

REPRINTED

4/29/97 *4/2/97 reinserted
Business Calendar
referred to Environ.
Comm*

MAR 18 1997

HOUSE FILE 681

Place On Calendar

BY COMMITTEE ON ENVIRONMENTAL
PROTECTION

*(P.255) 2/16/98 Emerg/Do Pass w/ H 8054
2/18/98 Special Order Calendar 2/26/98
(SUCCESSOR TO HF 216)*

(P.453)
Passed House, Date 3/13/98 Passed Senate, Date 3/24/98
Vote: Ayes 66 Nays 32 Vote: Ayes 33 Nays 16
Approved April 16, 1998

A BILL FOR

1 An Act creating an environmental audit privilege and providing
2 penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

HF 681

1 Section 1. NEW SECTION. 455H.1 TITLE.

2 This chapter shall be known and cited as the "Environmental
3 Audit Privilege and Immunity Act".

4 Sec. 2. NEW SECTION. 455H.2 FINDINGS AND DECLARATIONS.

5 The general assembly finds and declares that protection of
6 the environment is enhanced by voluntary compliance with
7 environmental laws and that the public will benefit from
8 incentives to voluntarily identify and remedy environmental
9 compliance issues. It is further declared that limited
10 expansion of the protection against disclosure and prosecution
11 will encourage regulated large and small entities to
12 voluntarily discover, correct, and prevent violations of state
13 environmental requirements resulting in enhanced protection of
14 human health and the environment in the state. The provisions
15 of this chapter will not inhibit the exercise of regulatory
16 authority by those persons entrusted with protecting the
17 environment. Therefore, an environmental audit privilege is
18 provided to protect the confidentiality of communication
19 relating to voluntary environmental audits and limited
20 immunity is provided to improve compliance with environmental
21 laws.

22 Sec. 3. NEW SECTION. 455H.3 DEFINITIONS.

23 As used in this chapter:

24 1. "Department" means the department of natural resources.

25 2. "Environmental audit" means a voluntary and internal
26 evaluation conducted in good faith on or after the effective
27 date of this Act of one or more facilities or an activity at
28 one or more facilities regulated under local, state, or
29 federal environmental laws or ordinances, or of environmental
30 management systems or processes related to the facilities or
31 activities or of a previously corrected specific instance of
32 noncompliance, that is designed to identify historical or
33 current noncompliance and prevent noncompliance or improve
34 compliance with one or more of those laws or ordinances, or to
35 identify an environmental hazard, contamination, or other

1 adverse environmental condition, or to improve an
2 environmental management system or process. At any time, the
3 owner or operator or an employee or agent of the owner or
4 operator on behalf of the owner or operator may conduct an
5 environmental audit and may create an environmental audit
6 report.

7 3. "Environmental audit report" means a document or set of
8 documents created as a result of an environmental audit and
9 labeled at the time of creation as "environmental audit
10 report: privileged document". An "environmental audit
11 report" shall include supporting information which may
12 include, but is not limited to, the report document itself,
13 any supporting documents, file notes and records of
14 observations, samples, analytical results, exhibits, findings,
15 opinions, suggestions, recommendations, conclusions, drafts,
16 memoranda, drawings, photographs, computer-generated or
17 electronically recorded information, maps, charts, graphs,
18 surveys, implementation plans, interviews, discussions,
19 correspondence, and communications related to the
20 environmental audit, if the supporting information and
21 documents are collected and developed for the primary purpose
22 and in the course of or as a result of conducting an
23 environmental audit. An environmental audit report shall
24 include the following components:

25 a. A report prepared by the auditor, which may include the
26 scope of the environmental audit, the information gained in
27 the environmental audit, conclusions, recommendations,
28 exhibits, and appendices.

29 b. Memoranda and documents analyzing portions or all of
30 the report and discussing implementation issues.

31 c. An implementation plan that addresses correcting past
32 noncompliance, improving current compliance or an
33 environmental management system, or preventing future
34 noncompliance.

35 d. Periodic updates documenting progress in completing the

1 implementation plan.

2 4. "Inquiring party" means any party appearing before a
3 court or administrative tribunal.

4 5. "Owner or operator" means the person or entity who
5 caused the environmental audit to be undertaken. "Owner or
6 operator" includes a prospective purchaser who caused the
7 environmental audit to be undertaken.

8 6. "Privilege" means the privilege provided to an
9 environmental audit report as provided in this Act.

10 7. "Substantial harm" means a clear, present, and
11 impending danger to the public health or the environment.

12 Sec. 4. NEW SECTION. 455H.4 PRIVILEGE.

13 1. An environmental audit report is privileged and
14 confidential and is not discoverable or admissible as evidence
15 in any legal action in any civil, criminal, or administrative
16 proceeding, or in response to a regulatory inspection or
17 inquiry, except as otherwise provided in this chapter.

18 2. The owner or operator, a person who conducts an
19 environmental audit, and a person to whom the results are
20 disclosed shall not be questioned, examined, or compelled to
21 testify regarding any information obtained solely through the
22 environmental audit which is a privileged portion of the
23 environmental audit report. This subsection does not apply if
24 the environmental audit is subject to an exception under
25 section 455H.7.

26 3. A violation of the review, disclosure, or use
27 prohibitions in this chapter shall be the basis for
28 suppression of any evidence arising or derived from the
29 unauthorized review, disclosure, or use. A party failing to
30 comply with this chapter shall have the burden of proving that
31 the proffered evidence did not derive from the unauthorized
32 activity.

33 Sec. 5. NEW SECTION. 455H.5 WAIVER OF PRIVILEGE --
34 DISCLOSURE -- ORDER.

35 1. An owner or operator may waive the privilege under

1 section 455H.4. The privilege cannot be waived except by or
2 with the consent of the owner or operator. The waiver applies
3 only to the portion or portions of the environmental audit
4 report that are specifically waived.

5 2. The environmental audit report may be disclosed by an
6 owner or operator, an employee on behalf of the owner or
7 operator, or an agent on behalf of the owner or operator under
8 any of the following circumstances without waiving the
9 privilege under section 455H.4:

10 a. An environmental audit report and information generated
11 by the environmental audit may be disclosed to any person
12 employed by the owner or operator, any legal representative of
13 the owner or operator, or any agent of the owner or operator
14 to address an issue or issues raised by the environmental
15 audit.

16 b. Under the terms of a confidentiality agreement between
17 the owner or operator and a partner or potential partner,
18 transferee or potential transferee of the business, lender or
19 potential lender for the business, or trustee of the business
20 or facility audited, or a disclosure made between a subsidiary
21 and a parent corporation or between members of a partnership,
22 joint venture, or other similarly related entities.

23 c. Under the terms of a confidentiality agreement between
24 governmental officials and the owner or operator.

25 d. To the United States environmental protection agency
26 upon the demand of the agency by the owner or operator.

27 3. The existence of an environmental audit is subject to
28 disclosure in a civil, criminal, or administrative proceeding.
29 The party in possession of the environmental audit may assert
30 the privilege. The party in possession shall not be required
31 to provide an inquiring party with a copy of the environmental
32 audit.

33 4. The inquiring party may file, with the appropriate
34 court or administrative tribunal, a petition requesting an in
35 camera review of whether the environmental audit or portions

1 of the environmental audit are privileged or subject to
2 disclosure under this chapter. The inquiring party's failure
3 to file a petition under this subsection shall waive the
4 party's argument that the environmental audit is not
5 privileged.

6 5. The court or administrative tribunal shall issue an
7 order scheduling an in camera review within forty-five days of
8 the filing of the petition. The in camera review shall not
9 include the inquiring party's counsel or the counsel for the
10 owner or operator asserting the privilege.

11 6. After the in camera review, the court or
12 administrative tribunal shall issue an order directing whether
13 the information in the environmental audit is subject to
14 disclosure.

15 a. The order may require disclosure of information for
16 which the privilege is asserted if the court or administrative
17 tribunal determines any of the following:

18 (1) The privilege is asserted for a fraudulent purpose.

19 (2) The material is not subject to the privilege.

20 (3) The material, even if subject to the privilege, shows
21 evidence of noncompliance with local, state, or federal
22 environmental laws and appropriate efforts to achieve
23 compliance with local, state, or federal environmental laws
24 were not initiated and pursued with reasonable diligence upon
25 discovery of noncompliance.

26 (4) The material, even if subject to the privilege, shows
27 that violations of local, state, or federal environmental laws
28 were intentional, or shows that violations of local, state, or
29 federal environmental laws resulted in substantial harm to the
30 public health or the environment.

31 The court or administrative tribunal may compel disclosure
32 of only those portions of a report relevant to the issue in
33 dispute.

34 b. The order may restrict the distribution and review of
35 the environmental audit or parts of the environmental audit to

1 protect against unnecessary disclosure.

2 7. The parties may at any time stipulate to entry of an
3 order directing that specific information contained in an
4 environmental audit is or is not subject to the privilege
5 under section 455H.4.

6 Sec. 6. NEW SECTION. 455H.6 EXCEPTIONS.

7 The privilege under section 455H.4 shall not extend to any
8 of the following regardless of whether or not they are
9 included within an environmental audit report:

10 1. Documents, communications, data, reports, or other
11 information required to be collected, developed, maintained,
12 reported, or otherwise made available to a regulatory agency
13 pursuant to local, state, or federal environmental laws or
14 regulations. However, the privilege shall extend to any
15 observations, findings, opinions, suggestions, or conclusions
16 derived from the above by the person conducting the
17 environmental audit.

18 2. Information obtained from observation, sampling, or
19 monitoring by any regulatory agency.

20 3. Information legally obtained from a source independent
21 of the environmental audit.

22 4. Machinery and equipment maintenance records.

23 Sec. 7. NEW SECTION. 455H.7 VIOLATIONS.

24 1. If a person, party, public entity, public employee, or
25 public official knowingly divulges or disseminates all or any
26 part of the information contained in an environmental audit or
27 in an environmental audit report in violation of this chapter
28 or violates an order issued by a court or administrative
29 tribunal under section 455H.5, the person, party, public
30 entity, public employee, or public official is liable for
31 actual damages caused by the divulgence or dissemination of
32 the information and incurred by the owner or operator for whom
33 the environmental audit was conducted or for whom the
34 environmental audit report was prepared. A violation of this
35 chapter shall also subject the violator to punitive damages of

1 not more than ten thousand dollars.

2 2. A person who violates an order rendered pursuant to
3 section 455H.5 shall be guilty of a simple misdemeanor and may
4 be found in contempt of court by a court of record.

5 3. If the environmental audit meets the requirements of
6 this chapter, a willful disclosure or dissemination in
7 violation of this chapter or of an order issued by a court or
8 administrative tribunal under section 455H.5 shall not
9 abrogate the privilege under section 455H.4.

10 4. This section shall not affect the enforceability of any
11 of the following federal provisions providing protection
12 against discriminatory actions taken by employers against
13 employees who report environmental noncompliance: 42 U.S.C. §
14 5851; 42 U.S.C. § 300j-9(i); 42 U.S.C. § 9610; 33 U.S.C. §
15 1367; 15 U.S.C. § 2622; 42 U.S.C. § 6971; and 42 U.S.C. §
16 7622.

17 Sec. 8. NEW SECTION. 455H.8 VOLUNTARY DISCLOSURE OF
18 ENVIRONMENTAL VIOLATION -- IMMUNITY.

19 1. An owner or operator who makes a prompt voluntary
20 disclosure of an environmental violation, which is revealed as
21 a result of an environmental audit, to the department is
22 immune from any administrative or civil penalty associated
23 with the issues disclosed and is immune from any criminal
24 penalties for negligent acts associated with the issues
25 disclosed. The owner or operator shall provide a compliance
26 schedule and information supporting the claim that the
27 disclosure is voluntary at the time that the disclosure is
28 made to the department. The owner or operator creates a
29 rebuttable presumption that the disclosure is voluntary by
30 providing such information at the time of disclosure. To
31 rebut the presumption that a disclosure is voluntary, the
32 department or other party has the burden of proving that the
33 disclosure was not voluntary. Immunity is not provided if the
34 violations of local, state, or federal environmental law are
35 intentional or if the violations of local, state, or federal

1 law resulted in substantial harm to public health or the
2 environment.

3 2. The disclosure of information is voluntary if all of
4 the following circumstances exist:

5 a. The disclosure arises out of an environmental audit and
6 relates to the privileged information.

7 b. The person making the disclosure uses reasonable
8 efforts to pursue compliance and corrects the noncompliance
9 within a reasonable period of time after completion of the
10 environmental audit. Where the evidence shows the
11 noncompliance is the failure to obtain a permit, reasonable
12 effort may be demonstrated by the submittal of a complete
13 permit application within a reasonable time. Disclosure of
14 information required to be reported by local, state, or
15 federal law is considered to be voluntary disclosure and the
16 immunity provisions in this section are applicable.

17 c. The violations are identified in an environmental audit
18 report and disclosed before the owner or operator is
19 officially notified of an investigation by a regulatory agency
20 for potential violations of environmental rules or
21 regulations.

22 d. The violations are identified in an environmental audit
23 report and disclosed before there is imminent discovery of the
24 violations by a regulatory agency.

25 e. The violations are identified in an environmental audit
26 report and disclosed before there is notice of a citizen suit
27 or a legal complaint by a third party.

28 f. The violations are identified in an environmental audit
29 report and disclosed before the violations are reported by a
30 whistle-blower.

31 3. If a person is required to make a disclosure relating
32 to a specific issue under a specific permit condition or under
33 an order issued by the department, the disclosure is not
34 voluntary with respect to that issue.

35 4. Except as provided in this section, this section does

1 not affect the authority of the department to require any
2 action associated with the information disclosed in any
3 voluntary disclosure of an environmental violation.

4 5. Upon application to the department, the time period
5 within which a noncompliance item is corrected under
6 subsection 2 may be extended if it is not practical to correct
7 the noncompliance within a two-year period. The department
8 shall not unreasonably withhold the grant of an extension. If
9 the department denies an extension, the department shall
10 provide the requesting party with a written explanation of the
11 reasons for the denial. A request for de novo review of the
12 department's decision may be made to the appropriate court.

13 6. The elimination of administrative or civil penalties or
14 fines or criminal penalties or fines under this section does
15 not apply if an owner or operator has been found by a court or
16 administrative law judge to have knowingly committed a
17 criminal act or committed serious violations that constitute a
18 pattern of continuous or repeated violations of environmental
19 laws, rules, regulations, permit conditions, settlement
20 agreements, or orders on consent or judicial orders and that
21 were due to separate and distinct events giving rise to the
22 violations within the three-year period prior to the date of
23 disclosure. The court or administrative law judge shall base
24 the decision on the compliance history of the specific
25 facility at issue.

26 7. In cases where the conditions of a voluntary disclosure
27 are not met but a good faith effort was made to voluntarily
28 disclose and resolve a violation detected in a voluntary
29 environmental audit, the state and local law enforcement
30 authorities shall consider the nature and extent of any good
31 faith effort in deciding the appropriate enforcement response
32 and shall mitigate any civil penalties based on a showing that
33 one or more of the conditions for voluntary disclosure have
34 been met.

35 8. The immunity provided by this section does not abrogate

1 the responsibility of a person as provided by applicable law
2 to correct the violation, conduct necessary remediation, or
3 respond to third-party actions.

4 Sec. 9. NEW SECTION. 455H.9 ABROGATION OF OTHER
5 PRIVILEGES.

6 This chapter shall not limit, waive, or abrogate the scope
7 or nature of any statutory or common-law privilege, including
8 the work product doctrine and the attorney-client privilege.

9 Sec. 10. NEW SECTION. 455H.10 DEPARTMENTAL REPORTING AND
10 EVALUATION.

11 1. The department shall establish and maintain a database
12 of the voluntary disclosures made under this chapter. The
13 database shall include, but not be limited to, the number of
14 voluntary disclosures made on an annual basis and a summary in
15 general categories of the types of violations and the time
16 needed to achieve compliance. The department shall annually
17 publish a report containing the information in the database.

18 2. By June 30, 2002, the department shall prepare and
19 submit to all appropriate standing committees of the general
20 assembly a report evaluating the effectiveness of this part
21 and specifically detailing whether this Act has been effective
22 in encouraging the use of environmental audits and in
23 identifying and correcting environmental problems and
24 conditions.

25 Sec. 11. NEW SECTION. 455H.11 EFFECT.

26 The privileges established in this chapter, the exercise of
27 the privileges established in this chapter, and the
28 presumption and immunity established in this chapter shall not
29 be limited, restricted, or circumvented by any state or local
30 law, ordinance, rule, regulation, guidance, policy, or permit
31 condition.

32

EXPLANATION

33 This bill creates the "Environmental Audit Privilege and
34 Immunity Act", which protects disclosure of environmental
35 audits and provides immunity from penalties for actions which

1 voluntarily disclose the existence of an environmental
2 violation. The bill finds that the protection of the
3 environment is enhanced by voluntary compliance with
4 environmental laws and that the public benefits from
5 incentives to voluntarily identify and remedy environmental
6 compliance issues.

7 The bill provides that an environmental audit report is
8 privileged and not discoverable as evidence in any legal
9 action. "Environmental audit" is defined as a voluntary
10 internal evaluation conducted in good faith designed to
11 identify and prevent noncompliance or improve compliance with
12 local, state, or federal environmental laws, identify an
13 environmental hazard, contamination, or other adverse
14 condition, or improve an environmental management system or
15 process. An environmental audit report contains documents and
16 information generated and collected in the course of
17 conducting an environmental audit. A violation of the review,
18 disclosure, or use prohibitions in the bill is considered the
19 basis for suppression of any evidence arising from or derived
20 from the unauthorized review, disclosure, or use of
21 information.

22 The bill provides that an owner or operator may waive the
23 environmental audit privilege. It provides for disclosure of
24 the audit in limited circumstances without waiving the
25 privilege. A person who wishes to obtain audit information
26 may file a petition for in camera review. The court or
27 administrative tribunal is required to schedule an in camera
28 review within 45 days. The court or administrative tribunal
29 shall issue an order directing whether the audit or portions
30 of the audit are subject to disclosure. The bill provides
31 that an audit may be disclosed if the privilege is asserted
32 for a fraudulent purpose, if the material is not subject to
33 the privilege, if appropriate efforts to achieve compliance
34 with local, state, or federal environmental laws were not
35 initiated and pursued with reasonable diligence, if violations

1 were intentional, or if violations resulted in substantial
2 harm to the public health or the environment.

3 The bill provides that any person, party, public entity,
4 employee, or official who knowingly divulges or disseminates
5 information in violation of the privilege or an order is
6 liable for actual damages and is subject to punitive damages
7 of up to \$10,000. A person who violates an order rendered
8 under the Act is guilty of a simple misdemeanor and may be
9 found in contempt of court. The bill does not change
10 employees' rights to disclose violations under federal
11 "whistle-blower" provisions.

12 The bill allows for limited immunity for a prompt voluntary
13 disclosure of an environmental violation by an owner or
14 operator to the department of natural resources. An owner or
15 operator who voluntarily discloses a violation is immune from
16 administrative and civil penalties and criminal penalties for
17 negligence that are associated with the issues disclosed.

18 Voluntary disclosure is limited to disclosure arising out
19 of certain circumstances. A disclosure which is required
20 under a specific permit condition or under an order issued by
21 the department of natural resources is not considered to be
22 voluntary. The bill allows for the department to issue a
23 compliance extension. The bill provides that the elimination
24 of administrative or civil penalties or fines does not apply
25 in some circumstances. The bill does not limit, waive, or
26 abrogate any common-law privilege, including the work product
27 doctrine and attorney-client privilege.

