

SECOND REGULAR SESSION

# HOUSE BILL NO. 1854

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BIVINS (Sponsor), MUNZLINGER,  
MOORE AND SANDER (Co-sponsors).

Read 1st time January 24, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

3889L.01I

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### AN ACT

To amend chapter 640, RSMo, by adding thereto ten new sections relating to environmental audits.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 640, RSMo, is amended by adding thereto ten new sections, to be  
2 known as sections 640.300, 640.305, 640.310, 640.315, 640.320, 640.325, 640.330, 640.335,  
3 640.340, and 640.345, to read as follows:

**640.300. Nothing in sections 640.300 to 640.340 shall be interpreted to impede or**  
2 **excuse the disclosure of normal regulatory reporting requirements for environmental**  
3 **compliance, however, no environmental audit shall be disclosed except by lawful subpoena**  
4 **or court order, in order to encourage owners and operators of facilities regulated under**  
5 **state, federal, regional, or local laws, ordinances, regulations, permits, or orders to conduct**  
6 **voluntary internal environmental audits of their compliance with those laws, and to**  
7 **promote the prompt disclosure to the department of natural resources in order to correct**  
8 **any deficiencies discovered.**

**640.305. As used in sections 640.300 to 640.340, the following terms shall mean:**

2 **(1) "Compliance management system" or "environmental management system",**  
3 **a regulated entity's documented systematic efforts, appropriate to the size and nature of**  
4 **its business, to prevent, detect, and correct noncompliance through all of the following:**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

(a) Compliance policies, standards, and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits, enforceable agreements, and other sources of authority for environmental requirements;

(b) Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;

(c) Mechanisms for systematically assuring that compliance policies, standards, and procedures are being carried out, including monitoring and auditing systems reasonably designed to detect and correct noncompliance, periodic evaluation of the overall performance of the compliance management system, or environmental management system, and a means for employees or agents to report noncompliance of environmental requirements without fear of retaliation;

(d) Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents;

(e) Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards, and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and

(f) Procedures for the prompt and appropriate correction of any noncompliance, and any necessary modifications to the regulated entity's compliance management system or environmental management system to prevent future noncompliance;

(2) "Department", the department of natural resources;

(3) "Environmental audit", a systematic, documented, periodic, and objective review by regulated entities of facility operations and practices related to meeting environmental requirements;

(4) "Environmental audit report", the documented analysis, conclusions, and recommendations resulting from an environmental audit, but not including data obtained in or testimonial evidence concerning such audit;

(5) "Regulated entity", any entity, including a federal, state, or municipal department or facility, which is regulated under federal or state environmental laws.

**640.310.** If a regulated entity satisfies all of the conditions of section 640.330, neither the department nor the attorney general may seek penalties, other than the recovery of the economic benefits gained through noncompliance with environmental requirements, for noncompliance of state, federal, or local laws, regulations, permits, or orders relating to environmental requirements discovered and disclosed by the entity. If a regulated entity satisfies all of the conditions of section 640.330, except for the periodic routine assessment through an environmental audit or compliance management system,

8 the department may recover as penalties the economic benefits gained through  
9 noncompliance, and reduce any other penalties up to seventy-five percent for  
10 noncompliance of state or federal laws, regulations, permits, or orders relating to  
11 environmental requirements discovered and disclosed by the entity.

640.315. If a regulated entity establishes that it satisfies subdivisions (1) to (9) of  
2 section 640.330, the department shall not recommend to the attorney general or other  
3 prosecuting authority that criminal charges be brought against the disclosing entity, as  
4 long as the department determines that the noncompliance is not part of a pattern or  
5 practice that demonstrates or involves:

6 (1) A prevalent management philosophy or practice that conceals or condones  
7 environmental noncompliance; or

8 (2) High-level corporate officials' or managers' conscious involvement in, or willful  
9 blindness to, noncompliance of federal environmental law.

640.320. Regardless of whether the department recommends the regulated entity  
2 for criminal prosecution, the department may recommend for prosecution the criminal acts  
3 of individual managers or employees under existing policies guiding the exercise of  
4 enforcement discretion.

640.325. The department, the attorney general, and any prosecuting attorney shall  
2 not request or use an environmental audit report to initiate a civil or criminal investigation  
3 of an entity, including but not limited to the use of such report in routine inspections. If  
4 the department has an independent reason to believe that noncompliance has occurred, the  
5 department may seek any information relevant to identifying noncompliance or  
6 determining liability or extent of harm.

