

CHAPTER 114C

ENVIRONMENTAL REGULATORY INNOVATIONS

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114C.20 ENVIRONMENTAL IMPROVEMENT PROGRAM ESTABLISHED.

An environmental improvement program is established to promote voluntary compliance with environmental requirements.

History: 1999 c 158 s 1

114C.21 DEFINITIONS.

Subdivision 1. **Applicability.** As used in sections 114C.20 to 114C.28, the terms defined in this section have the meanings given.

[For text of subd 2, see M.S.1998]

Subd. 2a. **Environmental management system.** "Environmental management system" means a documented, systematic procedure or practice that reflects the regulated entity's due diligence in preventing, detecting, and correcting violations of environmental requirements. Due diligence encompasses the regulated entity's systematic efforts, appropriate to the size and nature of its business, to prevent, detect, and correct violations of environmental requirements and must be consistent with any criteria used by the United States Environmental Protection Agency to define due diligence in federal audit policies or regulations.

[For text of subd 3, see M.S.1998]

Subd. 4. **Environmental audit; audit.** "Environmental audit" or "audit" means a systematic, documented, and objective review by a regulated entity of one or more facility operations and practices related to compliance with one or more environmental requirements and, if deficiencies are found, a plan for corrective action. The regulated entity may use an evaluation form developed by the regulated entity, prepared by a consultant, or prescribed or approved by the commissioner. The final audit document must be designated as an "audit report" and must include the date of the final written report of findings for the audit.

[For text of subds 5 to 8, see M.S.1998]

Subd. 9. [Repealed, 1999 c 158 s 15]

[For text of subd 10, see M.S.1998]

Subd. 10a. **Regulated material.** "Regulated material" means the chemicals, wastes, or substances generated or released by a facility that make the facility subject to an environmental requirement.

Subd. 11. [Repealed, 1999 c 158 s 15]

[For text of subd 12, see M.S.1998]

History: 1999 c 158 s 2-5

114C.22 AUDITS.

Subdivision 1. **Qualification to participate in program.** For a facility to qualify for participation in the environmental improvement program, more than two years must have elapsed since the initiation of an enforcement action that resulted in the imposition of a penalty involving the facility. In addition, a regulated entity must:

- (1) conduct an environmental audit or submit findings from the facility's environmental management system;
- (2) for a major facility, prepare an environmental audit program pollution prevention plan in accordance with subdivision 3;
- (3) for a facility that is not a major facility, examine steps that could be taken to eliminate or reduce the generation or release of regulated materials at the facility; and
- (4) submit a report in accordance with subdivision 2.

Subd. 2. Report. A regulated entity must submit a report to the commissioner, and to a local governmental unit if the report identifies a violation of an ordinance enacted by the local governmental unit or of another legally binding requirement imposed by the local governmental unit, within 45 days after the date of the final written report of findings for an environmental audit or within 45 days after the findings from the facility's environmental management system. The report must contain:

- (1) a certification by the owner or operator of the facility that the applicable requirements of subdivision 1, clauses (1) to (4), have been met, including a certification that the facility's environmental management system meets the requirements of section 114C.21, subdivision 2a, if the report contains findings from the facility's environmental management system;
- (2) a disclosure of all violations of environmental requirements that were identified in the environmental audit or by the facility's environmental management system and a brief description of proposed actions to correct the violations;
- (3) a commitment signed by the owner or operator of the facility to correct the violations as expeditiously as possible under the circumstances;
- (4) if more than 90 days will be required to correct the violations, a performance schedule that identifies the time that will be needed to correct the violations and a brief statement of the reasons that support the time periods set out in the performance schedule; and
- (5) a description of the steps the owner or operator has taken or will take to prevent recurrence of the violations.

Subd. 3. Environmental audit program pollution prevention plan. An environmental audit program pollution prevention plan must establish a program identifying the specific technically and economically practicable steps that could be taken to eliminate or reduce the generation or release of regulated materials.

