

The Wisconsin Department of Natural Resources “Enviro-Check” Program

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You are the Plant Manager of a manufacturing facility and of the many responsibilities you have, one of them includes maintaining your company’s environmental compliance. While you are not an environmental expert, you believe that your company is compliant with environmental laws because you have never been contacted or inspected by the Wisconsin Department of Natural Resources (WDNR) regarding non-compliance with environmental regulations. However, the company has never performed a formal environmental compliance audit to confirm that the environmental laws applicable to the facility have been addressed satisfactorily. Alternatively, you are considering the sale of your business, and rather than have a potential purchaser conduct an environmental audit of your company prior to the purchase, you would like to have control of the audit process by conducting your own audit and have the opportunity to correct any non-compliance issues before the sale.

In Wisconsin, there is a statutory-based program (pursuant to Wis. Stats. Section 299.85, et seq.) which allows companies to conduct an environmental audit without fines or penalties for environmental non-compliance that is discovered by the audit, as long as certain conditions are met. Known as “Enviro-Check,” the program is offered by the WDNR and it allows Wisconsin businesses to proactively assess a facility’s compliance with state of Wisconsin environmental laws and obtain an exemption from liability and penalties, if a good faith audit of the facility is conducted and the applicant agrees to correct the non-compliance issues identified by the audit. The following steps are required to participate in the Program:

1. **Eligibility:** To be eligible to participate in the Program, applicants must not have had a Wisconsin Department of Justice (DOJ) environmental enforcement suit within two years prior to entering the Program. (Note: Parties can request an Eligibility Determination from the WDNR prior to entering the Program. That request must be made at least 30 days prior to beginning the audit. If the Eligibility Determination is not requested prior to the audit, the WDNR will make an eligibility determination after the audit report is submitted.) In addition, the applicant must sign a statement before beginning the audit acknowledging that environmental non-compliance discovered prior to the audit does not qualify for liability protections under the Program.
2. **Conduct an Environmental Regulatory Compliance Audit:** Eligible parties retain a third-party environmental auditor to perform the environmental regulatory compliance audit. The audit must be conducted within 365 days of submission of the signed statement acknowledging that violations known before the audit are not eligible for coverage. (Note: An environmental regulatory compliance audit is intended to evaluate a facility's compliance with applicable environmental laws [e.g., whether an air or stormwater permit is required, or if the facility holds such a permit, whether the facility is in compliance with the terms of the permit], and is not the same as a Phase I Environmental Site Assessment, which is typically completed as part of environmental due diligence associated with a real estate transaction.)
3. **Submit the Audit Report:** Participants are required to submit the environmental audit report to the WDNR within 45 days of completion of the audit. The audit report must contain:
 - ◊ A description of each violation and length of time it may have existed;
 - ◊ A description of the actions taken or proposed to be taken to correct the violation;
 - ◊ Dates of corrective action or the schedule for proposed corrective actions; and
 - ◊ Proposed strategies to prevent future violations.
4. **Corrective Actions:** The participant must correct any non-compliance identified in the audit within 60 days of submitting the audit report or may request an extension of up to one year. To receive an extension, the participant must submit a proposed compliance schedule for correcting violations and justification for the schedule, agree to proposed penalties if the schedule is not met, and provide a description of measures to be taken to minimize impacts of the non-compliance violations during the extension period. Compliance schedules cannot exceed one year and liability protections will not extend more than six months beyond the end of the extended schedule.
5. **Violations that are Not Eligible for Liability Protection:** The following violations do not receive protection under the Enviro-Check Program:
 - ◊ The violation presents an imminent threat or may cause serious harm to public health or the environment;
 - ◊ The participant discovers the violation prior to beginning the audit;
 - ◊ The WDNR discovers the violation first;
 - ◊ The violation is identified through sampling required by a permit, statute, rule, judicial or administrative order;
 - ◊ The violation is a repeat violation of the same requirement at the same facility committed in the same manner, unless it was caused by a change in business processes or activities;
 - ◊ The violation results in a substantial economic benefit that gives the facility a clear competitive business advantage.

The Enviro-Check Program is a proactive and effective way to confirm your company's environmental compliance without the fear of fines and penalties, and should be seriously considered if you are not completely sure about your facility's compliance with environmental laws. There are alternative environmental audit options available to those who would prefer to conduct an audit without the involvement of WDNR – though without the liability and penalty exemptions. We welcome the opportunity to discuss those options with you.

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