



Kansas Department of Health and Environment
Environmental Audit Policy

Policy Category: Agency Policy on Environmental Audits

Subject: Environmental Audits

Reference: K.S.A. 60-3332 *et seq.*, as amended by SB 453 (2006)

AN ACT concerning the environment; establishing a privilege with regard to certain environmental compliance audits under certain circumstances and providing for immunity from or lessening of penalties for violations of environmental laws under certain circumstances.

BACKGROUND

KDHE's policy towards environmental audits is issued pursuant to and for implementation of K.S.A. 60-3332 *et seq.*, as amended. Additional information concerning the provisions of K.S.A. 60-3332 *et seq.*, as amended, may be found in the attached question and answer document (Attachment I) and the bill summary with agency comments (Attachment II).

POLICY

KDHE supports improving compliance with environmental laws and regulations by encouraging the use of self-audits, voluntary disclosure of violations and the implementation of environmental management systems by the regulated community. The primary emphasis toward improving compliance is on cooperative efforts between KDHE and the regulated community. KDHE will pursue enforcement where necessary.

The environmental audit policy embodied in K.S.A. 60-3332 *et seq.*, as amended, only applies to audits performed, disclosures made and environmental management systems implemented that meet the requirements of K.S.A. 60-3332 *et seq.* Where appropriate, if a member of the regulated community has attempted in good faith to comply with the requirements of K.S.A. 60-3332 *et seq.*, as amended, but has failed to do so, KDHE will take those good faith efforts into consideration when assessing the necessary response to violations of environmental laws.

This policy document represents KDHE's interpretation of the environmental audit law and should not be considered a substitute for independent legal advice. Members of the regulated community are encouraged to read the statutes and to obtain independent legal advice regarding any questions they may have.

AGENCY IMPLEMENTATION

Kansas environmental audit law has three components: an evidentiary privilege for audit reports; immunity for voluntary disclosure of violations; and mitigation of penalties for those violators who have implemented an environmental management system.

An environmental audit is a voluntary self-evaluation, performed by the owner or operator or its employees or by a qualified auditor. The audit is designed to determine if a facility complies with state environmental laws, including statutes and rules and regulations promulgated under the statutes.

K.S.A. 60-3332, as amended by SB 453, § 2. An environmental management system is a system that regularly takes steps to prevent and remedy noncompliance. This management tool has the support of senior management and is implemented through policies, standards and procedures that are effectively communicated throughout the facility's operation to ensure compliance with environmental laws. K.S.A. 60-3334(d), as amended by SB 453, § 4.

I. Evidentiary Privilege for Audit Reports

An audit report that meets the requirements of the environmental audit law, is privileged and not admissible as evidence in any civil or administrative proceeding, except as specifically provided by the environmental audit law. K.S.A. 60-3333(a). [SB 453, § 3.] Disclosure of the contents of the audit report waives the privilege unless the disclosure is made under the express terms of confidentiality agreements between the owner or operator of the facility audited and either a potential purchaser of the facility or KDHE officials (Attachment III). K.S.A. 60-3334(c)(2). [SB 453, § 4.]

The owner or operator of a regulated facility who wishes to disclose the contents of an audit report to KDHE while still preserving the right to claim the privilege should contact the Director of the Division of the Environment to request a confidentiality agreement. The confidentiality agreement must be in place prior to the disclosure.

By entering into the confidentiality agreement, the owner or operator of the regulated facility has preserved the right to assert the privilege in any legal proceedings. The preservation of the privilege also exempts the audit report from disclosure by KDHE in response to an open records act request. K.S.A. 2005 Supp. 45-229. [SB 453, § 1.] Confidentiality agreements will not be binding on KDHE unless signed by the Secretary.

The environmental audit law prohibits KDHE employees from asking for, reviewing or using environmental audit reports during the course of a KDHE inspection of the facility. K.S.A.60-3333(d). [SB 453, § 3.]