28
29
30
31
32
33
34
35

**HOUSE FILE 681
FISCAL NOTE**

A fiscal note for Amendment H-8054 to House File 681, is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Amendment H-8054 to House File 681, establishes the Environmental Audit Privilege and Immunity Act. This Act encourages business owners to voluntarily conduct an environmental audit and submit their findings to the Department of Natural Resources. In exchange, they receive privilege and immunity for most violations discovered during the audit. The voluntary audit process increases the overall awareness of environmental laws by the general public as well as increases the level of cooperation between the Department of Natural Resources and business owners.

BACKGROUND

A training program and standards for certification of environmental auditors shall be developed jointly by the Iowa Waste Reduction Center at the University of Northern Iowa and the Department of Natural Resources. The training program shall be administered by the Iowa Waste Reduction Center. The program shall be made available to small and large business owners and operators, consultant engineers, regulatory personnel, and citizens through the community college system. A fee may be assessed for participation in the program.

ASSUMPTIONS

1. The Department of Natural Resources will make rules which define what information must accompany the disclosure of a violation.
2. The Department will review violations and compliance schedules when the violation is disclosed.
3. A data base recording all reported violations will be maintained.
4. The Department will work with the Iowa Waste Reduction Center at the University of Northern Iowa for the establishment of an environmental audit training and certification program. This program will educate participants in general environmental principles, assist them in determining if business waste is hazardous or not, and determine the generator category of the business and the laws that apply.
5. Program participants may be required to pay a fee.

FISCAL IMPACT

The fiscal impact of Amendment H-8054 to HF 681, to the Department of Natural Resources is anticipated to be minimal.

The fiscal impact to the Iowa Waste Reduction Center at the University of Northern Iowa is estimated to cost \$220,000 in FY 1999. Start up costs are estimated at \$140,000 and on-going program costs are expected to be

-2-

approximately \$80,000 annually. No estimate is available regarding the number of participants and the fees that would be collected.

SOURCE

Iowa Waste Reduction Center, University of Northern Iowa
Department of Natural Resources

(LSB 1660hv.2, DFK)

FILED MARCH 3, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 681

H-1352

- 1 Amend House File 681 as follows:
2 1. Page 3, by inserting after line 11 the
3 following:
4 "Sec. ____ . NEW SECTION. 455H.3A REPORTING
5 REQUIREMENTS.
6 1. An owner or operator shall immediately notify
7 the department of natural resources when the owner or
8 operator causes an environmental audit to be
9 undertaken and when the environmental audit is
10 completed.
11 2. An owner or operator who causes an
12 environmental audit to be undertaken shall submit a
13 copy of the environmental audit report to the
14 department of natural resources within one month of
15 the completion of the report. All environmental audit
16 reports submitted to the department shall be subject
17 to the privilege requirements provided in this
18 chapter."
19 2. By renumbering as necessary.

By BURNETT of Story

H-1352 FILED MARCH 25, 1997

O/order 3/3/98

HOUSE FILE 681

H-1353

- 1 Amend House File 681 as follows:
2 1. Page 8, line 24, by inserting after the word
3 "agency." the following: "For purposes of this
4 paragraph, "imminent discovery" means a discovery of a
5 violation which is likely to occur or can reasonably
6 be expected to occur."

By BURNETT of Story

H-1353 FILED MARCH 25, 1997

O/order 3/3/98

HOUSE FILE 681

H-1354

- 1 Amend House File 681 as follows:
2 1. Page 8, line 10, by inserting after the word
3 "audit" the following: "in accordance with a
4 compliance timeline established by the department of
5 natural resources".

By MASCHER of Johnson

H-1354 FILED MARCH 25, 1997

O/order 3/3/98

HOUSE FILE 681

H-1355

- 1 Amend House File 681 as follows:
2 1. Page 9, by striking lines 23 through 25 and
3 inserting the following: "disclosure."

By FALLON of Polk

H-1355 FILED MARCH 25, 1997

O/order 3/3/98

HOUSE FILE 681

H-1350

- 1 Amend House File 681 as follows:
2 1. By striking page 2, line 7, through page 3,
3 line 1, and inserting the following:
4 "3. "Environmental audit report" means a formal
5 written report which is a single, discreet set of
6 documents clearly identified as the environmental
7 audit report containing information generated and
8 collected during the course of conducting an
9 environmental audit. An environmental audit report
10 includes any information which is collected and
11 developed for the primary purpose of conducting the
12 environmental audit. An environmental audit report
13 includes, at a minimum, all of the following
14 components:
15 a. A report describing the scope of the audit
16 including the starting and ending dates.
17 b. The names and qualifications of the person or
18 persons performing the audit.
19 c. A summary of findings and conclusions resulting
20 from the audit.
21 d. Identification of areas of noncompliance
22 identified during the audit.
23 e. Proposed steps for correcting noncompliance.
24 f. If more than sixty calendar days will be
25 required to correct an area of noncompliance, a
26 compliance schedule identifying the time needed and
27 interim compliance measures to be taken to correct the
28 noncompliance and a statement of reasons supporting
29 the time periods needed.
30 g. Proposed steps and schedules designed to
31 prevent future noncompliance including consideration
32 of pollution prevention alternatives.
33 h. Appendices and exhibits appropriate to support
34 the findings, conclusions, and proposed steps and
35 schedules."
36 2. By renumbering as necessary.

By MASCHER of Johnson

H-1350 FILED MARCH 25, 1997

o/order 3/3/98

HOUSE FILE 681

H-1351

- 1 Amend House File 681 as follows:
2 1. Page 9, line 32, by striking the word "shall"
3 and inserting the following: "may".

By BURNETT of Story

H-1351 FILED MARCH 25, 1997

o/order 3/3/98

HOUSE FILE 681

H-1356

- 1 Amend House File 681 as follows:
- 2 1. Page 10, by striking lines 25 through 31.
- 3 2. By renumbering as necessary.

By FALLON of Polk

H-1356 FILED MARCH 25, 1997

O/Order 3/3/98

HOUSE FILE 681

H-1372

- 1 Amend House File 681 as follows:
- 2 1. Page 1, line 11, by striking the words "large
- 3 and".
- 4 2. Page 3, line 4, by striking the words "the
- 5 person or entity" and inserting the following: "a
- 6 person who owns or operates a small business as
- 7 defined in section 17A.31, a family farm, or a family
- 8 farm business entity within the scope of section
- 9 9H.1".
- 10 3. Page 3, by inserting after line 11 the
- 11 following:
- 12 "Sec. ____ . NEW SECTION. 455H.4 APPLICABILITY.
- 13 The benefits conferred by this chapter apply only
- 14 to environmental audits for facilities used in a small
- 15 business as defined in section 17A.31, a family farm,
- 16 or a family farm business entity within the scope of
- 17 section 9H.1."
- 18 4. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-1372 FILED MARCH 25, 1997

O/Order 3/3/98

HOUSE FILE 681

H-1373

- 1 Amend House File 681 as follows:
- 2 1. Page 1, line 3, by striking the words "and
- 3 Immunity".
- 4 2. Page 1, line 10, by striking the words "and
- 5 prosecution".
- 6 3. Page 1, lines 19 and 20, by striking the words
- 7 "and limited immunity is provided".
- 8 4. By striking page 7, line 17, through page 10,
- 9 line 3.
- 10 5. Page 10, by striking lines 11 through 17.
- 11 6. Page 10, line 18, by striking the figure "2."
- 12 7. Page 10, line 27, by striking the words
- 13 "established in this chapter, and the".
- 14 8. Page 10, line 28, by striking the words
- 15 "presumption and immunity".
- 16 9. By renumbering as necessary.

By MASCHER of Johnson

H-1373 FILED MARCH 25, 1997

O/Order 3/3/98

HOUSE FILE 681

H-1374

1 Amend House File 681 as follows:

- 2 1. By striking page 6, line 23, through page 7,
3 line 16.
4 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-1374 FILED MARCH 25, 1997

O/ order 3/3/98

HOUSE FILE 681

H-1375

1 Amend House File 681 as follows:

- 2 1. Page 1, line 27, by inserting after the word
3 "Act" the following: "by an independent environmental
4 auditor certified by the department".
5 2. Page 2, line 4, by inserting after the word
6 "may" the following: "authorize a certified
7 independent environmental auditor to".
8 3. Page 2, line 25, by inserting after the word
9 "prepared" the following: "and certified in
10 accordance with rules of the department".
11 4. Page 2, line 35, by inserting after the word
12 "updates" the following: "certified by the auditor in
13 accordance with rules of the department".
14 5. Page 3, by inserting after line 11 the
15 following:
16 "Sec. ____ . NEW SECTION. 455H.3A CERTIFICATION
17 AND REPORTING.
18 The department shall adopt rules providing for the
19 certification of independent environmental auditors,
20 certification of environmental audit reports and
21 updates by auditors, notification of audit
22 commencement by certified auditors, and filing of
23 summaries of audit reports and updates by certified
24 auditors. Notwithstanding any audit report privilege
25 provisions contained elsewhere in this chapter, the
26 rules shall require a certified auditor to file with
27 the department a notice of commencement of an audit, a
28 notice of completion of the audit, and a summary
29 report of the scope of the audit, including the
30 recommendations for corrective actions and practices
31 which were included in the audit report to improve
32 compliance with environmental laws. Each notice and
33 summary report shall include the identification of the
34 owner or operator and affected facilities."
35 6. Page 3, line 26, by inserting before the word
36 "A" the following: "Eligibility of the owner or
37 operator for any benefit conferred by this chapter
38 shall be contingent on compliance with all
39 certification and reporting requirements imposed by
40 this chapter and rules which implement this chapter."
41 7. By renumbering as necessary.

By BURNETT of Story

H-1375 FILED MARCH 25, 1997

O/ order 3/3/98

HOUSE FILE 681

H-1376

1 Amend House File 681 as follows:

2 1. Page 3, by inserting after line 11 the
3 following:

4 "Sec. ____ . NEW SECTION. 455H.3A NOTICE AND
5 REPORTING.

6 The department shall adopt rules providing for the
7 certification of environmental audit reports and
8 updates by auditors, notification of audit
9 commencement by auditors, and filing of summaries of
10 audit reports and updates by auditors.
11 Notwithstanding any audit report privilege provision
12 contained elsewhere in this chapter, the rules shall
13 require an owner or operator to file with the
14 department a notice of commencement of an audit, a
15 notice of completion of the audit, and a summary
16 report of the scope of the audit, including the
17 recommendations for corrective actions and practices
18 which were included in the audit report to improve
19 compliance with environmental laws. Each notice and
20 summary report shall include the identification of the
21 owner or operator and affected facilities."

22 2. Page 3, line 26, by inserting before the word
23 "A" the following: "Eligibility of the owner or
24 operator for any benefit conferred by this chapter
25 shall be contingent on compliance with all
26 certification and reporting requirements imposed by
27 this chapter and rules which implement this chapter."

28 3. By renumbering as necessary.

By BURNETT of Story

H-1376 FILED MARCH 25, 1997

O/O 3/3/98

HOUSE FILE 681

H-1377

1 Amend House File 681 as follows:

2 1. Page 3, by inserting after line 11 the
3 following:

4 "Sec. ____ . NEW SECTION. 455H.3A SCOPE.

5 Notwithstanding any other provision of this
6 chapter, the privileges and immunities conferred by
7 this chapter shall not apply in a civil or criminal
8 action against an owner or operator for penalties for
9 discharge of a pollutant which resulted in violation
10 of water quality standards applicable to a surface
11 water body or resulted in contamination of
12 groundwater."

13 2. By renumbering as necessary.

By HUSER of Polk

H-1377 FILED MARCH 25, 1997

O/O 3/3/98

HOUSE FILE 681

H-1346

- 1 Amend House File 681 as follows:
- 2 1. Page 10, line 17, by inserting after the word
- 3 "database." the following: "The department shall not
- 4 be required to establish and maintain the database
- 5 required in this section if sufficient moneys are not
- 6 available."

By BURNETT of Story

H-1346 FILED MARCH 25, 1997

O/ order 3/3/98

HOUSE FILE 681

H-1347

- 1 Amend House File 681 as follows:
- 2 1. Page 2, line 33, by striking the word "or" and
- 3 inserting the following: "and".

By BURNETT of Story

H-1347 FILED MARCH 25, 1997

O/ order 3/3/98

HOUSE FILE 681

H-1348

- 1 Amend House File 681 as follows:
- 2 1. Page 1, by striking lines 4 through 21.
- 3 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-1348 FILED MARCH 25, 1997

O/o 3/3/98

HOUSE FILE 681

H-1349

- 1 Amend House File 681 as follows:
- 2 1. Page 8, by striking lines 29 and 30 and
- 3 inserting the following: "report and disclosed before
- 4 the violations are reported by an employee of the
- 5 owner or operator."

By MASCHER of Johnson

H-1349 FILED MARCH 25, 1997

O/ order 3/3/98

HOUSE FILE 681

H-1380

1 Amend House File 681 as follows:

2 1. By striking page 1, line 1, through page 10,
3 line 31, and inserting the following:

4 "Section 1. NEW SECTION. 455H.1 TITLE.

5 This chapter shall be known and cited as the
6 "Environmental Audit and Voluntary Compliance Act".

7 Sec. ____ . NEW SECTION. 455H.2 FINDINGS AND
8 DECLARATIONS.

9 The general assembly finds and declares that
10 protection of the environment is enhanced by voluntary
11 compliance with state environmental requirements and
12 that the public will benefit from incentives to
13 voluntarily identify and remedy environmental
14 noncompliance issues. It is further declared that
15 limited expansion of the protection against
16 prosecution will encourage regulated entities, large
17 and small, to voluntarily discover, correct, and
18 prevent instances of noncompliance with state
19 environmental requirements resulting in enhanced
20 protection of human health and the environment in the
21 state. The provisions of this chapter will not
22 inhibit the exercise of regulatory authority by those
23 persons entrusted with protecting the environment.
24 Therefore, an environmental audit and voluntary
25 compliance program is created and limited immunity is
26 provided to improve compliance with environmental
27 laws.

28 Sec. ____ . NEW SECTION. 455H.3 DEFINITIONS.

29 As used in this chapter:

30 1. "Department" means the department of natural
31 resources created in chapter 455A.

32 2. "Director" means the director of the department
33 of natural resources or the director's designee.

34 3. "Environmental audit" means a voluntary,
35 systematic, objective, and documented internal
36 evaluation conducted by an owner or operator after the
37 effective date of this Act at one or more facilities,
38 or of processes, activities, or management systems
39 related to a facility, regulated under state
40 environmental requirements that are designed to
41 identify and correct noncompliance and prevent future
42 noncompliance. An environmental audit may be
43 conducted by the owner or operator of the facility, by
44 an employee of the owner or operator of the facility,
45 by an officer or director of the facility, by an
46 independent contractor hired by the owner or operator
47 of the facility, or by the attorney of the owner or
48 operator of the facility provided, however, that the
49 person performing the audit possesses a knowledge of
50 the facility and of state environmental requirements

H-1380

H-1380

Page 2

1 reasonably necessary to conduct the audit. An
2 environmental audit within the meaning of this chapter
3 shall include the preparation of an environmental
4 audit report.

5 4. "Environmental audit report" means a formal
6 written report which is a single, discreet set of
7 documents clearly identified as the environmental
8 audit report and containing information generated and
9 collected in the course of conducting an environmental
10 audit. The report includes any information which is
11 collected and developed for the primary purpose of
12 conducting an environmental audit. The report
13 includes at a minimum all of the following components:

14 a. A report describing the scope of the
15 environmental audit including the starting and ending
16 dates.

17 b. The names and qualifications of the person
18 performing the environmental audit.

19 c. A summary of findings and conclusions resulting
20 from the environmental audit.

21 d. Identification of areas of noncompliance
22 identified during the environmental audit.

23 e. Proposed steps for correcting noncompliance.

24 f. If more than sixty calendar days will be
25 required to correct an area of noncompliance, a
26 compliance schedule identifying the time needed and
27 interim compliance measures to be taken to correct the
28 noncompliance and a statement of reasons supporting
29 the time periods needed.

30 g. Proposed steps and schedules designed to
31 prevent future noncompliance including consideration
32 of pollution prevention alternatives.

33 h. Appendices and exhibits appropriate to support
34 the findings, conclusions, and proposed steps and
35 schedules.

36 5. "Facility" means all buildings, equipment,
37 structures, and other stationary items that are
38 located on a single site or on contiguous or adjacent
39 sites and that are owned or operated by the same
40 person.

41 6. "Owner or operator" means the person or entity
42 who causes an environmental audit to be undertaken.

43 "Owner or operator" does not include a prospective
44 purchaser who caused the environmental audit to be
45 undertaken.

46 7. "Pollution prevention" means the elimination or
47 reduction of the use, generation, or release of
48 pollutants at their source.

49 8. "State" means the department of natural
50 resources, the attorney general, and all political

H-1380

-2-

H-1380

Page 3

1 subdivisions of the state.

2 9. "State environmental requirement" means laws
3 administered by the department, rules adopted by the
4 department, permits or orders issued by the
5 department, an agreement entered into with the
6 department, or a court order issued pursuant to any of
7 the foregoing, or regulations under an ordinance or
8 other legally binding requirement of a political
9 subdivision of the state under authority granted by
10 state law relating to environmental protection.

11 Sec. ____ . NEW SECTION. 455H.4 PROGRAM
12 ELIGIBILITY REQUIREMENTS.

13 In order to be eligible to participate in and enjoy
14 any of the benefits and privileges of this chapter, an
15 owner or operator must satisfy all of the following
16 conditions:

17 1. The owner's or operator's facility must not be
18 under a current enforcement action in the form of an
19 outstanding and unsatisfied administrative order,
20 referral to the attorney general, pending civil or
21 criminal court action, or outstanding and unsatisfied
22 court judgment.

23 2. At least twelve calendar months must have
24 elapsed since the final disposition of the last
25 enforcement action in the form of an administrative
26 order, referral to the attorney general, or civil or
27 criminal court action involving the facility.

28 3. At least twelve calendar months must have
29 elapsed since the submission of the last environmental
30 audit pursuant to this chapter for the facility.

31 4. The owner or operator must provide the director
32 with at least thirty calendar days' written notice of
33 intent to conduct an environmental audit meeting the
34 requirements of this chapter. This notification shall
35 include the projected starting and ending dates of the
36 audit. The notification shall also include a
37 certification of the owner or operator of the facility
38 that the applicable requirements of this section are
39 met.

40 5. The owner or operator must submit an
41 environmental audit report meeting the requirements of
42 section 455H.3, subsection 4, to the director within
43 sixty calendar days after the ending date of the
44 environmental audit. If the report identifies a
45 violation of an ordinance or other legally binding
46 requirement enacted by a political subdivision of the
47 state under authority granted by state law relating to
48 environmental protection, the owner or operator shall
49 also submit a copy of the environmental audit report
50 to the political subdivision within sixty calendar

H-1380

-3-

H-1380

Page 4

1 days after the ending date of the environmental audit.
2 6. Submit to the director a written commitment
3 signed by the owner or operator of the facility to
4 correct areas of noncompliance identified in the
5 environmental audit report within sixty calendar days
6 or in accordance with the compliance schedule
7 contained in the environmental audit report.

8 7. The owner or operator must correct all areas of
9 noncompliance in accordance with the compliance
10 schedule as approved or extended by the director.

