

III. ENVIRONMENTAL SELF-AUDITS

Environmental self-audits are environmental reviews initiated by a producer to determine compliance with sound environmental practices and current environmental regulation. Iowa's Environmental Audit Act was enacted in 1998 to encourage environmental responsibility by businesses by offering legal protections to any business which conducts a voluntary self-audit and takes appropriate corrective action as a result of the self-audit. A livestock operation is a business which can qualify for the benefits of Iowa's environmental self-audit law. In addition, the U.S. Environmental Protection Agency offers benefits to persons who conduct self-audits of their operations.

Under Iowa law, an environmental audit can be conducted by the owner or operator or an independent contractor retained by the owner or operator. The audit must be designed to identify past or current noncompliance with environmental law, discover environmental contamination or hazards, correct noncompliance or improve compliance with environmental laws, or improve an environmental management system.

1. **Benefits.** In addition to assuring a producer that an operation is not negatively affecting the environment and neighbors, conducting an environmental audit in accordance with Iowa law provides the following legal benefits to producers:
 - a. Immunity from administrative or civil penalties arising from the disclosure of a violation if the producer promptly and voluntarily discloses to DNR that an environmental violation was discovered in the audit.
 - b. Confidentiality for the contents of an environmental audit report and confidentiality for those who prepared the report regarding the components of the report, with certain exceptions as set out below. For any environmental audit report prepared as a result of the audit to be considered privileged and confidential information, the report must be labeled "ENVIRONMENTAL AUDIT REPORT: PRIVILEGED DOCUMENT".
 - c. A person who prepares an environmental audit report and who observed the physical events of an environmental violation may, but is not required by law, to testify about those events and cannot be compelled to testify about or produce documents related to the preparation of or any privileged part of an environmental audit or any component of the environmental audit report.
 - d. A government employee shall not request, review, or otherwise use an environmental audit report during an agency inspection of a regulated facility or operation, or an activity of a regulated facility or operation.

The information in this excerpt from the Iowa Environmental Regulations Handbook, like the Handbook itself, is for informational purposes and based on laws and regulations in effect at the time of publication. Producers are advised to consult individual legal counsel, to stay informed of changes in these laws, and to contact IPPA for further information.

2. **DNR Notification.** To be eligible for immunity from penalties for information arising from the environmental audit, the following two notices must be given to DNR:

- a. **Notice of Environmental Audit.** A producer may notify DNR before an audit is conducted or at the time the audit is begun. An owner or operator is eligible for immunity under the law beginning when DNR receives official notification that an audit will be conducted. Once notification is given to the department, an environmental audit must be completed within a reasonable time not to exceed six months unless an extension is granted by DNR. As required by DNR rules, producers should provide DNR with the following Notice of Environmental Audit by certified mail:

“Pursuant to Iowa Code Chapter 455K and Iowa Administrative Code 567 Chapter 12, by this letter the Iowa Department of Natural Resources is notified of the commencement of an environmental self-audit. As required by Iowa Administrative Code 567 — 12.2(1), the following information is provided:

- a. and b. The names and locations (address and city) of the facilities to be audited:**
c. The description of the facilities or portion of the facilities to be audited, including applicable DNR permit numbers:
d. Date of the anticipated initiation of audit (day, month, and year):
e. The general scope of the audit:
f. The names of the persons conducting the audit:
g. The anticipated date of completion of the audit not to exceed six calendar months: “

- b. **Voluntary Disclosure of Violation.** A producer must notify DNR if a violation is discovered during the audit. The law provides immunity from administrative or civil penalties arising from the disclosure of a violation if the producer promptly and voluntarily discloses the violation to DNR. If DNR was not notified before the audit was conducted, the disclosure of violation is voluntary if the violation is identified in the audit report and disclosed by certified mail to the appropriate agency (in most cases, DNR) before the agency begins an investigation. To be voluntary disclosure, violations must be identified in the audit report and disclosed to the DNR before the violations are reported by a third party or before there is a lawsuit filed. As required by DNR rules, producers should provide DNR with the following Voluntary Disclosure of Violation by certified mail:

“Pursuant to Iowa Code chapter 455K and Iowa Administrative Code 567 Chapter 12, by this letter a violation of the Iowa Code and Iowa Administrative Code Chapter 65 is voluntarily disclosed to the Iowa Department of Natural Resources.

**A voluntary environmental self-audit has been and conducted at the following location:
Voluntary disclosure of a violation is made for the following location:**

As required by Iowa Administrative Code 567 - 12.4(3), the following information is provided:

- a. Reference to the date of the relevant notice of audit and assigned reference number, if one was provided:**
b. Time of initiation and completion of the audit, if applicable:
c. The names of the person or persons conducting the audit:
d. Affirmative assertion that a violation has been discovered:
e. Description of the violation discovered and reason for believing a violation exists:
f. Date of discovery of the violation and interim measures taken to abate the violation:
g. Duration of the violation if that can be determined:
h. The status and schedule of proposed corrective measures, if applicable:”

Within 15 days, DNR is to acknowledge receipt of the disclosure and will note whether the corrective measures and schedule are accepted. A notice of violation to DNR is not privileged information and is considered public information. A copy of any environmental audit report prepared during the audit should not be sent to DNR unless DNR specifically requests a copy.

Disclosure of the violation is voluntary if it relates to privileged information from an environmental audit and reasonable efforts are made to pursue compliance and to correct the noncompliance within a reasonable time after the audit is completed and in accordance with a DNR approved schedule. If the noncompliance is a failure to obtain a permit, reasonable efforts to comply would be submitting a permit application within a reasonable time. Disclosure of information required to be reported by law is not considered to be voluntary disclosure.

3. **Exceptions.** The legal immunity benefits of the Iowa Environmental Audit Act do not apply if:
- a. The requirements of the environmental audit law are not met, for example, if DNR is not properly notified.
 - b. The violations of state or federal environmental law are intentional or if the violations resulted in substantial actual injury or imminent and substantial risk of injury to persons, property, or the environment.
 - c. An owner or operator has been found in a civil or administrative proceeding to have committed serious violations in Iowa that constitute a pattern of continuous or repeated violations of environmental laws, administrative rules, or permit conditions, that were due to separate and distinct events giving rise to the violations within the previous three year period or if under Iowa livestock environmental law an owner or operator is classified as a habitual violator.
 - d. A violation results in substantial economic benefit which gives the violator a clear economic advantage over business competitors.

The confidentiality benefits provided by the Iowa Environmental Audit Act do not apply:

- a. If the requirements of the law are not met, for example, if the report is not properly labeled.
- b. To the extent that the privilege is expressly waived in writing by the owner or operator. The benefits are not waived if disclosure is made to address or correct a matter raised by the environmental audit and the disclosure is made to an employee, legal representative, officer or director, or an independent contractor of the owner or operator.
- c. To information required by a regulatory agency to be collected, developed, retained, or reported under a state or federal environmental law, rule, or permit condition.
- d. To information obtained by an agency by observation, sampling, or monitoring.
- e. To information obtained from a source not involved in the preparation of the environmental audit report.
- f. To criminal investigations or proceedings.

A court or administrative hearing officer may require disclosure of a portion of an environmental audit report in a civil or administrative proceeding if it is determined, after a confidential review by the court that:

- a. The privilege is asserted for a fraudulent purpose;
- b. There is evidence in the report of noncompliance with a state or federal environmental or other law and the owner or operator has not made appropriate efforts to achieve compliance;
- c. The report shows clear and convincing evidence of substantial actual personal injury, or the report shows a clear and present danger to the public health or the environment.