II. Immunity for Voluntary Disclosure of Violations

K.S.A. 60-3332 *et seq.*, as amended, provides for immunity from administrative or civil penalties for violations voluntarily disclosed if certain conditions are met. The violation must have been found in the course of a self-audit. The disclosure must be made promptly after the person discovers the violation. The person must have initiated action in a reasonable and diligent manner to resolve the violation and the person must cooperate with KDHE in the investigation of the issues identified in

the disclosure. See K.S.A. 60-3338(a). [SB 453, § 6.] A disclosure is not “voluntary” if it is required to be disclosed by law. K.S.A. 60-3338(b). [SB 453, § 6.]

The disclosure should identify the facility owner or operator or facility name, address and phone number, the date of the disclosure, the violation(s) discovered, and the proposed actions to correct the violation. A sample disclosure form is attached. (Attachment IV).

III. Mitigation of Penalties

K.S.A. 60-3332 *et seq.*, as amended, also provides that an administrative hearing officer or district court judge must consider the implementation of an environmental management system as a mitigating factor in determining whether to impose administrative or civil penalties and in determining the severity of any penalty imposed. K.S.A. 60-3339. [SB 453, § 7.]

Although K.S.A. 60-3339, as amended, does not require KDHE to take into consideration the implementation of an environmental management system when assessing the initial administrative penalty, KDHE may, under the appropriate circumstances, consider this factor when determining the penalty to be imposed.

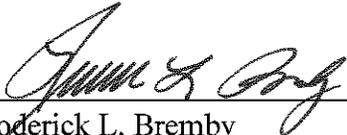
DISCLOSURE SUBMISSIONS

Owners or operators of regulated facilities who wish to disclose the contents of an audit report to KDHE should first sign and submit the confidentiality agreement (Attachment III). Once the facility receives a copy of the fully executed confidentiality agreement, the *Notice of Voluntary Disclosure* form (Attachment IV) can be submitted.

A *Notice of Voluntary Disclosure* form can be submitted without entering into a confidentiality agreement with KDHE; however, the regulated facility will forfeit its right to assert the evidentiary privilege.

All information related to voluntary disclosures should be sent to the following address:

Director of the Division of Environment
Kansas Department of Health and Environment
1000 SW Jackson St., Suite 400
Topeka, Kansas 66612-1367



Roderick L. Bremby
Secretary

1-8-2010
Date

Questions and Answers

Regarding K.S.A. 60-3332 et seq.

NOTE: Any reference to a "person" in this attachment includes any member of the regulated community, whether sole proprietor, partnership, corporation, etc.

This information is intended to provide guidance in interpreting K.S.A. 60-3332, *et seq.* as it applies to environmental auditing and disclosure of violations of environmental laws administered by KDHE. It should not be considered as a substitute for the actual law.

GENERAL

QUESTION: What does this legislation do?

ANSWER: It creates an evidentiary privilege for audit reports and immunity from or mitigation of any civil or administrative penalties assessed for violation of environmental laws.

QUESTION: What do I have to do to take advantage of this legislation?

ANSWER: To take full advantage of this legislation three things are required: implementation of an environmental management system tailored to the unique circumstances of the person involved, performance of a self-audit for compliance with environmental laws, and if any violations are found, voluntary disclosure of the violations to the appropriate agency.

If the person does any one or two of these three items, some benefits of the legislation may still be available. For instance, while performing an audit without implementing an environmental management system would preclude claiming an evidentiary privilege [K.S.A. 60-3334(d)(2), as amended], the person may still be able to receive immunity for the violations voluntarily disclosed [K.S.A. 60-3338, as amended}. Conversely, if the management system is implemented, and either no audit is done or no voluntary disclosure has been made, the implementation of the system must still be taken into account as a mitigating factor for any penalty assessed [K.S.A. 60-3339, as amended].

QUESTION: Do I have to implement an environmental management system or conduct a self-audit?

ANSWER: No. These activities are completely voluntary.

QUESTION: Why should I implement an environmental management system?

ANSWER: Even without this legislation, implementing an environmental management system makes sense because it can assist a person in maximizing compliance with a regulation, minimizing potential liabilities, reducing operating costs and improving the person's public image. With this legislation, the implementation of an environmental management system provides a person with these additional benefits: any audit reports prepared under this legislation by a person that has implemented an environmental management system may be able to claim a privilege regarding that report and if that person is subject to any civil or administrative penalty, the court or administrative tribunal determining whether to impose the penalty or in setting the severity of the penalty, must consider the implementation of the environmental management system as a mitigating factor.