11 Sec. ____ . NEW SECTION. 455H.5 REVIEW OF
12 COMPLIANCE SCHEDULES.

13 1. A compliance schedule submitted as part of an
14 environmental audit report in accordance with the
15 requirements of section 455H.3, subsection 4, shall be
16 subject to review and approval by the director. In
17 reviewing and approving a compliance schedule, the
18 director shall take into account information supplied
19 by the owner or operator as part of the environmental
20 audit report and information developed or obtained by
21 the department. In the event of a dispute over
22 approval of the compliance schedule, the owner or
23 operator may request a hearing pursuant to chapter
24 17A. A compliance schedule may be amended by written
25 agreement between the director and the owner or
26 operator.

27 2. The decision to approve a compliance schedule
28 shall be based on consideration of all of the
29 following factors:

30 a. The nature and extent of the noncompliance.

31 b. The severity of the impact or threat to the
32 environment, public health, or public safety resulting
33 from the noncompliance.

34 c. The economic benefits, if any, resulting from
35 the noncompliance and the current economic
36 circumstances of the facility.

37 d. The availability of equipment, material, and
38 technical expertise necessary to correct the
39 noncompliance.

40 e. The time needed to implement pollution
41 prevention opportunities as an alternative to
42 pollution control approaches to correct the
43 noncompliance.

44 Sec. ____ . NEW SECTION. 455H.6 DEFERRAL OF
45 ENFORCEMENT.

46 1. The state shall defer for at least ninety
47 calendar days the enforcement of state environmental
48 requirements against the owner or operator of a
49 facility if an environmental audit report has been
50 submitted to the director and the owner or operator

H-1380

-4-

H-1380

Page 5

1 meets the requirements of section 455H.4, subsections
2 1 through 6. If the report includes a compliance
3 schedule, and the compliance schedule is approved
4 under section 455H.5, the state shall defer
5 enforcement for the term of the approved compliance
6 schedule unless the owner or operator of the facility
7 fails to meet an interim compliance date contained in
8 the compliance schedule.

9 2. If within ninety calendar days after an
10 environmental audit report meeting the requirements of
11 section 455H.3, subsection 4, is received by the
12 director or within the time specified in an approved
13 compliance schedule, the owner or operator of a
14 facility corrects the areas of noncompliance
15 identified in the environmental audit report and
16 certifies to the director that the areas of
17 noncompliance have been corrected, the state shall not
18 impose any administrative or civil penalties against
19 the owner or operator of the facility for the reported
20 areas of noncompliance.

21 3. Notwithstanding subsections 1 and 2, the state
22 may at any time bring an enforcement action, which may
23 include a penalty, against the owner or operator of a
24 facility if any of the following instances occurs:

25 a. Less than one year has elapsed since final
26 resolution of an enforcement action against an owner
27 or operator in the form of an administrative order, or
28 a civil or criminal court action against the facility
29 for noncompliance with laws administered by the
30 department, rules adopted by the department, permits
31 or orders issued by the department, an agreement
32 entered into with the department, or a court order
33 issued pursuant to any of the foregoing and the owner
34 or operator was also shown as having been in
35 noncompliance in the report required under section
36 455H.3, subsection 4.

37 b. The facility has previously been found by the
38 state to have three or more instances of noncompliance
39 with state environmental requirements within the past
40 three years.

41 c. An instance of noncompliance causes serious
42 harm to public health, public safety, or the
43 environment.

44 d. An instance of noncompliance creates an
45 imminent threat to public health, public safety, or
46 the environment.

47 4. If the state finds one of the conditions in
48 subsection 3 exists, the state shall take into account
49 good faith efforts by the owner or operator to comply
50 with laws, rules, permits, or orders issued by the

H-1380

-5-

H-1380

Page 6

1 department, an agreement entered into with the
2 department, or a court order issued pursuant to any of
3 the foregoing in deciding whether to pursue an
4 enforcement action, whether an enforcement action
5 should be administrative, civil, or criminal, and
6 what, if any, penalty should be imposed. In
7 determining whether the owner or operator has acted in
8 good faith, the state shall consider all of the
9 following:

10 a. Whether when noncompliance was discovered, the
11 owner or operator took corrective actions that were
12 timely and appropriate under the circumstances.

13 b. Whether the owner or operator exercised
14 reasonable care in attempting to prevent noncompliance
15 and ensure compliance with environmental requirements.

16 c. Whether the noncompliance resulted in
17 significant economic benefit to the regulated entity.

18 d. Whether prior to implementing the environmental
19 audit and voluntary compliance program, the owner or
20 operator had a history of good faith efforts to comply
21 with laws, rules, permits, or orders issued by the
22 department, an agreement entered into with the
23 department, or a court order issued pursuant to any of
24 the foregoing relating to environmental protection
25 requirements.

26 e. Whether the owner or operator demonstrated good
27 faith efforts to achieve compliance since implementing
28 an environmental audit and voluntary compliance
29 program.

30 f. Whether the owner or operator has demonstrated
31 efforts to implement pollution prevention
32 opportunities.

33 5. Nothing in this chapter precludes the state
34 from taking any enforcement action the state is
35 authorized to take with respect to noncompliance
36 discovered by the state prior to the time an owner or
37 operator has submitted an environmental audit report
38 meeting the requirements of section 455H.3, subsection
39 4, to the director, or not identified and addressed as
40 an area of noncompliance within the environmental
41 audit report submitted to the director.

42 Sec. . NEW SECTION. 455H.7 ACCESS TO
43 ENVIRONMENTAL AUDIT REPORTS.

44 After receipt by the director of a final
45 environmental audit report meeting the requirements of
46 section 455H.3, subsection 4, the final environmental
47 audit report shall be considered a public record
48 within the meaning and governed by provisions of
49 chapter 22. An owner or operator may request that
50 information submitted to the director as part of the

H-1380

-6-

H-1380

Page 7

1 environmental audit report be treated as confidential
2 records as that term is defined in section 22.7. Any
3 information found to be a confidential record within
4 the meaning of section 22.7 shall not be considered a
5 public record. Participation by an owner or operator
6 in the environmental audit and voluntary compliance
7 program does not waive, minimize, reduce, expand, or
8 otherwise affect the level of protection or
9 confidentiality that exists under law with respect to
10 any other documents relating to an environmental
11 audit.

12 Sec. ____ . NEW SECTION. 455H.8 ENVIRONMENTAL
13 AUDIT REPORTS INADMISSIBLE.

14 1. After receipt by the director of an
15 environmental audit report in compliance with sections
16 455H.3 and 455H.4, an environmental audit report is
17 not discoverable or admissible as evidence in any
18 civil, criminal, or administrative proceeding or in
19 response to a regulatory inspection, or inquiry,
20 except as otherwise provided in this chapter.

21 2. After receipt by the director of an
22 environmental audit report in compliance with sections
23 455H.3 and 455H.4, the owner or operator, or a person
24 who conducts an environmental audit for an owner or
25 operator, shall not be compelled to testify regarding
26 any information obtained solely through the
27 environmental audit and part of the environmental
28 audit report submitted to the director, without
29 consent of the owner or operator, unless ordered to do
30 so by a court of record or administrative tribunal.
31 This subsection does not apply if the environmental
32 audit is subject to an exception under section 455H.6.

33 3. The prohibitions in subsections 1 and 2 shall
34 apply only if both of the following conditions are
35 met:

36 a. The environmental audit report submitted to the
37 director meets all the requirements of section 455H.3,
38 subsection 4.

39 b. The owner or operator is in compliance with a
40 compliance schedule, if any, as approved or extended
41 by the director under section 455H.5.

42 4. The prohibition on admissibility shall not
43 extend to any of the following regardless of whether
44 or not they are included within an environmental audit
45 report:

46 a. Documents, communications, data, reports, or
47 other information required to be collected, developed,
48 maintained, reported, or otherwise made available to a
49 regulatory agency pursuant to local, state, or federal
50 environmental laws or regulations. However, the

H-1380

-7-

H-1380

Page 8

1 prohibition shall extend to any observations,
2 findings, opinions, suggestions, or conclusions
3 derived from the above by the person conducting the
4 environmental audit.

5 b. Information obtained from observation,
6 sampling, or monitoring by any regulatory agency.

7 c. Information legally obtained from a source
8 independent of the environmental audit or from a
9 person who did not obtain the information from the
10 environmental audit or the environmental audit report.

11 d. Machinery and equipment maintenance records.

12 5. The prohibition on admissibility shall not
13 apply if a court or administrative tribunal determines
14 any of the following or determines that there is a
15 genuine issue of material fact which is germane to the
16 pending proceeding, as to any of the following:

17 a. The prohibition is asserted for a fraudulent
18 purpose.

19 b. The owner or operator was not eligible for
20 participation under section 455H.4, the environmental
21 audit report does not meet the requirements of section
22 455H.3, subsection 4, or the owner or operator has
23 failed to comply with the compliance schedule approved
24 under section 455H.5.

25 c. The environmental audit report or related
26 documents include material misrepresentations, or
27 there is evidence of perjury as to which the audit
28 report or testimony may be material.

29 d. The material is not subject to the prohibition.

30 e. The material, otherwise subject to the
31 prohibition, shows evidence of noncompliance with
32 local, state, or federal environmental laws and
33 appropriate efforts to achieve compliance with local,
34 state, or federal environmental laws were not
35 initiated and pursued with reasonable diligence upon
36 discovery of noncompliance.

37 f. The material, otherwise subject to the
38 prohibition, shows that violations of local, state, or
39 federal environmental laws were intentional or
40 repeated, or shows that violations of local, state, or
41 federal environmental laws resulted in substantial
42 harm to the public health or the environment. The
43 court or administrative tribunal may find admissible
44 only those portions of an environmental audit report
45 relevant to the issue in dispute.

46 g. The proceeding is an enforcement action
47 permitted under section 455H.6 or one to determine any
48 issue arising under this chapter.

49 h. The proceeding is one to determine whether the
50 owner or operator of the facility in question is

H-1380

-8-

H-1380

Page 9

1 eligible for any immunities or liability protections
2 provided by any other law.

3 6. The owner or operator and the state may at any
4 time stipulate to entry of an order directing that
5 specific information contained in an environmental
6 audit report is or is not subject to the prohibition
7 under this section.

8 Sec. ____ . NEW SECTION. 455H.9 NO EFFECT ON OTHER
9 RIGHTS OR PRIVILEGES.

10 Nothing in this chapter shall limit, waive, or
11 abrogate any of the following:

12 1. Rights of an owner or operator who chooses not
13 to participate, or is not eligible to participate, in
14 the environmental audit and voluntary compliance
15 program.

16 2. Rights of other persons relative to matters
17 addressed by the environmental audit and voluntary
18 compliance program.

19 3. The scope or nature of any statutory or common
20 law privilege, including the work product doctrine and
21 the attorney-client privilege.

22 Sec. ____ . NEW SECTION. 455H.10 REPORTS REQUIRED
23 BY LAW.

24 Nothing in this chapter alters the obligation of
25 any person to report releases, violations, or other
26 matters that are required to be reported by state or
27 federal law, rule, permit, or administrative or
28 judicial order."

29 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-1380 FILED MARCH 25, 1997

O/order 3/3/98

HOUSE FILE 681

H-1383

1 Amend House File 681 as follows:

2 1. Page 2, by striking lines 2 through 6 and
3 inserting the following: "environmental management
4 system or process. An environmental audit may be
5 conducted by the owner or operator of the facility, by
6 an employee of the owner or operator of the facility,
7 by an officer or director of the facility, by an
8 independent contractor of the facility provided the
9 person participating in the audit possesses a
10 knowledge of the facility and of the state
11 environmental requirements."

12 2. Page 4, by striking line 9 and inserting the
13 following: "privilege under sections 455B.484A and
14 455H.4:".

15 3. Page 7, by inserting after line 16 the
16 following:

17 "5. An employee who reports environmental
18 noncompliance and who is acting on the reasonable
19 belief of either of the following shall be exempt from
20 this section:

21 a. There was a willful or fraudulent attempt on
22 the part of the owner or operator to suppress evidence
23 of violations which harm public health or the
24 environment.

25 b. There were compliance actions which were not
26 being undertaken promptly, in good faith, or
27 competently, and such information was being
28 suppressed."

29 4. Page 9, by striking lines 23 through 25 and
30 inserting the following: "disclosure."

31 5. Page 9, line 32, by striking the word
32 "mitigate" and inserting the following: "consider
33 mitigating".

34 6. Page 10, by striking lines 25 through 31.

By BRADLEY of Clinton
WITT of Black Hawk

H-1383 FILED MARCH 25, 1997

0/0 3/3/98

HOUSE FILE 681

H-1384

1 Amend House File 681 as follows:

2 1. Page 3, lines 10 and 11, by striking the words
3 "clear, present, and impending" and inserting the
4 following: "condition of acute toxicity in a water of
5 the state or other damage or".

By HOLVECK of Polk

H-1384 FILED MARCH 25, 1997

0/0 3/3/98

HOUSE FILE 681

H-1385

- 1 Amend House File 681 as follows:
2 1. Page 10, by inserting after line 31 the
3 following:
4 "Sec. ____ . NEW SECTION. 455H.12 APPLICABILITY.
5 Notwithstanding any other provision of this
6 chapter, the privileges and immunities conferred by
7 this chapter do not apply to environmental audits of
8 facilities or practices used in the storage or
9 disposal of animal waste produced at a confinement
10 feeding operation regulated under chapter 455B."
By MASCHER of Johnson

H-1385 FILED MARCH 25, 1997

O/Order 3/3/98

HOUSE FILE 681

H-1391

- 1 Amend House File 681 as follows:
2 1. Page 1, line 3, by striking the words
3 "Privilege and".
4 2. Page 1, line 10, by striking the words
5 "disclosure and".
6 3. Page 1, by striking lines 17 through 19 and
7 inserting the following: "environment. Therefore,
8 limited".
9 4. Page 2, line 10, by striking the words "
10 privileged document".
11 5. Page 3, by striking lines 8 and 9.
12 6. By striking page 3, line 12, through page 7,
13 line 16.
14 7. Page 8, by striking lines 5 and 6.
15 8. Page 10, line 4, by striking the word "OTHER".
16 9. Page 10, by striking lines 25 through 31.
17 10. Title page, by striking lines 1 and 2 and
18 inserting the following: "An Act relating to
19 environmental audit reports."
20 11. By renumbering as necessary.
By SHOULTZ of Black Hawk

H-1391 FILED MARCH 25, 1997

*O/Order 3/3/98
(p. 452)*

HOUSE FILE 681

H-1394

- 1 Amend the amendment, H-1383, to House File 681 as
- 2 follows:
- 3 1. Page 1, by striking lines 13 through 14 and
- 4 inserting the following: "following: "privilege
- 5 provisions under section 455H.4 and the
- 6 confidentiality provisions under sections 268.4 and
- 7 455B.484A:""

By BRADLEY of Clinton
WITT of Black Hawk

H-1394 FILED MARCH 26, 1997

0/order 3/3/98

HOUSE FILE 681

H-1413

- 1 Amend the amendment, H-1383, to House File 681 as
- 2 follows:
- 3 1. Page 1, line 8, by inserting after the word
- 4 "facility" the following: "or a certified independent
- 5 environmental auditor".
- 6 2. Page 1, by inserting after line 11 the
- 7 following:
- 8 "____. Page 3, by inserting after line 11 the
- 9 following:
- 10 "Sec. ____ . NEW SECTION. 455H.3A CERTIFICATION OF
- 11 AUDITORS.
- 12 The department shall adopt rules providing for the
- 13 certification of independent environmental auditors."

By BURNETT of Story

H-1413 FILED MARCH 26, 1997

0/0 3/3/98

HOUSE FILE 681

H-1414

- 1 Amend the amendment, H-1349, to House File 681 as
- 2 follows:
- 3 1. Page 1, by striking lines 4 and 5 and
- 4 inserting the following: "the violations are reported
- 5 by any third party."

By MASCHER of Johnson

H-1414 FILED MARCH 26, 1997

0/0 3/3/98

HOUSE FILE 681

H-1415

- 1 Amend the amendment, H-1354, to House File 681 as
- 2 follows:
- 3 1. Page 1, line 4, by striking the word
- 4 "established" and inserting the following:
- 5 "approved".

By MASCHER of Johnson

H-1415 FILED MARCH 26, 1997

0/order 3/3/98

HOUSE FILE 681

-1464

1 Amend House File 681 as follows:

2 1. By striking page 1, line 1, through page 10,
3 line 31, and inserting the following:

4 "Sec. ____ . NEW SECTION. 455H.1 PURPOSE.

5 The purpose of this chapter is to promote
6 environmental compliance in the business community by
7 providing incentives to conduct environmental audits.

8 Sec. ____ . NEW SECTION. 455H.2 APPLICABILITY.

9 This chapter applies to small businesses. For
10 purposes of this chapter, "small business" means a
11 person, corporation, partnership, or other entity
12 which employs one hundred or fewer individuals and
13 shall include all facilities and operations owned by
14 the entity.

15 Sec. ____ . NEW SECTION. 455H.3 IMMUNITY.

16 A small business shall be immune from any
17 administrative or civil penalty or any criminal
18 penalties for negligent acts if the small business
19 meets all of the following criteria:

20 1. The small business makes a good faith effort to
21 comply with applicable local, state, and federal
22 environmental laws as demonstrated by either of the
23 following:

24 a. The small business receives onsite compliance
assistance from a government or government-supported
program that offers services to small businesses and
violations of local, state, and federal environmental
28 laws are detected during the compliance assistance.
29 If a small business requests from the department of
30 natural resources a period of time to remedy
31 violations after receiving compliance assistance from
32 a confidential assistance program, the small business
33 must promptly disclose the violations to the
34 department.

35 b. The small business conducts an environmental
36 audit and promptly reports all violations of local,
37 state, and federal environmental laws to the
38 department of natural resources discovered during the
39 audit.

40 In order to meet the criteria in this subsection,
41 all violations of local, state, and federal
42 environmental laws must be reported to the department
43 before the violation is otherwise discovered by or
44 reported to the department.

45 2. The small business has not been subject to an
46 information request, warning letter, notice of
47 violation, field citation, citizen suit, or other
48 enforcement action or received penalty mitigation for
49 any current violation within the past three years and
50 the small business has not been subject to two or more

464

-1-

H-1464

Page 2

1 enforcement actions for environmental violations
2 within the past five years.

3 3. The small business shall remedy any violations
4 of local, state, and federal environmental laws within
5 the shortest practicable time which shall not exceed
6 one hundred eighty days from the time the violation is
7 detected. However, the small business may request an
8 additional period of one hundred eighty days if the
9 small business demonstrates the violation cannot be
10 remedied by implementing pollution prevention
11 measures. For any violation which cannot be remedied
12 within ninety days from the time of detection, the
13 small business shall submit a written schedule to the
14 department of natural resources or the department
15 shall issue a compliance order with a schedule.
16 Remedying a violation includes, but is not limited to,
17 remediating any environmental harm associated with the
18 violation and implementing steps to prevent a
19 recurrence of the violation.

20 4. All of the following apply:

21 a. The violation has not caused actual serious
22 harm to public health, safety, or the environment.

23 b. The violation is not one that may present an
24 imminent and substantial endangerment to public health
25 or the environment.

26 c. The violation does not present a significant
27 health, safety, or environmental threat.

28 d. The violation does not involve criminal
29 conduct.

30 Sec. ____ . NEW SECTION. 455H.4 ENVIRONMENTAL
31 AUDITS AND COMPLIANCE ASSISTANCE.

32 1. An environmental audit is a systematic,
33 documented, periodic, and objective review by
34 regulated entities of facility operations and
35 practices related to meeting local, state, and federal
36 environmental laws.

37 2. Compliance assistance is information or
38 assistance provided by a governmental agency or
39 department or government-supported entity to help the
40 regulated community comply with legally mandated
41 environmental requirements. Compliance assistance
42 does not include enforcement inspections or
43 enforcement actions. If a small business requests
44 assistance from a governmental agency which is unable
45 to provide assistance, the governmental agency shall
46 provide a prompt response to the small business
47 indicating that such assistance is not available and
48 providing the names of other public and private
49 sources of assistance that may be available.

