shall be commenced and identify the person or persons who shall  
29 conduct the examination.

30 (3) No such demand shall contain any requirement which  
31 would be unreasonable or improper if contained in a discovery  
32 notice, request or demand made under any of the discovery provi-  
33 sions of the Massachusetts Rules of Civil Procedure; or require  
34 the disclosure of any documentary material which is privileged,  
35 or which for any other reason could not be required to be disclosed  
36 if demanded by a subpoena duces tecum issued by a court of the  
37 Commonwealth.

38 (4) Service of any such notice may be made by (a) delivering  
39 a duly executed copy thereof to the person to be served or to a  
40 partner or to any officer or agent authorized by appointment or  
41 by law to receive service of process on behalf of such person; (b)  
42 delivering a duly executed copy thereof to the principal residence  
43 or principal place of business in the Commonwealth of the person  
44 to be served; or (c) mailing by registered or certified mail a duly  
45 executed copy thereof addressed to the person to be served at his  
46 principal residence, principal office or place of business in the  
47 Commonwealth, or, if said person has no residence, office or place  
48 of business in the Commonwealth, to his principal residence,  
49 office or place of business.

50 (5) All documentary material or other information produced  
51 by any person pursuant to this section shall be held in the custody  
52 of the attorney general, shall be kept confidential by the attorney  
53 general and shall not be disclosed by the attorney general to any  
54 person except as necessary to aid in the enforcement of statutes,  
55 ordinances, by-laws and regulations designed to prevent damage  
56 to the environment. Such documentary material and information  
57 shall be admissible in a court action brought by the attorney  
58 general to the same extent as material obtained during discovery  
59 after the commencement of a civil action. Such information and  
60 documentary materials shall not be public records and are exempt  
61 from disclosure under section ten of chapter sixty-six. The  
62 attorney general may not be compelled to disclose such infor-

63 mation and material in any litigation or other proceeding. Upon  
64 the completion of a case brought to enforce a statute, ordinance,  
65 by-law or regulation designed to prevent damage to the environ-  
66 ment, the attorney general shall, upon the written request of the  
67 person who produced the material, return all documents produced  
68 pursuant to this section and all copies thereof which have not  
69 passed into the control of the court through the introduction  
70 thereof into the record. If no case in which such material may be  
71 used has been commenced within a reasonable time after  
72 completion of the examination or analysis of all documentary  
73 material, but in no event later than two years after production  
74 thereof, the attorney general shall, upon written request of the  
75 person who produced the material, return all documents produced  
76 pursuant to this section and all copies thereof to the person who  
77 provided them.

78 Notwithstanding the foregoing, this section shall not preclude  
79 the attorney general from disclosing information and evidence  
80 secured pursuant to this section to those officials of the United  
81 States or the several states, charged with the enforcement of state  
82 or federal environmental laws provided, however, that, prior to  
83 any such disclosure, the attorney general shall obtain a written  
84 agreement from such officials to abide by the restrictions of this  
85 section. Nothing in this section is intended to prevent officials of  
86 the United States and the several states receiving information  
87 pursuant to this section from disclosing such information in court  
88 proceedings or other papers filed in court if said officials deem  
89 such disclosure necessary to prosecute such case.

90 (6) At any time before the return date specified in the demand  
91 or within such twenty-one days after the demand has been served,  
92 whichever is shorter, the person served may petition the superior  
93 court in Suffolk County, or in the county in which he resides or  
94 has his usual place of business, for an order modifying or setting  
95 aside such demand or for an appropriate protective order. The  
96 obligation to comply with the demand shall be suspended while  
97 such petition is pending. The petition shall specify each ground  
98 upon which the petitioner relies in seeking relief and may be based  
99 upon any failure of the demand to comply with the provisions  
100 of this section or any constitutional or other legal right or privilege  
101 of such person. The superior court shall have jurisdiction to enter

102 such order or orders as may be required to carry into effect the  
103 provisions of this section and the ordinances, by-laws and regu-  
104 lations which the attorney general believes has been violated and  
105 to protect the rights of the petitioner. Any order issued by the  
106 court pursuant to this section shall be subject to appeal.

107 (7) The attorney general shall have the authority, at any time,  
108 to modify or revoke any civil investigative demand and to stipulate  
109 to protective orders with respect to documents and information  
110 submitted in response to a demand.

111 (8) The oral examination of all persons pursuant to this  
112 section shall be conducted under oath before a person duly  
113 authorized to administer oaths by the law of the commonwealth  
114 and shall be taken in the county within which such person resides,  
115 is found, or transacts business or in such other county as may be  
116 agreed upon by the attorney general and such person.

117 (9) Any person compelled to appear under a demand for oral  
118 testimony pursuant to this section may be accompanied,  
119 represented, and advised by counsel. The person conducting the  
120 examination shall exclude from the place where the examination  
121 is held all persons except the person being examined, his counsel,  
122 the officer before whom the testimony is taken and any  
123 stenographer taking such testimony.

124 (10) Testimony shall be taken stenographically or by sound  
125 recording and transcribed. When the testimony is fully  
126 transcribed, the witness, with his counsel, shall be afforded a  
127 reasonable opportunity to examine the transcript. Any changes  
128 in form or substance which the witness desires to make shall be  
129 entered and identified upon the transcript with a statement of the  
130 reasons given by the witness for making such changes. Upon  
131 payment of reasonable charges therefor, a copy of the transcript  
132 shall be furnished to the witness.

133 (11) The production of documentary material in response to  
134 a demand served pursuant to this section shall be made under  
135 sworn certificate, in such form as the demand designates, by the  
136 person, if a natural person, to whom the demand is directed, or,  
137 if not a natural person, by a person or persons having knowledge  
138 of the facts and circumstances relating to such production to the  
139 effect that all of the documentary material required by the demand  
140 and in the possession, custody or control of the person to whom

141 the demand is directed has been produced and made available to  
142 the attorney general.

143 (12) Each interrogatory in a demand served pursuant to this  
144 section shall be answered separately and fully in writing under  
145 oath. Answers shall be submitted under a sworn certificate, in such  
146 form as the demand designates, by the person, if a natural person  
147 to whom the demand is directed or, if not a natural person, by  
148 a person or persons responsible for answering each interrogatory  
149 to the effect that all information required by the demand, and in  
150 the possession, custody, control or knowledge of the person to  
151 whom the demand is directed has been submitted.

152 (13) A person upon whom a demand is served shall comply with  
153 the terms thereof unless a petition filed pursuant to paragraph 6  
154 is pending before the superior court, or unless otherwise ordered  
155 by the superior court. Any person who fails to appear, or removes  
156 from any place, conceals, withholds, or destroys, mutilates, alters,  
157 or by any other means falsifies any documentary material in the  
158 possession, custody or control of any person subject to any such  
159 demand, or conceals any relevant information, shall be subject  
160 to a civil penalty of not more than twenty-five thousand dollars  
161 for each separate failure to comply with the civil investigative  
162 demand. The superior court shall have jurisdiction to assess such  
163 penalty. Whenever any person fails to comply with any civil  
164 investigative demand duly served upon him under this section, the  
165 attorney general may file, in the superior court of Suffolk County  
166 or any county in which such person resides, is found, or transacts  
167 business, a petition for an order of such court enforcing said  
168 demand. Any order issued by the court pursuant to this  
169 section shall be subject to appeal. Any disobedience of any order  
170 issued by a court under this section shall be punished as a  
171 contempt of court.