QUESTION: Why should I conduct a self-audit?

ANSWER: The benefits of conducting a self-audit exist outside of this legislation. By reviewing the person's own environmental compliance, a person is able to assess where their strengths and weaknesses are and how that person can work to correct any problems. With this legislation, if the person determines during the course of the audit that they have violated a KDHE statute or regulation, they can voluntarily disclose that violation to KDHE and receive immunity from a penalty subject to certain exceptions.

QUESTION: How often should I conduct self-audits in an environmental management system?

ANSWER: Under this legislation an environmental management system should contain a practice of regular review, routine evaluation and periodic auditing of day to day monitoring efforts to evaluate compliance. What is appropriate is dependent on factors including, but not limited to, the size and financial resources of the operation and the environmental risks posed in its operations. This requires an individualized assessment of each operation to answer this question. It should be noted that this legislation is not intended to allow continuous or uninterrupted auditing.

QUESTION: Does this legislation allow a person to hide the fact they are operating out of compliance?

ANSWER: No. No one can claim an evidentiary privilege regarding matters covered in an audit report if they fail to take action to remedy the noncompliance or they do not implement a management system. In order to claim immunity from penalties the person must report the violations discovered during the course of an audit. No one can claim immunity for violations that must be disclosed under any statute or regulation.

QUESTION: Can a person use the audit privilege to thwart a pending investigation of their facility?

ANSWER: No. Information obtained by an agency in any investigation, if obtained independently of any audit, is still admissible in a civil, administrative or criminal proceeding. K.S.A. 60-3336, as amended by SB 453, § 5.

QUESTION: Does this legislation impede the ability of KDHE to address serious environmental concerns?

ANSWER: No. There is no immunity from enforcement action where there an imminent and substantial endangerment to the public health or environment. K.S.A. 60-3334, as amended by SB 453, § 4.

QUESTION: Will the voluntary disclosure immunity and audit report privilege allow a person to avoid coming into and maintaining compliance?

ANSWER: No. Persons have a duty independent of the immunity or privilege provisions to comply with the law. This legislation encourages persons to review their compliance status and then to report and correct any violations they find.

QUESTION: I want an independent review of my facility's environmental compliance. How can I find a qualified auditor?

ANSWER: KDHE does not certify environmental auditors or consultants, nor does it maintain a list of persons or entities holding themselves out to be qualified auditors within the meaning of this legislation. KDHE has prepared a brochure, "Choosing an Environmental Consultant."

QUESTION: What is KDHE's overall policy regarding this legislation?

ANSWER: Representatives from KDHE testified in favor of the legislation in legislative committee hearings. KDHE recognized the purpose of the legislation is to encourage voluntary compliance as a means to reduce the need for enforcement. KDHE supports that purpose but will continue to fulfill its duty to protect the environment and public health by enforcement actions where necessary.

QUESTION: How does this legislation benefit the state?

ANSWER: This legislation, if all parties involved actively promote and implement the provisions it contains, will improve the overall protection of the environment and public health by supporting and encouraging voluntary compliance efforts by the regulated community.

PRIVILEGE

QUESTION: Does this privilege shield information otherwise required to be developed, maintained or reported under any law or permit condition?

ANSWER: No. The privilege does not apply to any information that is required to be developed, maintained or reported under any law or condition of any permit issued. K.S.A. 60-3336, as amended by SB 453, § 5.

QUESTION: Does this privilege prevent KDHE from obtaining any information about a person's environmental compliance record?

ANSWER: No. This privilege does not cover information obtained by KDHE independently from any audit, nor to any information developed by the person outside of the audit process. K.S.A. 60-3336, as amended by SB 453, § 5.

QUESTION: If the audit report is privileged, the privilege is lost if "*appropriate efforts to achieve compliance were not promptly initiated and pursued with reasonable diligence upon discovery of noncompliance.*" What do the italicized terms mean?