50 Sec. ____ . NEW SECTION. 455H.5 ENFORCEMENT.

H-1464

H-1464

Page 3

1 1. Violations detected through inspections or
2 field citations reported to an agency by a member of
3 the public or an employee of the small business,
4 identified in notices of citizen suits, or previously
5 reported to an agency or department as required by
6 applicable local, state, and federal environmental
7 laws, regulations, or permits remain enforceable.

8 2. A small business is subject to all applicable
9 enforcement response policies for all violations that
10 had been detected through compliance assistance
11 programs and were not remedied within the corrections
12 period.

13 3. The actions of the state in providing
14 compliance assistance is not a legal defense in any
15 enforcement action. This subsection does not limit
16 the state's discretion to use information relating to
17 violations revealed through compliance assistance as
18 evidence in subsequent enforcement actions."

19 2. By renumbering as necessary.

By BURNETT of Story

H-1464 FILED MARCH 31, 1997

O/Order 3/3/98

HOUSE FILE 681

H-1471

1 Amend the amendment, H-1384, to House File 681 as
follows:

2 1. Page 1, by striking lines 4 through 5 and
4 inserting the following: "following: "threatened or
5 existing condition of damage or"".

By HOLVECK of Polk

H-1471 FILED MARCH 31, 1997

O/Order 3/3/98

H-8054

1 Amend House File 681 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 455J.1 TITLE.

5 This chapter shall be known and cited as the
6 "Environmental Audit Privilege and Immunity Act".

7 Sec. 2. NEW SECTION. 455J.2 DEFINITIONS.

8 As used in this chapter, unless the context
9 otherwise requires:

10 1. "Department" means the department of natural
11 resources created under section 455A.2.

12 2. "Environmental audit" means a voluntary
13 evaluation of a facility or operation, of an activity
14 at a facility or operation, or of an environmental
15 management system at a facility or operation, which is
16 regulated under local, state, or federal environmental
17 laws, rules, ordinances, or permits, conducted by an
18 owner or operator, an employee of the owner or
19 operator, or an independent contractor that is
20 designed to identify historical or current
21 noncompliance, discover environmental contamination or
22 hazards, remedy noncompliance or improve compliance
23 with environmental laws, or improve an environmental
24 management system. Once initiated, an environmental
25 audit shall be completed within a reasonable time not
26 to exceed six months unless an extension is approved
27 by the governmental entity with regulatory authority
28 over the regulated facility or operation based on
29 reasonable grounds.

30 3. "Environmental audit report" means a document
31 or set of documents generated as a result of an
32 environmental audit. An "environmental audit report"
33 includes supporting information which may include, but
34 is not limited to, the report document itself,
35 observations, samples, analytical results, exhibits,
36 findings, opinions, suggestions, recommendations,
37 conclusions, drafts, memoranda, drawings, photographs,
38 computer-generated or electronically recorded
39 information, maps, charts, graphs, surveys,
40 implementation plans, interviews, discussions,
41 correspondence, and communications related to the
42 environmental audit, if the supporting information and
43 documents are generated and developed for the primary
44 purpose and in the course of or as a result of
45 conducting an environmental audit. An "environmental
46 audit report" may include any of the following
47 components:

48 a. A report prepared by the person conducting the
49 environmental audit, which may include the scope of
50 the environmental audit, the information gained in the

H-8054

H-8054

Page 2

1 environmental audit, conclusions, recommendations,
2 exhibits, and appendices.

3 b. Memoranda and documents analyzing portions or
4 all of the report and discussing implementation
5 issues.

6 c. An implementation plan which addresses
7 correcting past noncompliance, improving current
8 compliance or an environmental management system, or
9 preventing future noncompliance.

10 d. Periodic updates documenting progress in
11 completing the implementation plan.

12 4. "Inquiring party" means any party appearing
13 before a court or a presiding officer in an
14 administrative proceeding seeking to review or obtain
15 an in camera review of an environmental audit report.

16 5. "Owner or operator" means the person or entity
17 who caused the environmental audit to be undertaken.

18 6. "Privilege" means the privilege provided to an
19 environmental audit report as provided in this
20 chapter.

21 Sec. 3. NEW SECTION. 455J.3 PRIVILEGE.

22 1. An environmental audit report is privileged and
23 confidential and is not discoverable or admissible as
24 evidence in any civil or administrative proceeding,
25 except as otherwise provided in this chapter. The
26 environmental audit report shall be labeled
27 "ENVIRONMENTAL AUDIT REPORT: PRIVILEGED DOCUMENT", or
28 labeled with words of similar import. Failure to
29 label each document does not constitute a waiver of
30 the environmental audit privilege or create a
31 presumption that the privilege does or does not apply.

32 2. A person shall not be compelled to testify or
33 produce a document related to an environmental audit
34 in any of the following circumstances:

35 a. If the testimony or document discloses any
36 component listed in section 455J.2, subsection 3, that
37 was made as part of the preparation of an
38 environmental audit report and that is addressed in a
39 privileged part of an environmental audit report.

40 b. If the person is any of the following:

41 (1) A person who conducted any portion of the
42 environmental audit but did not personally observe the
43 physical events of an environmental violation.

44 (2) A person to whom the results of the
45 environmental audit report are disclosed under section
46 455J.4, subsection 2.

47 (3) A custodian of the environmental audit report.

48 3. A person who conducts or participates in the
49 preparation of an environmental audit report and who
50 has observed physical events of an environmental

H-8054

-2-

H-8054

Page 3

1 violation may testify about those events but shall not
2 be compelled to testify about or produce documents
3 related to the preparation of or any privileged part
4 of an environmental audit or any component listed in
5 section 455J.2, subsection 3.

6 4. An employee of a state agency or other
7 governmental employee shall not request, review, or
8 otherwise use an environmental audit report during an
9 agency inspection of a regulated facility or
10 operation, or an activity of a regulated facility or
11 operation.

12 5. A party asserting the privilege under this
13 section has the burden of establishing the
14 applicability of the privilege.

15 6. The privilege provided in this section is in
16 addition to the privilege provided to assistance
17 programs pursuant to section 455B.484A.

18 Sec. 4. NEW SECTION. 455J.4 WAIVER OF PRIVILEGE
19 -- DISCLOSURE.

20 1. The privilege described in section 455J.3 shall
21 not apply to the extent that the privilege is
22 expressly waived by the owner or operator who prepared
23 the environmental audit report or caused the report to
24 be prepared.

25 2. Disclosure of an environmental audit report or
26 any information generated by an environmental audit
27 does not waive the privilege established in section
28 455J.3 if the disclosure meets any of the following
29 criteria:

30 a. The disclosure is made to address or correct a
31 matter raised by the environmental audit and the
32 disclosure is made to any of the following:

33 (1) A person employed by the owner or operator,
34 including temporary and contract employees.

35 (2) A legal representative of the owner or
36 operator.

37 (3) An officer or director of the regulated
38 facility or operation or a partner of the owner or
39 operator.

40 (4) An independent contractor retained by the
41 owner or operator.

42 b. The disclosure is made under the terms of a
43 confidentiality agreement between the owner or
44 operator of the audited facility or operation and any
45 of the following:

46 (1) A partner or potential partner of the owner or
47 operator of the facility or operation.

48 (2) A transferee or potential transferee of the
49 facility or operation.

50 (3) A lender or potential lender for the facility

H-8054

-3-

H-8054

Page 4

1 or operation.

2 (4) A governmental official or agency of this
3 state.

4 (5) A person or entity engaged in the business of
5 insuring, underwriting, or indemnifying the facility
6 or operation.

7 3. A party to a confidentiality agreement
8 described in subsection 2, paragraph "b", who violates
9 that agreement is liable for damages caused by the
10 disclosure and for any other penalties stipulated in
11 the confidentiality agreement.

12 4. Information that is disclosed under subsection
13 2, paragraph "b", subparagraph (4), is confidential
14 and is not subject to disclosure under chapter 22. A
15 governmental entity, governmental employee, or
16 governmental official who discloses information in
17 violation of this subsection is subject to any penalty
18 provided in chapter 22.

19 5. The protections provided by federal or state
20 law shall be afforded to individuals who disclose
21 information to law enforcement authorities.

22 Sec. 5. NEW SECTION. 455J.5 REQUIRED DISCLOSURE.

23 1. A court or a presiding officer in an
24 administrative hearing may require disclosure of a
25 portion of an environmental audit report in a civil or
26 administrative proceeding if the court or presiding
27 officer affirmatively determines, after an in camera
28 review, that any of the following exists:

29 a. The privilege is asserted for a fraudulent
30 purpose.

31 b. The portion of the environmental audit report
32 is not subject to the privilege under section 455J.6.

33 c. The portion of the environmental audit report
34 shows evidence of noncompliance with a local, state,
35 or federal environmental or other law, rule,
36 ordinance, or permit condition and appropriate efforts
37 to achieve compliance with the law or ordinance were
38 not promptly initiated and pursued with reasonable
39 diligence after discovery of noncompliance.

40 2. A party seeking disclosure under this section
41 has the burden of proving that subsection 1 applies.

42 3. A decision of a presiding officer in an
43 administrative hearing under subsection 1 may be
44 directly appealed to the district court without
45 disclosure of the environmental audit report to any
46 person unless so ordered by the court.

47 4. A determination of a court under this section
48 is subject to interlocutory appeal to an appropriate
49 appellate court.

50 Sec. 6. NEW SECTION. 455J.6 MATERIALS NOT

H-8054

-4-

H-8054

Page 5

1 PRIVILEGED.

2 1. The privilege described in this chapter does
3 not apply to any of the following:

4 a. A document, communication, datum, report, or
5 other information required by a regulatory agency to
6 be collected, developed, retained, or reported under a
7 local, state, or federal environmental law, rule,
8 ordinance, or permit condition.

9 b. Information obtained by observation, sampling,
10 or monitoring by a regulatory agency or a regulatory
11 agency's authorized designee.

12 c. Information obtained from a source not involved
13 in the preparation of the environmental audit report.

14 2. This section does not limit the right of a
15 person to agree to conduct an environmental audit and
16 disclose an environmental audit report.

17 Sec. 7. NEW SECTION. 455J.7 REVIEW OF PRIVILEGED
18 DOCUMENTS.

19 1. If an environmental audit report is obtained,
20 reviewed, or used in a criminal proceeding, the
21 administrative and civil evidentiary privilege
22 established in this chapter is not waived or made
23 inapplicable for any purpose other than for the
24 criminal proceeding.

25 2. Notwithstanding the privilege established in
26 this chapter, a regulatory agency may review
27 information in an environmental audit report that is
28 required to be collected, developed, retained, or
29 reported under a specific local, state, or federal
30 law, rule, ordinance, or permit condition, but such
31 review does not waive or make the administrative and
32 civil evidentiary privilege inapplicable. A
33 regulatory agency shall not adopt a rule or impose a
34 condition that circumvents the purpose of this
35 chapter.

36 3. If information is required to be made available
37 to the public by operation of a specific local, state,
38 or federal law, rule, ordinance, or permit condition,
39 the governmental authority shall notify the person
40 claiming the privilege of the potential for public
41 disclosure prior to obtaining such information under
42 subsection 1 or 2.

43 4. If privileged information is disclosed under
44 subsection 2 or 3, on the motion of a party, a court
45 or the presiding officer in an administrative hearing
46 shall suppress evidence offered in any civil or
47 administrative proceeding that arises or is derived
48 from review, disclosure, or use of information
49 obtained under this section if the review, disclosure,
50 or use is not authorized under section 455J.6. A

H-8054

-5-

H-8054

Page 6

1 party having received information under subsection 2
2 or 3 has the burden of proving that the evidence
3 offered did not arise and was not derived from the
4 review of privileged information.

5 Sec. 8. NEW SECTION. 455J.8 VOLUNTARY DISCLOSURE
6 OF ENVIRONMENTAL VIOLATION -- IMMUNITY.

7 1. An owner or operator is eligible for immunity
8 under this section from the time the department
9 receives official notification from the owner or
10 operator of a scheduled environmental audit. An owner
11 or operator is immune from any administrative or civil
12 penalty associated with the issues disclosed if the
13 owner or operator makes a prompt voluntary disclosure
14 to the department regarding an environmental violation
15 which is discovered through the environmental audit.
16 The owner or operator shall provide a timetable for
17 submitting a remediation schedule to the department
18 and information supporting the claim that the
19 disclosure is voluntary at the time that the
20 disclosure is made to the department. The owner or
21 operator creates a rebuttable presumption that the
22 disclosure is voluntary by providing such information
23 at the time of disclosure. To rebut the presumption
24 that a disclosure is voluntary, the department or
25 other party has the burden of proving that the
26 disclosure was not voluntary. Immunity is not
27 provided if the violations of local, state, or federal
28 environmental law, rule, ordinance, or permit
29 condition are intentional or if the violations of
30 local, state, or federal law, rule, ordinance, or
31 permit condition resulted in substantial actual injury
32 or imminent and substantial risk of injury to persons,
33 property, or the environment.

34 2. The disclosure of information is voluntary if
35 all of the following circumstances exist:

36 a. The disclosure arises out of an environmental
37 audit and relates to privileged information as
38 provided in section 455J.3.

39 b. The person making the disclosure uses
40 reasonable efforts to pursue compliance and corrects
41 the noncompliance within a reasonable period of time
42 after completion of the environmental audit in
43 accordance with a remediation schedule approved by the
44 department. If evidence shows that the noncompliance
45 is due to the failure to obtain a permit, reasonable
46 effort may be demonstrated by the submittal of a
47 complete permit application within a reasonable time.
48 Disclosure of information required to be reported by
49 local, state, or federal law, rule, ordinance, or
50 permit condition is not considered to be voluntary

H-8054

-6-

H-8054

Page 7

1 disclosure and the immunity provisions in this section
2 are not applicable.

3 c. Environmental violations are identified in an
4 environmental audit report and disclosed before there
5 is notice of a citizen suit or a legal complaint by a
6 third party.

7 d. Environmental violations are identified in an
8 environmental audit report and disclosed before the
9 environmental violations are reported by any person
10 not involved in conducting the environmental audit or
11 to whom the environmental audit report was disclosed.

12 3. If an owner or operator has not provided the
13 department with notification of a scheduled
14 environmental audit prior to performing the audit, a
15 disclosure of information is voluntary if the
16 environmental violations are identified in an
17 environmental audit report and disclosed by certified
18 mail to the proper regulatory agency that has
19 jurisdiction over the disclosed violation prior to the
20 agency's commencement of an investigation.

21 4. If a person is required to make a disclosure
22 relating to a specific issue under a specific permit
23 condition or under an order issued by the department,
24 the disclosure is not voluntary with respect to that
25 issue.

26 5. Except as provided in this section, this
27 section does not impair the authority of the proper
28 regulatory agency to require a technical or remedial
29 action or to order injunctive relief.

30 6. Upon application to the department, the time
31 period within which a noncompliance item is corrected
32 under subsection 2 may be extended if it is not
33 practical to correct the noncompliance within the
34 reasonable period of time initially approved by the
35 department. The department shall not unreasonably
36 withhold the grant of an extension. If the department
37 denies an extension, the department shall provide the
38 requesting party with a written explanation of the
39 reasons for the denial. A request for de novo review
40 of the department's decision may be made to the
41 appropriate court.

42 7. Immunity provided under this section from
43 administrative or civil penalties does not apply under
44 any of the following circumstances:

45 a. If an owner or operator of the facility or
46 operation has been found in a civil or administrative
47 proceeding to have committed serious violations in
48 this state that constitute a pattern of continuous or
49 repeated violations of environmental laws,
50 administrative rules, permit conditions, settlement

H-8054

-7-

H-8054

Page 8

1 agreements, or orders on consent, final orders, or
2 judicial orders and that were due to separate and
3 distinct events giving rise to the violations within
4 the three-year period prior to the date of disclosure,
5 or if under another provision of law an owner or
6 operator of a facility or operation is subject to
7 classification as a repeat or habitual violator.

8 b. If a violation of an environmental law,
9 administrative rule, permit condition, settlement
10 agreement, or order on consent, final order, or
11 judicial order results in a substantial economic
12 benefit which gives the violator a clear advantage
13 over its business competitors.

14 8. In cases where the conditions of a voluntary
15 disclosure are not met but a good faith effort was
16 made to voluntarily disclose and resolve a violation
17 detected in an environmental audit, the state and
18 local regulatory authorities shall consider the nature
19 and extent of any good faith effort in deciding the
20 appropriate enforcement response and shall consider
21 reducing any administrative or civil penalties based
22 on mitigating factors showing that one or more of the
23 conditions for voluntary disclosure have been met.

24 9. The immunity provided by this section does not
25 abrogate the responsibility of a person as provided by
26 applicable law to correct the violation, conduct
27 necessary remediation, or respond to third-party
28 actions.

29 Sec. 9. NEW SECTION. 455J.9 ABROGATION OF OTHER
30 PRIVILEGES.

31 This chapter shall not limit, waive, or abrogate
32 the scope or nature of any statutory or common-law
33 privilege, including the work product doctrine and the
34 attorney-client privilege.

35 Sec. 10. NEW SECTION. 455J.10 ENVIRONMENTAL
36 AUDITOR TRAINING PROGRAM.

37 A training program for and standards for
38 certification of environmental auditors shall be
39 developed jointly by the Iowa waste reduction center
40 and the department. The training program shall be
41 administered by the Iowa waste reduction center. The
42 program shall provide training on the proper conduct
43 of an environmental audit; local, state, and federal
44 environmental ordinances, rules, and laws that apply
45 to businesses in this state; and the environmental
46 audit laws in this state. The program shall be made
47 available to small and large business owners and
48 operators, consulting engineers, regulatory personnel,
49 and citizens through the community college system. A
50 fee may be assessed for participation in the program.

H-8054

-8-

H-8054

Page 9

1 Upon completion of the training program, program
2 participants may elect to be tested by the department
3 for certification as an environmental auditor for the
4 purposes of this chapter.

5 Sec. 11. NEW SECTION. 455J.11 SUMMARY.

6 On or before December 1 of each year, the
7 department shall make available a summary of the
8 number of environmental audit notices received, the
9 violations, and the remediation status of the
10 violations reported pursuant to this chapter during
11 the preceding fiscal year.

12 Sec. 12. NEW SECTION. 455J.12 RULEMAKING.

13 The department may adopt rules pursuant to chapter
14 17A necessary to administer this chapter.

15 Sec. 13. NEW SECTION. 455J.13 COSTS.

16 The necessary costs incurred by the department
17 under this chapter shall be funded from appropriations
18 made to the department from the general fund of the
19 state."

20 2. Title page, by striking lines 1 and 2 and
21 inserting the following: "An Act creating an
22 environmental audit privilege and immunity, and an
23 environmental auditor training program, and providing
24 penalties."

