

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.14802 Environmental audit and environmental audit report; conduct; creation; privilege and protection from disclosure; exception; testimony; admissibility as evidence.

Sec. 14802.

(1) The owner or operator of a facility, or an employee or agent of the owner or operator on behalf of the owner or operator, at any time may conduct an environmental audit and may create an environmental audit report.

(2) Except as provided in subsection (3), an environmental audit report created pursuant to this part is privileged and protected from disclosure under this part.

(3) The privilege described in subsection (2) does not extend to any of the following regardless of whether or not they are included within an environmental audit report:

(a) Documents, communication, data, reports, or other information required to be collected, maintained, or made available or reported to a regulatory agency or any other person by statute, rule, ordinance, permit, order, consent agreement, or as otherwise provided by law.

(b) Information obtained by observation, sampling, or monitoring by any regulatory agency.

(c) Pretreatment monitoring results which a publicly owned treatment works or control authority requires any industrial user to report to a publicly owned treatment works or control authority, including, but not limited to, results establishing a violation of the industrial user's discharge permit or applicable local ordinance.

(d) Information legally obtained from a source independent of the environmental audit or from a person who did not obtain the information from the environmental audit.

(e) Machinery and equipment maintenance records.

(f) Information in instances where the privilege is asserted for a fraudulent purpose.

(g) Information in instances where the material shows evidence of noncompliance with state, federal, regional, or local environmental laws, permits, consent agreements, regulations, ordinances, or orders and the owner or operator failed to either take prompt corrective action or eliminate any violation of law identified during the environmental audit within a reasonable time, but not exceeding 3 years after discovery of the noncompliance or violation unless a longer period of time is set forth in a schedule of compliance in an order issued by the department of environmental quality, after notice in the department's calendar, and following the department's determination that acceptable progress is being made.

(4) Except as otherwise provided in this part, a person who conducts an environmental audit and a person to whom the environmental audit results are disclosed shall not be compelled to testify regarding any information obtained solely through the environmental audit which is a privileged portion of the environmental audit report. Except as otherwise provided in this part, the privileged portions of an environmental audit report are not subject to discovery and are not admissible as evidence in any civil or administrative proceeding.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996 ;-- Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997

Popular Name: Act 451

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