ANSWER: These terms need to be considered within the circumstances involved. KDHE interprets "appropriate efforts" to be efforts suitable to achieve compliance, when the particular circumstances involved are considered, are taken. For instance, whether efforts that might achieve compliance at a cost of \$10,000 may or may not be appropriate depends on the size of the business involved, or the extent or nature of the threat to the environment posed by not pursuing those efforts.

"Promptly" means readily and quickly, within the demands of the occasion. It should be done without unnecessary delay and with reasonable speed. If the efforts involved require ordering equipment that will take several weeks to have delivered, placing the order at the first opportunity would be considered "prompt" action, even if the installation would not occur for several weeks.

"Reasonable diligence" means a fair, proper and due degree of care and activity, measured with reference to the particular circumstances.

QUESTION: If I send a copy of the audit to KDHE, will any news media, competitor or member of the general public be able to have access to it?

ANSWER: The legislation allows the privilege to be maintained if the disclosure is made under the express terms of a confidentiality agreement between KDHE and the owner or operator of the facility audited. K.S.A. 60-3334, as amended by

SB 453, § 4. KDHE is not required to provide public access to documents that are privileged under the rules of evidence. K.S.A. 2005 Supp. 45-229, as amended by SB 453, § 1. If the disclosure to KDHE was made under an express confidentiality agreement, then the confidentiality of the report will be preserved by KDHE.

If, however, the disclosure was made to KDHE without any confidentiality agreement, the disclosure acts as a waiver of the privilege and KDHE would have to allow access to anyone making an open records act request.

IMMUNITY

QUESTION: **In order to obtain immunity I must make a voluntary disclosure to the agency having regulatory authority over the violation involved. Who should I make the disclosure to and what happens after I make it?**

ANSWER: Disclosure of any violation that is within KDHE's authority may be made to any KDHE employee but, in order to ensure immunity, should be made in writing to the Director of the Division of the Environment. If the person making the disclosure also wishes to disclose the contents of an audit report, they should do so only after entering into a confidentiality agreement with KDHE. If the contents of an audit report are disclosed without entering into a confidentiality agreement, the person has waived their right to assert any evidentiary privilege at any subsequent legal proceeding where a party submits evidence regarding the contents of that audit report.

QUESTION: **What happens if I discover a violation during an audit and make the proper disclosure, but during the KDHE follow-up visit the inspector finds other violations I did not discover during the audit?**

ANSWER: The legislation only provides for immunity for those violations voluntarily disclosed. Although immunity is not available for those violations not voluntarily disclosed, KDHE has the discretion to determine that no penalty be assessed for other violations found in a follow-up audit under the appropriate circumstances. If KDHE does determine that a penalty is warranted, but the business has implemented an environmental management system, then that fact must be taken into account as a mitigating factor by the administrative hearing officer or district court judge.

Although K.S.A. 60-3339, as amended, does not require KDHE to take into consideration the implementation of an environmental management system when assessing the initial penalty, KDHE may, under the appropriate

circumstances, consider this factor when determining the penalty to be imposed.

QUESTION: Should a person disclose all violations they find or just those they can quickly correct?

ANSWER: Immunity is available for violations discovered in the course of an audit, subject to some exceptions, where the disclosure is promptly made and action to correct the violation is being taken in a reasonable and diligent manner. Although the person must be taking steps toward correcting the violation, immunity is still available even if the violation has not been corrected prior to reporting it to KDHE. If the person discovers any violations during the audit and fails to report all of the violations found, whether corrected or not, immunity only exists for those violations properly disclosed.

It should be noted that implementation of an environmental management system requires periodic auditing to evaluate a facility's compliance with environmental laws. If a violation is discovered during this periodic auditing, voluntary disclosure may provide the facility with immunity from any penalty.

QUESTION: Will the immunity for voluntary disclosure allow a person to avoid penalties by reporting a longstanding violation immediately prior to KDHE learning of it?

ANSWER: No. The immunity is only available to those persons who discover the violation through an audit, promptly disclose the violation, and then initiate action in a reasonable and diligent manner to correct the violation.