By COMMITTEE ON ENVIRONMENTAL
PROTECTION
HAHN of Muscatine, Chairperson

H-8054 FILED FEBRUARY 16, 1998

Adopted
3/3/98 (p. 452)

HOUSE FILE 681

H-8095

- 1 Amend the amendment, H-8054, to House File 681 as
2 follows:
- 3 1. Page 1, line 11, by inserting after the figure
4 "455A.2" the following: "or its delegated authority".
- 5 2. Page 1, line 16, by striking the words "local,
6 state," and inserting the following: "state".
- 7 3. Page 1, line 17, by striking the words
8 "ordinances, or permits" and inserting the following:
9 "or permit conditions".
- 10 4. Page 1, line 21, by inserting after the word
11 "noncompliance" the following: "with environmental
12 laws, rules, ordinances, or permit conditions".
- 13 5. Page 1, line 24, by striking the word
14 "initiated" and inserting the following:
15 "notification is given to the department".
- 16 6. Page 1, lines 27 and 28, by striking the words
17 "governmental entity with regulatory authority over
18 the regulated facility or operation" and inserting the
19 following: "department".
- 20 7. Page 1, line 31, by striking the words
21 "generated as a result of" and inserting the
22 following: "generated and developed for the primary
23 purpose and in the course of or as a result of
24 conducting".
- 25 8. Page 1, by striking lines 42 through 45 and
26 inserting the following: "environmental audit. An
27 "environmental".
- 28 9. Page 2, line 22, by inserting after the word
29 "report" the following: "conducted after the
30 effective date of this Act".
- 31 10. Page 2, line 32, by inserting after the word
32 "testify" the following: "in regard to".
- 33 11. Page 2, line 33, by striking the words
34 "related to" and inserting the following: "included
35 in".
- 36 12. Page 4, by inserting after line 21 the
37 following:
38 "6. The provisions of this chapter shall not
39 abrogate the protections provided by federal and state
40 law regarding confidentiality and trade secrets."
- 41 13. Page 4, line 34, by striking the words
42 "local, state," and inserting the following: "state".
- 43 14. Page 4, line 36, by striking the word
44 "ordinance,".
- 45 15. Page 4, by inserting after line 39 the
46 following:
47 "d. The portion of the environmental audit report
48 shows clear and convincing evidence of substantial
49 actual personal injury, which information is not
50 otherwise available."

H-8095

-1-

H-8095

Page 2

- 1 16. Page 4, by inserting after line 49 the
2 following:
3 "5. If a court finds that a person claiming
4 privilege under this chapter intentionally claimed the
5 privilege for information the person knew was
6 unprotected as provided in section 455J.6, the person
7 is subject to a fine not to exceed one thousand
8 dollars.
9 6. Privilege provided in this chapter does not
10 apply if an owner or operator of the facility or
11 operation has been found in a civil or administrative
12 proceeding to have committed serious violations in
13 this state that constitute a pattern of continuous or
14 repeated violations of environmental laws,
15 administrative rules, or permit conditions, that were
16 due to separate and distinct events giving rise to the
17 violations within the three-year period prior to the
18 date of disclosure."
19 17. Page 5, line 7, by striking the words "local,
20 state," and inserting the following: "state".
21 18. Page 5, line 8, by striking the word
22 "ordinance,".
23 19. Page 5, line 29, by striking the words
24 "local, state," and inserting the following: "state".
25 20. Page 5, line 30, by striking the word
26 "ordinance,".
27 21. Page 5, line 32, by inserting after the word
28 "inapplicable" the following: "to the remainder of
29 the report".
30 22. Page 5, line 37, by striking the words
31 "local, state," and inserting the following: "state".
32 23. Page 5, line 38, by striking the word
33 "ordinance,".
34 24. Page 6, lines 16 and 17, by striking the
35 words "a timetable for submitting".
36 25. Page 6, line 17, by inserting after the word
37 "department" the following: "as specified by rule".
38 26. Page 6, line 27, by striking the words
39 "local, state," and inserting the following: "state".
40 27. Page 6, line 28, by striking the word
41 "ordinance,".
42 28. Page 6, line 30, by striking the words
43 "local, state," and inserting the following: "state".
44 29. Page 6, line 30, by striking the word
45 "ordinance,".
46 30. Page 6, line 49, by striking the words
47 "local, state," and inserting the following: "state".
48 31. Page 6, line 49, by striking the word
49 "ordinance,".
50 32. Page 7, line 31, by striking the words "a

H-8095

-2-

H-8095

Page 3

- 1 noncompliance item" and inserting the following: "the
 2 disclosed violation".
 3 33. By striking page 7, line 50, through page 8,
 4 line 2, and inserting the following: "administrative
 5 rules, and permit conditions and that were due to
 6 separate and".
 7 34. Page 8, line 4, by striking the word
 8 "disclosure," and inserting the following:
 9 "disclosure."
 10 35. Page 8, by striking lines 5 through 7.
 11 36. Page 8, lines 17 and 18, by striking the
 12 words "and local".
 13 37. Page 8, line 26, by inserting after the word
 14 "law" the following: "to report a violation,".
 15 38. Page 8, line 28, by inserting after the word
 16 "actions." the following: "This chapter shall not be
 17 construed to confer immunity from liability in any
 18 private civil action except those actions brought
 19 pursuant to section 455B.111."
 20 39. By renumbering, relettering, and
 21 redesignating as necessary.

By BRADLEY of Clinton
 WITT of Black Hawk

H-8095 FILED FEBRUARY 24, 1998

adopted 3/3/98 (p.433)

HOUSE FILE 681

H-8096

- 1 Amend the amendment, H-8054, to House File 681, as
 2 follows:
 3 1. Page 4, by striking lines 7 through 11.
 4 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8096 FILED FEBRUARY 24, 1998

*lost 3/3/98
(p.437)*

HOUSE FILE 681

H-8097

- 1 Amend the amendment, H-8054, to House File 681 as
 2 follows:
 3 1. Page 4, line 30, by inserting after the word
 4 "purpose." the following: "If a court or presiding
 5 officer determines the privilege has been asserted for
 6 a fraudulent purpose, the court or presiding officer
 7 shall impose a fine not to exceed one thousand
 8 dollars."

By SHOULTZ of Black Hawk

H-8097 FILED FEBRUARY 24, 1998

*order 3/3/98
(p.433)*

HOUSE FILE 681

H-8091

- 1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 9, by inserting before line 20 the
4 following:
5 "Sec. ____ . NEW SECTION. 455J.14 EXCLUSION.
6 A facility or operation which includes an animal
7 feeding operation structure as defined in section
8 455B.161 is not eligible for any privilege or immunity
9 granted under this chapter."
10 2. By renumbering as necessary.

By JENKINS of Black Hawk
FALCK of Fayette

WITHDRAWN

H-8091 FILED FEBRUARY 24, 1998

3/3/98 (p. 445)

HOUSE FILE 681

H-8094

- 1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 1, line 6, by striking the words
4 "Privilege and".
5 2. By striking page 2, line 18, through page 6,
6 line 4.
7 3. Page 6, by striking lines 37 and 38 and
8 inserting the following: "audit."
9 4. Page 9, by striking line 19 and inserting the
10 following: "state."
11 Sec. ____ . NEW SECTION. 455J.14 CONSTRUCTION.
12 This chapter shall not be construed to confer
13 immunity from liability in any private civil legal
14 action."
15 5. Page 9, line 22, by striking the words
16 "privilege and".
17 6. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8094 FILED FEBRUARY 24, 1998

Lost 3/3/98
(p. 431)

HOUSE FILE 681

H-8102

- 1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 9, by striking line 19 and inserting the
4 following: "state.
5 Sec. ____ . NEW SECTION. 455J.14 FUTURE REPEAL.
6 This chapter is repealed effective June 30, 2001."
7 2. By renumbering as necessary.

By MASCHER of Johnson

H-8102 FILED FEBRUARY 24, 1998

Lost 3/3/98 (P.443)

HOUSE FILE 681

H-8103

- 1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 9, by striking line 19 and inserting the
4 following: "state.
5 Sec. ____ . NEW SECTION. 455J.14 LIMITATIONS.
6 Notwithstanding any provision in this chapter, a
7 privilege provided in this chapter shall not exist in
8 connection with any private civil legal action. This
9 chapter shall not be construed to confer immunity from
10 liability in any private civil legal action."
11 2. By renumbering as necessary.

By HOLVECK of Polk

H-8103 FILED FEBRUARY 24, 1998

Lost 3/3/98 (P.444)

HOUSE FILE 681

H-8098

- 1 Amend the amendment, H-8054, to House File 681 as
- 2 follows:
- 3 1. Page 4, by striking lines 47 through 49.

By HOLVECK of Polk

H-8098 FILED FEBRUARY 24, 1998

Lost 3/3/98 (p.439)

HOUSE FILE 681

H-8099

- 1 Amend the amendment, H-8054, to House File 681, as
- 2 follows:
- 3 1. Page 4, by inserting after line 39 the
- 4 following:
- 5 "1A. A court or presiding officer conducting an in
- 6 camera review pursuant to this section may request
- 7 technical assistance from experts during the in camera
- 8 review."
- 9 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8099 FILED FEBRUARY 24, 1998

Lost 3/3/98 (p.437)

HOUSE FILE 681

H-8100

- 1 Amend the amendment, H-8054, to House File 681 as
- 2 follows:
- 3 1. Page 5, by inserting after line 13 the
- 4 following:
- 5 "d. Information pertaining to any violation found
- 6 and disclosed in an environmental audit report which
- 7 was not corrected within sixty days of the completion
- 8 of the audit. Once disclosed as part of an
- 9 environmental audit, the department may only grant an
- 10 extension of the correction time on reasonable
- 11 grounds."

By HOLVECK of Polk

H-8100 FILED FEBRUARY 24, 1998

Lost 3/3/98 (p.440)

HOUSE FILE 681

H-8101

- 1 Amend the amendment, H-8054, to House File 681 as
- 2 follows:
- 3 1. Page 5, by inserting after line 13 the
- 4 following:
- 5 "d. Information related to a condition that the
- 6 owner or operator knew or should have known about
- 7 prior to the department receiving official
- 8 notification of an environmental audit."

By HOLVECK of Polk

H-8101 FILED FEBRUARY 24, 1998

Lost 3/3/98 (p.441)

HOUSE FILE 681

H-8106

1 Amend the amendment, H-8054, to House File 681, as
2 follows:
3 1. Page 3, line 25, by striking the word
4 "Disclosure" and inserting the following: "Any
5 violation of an environmental law, rule, ordinance, or
6 permit condition which is discovered during an
7 environmental audit shall be reported to the
8 department within thirty days of the discovery of the
9 violation. The failure to report a violation in a
10 timely manner shall result in the waiver of any
11 privilege and confidentiality rights granted in
12 section 455J.3. However, disclosure".

By SHOULTZ of Black Hawk

H-8106 FILED FEBRUARY 24, 1998

*Lost 3/3/98**(p.436)*

HOUSE FILE 681

H-8107

1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 3, by inserting after line 17 the
4 following:
5 "7. A person who asserts the privilege under this
6 section with the intent to deceive or injure a person
7 or to conceal any wrongdoing is guilty of a fraudulent
8 practice."

By SHOULTZ of Black Hawk

H-8107 FILED FEBRUARY 24, 1998

Lost 3/3/98 (p.434)

HOUSE FILE 681

H-8108

1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 3, by inserting after line 17 the
4 following:
5 "7. Notwithstanding any other provision of this
6 chapter, the privileges conferred by this chapter
7 shall not be available in a civil or criminal action
8 against an owner or operator for discharge of a
9 pollutant which resulted in a violation of water
10 quality standards, ambient air quality standards, or
11 safe drinking water standards."
12 2. Page 8, by inserting after line 28 the
13 following:
14 "10. Notwithstanding any other provision of this
15 chapter, the immunities conferred by this chapter
16 shall not be available in a civil or criminal action
17 against an owner or operator for discharge of a
18 pollutant which resulted in a violation of water
19 quality standards, ambient air quality standards, or
20 safe drinking water standards."

By HOLVECK of Polk

H-8108 FILED FEBRUARY 24, 1998

Lost 3/3/98 (p.450)

HOUSE FILE 681

H-8104

1 Amend the amendment, H-8054, to House File 681, as
 2 follows:
 3 1. Page 1, by striking lines 12 through 29 and
 4 inserting the following:
 5 "2. "Environmental audit" means a systematic,
 6 documented, and objective review conducted by an
 7 environmental auditor certified by the board of
 8 environmental auditor certifications for a regulated
 9 entity of one or more facility operations and
 10 practices related to compliance with one or more
 11 environmental requirements and, if deficiencies are
 12 found, a plan for corrective action. The final audit
 13 document must be designated as an "audit report" and
 14 must include the date of the final written report of
 15 findings for the audit. Once initiated, an audit
 16 shall be completed within a reasonable time, not to
 17 exceed six months unless a written request for an
 18 extension is approved by the director of the
 19 department based on a showing of reasonable grounds.
 20 An audit shall not be deemed to be initiated until the
 21 certified environmental auditor has actively begun the
 22 evaluation of environmental compliance."
 23 2. By renumbering as necessary.

By BURNETT of Story

H-8104 FILED FEBRUARY 24, 1998

Last 3/3/98 (p. 434)

HOUSE FILE 681

H-8105

1 Amend the amendment, H-8054, to House File 681 as
 2 follows:
 3 1. Page 1, by striking line 32 and inserting the
 4 following: "environmental audit and filed with the
 5 department. An "environmental audit report"
 6 2. Page 6, by inserting after line 4 the
 7 following:
 8 "5. The department shall allow, upon request, the
 9 review of the contents of an environmental audit
 10 report filed with the department to all of the
 11 following:
 12 a. Medical doctors.
 13 b. Health officials.
 14 c. Statisticians.
 15 d. Public health officials.
 16 e. The general assembly.
 17 f. Environmental groups studying issues relating
 18 to environmental spills and cleanup."

By FALLON of Polk

H-8105 FILED FEBRUARY 24, 1998

A - withdrawn 3/3/98 (p. 449)

B - Last 3/3/98 (p. 450)

HOUSE FILE 681

H-8112

- 1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 4, by inserting after line 39 the
4 following:
5 "d. The portion of the environmental audit report
6 is relevant to demonstrate compliance or noncompliance
7 with a duty to disclose information to third parties
8 under statute, contract, or common law."
9 2. By renumbering as necessary.

By MORELAND of Wapello

H-8112 FILED FEBRUARY 24, 1998

Lost 3/3/98
(p. 438)

HOUSE FILE 681

H-8113

- 1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 5, line 19, by inserting after the figure
4 "1." the following: "The privileges created in this
5 chapter shall not apply to criminal investigations or
6 proceedings. An environmental audit report,
7 supporting documents, and testimony relating thereto
8 may be obtained by a prosecutor's subpoena pursuant to
9 the rules of criminal procedure."

By MORELAND of Wapello

H-8113 FILED FEBRUARY 24, 1998

Adopted 3/3/98
(p. 441)

HOUSE FILE 681

H-8109

1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 4, line 41, by inserting after the word
4 "applies." the following: "The party seeking
5 disclosure shall be provided with a copy of the
6 environmental audit report at least ten days prior to
7 the in camera hearing unless the court or presiding
8 officer orders a shorter or longer time. The court or
9 presiding officer may issue appropriate protective
10 orders to ensure privileged information is not
11 released to third parties during the proceedings."

By HOLVECK of Polk

H-8109 FILED FEBRUARY 24, 1998

Lost 3/3/98 (p.439)

HOUSE FILE 681

H-8110

1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 5, by inserting after line 13 the
4 following:
5 "d. Information which is contrary to or
6 inconsistent with reports to a regulatory agency or
7 testimony given by or on behalf of the person claiming
8 the privilege."
9 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8110 FILED FEBRUARY 24, 1998

Lost 3/3/98 (p.440)

HOUSE FILE 681

H-8111

1 Amend the amendment, H-8054, to House File 681 as
2 follows:
3 1. Page 9, by striking line 19 and inserting the
4 following: "state.
5 Sec. ____ . NEW SECTION. 455J.14 DISCLOSURE.
6 This chapter shall not alter or amend the duties,
7 rights, or obligations of persons to disclose
8 information to third parties, whether such duties,
9 rights, or obligations arise from statute, contract,
10 or common law."
11 2. By renumbering as necessary.

By MORELAND of Wapello

H-8111 FILED FEBRUARY 24, 1998

*Lost 3/3/98**(p.445)*

HOUSE FILE 681

H-8114

1 Amend the amendment, H-8054, to House File 681 as
2 follows:

3 1. By striking page 1, line 4, through page 9,
4 line 24, and inserting the following:

5 ""Sec. _____. NEW SECTION. 455J.1 DEFINITIONS.

6 As used in this chapter, unless the context
7 otherwise requires:

8 1. "Compliance assistance" means information and
9 assistance provided by the department to aid an owner
10 or operator in complying with legally mandated
11 environmental requirements. "Compliance assistance"
12 does not include enforcement inspections or
13 enforcement actions.

14 2. "Department" means the department of natural
15 resources created under section 455A.2.

16 3. "Environmental audits" means a systematic,
17 documented, periodic, and objective review by
18 regulated entities of facility operations and
19 practices related to meeting environmental
20 requirements.

21 4. "Owner or operator" means the person or entity
22 who caused the environmental audit to be undertaken.

23 5. "Penalty mitigation" means the elimination or
24 mitigation of penalties imposed by the department for
25 violations of environmental laws, rules, or permit
26 conditions.

27 Sec. _____. NEW SECTION. 455J.2 VIOLATIONS.

28 In order for an owner or operator to be eligible
29 for penalty mitigation under section 455J.3,
30 violations of environmental laws, rules, or permit
31 conditions must be discovered through an environmental
32 audit and not through a legally mandated monitoring or
33 sampling requirement prescribed by statute,
34 regulation, permit, judicial order, or consent
35 agreement. An owner or operator shall report all
36 violations discovered during an environmental audit to
37 the department within thirty days from the time the
38 discovery is made.

39 Sec. _____. NEW SECTION. 455J.3 PENALTY
40 MITIGATION.

41 1. The department shall eliminate a penalty
42 imposed on an owner or operator for a violation
43 reported pursuant to section 455J.2 if the department
44 determines that the owner or operator satisfies all of
45 the following criteria:

46 a. The owner or operator has made a good faith
47 effort to comply with applicable environmental
48 requirements.

49 b. The owner or operator has not previously been
50 found to violate the same environmental law, rule, or

H-8114

H-8114

Page 2

1 permit condition.

2 c. The owner or operator remedies the violation
3 within one hundred eighty days of the violation. The
4 department may grant one extension of one hundred
5 eighty days if the remedy requires implementing a
6 pollution prevention measure.

7 d. The owner or operator demonstrates all of the
8 following:

9 (1) The violation has not caused actual serious
10 harm to public health, safety, or the environment.

11 (2) The violation is not one that may present an
12 imminent and substantial endangerment to public health
13 or the environment.

14 (3) The violation does not present a significant
15 health, safety, or environmental threat.

16 (4) The violation does not involve criminal
17 conduct.

18 2. The department may mitigate a penalty imposed
19 on an owner or operator for a violation reported
20 pursuant to section 455J.2 if the department
21 determines that the owner or operator satisfies all of
22 the criteria listed in subsection 1, except for
23 paragraph "c". In determining the appropriate amount
24 to mitigate, the department shall consider, at a
25 minimum, the nature of the violation, the duration of
26 the violation, the environmental or public health
27 impacts of the violation, good faith efforts by the
28 owner or operator to promptly remedy the violation,
29 and the facility's overall record of compliance with
30 environmental laws, rules, and permit conditions.

31 Sec. ____ . NEW SECTION. 455J.4 COMPLIANCE
32 ASSISTANCE.

33 1. The department may provide on-site compliance
34 assistance to an owner or operator upon request. If
35 the department is unable to provide compliance
36 assistance to an owner or operator in a timely manner,
37 the department shall within thirty days of receiving
38 the request for compliance assistance provide the
39 owner or operator with notice of the department's
40 inability to provide compliance assistance.

41 2. Prior to providing on-site compliance
42 assistance, the department shall obtain an agreement
43 with the owner or operator which includes a statement
44 explaining the compliance assistance procedures, the
45 responsibilities of each party, the availability of
46 penalty mitigation, and the responsibilities of the
47 owner or operator for any violation discovered."