Each environmental audit program pollution prevention plan must include:

- (1) a policy statement articulating upper management support for eliminating or reducing the generation or release of regulated materials at the facility;
- (2) a description of the current processes generating or releasing regulated materials that specifically describes the types, sources, and quantities of regulated materials currently being generated or released by the facility;
- (3) a description of the current and past practices used to eliminate or reduce the generation or release of regulated materials at the facility and an evaluation of the effectiveness of these practices;
- (4) an assessment of technically and economically practicable options available to eliminate or reduce the generation or release of regulated materials at the facility, including options such as changing the raw materials, operating techniques, equipment and technology, personnel training, and other practices used at the facility. The assessment may include a cost benefit analysis of the available options;
- (5) a statement of objectives based on the assessment in clause (4) and a schedule for achieving those objectives. Wherever technically and economically practicable, the objectives for eliminating or reducing the generation or release of each regulated material at the facility must be expressed in numeric terms based on a specified base year that is no earlier than 1987. Otherwise, the objectives must include a clearly stated list of actions designed to lead to the establishment of numeric objectives as soon as practicable;
- (6) an explanation of the rationale and environmental benefit for each objective established for the facility;

(7) a listing of options that were considered not to be economically and technically practicable; and

(8) a certification, signed and dated by the facility manager and an officer of the company under penalty of section 609.63, attesting to the accuracy of the information in the plan.

A summary containing the information described in clause (5) must be submitted with the facility's initial environmental audit report. Subsequent environmental audit reports, submitted more than one year after the initial submittal, must include a progress report which describes the success in meeting the objectives included in the summary. After the first submission of the facility's progress report, progress reports are required only if at least one year has elapsed since the previous submission of a progress report.

History: 1999 c 158 s 6

114C.24 ENFORCEMENT.

[For text of subd 1, see M.S.1998]

Subd. 2. Penalties waived. If, within 90 days after the report required in section 114C.22, subdivision 2, is received by the commissioner or within the time specified in an approved performance schedule, the owner or operator of a facility corrects the violations identified in the audit or by the environmental management system and certifies to the commissioner that the violations have been corrected, the state may not impose or bring an action for any administrative, civil, or criminal penalties against the owner or operator of the facility for the reported violations.

Subd. 3. Exceptions. Notwithstanding subdivisions 1 and 2, the state may at any time bring:

(1) a criminal enforcement action against any person who commits a violation under section 609.671;

(2) a civil or administrative enforcement action, which may include a penalty, under section 115.071 or 116.072, against the owner or operator of a facility if:

(i) less than three years have elapsed since the owner or operator was notified about a violation that resulted in the imposition of a monetary penalty, or less than one year has elapsed since the final resolution of an enforcement action that did not result in the imposition of a monetary penalty;

(ii) a violation caused serious harm to, or presents an imminent and substantial endangerment to, human health or the environment;

(iii) a violation is of the specific terms of an administrative order, a judicial order or consent decree, a stipulation agreement, or a schedule of compliance;

(iv) a violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors; or

(v) a violation is identified through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement; or

(3) an enforcement action against the owner or operator of a facility to enjoin an imminent and substantial danger under section 116.11.

Subd. 4. Good faith consideration. If the state finds that one of the conditions in subdivision 3 exists, the state must take into account the good faith efforts of the regulated entity to comply with environmental requirements in deciding whether to pursue an enforcement action, whether an enforcement action should be civil or criminal, and what, if any, penalty should be imposed. In determining whether the regulated entity has acted in good faith, the state must consider whether:

(1) when noncompliance was discovered, the regulated entity took corrective action that was timely under the circumstances;

(2) the regulated entity exercised reasonable care in attempting to prevent the violations and ensure compliance with environmental requirements;

(3) the noncompliance resulted in significant economic benefit to the regulated entity;

(4) prior to implementing the audit program or the environmental management system, the regulated entity had a history of good faith efforts to comply with the environmental requirements;

(5) the regulated entity demonstrated good faith efforts to achieve compliance since implementing an environmental auditing program or the environmental management system; and

(6) the regulated entity has demonstrated efforts to implement pollution prevention opportunities.