QUESTION: Does this legislation allow a person to avoid penalties for disclosures they were required to make under any reporting requirement imposed by statute or permit condition?

ANSWER: No. Immunity only applies where the disclosure is voluntary. The legislation expressly states a disclosure is not voluntary where it is required to be reported by state law. Because permit conditions are authorized by state law, any reporting requirement imposed as a permit condition is one required by state law. K.S.A. 60-3336, as amended by SB 453, § 5.

QUESTION: Can a person repeatedly avoid penalties for a pattern of violations as long as they make the proper disclosures?

ANSWER: Immunity is not available where the persons have not taken diligent action to correct the violation or where they commit a willful or intentional violation.

QUESTION: Do I have immunity for past violations discovered during the audit that have been corrected?

ANSWER: Immunity attaches to any violations discovered during the audit, which are disclosed, regardless of when the violations occurred or have been corrected, as long as other requirements for immunity are met.

QUESTION: Immunity is not available for violations that result in imminent and substantial endangerment to the public health or the environment. What does the term "imminent and substantial endangerment" mean?

ANSWER: This term is not defined in Kansas Law. KDHE interprets the legislative intent to be that violations that result in an actual or imminent threat to the environment or public health that did or could have resulted in injury to persons or the environment. The determination of whether the violation presents an imminent and substantial endangerment would depend on the facts involved and would be determined by either the administrative hearing officer or the district court judge presiding over the proceeding. K.S.A. 60-3334, as amended by SB 453, § 4.

QUESTION: If I discover a violation during the data-gathering phase of the audit should I wait until the audit report is finished before disclosing the violation?

ANSWER: No. A violation must be promptly reported to obtain immunity. If the actual completion of the report does not occur within the necessary time of the discovery of the violation, the person making the disclosure may lose the right to immunity for reporting that violation. The disclosure should be made promptly after discovery without waiting for the completion of the audit report.

QUESTION: After the conclusion of an audit I implemented an environmental management system. Will I be able to claim immunity if I am later found to have violated some regulation?

ANSWER: Immunity from penalties only applies for voluntary disclosure of certain violations discovered during an audit. Although having implemented an environmental management system will be considered as a mitigating factor if a penalty is assessed, that system, by itself, will not create an immunity from penalties.

QUESTION: Does voluntary disclosure to the appropriate state agency protect me from over filing by a federal agency?

ANSWER: This legislation only applies to enforcement actions brought by state agencies. The EPA has issued its policy regarding self-auditing and voluntary

disclosure of violations. This policy is contained in Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations; Notice; 60 Fed. Reg. 66706 (December 22, 1995).

CRIMINAL

QUESTION: Does this legislation prevent effective prosecution of environmental crimes?

ANSWER: No. The privilege and immunity provisions do not apply where the violations are willful or intentional or where they cause serious actual personal injury or imminently and substantially endanger the public health or the environment.

Statute Summary with Agency Comments

Introduction

The following document summarizes the key provisions of K.S.A. 60-3332 *et seq.*, as amended by SB 453 (2006). Commentary is provided where needed.

Definition of Key Terms

An audit is a voluntary self-evaluation, performed by the owner or operator or its employees or by a qualified auditor designed to determine if a facility complies with environmental laws. It must be completed within a reasonable time and cannot be continuous or uninterrupted. K.S.A. 60-3332(a). [SB 453, § 2.]

An audit report is a report labeled "Audit Report: Privileged Document," prepared as a result of an audit. K.S.A. 60-3332(b). [SB 453, § 2.]

A facility includes all contiguous land, structures and other appurtenances and improvements on the land. K.S.A. 60-3332(c). [SB 453, § 2.]

An environmental law is any requirement contained in state environmental statutes and in rules and regulations promulgated under such statute. K.S.A. 60-3332(e). [SB 453, § 2.]

NOTE: This does not include any federal or local government entity statute, regulation or ordinance.

An environmental management system contains primary characteristics that ensure compliance with environmental laws is pursued and supported at all levels of the operation involved. K.S.A. 60-3334(d)(2). [SB 453, § 4.]