48 2. Title page, by striking lines 1 and 2 and
49 inserting the following: "An Act providing for
50 elimination and mitigation of penalties resulting from

H-8114

-2-

H-8114

Page 3

- 1 the reporting of violations discovered in
- 2 environmental audits and on-site compliance
- 3 assistance."

By BURNETT of Story

H-8114 FILED FEBRUARY 24, 1998*Lost 3/3/98 (p.448)***HOUSE FILE 681****H-8115**

- 1 Amend the amendment, H-8054, to House File 681 as
- 2 follows:
- 3 1. Page 4, by inserting after line 39 the
- 4 following:
- 5 "d. The court determines that the inquiring
- 6 party's need for the portion of the environmental
- 7 audit report outweighs the interest of the owner or
- 8 operator in protecting its evaluation process. In so
- 9 determining, the court shall weigh the relevance of
- 10 the evidence sought to be protected, the availability
- 11 of other evidence, the seriousness of the litigation
- 12 and the issues involved, the role of the government in
- 13 the litigation, and the adverse impact on the owner's
- 14 or operator's reasonable expectations of
- 15 confidentiality in the information sought to be
- 16 disclosed."
- 17 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8115 FILED FEBRUARY 24, 1998*Lost 3/3/98 (p.439)***HOUSE FILE 681****H-8116**

- 1 Amend the amendment, H-8054, to House File 681 as
- 2 follows:
- 3 1. Page 1, by striking line 32 and inserting the
- 4 following: "environmental audit and filed with the
- 5 department. An "environmental audit report".

By MASCHER of Johnson

H-8116 FILED FEBRUARY 24, 1998*adopted 3/3/98
(p.449)*

HOUSE FILE 681

H-8166

- 1 Amend the amendment, H-8054, to House File 681 as
- 2 follows:
- 3 1. Page 9, line 13, by striking the word "may"
- 4 and inserting the following: "shall".

By SCHRADER of Marion

H-8166 FILED MARCH 3, 1998

ADOPTED

(p. 442)

HOUSE FILE 681

H-8170

- 1 Amend the amendment, H-8054, to House File 681 as
- 2 follows:
- 3 1. Page 5, line 20, by inserting after the word
- 4 "criminal" the following: "investigation or".
- 5 2. Page 5, line 24, by inserting after the word
- 6 "criminal" the following: "investigation or".

By SIEGRIST of Pottawattamie

H-8170 FILED MARCH 3, 1998

ADOPTED

(p. 442)

HOUSE FILE 681

H-8182

- 1 Amend the amendment, H-8054, to House File 681 as
- 2 follows:
- 3 1. Page 9, by inserting before line 20 the
- 4 following:
- 5 "Sec. ____ . NEW SECTION. 455J.14 EXCLUSION.
- 6 A facility or operation which includes an animal
- 7 feeding operation structure as defined in section
- 8 455B.161 is not eligible for any privilege or immunity
- 9 granted under this chapter."
- 10 2. By renumbering as necessary.

By SCHRADER of Marion

H-8182 FILED MARCH 3, 1998

LOST

3/3/98 (p. 452)

5-3/19/98 Amend/Do Pass w/s-5288

HOUSE FILE **681**
BY COMMITTEE ON ENVIRONMENTAL
PROTECTION

(SUCCESSOR TO HF 216)

(As Amended and Passed by the House, March 3, 1998)

Passed House, Date (p. 1267) 4-3-98 Passed Senate, Date (p. 876) 3/24/98
Vote: Ayes 64 Nays 27 Vote: Ayes 33 Nays 16
Approved April 16, 1998

A BILL FOR

1 An Act creating an environmental audit privilege and immunity,
2 and an environmental auditor training program, and providing
3 penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19

All New Language

1 Section 1. NEW SECTION. 455J.1 TITLE.

2 This chapter shall be known and cited as the "Environmental
3 Audit Privilege and Immunity Act".

4 Sec. 2. NEW SECTION. 455J.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Department" means the department of natural resources
8 created under section 455A.2 or its delegated authority.

9 2. "Environmental audit" means a voluntary evaluation of a
10 facility or operation, of an activity at a facility or
11 operation, or of an environmental management system at a
12 facility or operation, which is regulated under state or
13 federal environmental laws, rules, or permit conditions,
14 conducted by an owner or operator, an employee of the owner or
15 operator, or an independent contractor that is designed to
16 identify historical or current noncompliance with
17 environmental laws, rules, ordinances, or permit conditions,
18 discover environmental contamination or hazards, remedy
19 noncompliance or improve compliance with environmental laws,
20 or improve an environmental management system. Once
21 notification is given to the department, an environmental
22 audit shall be completed within a reasonable time not to
23 exceed six months unless an extension is approved by the
24 department based on reasonable grounds.

25 3. "Environmental audit report" means a document or set of
26 documents generated and developed for the primary purpose and
27 in the course of or as a result of conducting an environmental
28 audit and filed with the department. An "environmental audit
29 report" includes supporting information which may include, but
30 is not limited to, the report document itself, observations,
31 samples, analytical results, exhibits, findings, opinions,
32 suggestions, recommendations, conclusions, drafts, memoranda,
33 drawings, photographs, computer-generated or electronically
34 recorded information, maps, charts, graphs, surveys,
35 implementation plans, interviews, discussions, correspondence,

1 and communications related to the environmental audit. An
2 "environmental audit report" may include any of the following
3 components:

4 a. A report prepared by the person conducting the
5 environmental audit, which may include the scope of the
6 environmental audit, the information gained in the
7 environmental audit, conclusions, recommendations, exhibits,
8 and appendices.

9 b. Memoranda and documents analyzing portions or all of
10 the report and discussing implementation issues.

11 c. An implementation plan which addresses correcting past
12 noncompliance, improving current compliance or an
13 environmental management system, or preventing future
14 noncompliance.

15 d. Periodic updates documenting progress in completing the
16 implementation plan.

17 4. "Inquiring party" means any party appearing before a
18 court or a presiding officer in an administrative proceeding
19 seeking to review or obtain an in camera review of an
20 environmental audit report.

21 5. "Owner or operator" means the person or entity who
22 caused the environmental audit to be undertaken.

23 6. "Privilege" means the privilege provided to an
24 environmental audit report as provided in this chapter.

25 Sec. 3. NEW SECTION. 455J.3 PRIVILEGE.

26 1. An environmental audit report conducted after the
27 effective date of this Act is privileged and confidential and
28 is not discoverable or admissible as evidence in any civil or
29 administrative proceeding, except as otherwise provided in
30 this chapter. The environmental audit report shall be labeled
31 "ENVIRONMENTAL AUDIT REPORT: PRIVILEGED DOCUMENT", or labeled
32 with words of similar import. Failure to label each document
33 does not constitute a waiver of the environmental audit
34 privilege or create a presumption that the privilege does or
35 does not apply.

1 2. A person shall not be compelled to testify in regard to
2 or produce a document included in an environmental audit in
3 any of the following circumstances:

4 a. If the testimony or document discloses any component
5 listed in section 455J.2, subsection 3, that was made as part
6 of the preparation of an environmental audit report and that
7 is addressed in a privileged part of an environmental audit
8 report.

9 b. If the person is any of the following:

10 (1) A person who conducted any portion of the
11 environmental audit but did not personally observe the
12 physical events of an environmental violation.

13 (2) A person to whom the results of the environmental
14 audit report are disclosed under section 455J.4, subsection 2.

15 (3) A custodian of the environmental audit report.

16 3. A person who conducts or participates in the
17 preparation of an environmental audit report and who has
18 observed physical events of an environmental violation may
19 testify about those events but shall not be compelled to
20 testify about or produce documents related to the preparation
21 of or any privileged part of an environmental audit or any
22 component listed in section 455J.2, subsection 3.

23 4. An employee of a state agency or other governmental
24 employee shall not request, review, or otherwise use an
25 environmental audit report during an agency inspection of a
26 regulated facility or operation, or an activity of a regulated
27 facility or operation.

28 5. A party asserting the privilege under this section has
29 the burden of establishing the applicability of the privilege.

30 6. The privilege provided in this section is in addition
31 to the privilege provided to assistance programs pursuant to
32 section 455B.484A.

33 Sec. 4. NEW SECTION. 455J.4 WAIVER OF PRIVILEGE --
34 DISCLOSURE.

35 1. The privilege described in section 455J.3 shall not

1 apply to the extent that the privilege is expressly waived by
2 the owner or operator who prepared the environmental audit
3 report or caused the report to be prepared.

4 2. Disclosure of an environmental audit report or any
5 information generated by an environmental audit does not waive
6 the privilege established in section 455J.3 if the disclosure
7 meets any of the following criteria:

8 a. The disclosure is made to address or correct a matter
9 raised by the environmental audit and the disclosure is made
10 to any of the following:

11 (1) A person employed by the owner or operator, including
12 temporary and contract employees.

13 (2) A legal representative of the owner or operator.

14 (3) An officer or director of the regulated facility or
15 operation or a partner of the owner or operator.

16 (4) An independent contractor retained by the owner or
17 operator.

18 b. The disclosure is made under the terms of a
19 confidentiality agreement between the owner or operator of the
20 audited facility or operation and any of the following:

21 (1) A partner or potential partner of the owner or
22 operator of the facility or operation.

23 (2) A transferee or potential transferee of the facility
24 or operation.

25 (3) A lender or potential lender for the facility or
26 operation.

27 (4) A governmental official or agency of this state.

28 (5) A person or entity engaged in the business of
29 insuring, underwriting, or indemnifying the facility or
30 operation.

31 3. A party to a confidentiality agreement described in
32 subsection 2, paragraph "b", who violates that agreement is
33 liable for damages caused by the disclosure and for any other
34 penalties stipulated in the confidentiality agreement.

35 4. Information that is disclosed under subsection 2,

1 paragraph "b", subparagraph (4), is confidential and is not
2 subject to disclosure under chapter 22. A governmental
3 entity, governmental employee, or governmental official who
4 discloses information in violation of this subsection is
5 subject to any penalty provided in chapter 22.

6 5. The protections provided by federal or state law shall
7 be afforded to individuals who disclose information to law
8 enforcement authorities.

9 6. The provisions of this chapter shall not abrogate the
10 protections provided by federal and state law regarding
11 confidentiality and trade secrets.

12 Sec. 5. NEW SECTION. 455J.5 REQUIRED DISCLOSURE.

13 1. A court or a presiding officer in an administrative
14 hearing may require disclosure of a portion of an
15 environmental audit report in a civil or administrative
16 proceeding if the court or presiding officer affirmatively
17 determines, after an in camera review, that any of the
18 following exists:

19 a. The privilege is asserted for a fraudulent purpose.

20 b. The portion of the environmental audit report is not
21 subject to the privilege under section 455J.6.

22 c. The portion of the environmental audit report shows
23 evidence of noncompliance with a state or federal
24 environmental or other law, rule, or permit condition and
25 appropriate efforts to achieve compliance with the law or
26 ordinance were not promptly initiated and pursued with
27 reasonable diligence after discovery of noncompliance.

28 d. The portion of the environmental audit report shows
29 clear and convincing evidence of substantial actual personal
30 injury, which information is not otherwise available.

31 2. A party seeking disclosure under this section has the
32 burden of proving that subsection 1 applies.

33 3. A decision of a presiding officer in an administrative
34 hearing under subsection 1 may be directly appealed to the
35 district court without disclosure of the environmental audit

1 report to any person unless so ordered by the court.

2 4. A determination of a court under this section is
3 subject to interlocutory appeal to an appropriate appellate
4 court.

5 5. If a court finds that a person claiming privilege under
6 this chapter intentionally claimed the privilege for
7 information the person knew was unprotected as provided in
8 section 455J.6, the person is subject to a fine not to exceed
9 one thousand dollars.

10 6. Privilege provided in this chapter does not apply if an
11 owner or operator of the facility or operation has been found
12 in a civil or administrative proceeding to have committed
13 serious violations in this state that constitute a pattern of
14 continuous or repeated violations of environmental laws,
15 administrative rules, or permit conditions, that were due to
16 separate and distinct events giving rise to the violations
17 within the three-year period prior to the date of disclosure.

18 Sec. 6. NEW SECTION. 455J.6 MATERIALS NOT PRIVILEGED.

19 1. The privilege described in this chapter does not apply
20 to any of the following:

21 a. A document, communication, datum, report, or other
22 information required by a regulatory agency to be collected,
23 developed, retained, or reported under a state or federal
24 environmental law, rule, or permit condition.

25 b. Information obtained by observation, sampling, or
26 monitoring by a regulatory agency or a regulatory agency's
27 authorized designee.

28 c. Information obtained from a source not involved in the
29 preparation of the environmental audit report.

30 2. This section does not limit the right of a person to
31 agree to conduct an environmental audit and disclose an
32 environmental audit report.

33 Sec. 7. NEW SECTION. 455J.7 REVIEW OF PRIVILEGED

34 DOCUMENTS.

35 1. The privileges created in this chapter shall not apply

1 to criminal investigations or proceedings. An environmental
2 audit report, supporting documents, and testimony relating
3 thereto may be obtained by a prosecutor's subpoena pursuant to
4 the rules of criminal procedure. If an environmental audit
5 report is obtained, reviewed, or used in a criminal
6 investigation or proceeding, the administrative and civil
7 evidentiary privilege established in this chapter is not
8 waived or made inapplicable for any purpose other than for the
9 criminal investigation or proceeding.

10 2. Notwithstanding the privilege established in this
11 chapter, a regulatory agency may review information in an
12 environmental audit report that is required to be collected,
13 developed, retained, or reported under a specific state or
14 federal law, rule, or permit condition, but such review does
15 not waive or make the administrative and civil evidentiary
16 privilege inapplicable to the remainder of the report. A
17 regulatory agency shall not adopt a rule or impose a condition
18 that circumvents the purpose of this chapter.

19 3. If information is required to be made available to the
20 public by operation of a specific state or federal law, rule,
21 or permit condition, the governmental authority shall notify
22 the person claiming the privilege of the potential for public
23 disclosure prior to obtaining such information under
24 subsection 1 or 2.

25 4. If privileged information is disclosed under subsection
26 2 or 3, on the motion of a party, a court or the presiding
27 officer in an administrative hearing shall suppress evidence
28 offered in any civil or administrative proceeding that arises
29 or is derived from review, disclosure, or use of information
30 obtained under this section if the review, disclosure, or use
31 is not authorized under section 455J.6. A party having
32 received information under subsection 2 or 3 has the burden of
33 proving that the evidence offered did not arise and was not
34 derived from the review of privileged information.

35 Sec. 8. NEW SECTION. 455J.8 VOLUNTARY DISCLOSURE OF

1 ENVIRONMENTAL VIOLATION -- IMMUNITY.

2 1. An owner or operator is eligible for immunity under
3 this section from the time the department receives official
4 notification from the owner or operator of a scheduled
5 environmental audit. An owner or operator is immune from any
6 administrative or civil penalty associated with the issues
7 disclosed if the owner or operator makes a prompt voluntary
8 disclosure to the department regarding an environmental
9 violation which is discovered through the environmental audit.
10 The owner or operator shall provide a remediation schedule to
11 the department as specified by rule and information supporting
12 the claim that the disclosure is voluntary at the time that
13 the disclosure is made to the department. The owner or
14 operator creates a rebuttable presumption that the disclosure
15 is voluntary by providing such information at the time of
16 disclosure. To rebut the presumption that a disclosure is
17 voluntary, the department or other party has the burden of
18 proving that the disclosure was not voluntary. Immunity is
19 not provided if the violations of state or federal
20 environmental law, rule, or permit condition are intentional
21 or if the violations of state or federal law, rule, or permit
22 condition resulted in substantial actual injury or imminent
23 and substantial risk of injury to persons, property, or the
24 environment.

25 2. The disclosure of information is voluntary if all of
26 the following circumstances exist:

27 a. The disclosure arises out of an environmental audit and
28 relates to privileged information as provided in section
29 455J.3.

30 b. The person making the disclosure uses reasonable
31 efforts to pursue compliance and corrects the noncompliance
32 within a reasonable period of time after completion of the
33 environmental audit in accordance with a remediation schedule
34 approved by the department. If evidence shows that the
35 noncompliance is due to the failure to obtain a permit,

1 reasonable effort may be demonstrated by the submittal of a
2 complete permit application within a reasonable time.
3 Disclosure of information required to be reported by state or
4 federal law, rule, or permit condition is not considered to be
5 voluntary disclosure and the immunity provisions in this
6 section are not applicable.

7 c. Environmental violations are identified in an
8 environmental audit report and disclosed before there is
9 notice of a citizen suit or a legal complaint by a third
10 party.

11 d. Environmental violations are identified in an
12 environmental audit report and disclosed before the
13 environmental violations are reported by any person not
14 involved in conducting the environmental audit or to whom the
15 environmental audit report was disclosed.

16 3. If an owner or operator has not provided the department
17 with notification of a scheduled environmental audit prior to
18 performing the audit, a disclosure of information is voluntary
19 if the environmental violations are identified in an
20 environmental audit report and disclosed by certified mail to
21 the proper regulatory agency that has jurisdiction over the
22 disclosed violation prior to the agency's commencement of an
23 investigation.

24 4. If a person is required to make a disclosure relating
25 to a specific issue under a specific permit condition or under
26 an order issued by the department, the disclosure is not
27 voluntary with respect to that issue.

28 5. Except as provided in this section, this section does
29 not impair the authority of the proper regulatory agency to
30 require a technical or remedial action or to order injunctive
31 relief.

32 6. Upon application to the department, the time period
33 within which the disclosed violation is corrected under
34 subsection 2 may be extended if it is not practical to correct
35 the noncompliance within the reasonable period of time

1 initially approved by the department. The department shall
2 not unreasonably withhold the grant of an extension. If the
3 department denies an extension, the department shall provide
4 the requesting party with a written explanation of the reasons
5 for the denial. A request for de novo review of the
6 department's decision may be made to the appropriate court.

7 7. Immunity provided under this section from
8 administrative or civil penalties does not apply under any of
9 the following circumstances:

10 a. If an owner or operator of the facility or operation
11 has been found in a civil or administrative proceeding to have
12 committed serious violations in this state that constitute a
13 pattern of continuous or repeated violations of environmental
14 laws, administrative rules, and permit conditions and that
15 were due to separate and distinct events giving rise to the
16 violations within the three-year period prior to the date of
17 disclosure.

18 b. If a violation of an environmental law, administrative
19 rule, permit condition, settlement agreement, or order on
20 consent, final order, or judicial order results in a
21 substantial economic benefit which gives the violator a clear
22 advantage over its business competitors.

23 8. In cases where the conditions of a voluntary disclosure
24 are not met but a good faith effort was made to voluntarily
25 disclose and resolve a violation detected in an environmental
26 audit, the state regulatory authorities shall consider the
27 nature and extent of any good faith effort in deciding the
28 appropriate enforcement response and shall consider reducing
29 any administrative or civil penalties based on mitigating
30 factors showing that one or more of the conditions for
31 voluntary disclosure have been met.

32 9. The immunity provided by this section does not abrogate
33 the responsibility of a person as provided by applicable law
34 to report a violation, to correct the violation, conduct
35 necessary remediation, or respond to third-party actions.

1 This chapter shall not be construed to confer immunity from
2 liability in any private civil action except those actions
3 brought pursuant to section 455B.111.

4 Sec. 9. NEW SECTION. 455J.9 ABROGATION OF OTHER
5 PRIVILEGES.

6 This chapter shall not limit, waive, or abrogate the scope
7 or nature of any statutory or common-law privilege, including
8 the work product doctrine and the attorney-client privilege.

