

**THE NATURAL RESOURCES AND ENVIRONMENTAL
PROTECTION ACT**

(Act 451 of 1994, As Amended)

**Part 148
ENVIRONMENTAL AUDIT PRIVILEGE AND IMMUNITY**

FIVE-YEAR REPORT

1996 – 2001

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Environmental Assistance Division
Department of Environmental Quality
March 31, 2001



LEGISLATIVE REPORT
ENVIRONMENTAL AUDIT PRIVILEGE AND IMMUNITY LAW
March 1996 – March 2001

I. INTRODUCTION

This report is being submitted to the Senate Natural Resources and Environmental Affairs Committee and the House Conservation and Outdoor Recreation Committee of the Michigan Legislature in accordance with Part 148, Environmental Audit Privilege and Immunity, of the Natural Resources and Environmental Protection Act 1994 PA 451, as amended, (NREPA), which states in part:

Section 14810

(2) Within 5 years after the effective date of this part, the department of environmental quality shall prepare and submit to the standing committees of the legislature with jurisdiction over issues pertaining to natural resources and the environment a report evaluating the effectiveness of this part and specifically detailing whether this part has been effective in encouraging the use of environmental audits and in identifying and correcting environmental problems and conditions.

II. LEGISLATIVE HISTORY

On March 15, 1996, Governor John Engler signed into law 1996 PA 132, which amended the NREPA by adding Part 148, Environmental Audit Privilege and Immunity.

On November 13, 1997, Governor John Engler signed into law 1997 PA 133 and 1997 PA 134, which amended Part 148 of the NREPA. These amendments further limited the scope of immunity coverage, established a pre-audit notice requirement, and clarified various aspects of the law.

III. OVERVIEW

The purpose of Part 148 is to encourage businesses, municipalities, and other entities to conduct environmental audits and to promptly disclose and correct any violations found by the audits. Part 148 defines “environmental audit” as a voluntary, internal evaluation of a facility (or activity) regulated by the environmental requirements in the NREPA, conducted after March 18, 1996, that is designed to:

- Identify past or current noncompliance;
- Prevent noncompliance or improve compliance;
- Identify an existing or potential hazard, contamination, or adverse environmental condition; or
- Improve an environmental management system or process.

Part 148 provides two important incentives to conduct environmental audits and correct violations:

- Limited privilege for an environmental audit report, by which certain information contained in the environmental audit report can be held confidential (privileged) and is not directly accessible to a state or local government agency or the public; and
- Limited immunity from state administrative or civil fines and penalties and certain criminal fines for negligent acts or omissions (except in the case of gross negligence) for violations that are discovered through an environmental audit, provided that the audit is voluntary, prior notice is provided to the Department of Environmental Quality (DEQ) of the intent to do an audit, and the discovered violations are promptly corrected and disclosed to the appropriate state and/or local regulatory agencies.

State and local agencies retain authority to access and review any information that is required to be made available or reported under environmental laws and regulations, permits, or other legal documents or agreements. Also, Part 148 establishes a procedure by which the state or local law enforcement agency can seek disclosure of privileged material through the circuit court.

In order to receive immunity under Part 148, a facility must notify the DEQ of its intent to do an environmental audit, specifying the facility or portion of the facility to be audited, the anticipated time the audit will begin, the general scope of the audit, and make a voluntary disclosure of the violations discovered, and promptly correct the violations. The state may rebut the presumption of immunity in a situation where the state believes that the disclosure was not made in full compliance with Part 148.

For additional information see the attached – *Fact Sheet – Environmental Audit Privilege & Immunity Update with 1997 Amendments.*

IV. RESULTS

As of March 31, 2001, the DEQ has received 1,648 notices of intent to perform an environmental audit. These notices have been filed by various business and industry types, both large and small, as well as several local units of government.

DATES	NUMBER OF NOTICES OF INTENT
March 1996 - October 1997	Requirement not in effect
November 1997 - March 1998	35
April 1998 - March 1999	554
April 1999 - March 2000	538
April 2000 - March 2001	521
Total to Date	1648

As of March 31, 2001, 80 voluntary disclosures have been submitted. To qualify for immunity, facilities are required to pursue compliance with due diligence, and promptly correct the noncompliance or conditions after their discovery. Ninety percent of the violations reported were targeted for correction within six months of the date of the voluntary disclosure.

DATES	NUMBER OF VOLUNTARY DISCLOSURES
March 1996 - April 1997	12
April 1997 - March 1998	10
April 1998 - March 1999	12
April 1999 - March 2000	15
April 2000 - March 2001	31
Total to Date	80

Additional information for the five-year period, including geographic distribution of notices and disclosures, types of violations disclosed, and the estimated time required to achieve compliance is presented in Appendix A attached.