A qualified auditor is a person or organization with education, training and experience in preparing studies and assessments. K.S.A. 60-3332(d). [SB 453, § 2.]

The Evidentiary Privilege Given to Audit Reports

Audit reports are not admissible as evidence in any proceeding except as specifically provided by this act. K.S.A. 60-3333(a). [SB 453, § 3.] If the audit report is privileged, no one who conducted the audit nor anyone to whom the audit results were disclosed can be compelled to testify regarding the audit report. K.S.A. 60-3333(b). [SB 453, § 3.] Any other applicable statutory or common-law privilege may also be claimed. K.S.A. 60-3337.

Environmental audit reports are not subject to discovery procedures, except as specifically provided in the environmental audit law. K.S.A. 60-3333(a). [SB 453, § 3.]

Waiver of the Privilege

The owner or operator of the facility where the audit was conducted can waive the privilege. K.S.A. 60-3334(a). [SB 453, § 4.] No waiver occurs if the disclosure is to a person employed by the owner or operator of the facility audited, to a legal representative of the owner or operator or to an independent contractor retained by the owner or operator to address an issue or issues raised in the audit report. K.S.A. 60-3334(b). [SB 453, § 4.]

Also no waiver occurs if the disclosure is under an agreement between the facility owner or operator and a potential purchaser if the terms of the agreement expressly provide the information is to be kept confidential or under a confidentiality agreement between government officials and the owner or operator of the facility audited if the terms expressly provide the information is to be kept confidential. K.S.A. 60-3334(c). [SB 453, § 4.]

NOTE: Under the Kansas Open Records Act, K.S.A. 45-215 *et seq.* (KORA), agency records which are privileged under the rules of evidence need not be disclosed to the public. If any Audit Reports are provided to KDHE under a confidentiality agreement, KDHE has no duty to disclose those reports if a KORA request is made.

Disclosure of material asserted to be privileged can be made in any proceeding if the judge or administrative hearing officer determines any of the following: the privilege is asserted for fraudulent purposes; the party asserting the privilege has not implemented a management system to assure compliance with environmental laws; the material is not privileged or the material shows evidence of noncompliance with environmental laws and appropriate efforts to achieve compliance were not promptly initiated and pursued with reasonable diligence upon discovery of noncompliance; the environmental audit report was prepared to avoid disclosure in a proceeding that was underway or imminent; the report shows evidence of substantial actual personal injury, which is not otherwise available; or the report shows an imminent substantial endangerment to the public health or the environment. K.S.A. 60-3334(d). [SB 453, § 4.]

The following items are not privileged: information required by law; information obtained by observation, sampling or monitoring by any regulatory agency; information obtained from a source not involved in the preparation of the audit report; information that either existed before or was prepared after the audit and independent of the audit; or any information that is not otherwise privileged that is developed or maintained in the regular course of business. K.S.A. 60-3336. [SB 453, § 5.]

Criminal Proceedings

If probable cause to believe a criminal offense has been committed based on information obtained independently from an audit report, the audit report may be obtained through a search warrant or subpoena or through discovery under the Kansas criminal procedure code. K.S.A. 60-3335(a). The court, after an *in camera* review, may only order disclosure of the portions of the report relevant to disputed issues in the proceeding. K.S.A. 60-3335(t). The parties may at any time stipulate to the disclosure or nondisclosure of any part of the audit report. K.S.A. 60-3335(e).

Immunity from Civil, Administrative, or Criminal Penalties

There is a rebuttable presumption of immunity from penalties if the disclosure: is made promptly after knowledge of the information disclosed is obtained by the facility owner or operator; is voluntarily made to the agency having regulatory authority with regard to the violation disclosed before there is notice of a citizen suit or legal complaint by a third party; arises out of the environmental audit and is related to privileged information. The person making the disclosure must initiate action in a reasonable and diligent manner to resolve the violations identified in the disclosure and must cooperate with the appropriate agency in connection with the investigation of the issues identified in the disclosure. K.S.A. 60-3338(a). [SB 453, § 6.]