9 Sec. 10. NEW SECTION. 455J.10 ENVIRONMENTAL AUDITOR
10 TRAINING PROGRAM.

11 A training program for and standards for certification of
12 environmental auditors shall be developed jointly by the Iowa
13 waste reduction center and the department. The training
14 program shall be administered by the Iowa waste reduction
15 center. The program shall provide training on the proper
16 conduct of an environmental audit; local, state, and federal
17 environmental ordinances, rules, and laws that apply to
18 businesses in this state; and the environmental audit laws in
19 this state. The program shall be made available to small and
20 large business owners and operators, consulting engineers,
21 regulatory personnel, and citizens through the community
22 college system. A fee may be assessed for participation in
23 the program. Upon completion of the training program, program
24 participants may elect to be tested by the department for
25 certification as an environmental auditor for the purposes of
26 this chapter.

27 Sec. 11. NEW SECTION. 455J.11 SUMMARY.

28 On or before December 1 of each year, the department shall
29 make available a summary of the number of environmental audit
30 notices received, the violations, and the remediation status
31 of the violations reported pursuant to this chapter during the
32 preceding fiscal year.

33 Sec. 12. NEW SECTION. 455J.12 RULEMAKING.

34 The department shall adopt rules pursuant to chapter 17A
35 necessary to administer this chapter.

1 Sec. 13. NEW SECTION. 455J.13 COSTS.

2 The necessary costs incurred by the department under this
3 chapter shall be funded from appropriations made to the
4 department from the general fund of the state.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

HOUSE FILE 681

S-5288

- 1 Amend House File 681, as amended, passed, and
2 reprinted by the House, as follows:
- 3 1. Page 1, line 12, by striking the word "
4 which" and inserting the following: "when the
5 facility, operation, or activity".
- 6 2. Page 1, line 15, by inserting after the word
7 "contractor" the following: "retained by the owner or
8 operator".
- 9 3. Page 1, line 28, by striking the words "and
10 filed with the department".
- 11 4. Page 2, line 4, by striking the words "A
12 report" and inserting the following: "An executive
13 summary".
- 14 5. Page 2, line 5, by striking the word "audit,"
15 and inserting the following: "audit".
- 16 6. Page 2, by striking lines 23 and 24 and
17 inserting the following:
18 "6. "Privilege" means the protections provided in
19 regard to an environmental audit report as provided in
20 this chapter."
- 21 7. Page 2, by striking line 26 and inserting the
22 following:
23 "1. Material included in an environmental audit
24 report generated during an environmental audit
25 conducted after the".
- 26 8. Page 2, lines 31 and 32, by striking the words
27 ", or labeled with words of similar import".
- 28 9. Page 2, line 32, by inserting after the word
29 "document" the following: "within the report".
- 30 10. Page 3, line 2, by inserting after the word
31 "audit" the following: "report".
- 32 11. Page 4, line 1, by inserting after the word
33 "waived" the following: "in writing".
- 34 12. Page 4, line 4, by inserting after the word
35 "any" the following: "other".
- 36 13. Page 4, by striking lines 18 through 30 and
37 inserting the following:
38 "b. The disclosure is made under the terms of a
39 confidentiality agreement between any person and the
40 owner or operator of the audited facility or
41 operation."
- 42 14. Page 5, by striking line 5 and inserting the
43 following: "subject to the penalty provided in
44 section 22.6."
- 45 15. Page 5, by inserting after line 30 the
46 following:
47 "e. The portion of the environmental audit report
48 shows a clear and present danger to the public health
49 or the environment."
- 50 16. Page 6, by striking line 7 and inserting the

S-5288

S-5288

Page 2

- 1 following: "material not privileged as provided in".
2 17. Page 7, by striking lines 11 through 16 and
3 inserting the following: "chapter, the department may
4 review information in an environmental audit report,
5 but such review does not waive or make the
6 administrative and civil evidentiary privilege
7 inapplicable to the report. A".
8 18. Page 8, line 6, by striking the word "issues"
9 and inserting the following: "information".
10 19. Page 8, by striking lines 10 through 13 and
11 inserting the following: "The owner or".
12 20. Page 8, line 15, by striking the words
13 "providing such information" and inserting the
14 following: "meeting the criteria provided in
15 subsection 2".
16 21. Page 8, line 31, by striking the word
17 "corrects" and inserting the following: "to correct".
18 22. Page 8, line 33, by inserting after the word
19 "schedule" the following: "submitted to and".
20 23. Page 9, line 8, by inserting after the word
21 "disclosed" the following: "to the department".
22 24. Page 9, line 12, by inserting after the word
23 "disclosed" the following: "to the department".
24 25. Page 10, by striking line 17 and inserting
25 the following: "disclosure, or if under section
26 455B.191 an owner or operator of a facility or
27 operation is classified as a habitual violator."
28 26. Page 11, by inserting after line 3 the
29 following:
30 "10. Information required by rule to be submitted
31 to the department as part of a disclosure made
32 pursuant to this section is not privileged
33 information."
34 27. By renumbering, relettering, or redesignating
35 and correcting internal references as necessary.

By COMMITTEE ON NATURAL RESOURCES
AND ENVIRONMENT
MERLIN E. BARTZ, Chairperson

S-5288 FILED MARCH 19, 1998

Adopted 3/24/98 (p. 874)

HOUSE FILE 681

S-5301

1 Amend House File 681, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 7, by inserting after line 34 the
4 following:
5 "5. The department shall allow, upon request, the
6 review of the contents of an environmental audit
7 report filed with the department to all of the
8 following:
9 a. Medical doctors.
10 b. Health officials.
11 c. Statisticians.
12 d. Public health officials.
13 e. The general assembly.
14 f. Environmental groups studying issues relating
15 to environmental spills and cleanup."

By BILL FINK

S-5301 FILED MARCH 23, 1998

W/D 3/24/98 (p. 874)

HOUSE FILE 681

S-5305

1 Amend House File 681, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 1, lines 14 and 15, by striking the words
4 "an owner or operator, an employee of the owner or
5 operator, or an independent contractor" and inserting
6 the following: "the waste reduction center at the
7 university of northern Iowa under contract with an
8 owner or operator or by an independent contractor
9 certified as an environmental auditor under section
10 455J.10 under contract with an owner or operator."

By BILL FINK

S-5305 FILED MARCH 23, 1998

Lost 3/24/98 (p. 874)

HOUSE FILE 681

S-5308

1 Amend House File 681, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 1, line 10, by inserting after the word
4 "operation" the following: "physically located in the
5 state".
6 2. Page 1, line 11, by inserting after the word
7 "operation" the following: "physically located in the
8 state".
9 3. Page 1, line 12, by inserting after the word
10 "operation" the following: "physically located in the
11 state".

By BILL FINK

S-5308 FILED MARCH 23, 1998

Lost 3/24/98 (p. 874)

HOUSE FILE 681

S-5300

1 Amend House File 681, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by striking lines 9 through 24 and
4 inserting the following:

5 "2. "Environmental audit" means a systematic,
6 documented, and objective review conducted by an
7 environmental auditor certified by the board of
8 environmental auditor certifications for a regulated
9 entity of one or more facility operations and
10 practices related to compliance with one or more
11 environmental requirements and, if deficiencies are
12 found, a plan for corrective action. The final audit
13 document must be designated as an "audit report" and
14 must include the date of the final written report of
15 findings for the audit. Once initiated, an audit
16 shall be completed within a reasonable time, not to
17 exceed six months unless a written request for an
18 extension is approved by the director of the
19 department based on a showing of reasonable grounds.
20 An audit shall not be deemed to be initiated until the
21 certified environmental auditor has actively begun the
22 evaluation of environmental compliance."

23 2. By renumbering as necessary.

By BILL FINK

S-5300 FILED MARCH 23, 1998

Lost 3/24/98 (p. 873)

HOUSE FILE 681

S-5342

- 1 Amend House File 681, as amended, passed, and
 - 2 reprinted by the House, as follows:
 - 3 1. Page 12, by inserting after line 4 the
 - 4 following:
 - 5 "Sec. ____ . NEW SECTION. 455J.14 FUTURE REPEAL.
 - 6 This chapter is repealed effective June 30, 2002."
 - 7 2. By renumbering as necessary.
- By BILL FINK

S-5342 FILED MARCH 24, 1998

LOST (p. 876)

HOUSE FILE 681

S-5349

- 1 Amend House File 681, as amended, passed, and
 - 2 reprinted by the House, as follows:
 - 3 1. Page 7, by inserting after line 34 the
 - 4 following:
 - 5 "5. The department shall allow, upon request, the
 - 6 review of the contents of an environmental audit
 - 7 report filed with the department to all of the
 - 8 following:
 - 9 a. Medical doctors.
 - 10 b. Health officials.
 - 11 c. Statisticians.
 - 12 d. Public health officials.
 - 13 e. The general assembly.
 - 14 f. Environmental groups studying issues relating
 - 15 to environmental spills and cleanup.
 - 16 g. Affected workers.
 - 17 h. Worker's representatives."
- By BILL FINK

S-5349 FILED MARCH 24, 1998

LOST (p. 875)

HOUSE FILE 681

S-5362

- 1 Amend House File 681, as amended, passed, and
 - 2 reprinted by the House, as follows:
 - 3 1. Page 11, by inserting after line 8 the
 - 4 following:
 - 5 "Sec. ____ . NEW SECTION. 455J.9A LIMITATIONS.
 - 6 Notwithstanding any provision in this chapter, a
 - 7 privilege provided in this chapter shall not exist in
 - 8 connection with any private civil legal action."
 - 9 2. By renumbering as necessary.
- By TOM VILSACK
MARY A. LUNDBY

S-5362 FILED MARCH 24, 1998

LOST
(p. 875)

HOUSE FILE 681

S-5364

1 Amend the amendment, S-5363, to House File 681, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. By striking page 4, line 49, through page 5,
5 line 2, and inserting the following: "attorney-client
6 privilege. Information disclosed to the department
7 and relating to all of the following is privileged and
8 confidential and is not discoverable or admissible as
9 evidence in any civil or administrative proceeding:
10 (1) Trade secrets.
11 (2) Manufacturing process data.
12 (3) Confidential data belonging to vendors for
13 which a written confidentiality agreement has been
14 signed.
15 (4) Financial management plans.
16 (5) Fiscal and cost data.
17 (6) Personnel records.
18 (7) Technical data packages including special
19 quality checks, testing methodology, and test
20 equipment.
21 (8) Product testing results which are not related
22 to any environmental violation."

By TOM VILSACK

S-5364 FILED MARCH 24, 1998

ADOPTED

(P. 872)

HOUSE FILE 681

S-5341

1 Amend House File 681, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 12, by inserting after line 4 the
4 following:
5 "Sec. ____ . NEW SECTION. 455J.14 EXCLUSION.
6 A facility or operation which includes an animal
7 feeding operation structure as defined in section
8 455B.161 is not eligible for any privilege or immunity
9 granted under this chapter."
10 2. By renumbering as necessary.

By BILL FINK

S-5341 FILED MARCH 24, 1998

LOST

(P. 875)

HOUSE FILE 681

S-5363

1 Amend House File 681, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 455J.1 TITLE.

6 This chapter shall be known and cited as the
7 "Environmental Audit Privilege and Immunity Act".

8 Sec. 2. NEW SECTION. 455J.2 DEFINITIONS.

9 As used in this chapter, unless the context
10 otherwise requires:

11 1. "Department" means the department of natural
12 resources created under section 455A.2 or its
13 delegated authority.

14 2. "Environmental audit" means a voluntary
15 evaluation of a facility or operation, of an activity
16 at a facility or operation, or of an environmental
17 management system at a facility or operation, which is
18 regulated under state or federal environmental laws,
19 rules, or permit conditions, conducted by an owner or
20 operator, an employee of the owner or operator, or an
21 independent contractor that is designed to identify
22 historical or current noncompliance with environmental
23 laws, rules, ordinances, or permit conditions,
24 discover environmental contamination or hazards,
25 remedy noncompliance or improve compliance with
26 environmental laws, or improve an environmental
27 management system. Once notification is given to the
28 department, an environmental audit shall be completed
29 within a reasonable time not to exceed six months
30 unless an extension is approved by the department
31 based on reasonable grounds.

32 3. "Environmental audit report" means a document
33 or set of documents generated and developed for the
34 primary purpose and in the course of or as a result of
35 conducting an environmental audit and filed with the
36 department. An "environmental audit report" includes
37 supporting information which may include, but is not
38 limited to, the report document itself, observations,
39 samples, analytical results, exhibits, findings,
40 opinions, suggestions, recommendations, conclusions,
41 drafts, memoranda, drawings, photographs, computer-
42 generated or electronically recorded information,
43 maps, charts, graphs, surveys, implementation plans,
44 interviews, discussions, correspondence, and
45 communications related to the environmental audit. An
46 "environmental audit report" may include any of the
47 following components:

48 a. A report prepared by the person conducting the
49 environmental audit, which may include the scope of
50 the environmental audit, the information gained in the

S-5363

S-5363

Page 2

1 environmental audit, conclusions, recommendations,
2 exhibits, and appendices.

3 b. Memoranda and documents analyzing portions or
4 all of the report and discussing implementation
5 issues.

6 c. An implementation plan which addresses
7 correcting past noncompliance, improving current
8 compliance or an environmental management system, or
9 preventing future noncompliance.

10 d. Periodic updates documenting progress in
11 completing the implementation plan.

12 4. "Inquiring party" means any party appearing
13 before a court or a presiding officer in an
14 administrative proceeding seeking to review or obtain
15 an in camera review of an environmental audit report.

16 5. "Owner or operator" means the person or entity
17 who caused the environmental audit to be undertaken.

18 Sec. 3. NEW SECTION. 455J.3 VOLUNTARY DISCLOSURE
19 OF ENVIRONMENTAL VIOLATION -- IMMUNITY.

20 1. An owner or operator is eligible for immunity
21 under this section from the time the department
22 receives official notification from the owner or
23 operator of a scheduled environmental audit. An owner
24 or operator is immune from any administrative or civil
25 penalty associated with the issues disclosed if the
26 owner or operator makes a prompt voluntary disclosure
27 to the department regarding an environmental violation
28 which is discovered through the environmental audit.
29 The owner or operator shall provide a remediation
30 schedule to the department as specified by rule and
31 information supporting the claim that the disclosure
32 is voluntary at the time that the disclosure is made
33 to the department. The owner or operator creates a
34 rebuttable presumption that the disclosure is
35 voluntary by providing such information at the time of
36 disclosure. To rebut the presumption that a
37 disclosure is voluntary, the department or other party
38 has the burden of proving that the disclosure was not
39 voluntary. Immunity is not provided if the violations
40 of state or federal environmental law, rule, or permit
41 condition are intentional or if the violations of
42 state or federal law, rule, or permit condition
43 resulted in substantial actual injury or imminent and
44 substantial risk of injury to persons, property, or
45 the environment.

46 2. The disclosure of information is voluntary if
47 all of the following circumstances exist:

48 a. The disclosure arises out of an environmental
49 audit.

50 b. The person making the disclosure uses

S-5363

-2-

S-5363

Page 3

1 reasonable efforts to pursue compliance and corrects
2 the noncompliance within a reasonable period of time
3 after completion of the environmental audit in
4 accordance with a remediation schedule approved by the
5 department. If evidence shows that the noncompliance
6 is due to the failure to obtain a permit, reasonable
7 effort may be demonstrated by the submittal of a
8 complete permit application within a reasonable time.
9 Disclosure of information required to be reported by
10 state or federal law, rule, or permit condition is not
11 considered to be voluntary disclosure and the immunity
12 provisions in this section are not applicable.

13 c. Environmental violations are identified in an
14 environmental audit report and disclosed before there
15 is notice of a citizen suit or a legal complaint by a
16 third party.

17 d. Environmental violations are identified in an
18 environmental audit report and disclosed before the
19 environmental violations are reported by any person
20 not involved in conducting the environmental audit or
21 to whom the environmental audit report was disclosed.

22 3. If an owner or operator has not provided the
23 department with notification of a scheduled
24 environmental audit prior to performing the audit, a
25 disclosure of information is voluntary if the
26 environmental violations are identified in an
27 environmental audit report and disclosed by certified
28 mail to the proper regulatory agency that has
29 jurisdiction over the disclosed violation prior to the
30 agency's commencement of an investigation.

31 4. If a person is required to make a disclosure
32 relating to a specific issue under a specific permit
33 condition or under an order issued by the department,
34 the disclosure is not voluntary with respect to that
35 issue.

36 5. Except as provided in this section, this
37 section does not impair the authority of the proper
38 regulatory agency to require a technical or remedial
39 action or to order injunctive relief.

40 6. Upon application to the department, the time
41 period within which the disclosed violation is
42 corrected under subsection 2 may be extended if it is
43 not practical to correct the noncompliance within the
44 reasonable period of time initially approved by the
45 department. The department shall not unreasonably
46 withhold the grant of an extension. If the department
47 denies an extension, the department shall provide the
48 requesting party with a written explanation of the
49 reasons for the denial. A request for de novo review
50 of the department's decision may be made to the

S-5363

-3-

S-5363

Page 4

1 appropriate court.

2 7. Immunity provided under this section from
3 administrative or civil penalties does not apply under
4 any of the following circumstances:

5 a. If an owner or operator of the facility or
6 operation has been found in a civil or administrative
7 proceeding to have committed serious violations in
8 this state that constitute a pattern of continuous or
9 repeated violations of environmental laws,
10 administrative rules, and permit conditions and that
11 were due to separate and distinct events giving rise
12 to the violations within the three-year period prior
13 to the date of disclosure or if a civil or
14 administrative proceeding is pending against an owner
15 or operator of the facility or operation relating to
16 an alleged violation of an environmental law,
17 administrative rule, permit condition, settlement
18 agreement, or order on consent, final order, or
19 judicial order.

20 b. If a violation of an environmental law,
21 administrative rule, permit condition, settlement
22 agreement, or order on consent, final order, or
23 judicial order results in a substantial economic
24 benefit which gives the violator a clear advantage
25 over its business competitors.

26 8. In cases where the conditions of a voluntary
27 disclosure are not met but a good faith effort was
28 made to voluntarily disclose and resolve a violation
29 detected in an environmental audit, the state
30 regulatory authorities shall consider the nature and
31 extent of any good faith effort in deciding the
32 appropriate enforcement response and shall consider
33 reducing any administrative or civil penalties based
34 on mitigating factors showing that one or more of the
35 conditions for voluntary disclosure have been met.

36 9. The immunity provided by this section does not
37 abrogate the responsibility of a person as provided by
38 applicable law to report a violation, to correct the
39 violation, conduct necessary remediation, or respond
40 to third-party actions. This chapter shall not be
41 construed to confer immunity from liability in any
42 private civil action except those actions brought
43 pursuant to section 455B.111.

44 Sec. 4. NEW SECTION. 455J.4 PRIVILEGE AND
45 CONFIDENTIALITY.

46 This chapter shall not limit, waive, or abrogate
47 the scope or nature of any statutory or common-law
48 privilege, including the work product doctrine and the
49 attorney-client privilege. The provisions of this
50 chapter shall not abrogate any protections provided by

S-5363

-4-

S-5363

Page 5

1 federal and state law regarding confidentiality and
2 trade secrets.