640.330. In order to receive the benefits of sections 640.310 to 640.325, owners and  
2 operators of facilities regulated under state, federal, regional, or local laws, ordinances,  
3 regulations, permits, or orders shall comply with the following:

4 (1) The noncompliance was discovered through:

5 (a) An environmental audit; or

6 (b) A compliance management system, reflecting the regulated entity's due  
7 diligence in preventing, detecting, and correcting noncompliance. The regulated entity  
8 shall provide accurate and complete documentation to the department as to how its  
9 compliance management system meets the criteria or due diligence and how the regulated  
10 entity discovered the noncompliance through its compliance management system. The  
11 department may require the registered entity to make available to the public a description  
12 of its compliance management system;

13           (2) The noncompliance was discovered voluntarily and not through a legally  
14 mandated monitoring or sampling requirement prescribed by statute, regulation, permit,  
15 judicial, or administrative order, or consent agreement. For example, sections 640.310 to  
16 640.325, do not apply to:

17           (a) Emissions noncompliance detected through a continuous emissions monitor, or  
18 alternative monitor established in a permit, regulation, order, or other instrument, in  
19 which any such monitoring is required;

20           (b) Noncompliance of National Pollutant Discharge Elimination System discharge  
21 limits detected through required sampling or monitoring; and

22           (c) Noncompliance discovered through a compliance audit required to be  
23 performed by the terms of a consent order or settlement agreement, unless the audit is a  
24 component of agreement terms to implement a comprehensive environmental management  
25 system;

26           (3) The regulated entity fully discloses the specific noncompliance in writing to the  
27 department within twenty-one days, or such shorter time period as may be required by  
28 law, after the entity discovers that the noncompliance has, or may have, occurred. The  
29 time at which the entity discovers that a noncompliance has, or may have, occurred begins  
30 when any officer, director, employee, or agent of the facility has an objectively reasonable  
31 basis for believing that a noncompliance has, or may have, occurred;

32           (4) The regulated entity discovers and discloses the potential noncompliance to the  
33 department prior to:

34           (a) The commencement of a federal, state, or local department inspection or  
35 investigation, or the issuance by such department of an information request to the  
36 registered entity, in which the department determines that the facility did not know that  
37 it was under civil investigation, and the department determines that the entity is otherwise  
38 acting in good faith, in which case the department is authorized to reduce or waive civil  
39 penalties in accordance with section 640.310;

40           (b) Notice of a citizen suit;

41           (c) The filing of a complaint by a third party;

42           (d) The reporting of the noncompliance to the department or other governmental  
43 agency by a whistle-blower employee and not be authorized to speak on behalf of the  
44 regulated entity; or

45           (e) Imminent discovery of the noncompliance by a regulatory department or  
46 agency;

47           (5) The regulated entity shall correct the noncompliance within sixty calendar days  
48 from the date of discovery, or such shorter time period as may be required by law,

49 certifying in writing that the noncompliance has occurred and taking appropriate  
50 measures as determined by the department to remedy any environmental or human harm  
51 due to the noncompliance. The department retains the authority to order an entity to  
52 correct a noncompliance within a specific time period shorter than sixty days whenever  
53 correction in such shorter time period is necessary to protect public health and the  
54 environment. If more than sixty days is needed to correct the noncompliance, the regulated  
55 entity shall so request additional time from the department in writing prior to the  
56 expiration of the sixty-day period. The Missouri department of natural resources will  
57 approve or deny the request before the expiration of the sixty-day period. If the  
58 department approves additional time, the department may require a regulated entity to  
59 enter into a publicly available written agreement, administrative consent order, or judicial  
60 consent decree as a condition for obtaining relief under sections 640.310 to 640.325, in  
61 particular where compliance or remedial measures are complex or a lengthy schedule for  
62 attaining and maintaining compliance or remediating harm is required;

63 (6) The regulated entity shall agree in writing or other appropriate order to take  
64 steps acceptable to the director to prevent a recurrence of the noncompliance, including  
65 improvements to its environmental auditing or compliance management system;

66 (7) The specific noncompliance, or a closely related noncompliance, has not  
67 occurred within the previous three years at the same facility and has not occurred within  
68 the past five years as part of a pattern at multiple facilities owned or operated by the same  
69 entity. For the purposes of this section, noncompliance includes:

70 (a) Failure to comply with any federal, state, or local environmental law identified  
71 in a judicial or administrative order, consent agreement or order, complaint, or notice of  
72 noncompliance, conviction, or plea agreement; or

73 (b) Any act or omission for which the regulated entity has previously received  
74 penalty mitigation from the department or another state or local department;

75 (8) The noncompliance is not one which:

76 (a) Resulted in actual harm, or may have presented an imminent and substantial  
77 endangerment, to human health or the environment; or

78 (b) Violates the specific terms of any judicial or administrative order or consent  
79 agreement; and

80 (9) The regulated entity cooperates as requested by the department and provides  
81 such information as is necessary and requested by the department to determine  
82 applicability of sections 640.310 to 640.325.

640.335. The department shall make available to the public the terms and  
2 conditions of and supporting documentation demonstrating any compliance agreement

3 reached under sections 640.310 to 640.325, including the nature of the noncompliance, the  
4 remedy, and the schedule for returning to compliance.

2 **640.340.** Nothing in sections 640.300 to 640.335 shall prevent a private party from  
3 bringing a cause of action, where otherwise permitted under the law, against an entity  
4 whose noncompliance with any relevant environmental law has caused damage to such  
private party.

2 **640.345.** The department shall not disclose from any audit report information  
3 relating to scientific and technological innovations in which the owner has a proprietary  
interest of any information which is otherwise protected from disclosure by law.

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