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Things to Know About Environmental Privileged Audits in Texas

If properly followed; The Texas Environmental, Health, and Safety Audit Privilege Act (Audit Act)¹ can save you and your business **time**, **monies**, and **stress** that could come from noncompliance with environmental regulations. Below are **4 key points** that could help you decide whether a "Privileged Audit" is necessary for your situation.

1. You can gain immunity from penalties.

As stated in Texas Health and Safety Code §1101.151, pertaining to the Audit Act, "...a person who makes a voluntary disclosure of a violation of an environmental or health and safety law is immune from an administrative or civil penalty for the violation disclosed." Given that notice requirements are met, violations discovered during a privileged audit and subsequently disclosed to the Texas Commission on Environmental Quality (TCEQ) are immune from these penalties. Two caveats, **1)** immunity does not apply to violations that resulted in injury to a person on-site or caused off-site harm and **2)** immunity may be denied from facilities with a history of disregard for environmental laws.

2. Notice requirements must be met.

Notice of Audit (NOA): An NOA must be submitted via certified mail to the agency prior to beginning privileged audit activities. The NOA must outline the who, what, where, when, and why of the proposed audit. An NOA is only required for an audit conducted under the Audit Act. From the submittal date of the NOA, a person must complete the audit and any corrective action within "a reasonable amount of time" (6 months) before having to submit a Request for Extension to continue the audit.

Disclosure of Violation (DOV): Following discovery of a violation during the audit, a DOV must be submitted via certified mail to the agency, stating the who, what, where, when, and how of each violation. The how concerns how the violation will be corrected, if not already corrected by the submittal date of the DOV, and the when concerns the corrective action schedule of each disclosed violation. No information within the DOV can be claimed as confidential or the DOV will be returned.

Request for Extension: A Request for Extension with information justifying the request must be submitted via certified mail if the audit (including corrective action) will exceed 6 months.

As a side note, privileged audits conducted for facility acquisition purposes are subject to a variation of the above notice requirements.

3. Immunity does not apply to known violations.

A privileged audit cannot be used to provide immunity for a known noncompliance/violation. In other words, if the persons involved with an audit acknowledge that there is a known violation prior to submitting the NOA, that violation will not be immune from penalties.

4. Specific to Texas; EPA has its own "Privileged Audit"

The United States Environmental Protection Agency (EPA) has its own version of the Audit Act entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations – Final Policy Statement." Therefore, the Audit Act is Texas-specific and does not apply to federal agencies.

For more information, the Texas Commission on Environmental Quality (TCEQ) has created a detailed guidance document (RG-173) for the Audit Act that can help you decide if a privileged audit is right for you and your operations. ■

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¹ Tex. Health & Safety Code §1101 (2017)