

567—12.4(455K) Disclosure of violation. An owner or operator wishing to take advantage of the immunity provisions of the Act must make a prompt voluntary disclosure to the department regarding an environmental violation which is discovered through an environmental audit.

12.4(1) A disclosure will be deemed voluntary if the following conditions apply:

- a.* The disclosure arises out of an environmental audit and relates to information considered privileged under the Act;
- b.* The disclosure is not otherwise required by federal or state law, rule, permit condition, or an order issued by the department;
- c.* If no current notice of audit covering the facility, activity, operation or management system is on file with the department, the disclosure is made prior to a violation being independently detected by the department or the initiation of an inspection or investigation by the department;
- d.* The violation is identified and disclosed to the department before there is notice of a citizen suit or a legal complaint filed by a third party; or before it is reported to the department by any person not involved in conducting the environmental audit or to whom the environmental audit was disclosed;
- e.* The violation does not involve intentional violation of state or federal law, rule, or permit condition, or result in substantial actual injury or imminent and substantial risk of injury to persons, property, or the environment; and
- f.* The owner or operator making the disclosure uses reasonable efforts to pursue compliance and to correct the noncompliance within a reasonable period of time after completion of the audit in accordance with a remediation schedule submitted to and approved in writing by the department.

12.4(2) An owner or operator may not be able to take advantage of the immunities under the Act from administrative or civil penalties if:

- a.* Violations are intentional;
- b.* Violations resulted in substantial actual injury or imminent and substantial risk of injury to persons, property, or the environment;
- c.* Violations resulted in a substantial economic benefit which gives an owner or operator a clear advantage over business competitors; or
- d.* The owner or operator has been found to have committed serious violations that constitute a pattern of continuous or repeated violations or is classified as a habitual violator as set forth in Iowa Code section 455K.8(7).

12.4(3) A disclosure of violation must be sent to the department in writing by certified mail and include the following information:

- 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; and
- h.* The status and schedule of proposed final corrective measures, if applicable.

12.4(4) A disclosure of violation is not an environmental audit report and is not privileged information under the Act. A disclosure of violation is public information subject to provisions of state open records laws in Iowa Code chapter 22. Owners or operators should not send copies of environmental audit reports to the department, unless specifically requested in writing by the department.

12.4(5) The department will acknowledge receipt of a disclosure of violation in writing which will include either concurrence or rejection of the proposed final corrective measures and schedule. This written acknowledgment will be sent to the owner or operator within 15 calendar days of receipt of the disclosure of violation.