The presumption of immunity may be rebutted by showing: the disclosure was not voluntary; the violation was intentional and willful; the violation was not fully corrected in a reasonable time; or the violation caused serious actual harm or an imminent and substantial endangerment to the public health or the environment. K.S.A. 60-3338(c). [SB 453, § 6.]

Mitigation of Civil and Administrative Penalties When an Environmental Management System has been Implemented

If the person or entity has implemented an environmental management system, a court or administrative tribunal, after finding a violation of the law, shall give consideration to that fact in determining whether to impose the penalty and in determining the severity of the penalty. K.S.A. 60-3339. [SB 453, § 7.]

Confidentiality Agreement *for Voluntary Disclosure of Violations*

This Confidentiality Agreement is made effective as of _____, 20___, by and between _____ (collectively, the “Company”) and the Kansas Department of Health and Environment (the “Agency”).

WHEREAS, the Company performed a voluntary, internal evaluation on _____ 20___, of the facility/real property owned by the Company located at _____ (the “Audit”); and

WHEREAS, the report of the Company’s environmental audit may be an Environmental Audit Report protected by the privilege set forth in K.S.A. 60-3332 *et seq.*, as amended, entitled Environmental Audits; Privilege and Immunity (the “Act”); and

WHEREAS, the Company intends to keep the information included in its Environmental Audit Report privileged and confidential to the fullest extent permitted under the Act and under the laws of the State of Kansas; and

WHEREAS, the Agency wishes to review the Environmental Audit Report in connection with disclosures made and immunity sought by the Company pursuant to the Act; and

WHEREAS, the Agency agrees to maintain the confidentiality of the information included in the Environmental Audit Report as provided under the Act and the laws of the State of Kansas and under the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions specified herein, the Company and the Agency agree as follows:

1. The Company or its agents may disclose to Agency, either verbally or in writing, certain information concerning the Environmental Audit Report (“Confidential Information”). The Company will mark all pages of all documents submitted “Audit Report: Privileged Document” or words of similar import on all materials submitted under a claim of confidentiality.

2. The Agency shall treat all such Confidential Information with the degree of care necessary to preserve and protect its confidentiality and shall promptly notify the Company of any wrongful disclosure or other misuse of Confidential Information of which the Agency becomes aware. The Agency will disclose the Confidential Information only to those of its employees, officers, or agents who are necessary for the use contemplated by the Agreement and to no other person or entity. The Agency will take all necessary action to inform such employees of the confidential and privileged nature of such information.

3. In the event that a member of the public requests copies of or access to Confidential Information, either orally or in writing, pursuant to the Kansas Open Records Act, K.S.A. 45-215 *et seq.*, (“Open Records Act”) or otherwise, the Agency shall refuse to provide such access or copies in accordance with the Act and the Open Records Act.

4. The Company and the Agency retain all rights and remedies afforded under the Act or the laws of the State of Kansas. Nothing in this Agreement or in the Agency's use of the information provided by the Company shall be deemed to waive any claim of confidentiality or privilege in the Confidential Information.

5. This Agreement shall be effective as of the date specified above. This Agreement may be amended or terminated only by a written instrument signed by all parties.

THE COMPANY:

THE AGENCY:
Kansas Department of Health & Environment

By: _____

By: _____

Printed Name

Printed Name

Title

Title

Date

Date

Kansas Department of Health and Environment
Notice of Voluntary Disclosure

Facility Name:

Address:

Contact:

Telephone:

Facility Owner or Operator:

Address (if different than above):

Nature of Violation:

Proposed Compliance Schedule:

This violation was discovered as a part of a voluntary facility audit. Notwithstanding the disclosures made under this Notice of Voluntary Disclosure and any environmental audit or audit report generated as a result of the facility's disclosures, the facility understands that KDHE has the discretion and authority to conduct complaint or compliance inspections at the facility at any time.

The undersigned understands that in order to preserve the right to claim the evidentiary privilege, a confidentiality agreement with KDHE must be in place prior to submission of the voluntary disclosure form.

Printed Name of Owner/Operator

Signature of Owner/Operator

Date



Mail to:
Kansas Department of Health and Environment
Director, Division of Environment
1000 SW Jackson, Suite 400
Topeka, KS 66612