V. EVALUATION OF EFFECTIVENESS

The recorded results indicate that Part 148 is serving its purpose in providing an incentive and reducing barriers to regulated entities to perform self-audits. Most importantly, the significant number of notices of intent filed (1,648) shows that audits are being performed.

There have been no known instances where Part 148 has prevented the DEQ from performing its regulatory responsibilities or taking necessary enforcement actions. None of the 80 voluntary disclosures have identified violations of the type and extent that warranted further action by the DEQ, nor did the privilege provided under Part 148 prevent the DEQ from accessing necessary site information.

In conclusion, Part 148 has been and continues to be effective in encouraging increased self-auditing by regulated entities in Michigan, with no adverse effect on the DEQ's regulatory programs. No changes in the statute appear to be necessary or appropriate at this time.

Appendix A
Five-Year Summary of Notifications and Disclosures Made Pursuant to Part 148, Environmental Audit Privilege and Immunity of Act 451 of 1994, as Amended, the Natural Resources and Environmental Protection Act

March 1996 – March 2001

Notices of Intent to Commence Environmental Audits

Total
Through
3/31/01

Number of Notices Received 1648

Types Of Facilities Providing Notice

- Industrial/Business 1645
- Municipal 3

Geographic Distribution Of Notices

- Number of Counties With Notices 41
- Number of Notices Per County
 - Wayne 907
 - Washtenaw 200
 - Macomb 144
 - Oakland 106
 - Monroe 47
 - Genesee 36
 - Kent 32
 - Saginaw 31
 - Muskegon 23
 - Ottawa 17
 - Bay 12
 - Ingham 12
 - Oceana 8
 - Kalamazoo 6
 - Lenawee 6
 - Shiawassee 6
 - Eaton 5
 - Kalkaska, Montcalm, Newaygo, St. Clair 4
 - Jackson, Manistee, Mecosta, Midland 3
 - Allegan, Calhoun, Clare, Lapeer, Livingston, Osceola, Sanilac 2
 - Alpena, Gratiot, Huron, Ionia, Lake, Livingston, Mason, Schoolcraft, VanBuren, Wexford 1

Voluntary Disclosures

Total
Through
3/31/01

Number of Disclosures Received	80
Types of Facilities Submitting Disclosures	
○ Industry/Business	79
○ Municipal	1
Geographic Distribution Of Disclosures	
○ Number of Counties With Disclosures	27
○ Number of Disclosures Per County	
○ Wayne	15
○ Oakland	10
○ Ottawa	8
○ Genesee, Ingham	5
○ Kent, Muskegon	4
○ Macomb, Saginaw	3
○ Jackson, Lapeer, Schoolcraft, Shiawassee, Washtenaw	2
○ Allegan, Bay, Branch, Clare, Huron, Kalamazoo, Kalkaska, Livingston, Manistee, Oceana, Sanilac, St. Clair, VanBuren	1

Table 1. Tabulation of number of violations disclosed by category and the reported time needed to gain compliance.
Table covers report period March, 1996 through March, 2001.

VIOLATION TYPE					
NREPA Part	Failure to Have A Permit	Contamination	Failure to Have A Required Plan	Violation of A Permit Condition/Rule	Failure to Report
31 <i>Water</i>	8	0	15	22	1
55 <i>Air</i>	22	0	4	36	18
111 <i>Hazardous Waste</i>	0	0	26	35	13
115 <i>Waste Disposal</i>	0	0	0	1	0
121 <i>Liquid Industrial Waste</i>	0	3	0	1	1
201 <i>Environmental Remediation</i>	0	6	0	1	0
211 <i>Underground Storage Tank</i>	0	0	0	2	0
311/312 <i>Title III (EPCRA)</i>	0	0	0	0	6
TOTAL	30	9	45	98	39

Table 2. Tabulation of time needed to gain compliance by violation type.
 Table covers report period March, 1996 through March, 2001.

NREPA Part	TIME TO ACHIEVE COMPLIANCE				
	Failure to Have A Permit	Contamination	Failure to Have A Required Plan	Violation of A Permit Condition/Rule	Failure to Report
Reported Compliant at Time of Disclosure	5	0	11	36	19
1 to 2 Months	14	0	13	41	9
3 to 6 Months	5	5	18	18	5
7 to 9 Months	4	4	0	1	0
Greater Than 9 Months	2	0	3	2	6