

By Mr. Angelo of Saugus, petition of L. Scott Harshbarger and Steven Angelo for legislation to further promote protection of the environment in the Commonwealth. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four.

AN ACT TO PROMOTE GREATER ENVIRONMENTAL PROTECTION IN THE COMMONWEALTH.

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. This chapter will have the title "The Environ-
2 mental Endangerment Act."

1 SECTION 2. As used in this chapter, the following words
2 shall, unless the context clearly requires otherwise, have the
3 following meanings:—

4 "Environmental violation", a violation of any of the following
5 statutes or regulations promulgated thereunder: sections twenty-
6 six through fifty-three, inclusive, of chapter twenty-one; sections
7 thirteen and fourteen of chapter twenty-one A; chapter twenty-
8 one C; chapter twenty-one E; chapter twenty-one G; chapter
9 twenty-one H; chapter twenty-one I; chapter ninety-one; sections
10 one hundred and forty-two A, one hundred and forty-two B, one
11 hundred and fifty, one hundred and fifty A, one hundred and
12 fifty B, one hundred and fifty-nine through one hundred
13 and seventy-four A, inclusive, and one hundred and ninety
14 through one hundred and ninety-nine A of chapter one hundred
15 and eleven; chapter one hundred and eleven F; sections twenty-
16 three through twenty-seven, inclusive, seventy-five, and one
17 hundred and five of chapter one hundred and thirty; sections forty,
18 forty A, forty-one, and forty-two of chapter one hundred and
19 thirty-one; chapter one hundred and thirty-one A; chapter one

20 hundred and thirty-two B; sections sixteen and thirty-seven
21 through thirty-eight I, inclusive, of chapter one hundred and forty-
22 eight; sections six A through six G, inclusive, of chapter one
23 hundred and forty-nine; and any other statute the major purpose of
24 which is to prevent or minimize damage to the environment.

25 "Natural resources", land, fish, wildlife, biota, air, water,
26 ground water and drinking water supplies belonging to, managed
27 by, held in trust by, appertaining to, or otherwise controlled by the
28 Commonwealth, or any local government.

29 "Organization", a person other than an individual.

30 "Person", any agency or political subdivision of the federal
31 government or the Commonwealth, any state, public or private
32 corporation or authority, individual, trust, firm, joint stock com-
33 pany, partnership, association, or other entity, and any officer,
34 employee, or agent of such person, and any group of persons.

35 "Serious bodily injury", bodily injury which creates a substan-
36 tial risk of death, or which involves unconsciousness, extreme
37 physical pain, protracted and obvious disfigurement, protracted
38 loss or impairment of the function of a bodily member, organ, or
39 mental faculty, reproductive or genetic damage, or substantially
40 increased risk of cancer or other chronic ailment.

1 SECTION 3. (a) Any person who knowingly or recklessly
2 engages in conduct which constitutes an environmental violation
3 and thereby causes serious bodily injury to another human
4 being: (1) shall be punished by a fine of not more than one hun-
5 dred thousand dollars, or by imprisonment in the state prison for
6 not more than twenty years or in a jail or house of correction
7 for not more than two and one-half years, or both such fine and
8 imprisonment, in the case of an individual; and (2) in the case of
9 an organization, shall be punished by a fine of not more than five
10 hundred thousand dollars for a first offense under this chapter, and
11 by a fine of not more than two million dollars for any second or
12 subsequent offense under this chapter.

13 (b) Any person who knowingly or recklessly engages in con-
14 duct which constitutes an environmental violation and thereby
15 causes a substantial risk of damage to natural resources, or to the
16 property of another person, in an amount exceeding fifty thousand
17 dollars: (1) shall be punished by a fine of not more than one hun-

18 dred thousand dollars, or by imprisonment in the state prison for
19 not more than five years or in a jail or house of correction for not
20 more than two and one-half years, or both such fine and imprison-
21 ment, in the case of an individual; and (2) in the case of an organi-
22 zation, shall be punished by a fine of not more than two hundred
23 and fifty thousand dollars for a first offense under this chapter,
24 and by a fine of not more than five hundred thousand dollars for
25 any second or subsequent offense under this chapter.

1 SECTION 4. (a) The court (1) shall, when sentencing an
2 organization for an offense under section 3(a)(2) of this chapter,
3 or for a second or subsequent offense under section 3(b)(2) of this
4 chapter, and (2) may, when sentencing an organization for a first
5 offense under section 3(b)(2) of this chapter, place the organiza-
6 tion on probation and require as a condition of that probation that
7 the organization pay for an environmental audit.

8 (b) The court shall appoint an independent expert with no prior
9 involvement in the environmental management of the organization
10 sentenced to conduct an environmental audit under this section.
11 The prosecution and the defense may each submit a reasonable
12 number of names of suggested experts. The court shall consider
13 any such submissions in making an appointment under this sub-
14 section.

15 (c) The environmental audit shall: (1) identify all causes of, and
16 any factors that contributed to, the conduct that is the basis for the
17 conviction, and recommend specific measures to prevent a recur-
18 rence of such causes or factors; and (2) recommend a schedule for
19 implementation of the recommendations under paragraph (1) of
20 this subsection.

21 (d) The court shall order the defendant to implement each rec-
22 ommendation of the audit unless the court finds by clear and con-
23 vincing evidence that: (1) the recommendation will not achieve
24 the result the recommendation seeks to bring about; (2) the
25 adverse environmental effects of implementing the recommen-
26 dation outweigh the environmental benefits of the recommenda-
27 tion; (3) the technology does not exist to carry out the recom-
28 mendation; or (4) there are alternative means to achieve the
29 equivalent result at significantly less cost to the defendant. Any
30 such alternative means shall be incorporated into the audit in

31 place of the relevant recommendation, and the court shall order
32 the defendant to implement the audit as modified.

33 (e) The court may impose for an offense under this chapter a
34 term of probation that is longer than the term otherwise permitted
35 by law, if the court determines that the longer term is necessary to
36 implement the environmental audit.

37 (f) The prosecutor, the auditor appointed under subsection 2(b)
38 of this section, or any governmental agency may suggest to the
39 court that a failure to implement the audit has taken place.
40 Whenever the alleged failure to implement an environmental audit
41 is properly before the court, unless the defendant demonstrates
42 that the failure did not take place, the court shall order appropriate
43 sanctions.

44 (g) In addition to any other sanctions the court may impose
45 for failure to implement an environmental audit, the court
46 may: (1) hold any appropriate person in contempt; or (2) appoint a
47 special master to conduct such affairs of the defendant as are
48 necessary and relevant to implementation of the audit.