Subd. 5. Violations discovered by the state. Nothing in sections 114C.20 to 114C.28 precludes the state from taking any enforcement action the state is authorized to take with respect to violations discovered by the state prior to the time a regulated entity has submitted to the commissioner a report that meets the requirements of section 114C.22, subdivision 2.

[For text of subd 6, see M.S.1998]

History: 1999 c 158 s 7–10

114C.25 GREEN STAR AWARD.

A regulated entity may display at a facility a “green star” award designed by the commissioner if:

(1) the regulated entity qualifies for participation in the environmental improvement program under section 114C.22;

(2) the scope of the regulated entity’s audit examines the facility’s compliance with applicable environmental requirements;

(3) the regulated entity certifies that all violations that were identified in the audit of the facility were corrected within 90 days or within the time specified in an approved performance schedule or certifies that no violations were identified in the audit; and

(4) at least two years have elapsed since the final resolution of an enforcement action involving the regulated entity.

After consulting with each other, however, the commissioner or the county may issue an award if the enforcement action resulted from minor violations. If the regulated entity is located in a metropolitan county, the commissioner and the county must also consult with the metropolitan council before issuing a green star award.

The award may be displayed for a period of two years from the time that the commissioner determines that the requirements of this section have been met. A facility submitting findings from its environmental management system is not eligible to receive an award unless the findings are part of an audit which examines the facility’s compliance with applicable environmental requirements.

History: 1999 c 158 s 11

114C.26 ACCESS TO DOCUMENTS.

Subdivision 1. Public access. After receipt by the commissioner of a report that complies with section 114C.22, subdivision 2, the state may not request, inspect, or seize a final audit report, draft audit papers, the notes or papers prepared by the auditor or the person conducting the audit, or the internal documents of a regulated entity establishing, coordinating, or responding to the audit, other than the report required in section 114C.22, subdivision 2, provided that the regulated entity is in compliance with its commitments under sections 114C.22 and 114C.23.

This subdivision does not restrict the ability of the state to seek monitoring, testing, or sampling data, or information about the location or nature of spills, releases, or threatened releases related to a suspected violation even if the information is contained in an audit report, draft audit papers, or other document protected under this subdivision.

Subd. 2. Third-party access. After receipt by the commissioner of a report that complies with section 114C.22, subdivision 2, the final audit report, draft audit reports, any notes or papers prepared by the auditor or by the person conducting the audit, and the internal docu-

ments of a regulated entity establishing, coordinating, or responding to the audit covered by the report are privileged as to all persons other than the state provided that the regulated entity is in compliance with its commitments under sections 114C.22 and 114C.23.

Subd. 3. Nonwaiver of protections. Participation by a regulated entity in the environmental improvement program does not waive, minimize, reduce, or otherwise adversely affect the level of protection or confidentiality that exists, under current or developing common or statutory law, with respect to any other documents relating to an environmental audit.

Subd. 4. Exceptions. Nothing in this section or any policy or rule adopted by the agency on environmental auditing shall limit the ability of:

(1) the state to seek any information that the state deems necessary to investigate, prevent, or respond to a situation that presents an imminent and substantial endangerment to human health or the environment;

(2) the state to seek any information the state deems necessary to respond to a continuing violation of any environmental requirement;

(3) the state to seek information as part of a criminal investigation; or

(4) the federal government to seek any information it is authorized to obtain under federal law.

History: 1999 c 158 s 12

114C.27 NO EFFECT ON OTHER RIGHTS.

Sections 114C.20 to 114C.28 do not affect, impair, or alter:

(1) rights of a regulated entity that chooses not to participate, or is not eligible to participate, in the environmental improvement program; or

(2) rights of other persons relative to the matters addressed by the environmental improvement program.

History: 1999 c 158 s 13

114C.28 REPORTING REQUIRED BY LAW.

Nothing in sections 114C.20 to 114C.28 alters the obligation of any regulated entity to report releases, violations, or other matters that are required to be reported by state or federal law, rule, permit, or enforcement action.

History: 1999 c 158 s 14

114C.29 [Repealed, 1999 c 158 s 15]

114C.30 [Repealed, 1999 c 158 s 15]

114C.31 [Repealed, 1999 c 158 s 15]