3 Sec. 5. NEW SECTION. 455J.5 ENVIRONMENTAL
4 AUDITOR TRAINING PROGRAM.

5 A training program for and standards for
6 certification of environmental auditors shall be
7 developed jointly by the Iowa waste reduction center
8 and the department. The training program shall be
9 administered by the Iowa waste reduction center. The
10 program shall provide training on the proper conduct
11 of an environmental audit; local, state, and federal
12 environmental ordinances, rules, and laws that apply
13 to businesses in this state; and the environmental
14 audit laws in this state. The program shall be made
15 available to small and large business owners and
16 operators, consulting engineers, regulatory personnel,
17 and citizens through the community college system. A
18 fee may be assessed for participation in the program.
19 Upon completion of the training program, program
20 participants may elect to be tested by the department
21 for certification as an environmental auditor for the
22 purposes of this chapter.

23 Sec. 6. NEW SECTION. 455J.6 SUMMARY.

24 On or before December 1 of each year, the
25 department shall make available a summary of the
26 number of environmental audit notices received, the
27 violations, and the remediation status of the
28 violations reported pursuant to this chapter during
29 the preceding fiscal year.

30 Sec. 7. NEW SECTION. 455J.7 RULEMAKING.

31 The department shall adopt rules pursuant to
32 chapter 17A necessary to administer this chapter.

33 Sec. 8. NEW SECTION. 455J.8 COSTS.

34 The necessary costs incurred by the department
35 under this chapter shall be funded from appropriations
36 made to the department from the general fund of the
37 state."

38 2. Title page, line 1, by striking the words
39 "privilege and".

By TOM VILSACK
MARY A. LUNDBY

S-5363 FILED MARCH 24, 1998

LOST

(p. 812)

SENATE AMENDMENT TO HOUSE FILE 681

H-8666

- 1 Amend House File 681, as amended, passed, and
2 reprinted by the House, as follows:
- 3 1. Page 1, line 12, by striking the word "
4 which" and inserting the following: "when the
5 facility, operation, or activity".
- 6 2. Page 1, line 15, by inserting after the word
7 "contractor" the following: "retained by the owner or
8 operator".
- 9 3. Page 1, line 28, by striking the words "and
10 filed with the department".
- 11 4. Page 2, line 4, by striking the words "A
12 report" and inserting the following: "An executive
13 summary".
- 14 5. Page 2, line 5, by striking the word "audit,"
15 and inserting the following: "audit".
- 16 6. Page 2, by striking lines 23 and 24 and
17 inserting the following:
18 "6. "Privilege" means the protections provided in
19 regard to an environmental audit report as provided in
20 this chapter."
- 21 7. Page 2, by striking line 26 and inserting the
22 following:
23 "1. Material included in an environmental audit
24 report generated during an environmental audit
25 conducted after the".
- 26 8. Page 2, lines 31 and 32, by striking the words
27 ", or labeled with words of similar import".
- 28 9. Page 2, line 32, by inserting after the word
29 "document" the following: "within the report".
- 30 10. Page 3, line 2, by inserting after the word
31 "audit" the following: "report".
- 32 11. Page 4, line 1, by inserting after the word
33 "waived" the following: "in writing".
- 34 12. Page 4, line 4, by inserting after the word
35 "any" the following: "other".
- 36 13. Page 4, by striking lines 18 through 30 and
37 inserting the following:
38 "b. The disclosure is made under the terms of a
39 confidentiality agreement between any person and the
40 owner or operator of the audited facility or
41 operation."
- 42 14. Page 5, by striking line 5 and inserting the
43 following: "subject to the penalty provided in
44 section 22.6."
- 45 15. Page 5, by inserting after line 30 the
46 following:
47 "e. The portion of the environmental audit report
48 shows a clear and present danger to the public health
49 or the environment."
- 50 16. Page 6, by striking line 7 and inserting the

H-8666

H-8666

Page 2

- 1 following: "material not privileged as provided in".
2 17. Page 7, by striking lines 11 through 16 and
3 inserting the following: "chapter, the department may
4 review information in an environmental audit report,
5 but such review does not waive or make the
6 administrative and civil evidentiary privilege
7 inapplicable to the report. A".
8 18. Page 8, line 6, by striking the word "issues"
9 and inserting the following: "information".
10 19. Page 8, by striking lines 10 through 13 and
11 inserting the following: "The owner or".
12 20. Page 8, line 15, by striking the words
13 "providing such information" and inserting the
14 following: "meeting the criteria provided in
15 subsection 2".
16 21. Page 8, line 31, by striking the word
17 "corrects" and inserting the following: "to correct".
18 22. Page 8, line 33, by inserting after the word
19 "schedule" the following: "submitted to and".
20 23. Page 9, line 8, by inserting after the word
21 "disclosed" the following: "to the department".
22 24. Page 9, line 12, by inserting after the word
23 "disclosed" the following: "to the department".
24 25. Page 10, by striking line 17 and inserting
25 the following: "disclosure, or if under section
26 455B.191 an owner or operator of a facility or
27 operation is classified as a habitual violator."
28 26. Page 11, by inserting after line 3 the
29 following:
30 "10. Information required by rule to be submitted
31 to the department as part of a disclosure made
32 pursuant to this section is not privileged
33 information."
34 27. By renumbering, relettering, or redesignating
35 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-8666 FILED MARCH 25, 1998

House Concurred
4-3-98

(P.1267)

HOUSE FILE 681

H-8908

1 Amend the Senate amendment, H-8666, to House File
2 681, as amended, passed, and reprinted by House, as
3 follows:

4 1. Page 1, by inserting after line 31 the
5 following:

6 "_____. Page 3, line 24, by striking the words
7 "shall not" and inserting the following: "may"."

8 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8908 FILED APRIL 3, 1998

Lost 4/3/98 (p. 1266)

HOUSE FILE 681

H-8909

1 Amend the Senate amendment, H-8666, to House File
2 681, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, by striking lines 9 and 10.

5 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8909 FILED APRIL 3, 1998

Lost 4-3-98 (p. 1265)

HOUSE FILE 681

H-8911

1 Amend the Senate amendment, H-8666, to House File
2 681, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 2, by inserting after line 33 the
5 following:

6 "_____. Page 12, by inserting after line 4 the
7 following:

8 "Sec. _____. NEW SECTION. 455J.14 REPEAL.

9 This chapter is repealed effective June 30, 2003."

10 2. By renumbering as necessary.

By MASCHER of Johnson

H-8911 FILED APRIL 3, 1998

*Lost 4-3-98
(p. 1266)*

HOUSE FILE 681

H-8912

1 Amend the Senate amendment, H-8666, to House File
2 681, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, by striking lines 6 through 8 and
5 inserting the following:

6 "_____. Page 1, by striking lines 14 and 15 and
7 inserting the following: "conducted by an

8 environmental auditor certified by the board of

9 environmental auditor certifications that is designed
10 to"."

11 2. By renumbering as necessary.

By BURNETT of Story

H-8912 FILED APRIL 3, 1998

Lost 4/3/98 (p. 1265)

H-8906

1 Amend the Senate amendment, H-8666, to House File
2 681, as amended, passed, and reprinted by House, as
3 follows:

4 1. Page 2, by inserting after line 34 the
5 following:

6 "_____. Page 12, by inserting before line 4 the
7 following:

8 "Sec. _____. NEW SECTION. 455J.14 SUSPENSION OF
9 OPERATION OF STATUTORY PROVISION.

10 If the general assembly is not in session and the
11 department determines that a provision of this chapter
12 would cause the department to lose delegation of
13 authority to administer a program or to lose federal
14 financial assistance, the department may suspend the
15 operation of the provision to the extent which is
16 essential to obtain the assistance under federal law
17 or regulation. The department shall propose an
18 amendment to such provision in the next session of the
19 general assembly."

20 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8906 FILED APRIL 3, 1998

Last 4/3/98

(P.1267)

HOUSE FILE 681

H-8907

1 Amend the Senate amendment, H-8666, to House File
2 681, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, by inserting after line 49 the
5 following:

6 "_____. Page 5, line 32, by inserting after the
7 word "applies." the following: "The party seeking
8 disclosure shall be provided with a copy of the
9 environmental audit report at least ten days prior to
10 the in camera hearing unless the court or presiding
11 officer orders a shorter or longer time. The court or
12 presiding officer may issue appropriate protective
13 orders to ensure privileged information is not
14 released to third parties during the proceedings."

15 2. By renumbering as necessary.

By HOLVECK of Polk

H-8907 FILED APRIL 3, 1998

Last

4.3.98

(P.1266)

HOUSE FILE 681

AN ACT

CREATING AN ENVIRONMENTAL AUDIT PRIVILEGE AND IMMUNITY,
AND AN ENVIRONMENTAL AUDITOR TRAINING PROGRAM, AND
PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 455J.1 TITLE.

This chapter shall be known and cited as the "Environmental Audit Privilege and Immunity Act".

Sec. 2. NEW SECTION. 455J.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of natural resources created under section 455A.2 or its delegated authority.
2. "Environmental audit" means a voluntary evaluation of a facility or operation, of an activity at a facility or operation, or of an environmental management system at a facility or operation when the facility, operation, or activity is regulated under state or federal environmental laws, rules, or permit conditions, conducted by an owner or operator, an employee of the owner or operator, or an independent contractor retained by the owner or operator that is designed to identify historical or current noncompliance with environmental laws, rules, ordinances, or permit conditions, discover environmental contamination or hazards, remedy noncompliance or improve compliance with environmental laws, or improve an environmental management system. Once notification is given to the department, an environmental audit shall be completed within a reasonable time not to exceed six months unless an extension is approved by the department based on reasonable grounds.

3. "Environmental audit report" means a document or set of documents generated and developed for the primary purpose and in the course of or as a result of conducting an environmental audit. An "environmental audit report" includes supporting information which may include, but is not limited to, the report document itself, observations, samples, analytical results, exhibits, findings, opinions, suggestions, recommendations, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, surveys, implementation plans, interviews, discussions, correspondence, and communications related to the environmental audit. An "environmental audit report" may include any of the following components:

- a. An executive summary prepared by the person conducting the environmental audit which may include the scope of the environmental audit, the information gained in the environmental audit, conclusions, recommendations, exhibits, and appendices.
 - b. Memoranda and documents analyzing portions or all of the report and discussing implementation issues.
 - c. An implementation plan which addresses correcting past noncompliance, improving current compliance or an environmental management system, or preventing future noncompliance.
 - d. Periodic updates documenting progress in completing the implementation plan.
4. "Inquiring party" means any party appearing before a court or a presiding officer in an administrative proceeding seeking to review or obtain an in camera review of an environmental audit report.

5. "Owner or operator" means the person or entity who caused the environmental audit to be undertaken.
6. "Privilege" means the protections provided in regard to an environmental audit report as provided in this chapter.

Sec. 3. NEW SECTION. 455J.3 PRIVILEGE.

1. Material included in an environmental audit report generated during an environmental audit conducted after the effective date of this Act is privileged and confidential and is not discoverable or admissible as evidence in any civil or administrative proceeding, except as otherwise provided in this chapter. The environmental audit report shall be labeled "ENVIRONMENTAL AUDIT REPORT: PRIVILEGED DOCUMENT". Failure to label each document within the report does not constitute a waiver of the environmental audit privilege or create a presumption that the privilege does or does not apply.

2. A person shall not be compelled to testify in regard to or produce a document included in an environmental audit report in any of the following circumstances:

a. If the testimony or document discloses any component listed in section 455J.2, subsection 3, that was made as part of the preparation of an environmental audit report and that is addressed in a privileged part of an environmental audit report.

b. If the person is any of the following:

(1) A person who conducted any portion of the environmental audit but did not personally observe the physical events of an environmental violation.

(2) A person to whom the results of the environmental audit report are disclosed under section 455J.4, subsection 2.

(3) A custodian of the environmental audit report.

3. A person who conducts or participates in the preparation of an environmental audit report and who has observed physical events of an environmental violation may testify about those events but shall not be compelled to testify about or produce documents related to the preparation of or any privileged part of an environmental audit or any component listed in section 455J.2, subsection 3.

4. An employee of a state agency or other governmental employee shall not request, review, or otherwise use an environmental audit report during an agency inspection of a

regulated facility or operation, or an activity of a regulated facility or operation.

5. A party asserting the privilege under this section has the burden of establishing the applicability of the privilege.

6. The privilege provided in this section is in addition to the privilege provided to assistance programs pursuant to section 455B.484A.

Sec. 4. NEW SECTION. 455J.4 WAIVER OF PRIVILEGE -- DISCLOSURE.

1. The privilege described in section 455J.3 shall not apply to the extent that the privilege is expressly waived in writing by the owner or operator who prepared the environmental audit report or caused the report to be prepared.

2. Disclosure of an environmental audit report or any other information generated by an environmental audit does not waive the privilege established in section 455J.3 if the disclosure meets any of the following criteria:

a. The disclosure is made to address or correct a matter raised by the environmental audit and the disclosure is made to any of the following:

(1) A person employed by the owner or operator, including temporary and contract employees.

(2) A legal representative of the owner or operator.

(3) An officer or director of the regulated facility or operation or a partner of the owner or operator.

(4) An independent contractor retained by the owner or operator.

b. The disclosure is made under the terms of a confidentiality agreement between any person and the owner or operator of the audited facility or operation.

3. A party to a confidentiality agreement described in subsection 2, paragraph "b", who violates that agreement is liable for damages caused by the disclosure and for any other penalties stipulated in the confidentiality agreement.

4. Information that is disclosed under subsection 2, paragraph "b", is confidential and is not subject to disclosure under chapter 22. A governmental entity, governmental employee, or governmental official who discloses information in violation of this subsection is subject to the penalty provided in section 22.6.

5. The protections provided by federal or state law shall be afforded to individuals who disclose information to law enforcement authorities.

6. The provisions of this chapter shall not abrogate the protections provided by federal and state law regarding confidentiality and trade secrets.

Sec. 5. NEW SECTION. 455J.5 REQUIRED DISCLOSURE.

1. A court or a presiding officer in an administrative hearing may require disclosure of a portion of an environmental audit report in a civil or administrative proceeding if the court or presiding officer affirmatively determines, after an in camera review, that any of the following exists:

- a. The privilege is asserted for a fraudulent purpose.
- b. The portion of the environmental audit report is not subject to the privilege under section 455J.6.
- c. The portion of the environmental audit report shows evidence of noncompliance with a state or federal environmental or other law, rule, or permit condition and appropriate efforts to achieve compliance with the law or ordinance were not promptly initiated and pursued with reasonable diligence after discovery of noncompliance.
- d. The portion of the environmental audit report shows clear and convincing evidence of substantial actual personal injury, which information is not otherwise available.
- e. The portion of the environmental audit report shows a clear and present danger to the public health or the environment.

2. A party seeking disclosure under this section has the burden of proving that subsection 1 applies.

3. A decision of a presiding officer in an administrative hearing under subsection 1 may be directly appealed to the district court without disclosure of the environmental audit report to any person unless so ordered by the court.

4. A determination of a court under this section is subject to interlocutory appeal to an appropriate appellate court.

5. If a court finds that a person claiming privilege under this chapter intentionally claimed the privilege for material not privileged as provided in section 455J.6, the person is subject to a fine not to exceed one thousand dollars.

6. Privilege provided in this chapter does not apply if an owner or operator of the facility or operation has been found in a civil or administrative proceeding to have committed serious violations in this state that constitute a pattern of continuous or repeated violations of environmental laws, administrative rules, or permit conditions, that were due to separate and distinct events giving rise to the violations within the three-year period prior to the date of disclosure.

Sec. 6. NEW SECTION. 455J.6 MATERIALS NOT PRIVILEGED.

1. The privilege described in this chapter does not apply to any of the following:

- a. A document, communication, datum, report, or other information required by a regulatory agency to be collected, developed, retained, or reported under a state or federal environmental law, rule, or permit condition.
- b. Information obtained by observation, sampling, or monitoring by a regulatory agency or a regulatory agency's authorized designee.
- c. Information obtained from a source not involved in the preparation of the environmental audit report.

2. This section does not limit the right of a person to agree to conduct an environmental audit and disclose an environmental audit report.

Sec. 7. NEW SECTION. 455J.7 REVIEW OF PRIVILEGED DOCUMENTS.

1. The privileges created in this chapter shall not apply to criminal investigations or proceedings. An environmental audit report, supporting documents, and testimony relating thereto may be obtained by a prosecutor's subpoena pursuant to the rules of criminal procedure. If an environmental audit report is obtained, reviewed, or used in a criminal investigation or proceeding, the administrative and civil evidentiary privilege established in this chapter is not waived or made inapplicable for any purpose other than for the criminal investigation or proceeding.

2. Notwithstanding the privilege established in this chapter, the department may review information in an environmental audit report, but such review does not waive or make the administrative and civil evidentiary privilege inapplicable to the report. A regulatory agency shall not adopt a rule or impose a condition that circumvents the purpose of this chapter.

3. If information is required to be made available to the public by operation of a specific state or federal law, rule, or permit condition, the governmental authority shall notify the person claiming the privilege of the potential for public disclosure prior to obtaining such information under subsection 1 or 2.

4. If privileged information is disclosed under subsection 2 or 3, on the motion of a party, a court or the presiding officer in an administrative hearing shall suppress evidence offered in any civil or administrative proceeding that arises or is derived from review, disclosure, or use of information obtained under this section if the review, disclosure, or use is not authorized under section 455J.6. A party having received information under subsection 2 or 3 has the burden of proving that the evidence offered did not arise and was not derived from the review of privileged information.

Sec. 8. NEW SECTION. 455J.8 VOLUNTARY DISCLOSURE OF ENVIRONMENTAL VIOLATION -- IMMUNITY.

1. An owner or operator is eligible for immunity under this section from the time the department receives official notification from the owner or operator of a scheduled environmental audit. An owner or operator is immune from any administrative or civil penalty associated with the information disclosed if the owner or operator makes a prompt voluntary disclosure to the department regarding an environmental violation which is discovered through the environmental audit. The owner or operator creates a rebuttable presumption that the disclosure is voluntary by meeting the criteria provided in subsection 2 at the time of disclosure. To rebut the presumption that a disclosure is voluntary, the department or other party has the burden of proving that the disclosure was not voluntary. Immunity is not provided if the violations of state or federal environmental law, rule, or permit condition are intentional or if the violations of state or federal law, rule, or permit condition resulted in substantial actual injury or imminent and substantial risk of injury to persons, property, or the environment.

2. The disclosure of information is voluntary if all of the following circumstances exist:

a. The disclosure arises out of an environmental audit and relates to privileged information as provided in section 455J.3.

b. The person making the disclosure uses reasonable efforts to pursue compliance and to correct the noncompliance within a reasonable period of time after completion of the environmental audit in accordance with a remediation schedule submitted to and approved by the department. If evidence shows that the noncompliance is due to the failure to obtain a permit, reasonable effort may be demonstrated by the submittal of a complete permit application within a reasonable time.

Disclosure of information required to be reported by state or federal law, rule, or permit condition is not considered to be voluntary disclosure and the immunity provisions in this section are not applicable.

c. Environmental violations are identified in an environmental audit report and disclosed to the department before there is notice of a citizen suit or a legal complaint by a third party.

d. Environmental violations are identified in an environmental audit report and disclosed to the department before the environmental violations are reported by any person not involved in conducting the environmental audit or to whom the environmental audit report was disclosed.

3. If an owner or operator has not provided the department with notification of a scheduled environmental audit prior to performing the audit, a disclosure of information is voluntary if the environmental violations are identified in an environmental audit report and disclosed by certified mail to the proper regulatory agency that has jurisdiction over the disclosed violation prior to the agency's commencement of an investigation.

4. If a person is required to make a disclosure relating to a specific issue under a specific permit condition or under an order issued by the department, the disclosure is not voluntary with respect to that issue.

5. Except as provided in this section, this section does not impair the authority of the proper regulatory agency to require a technical or remedial action or to order injunctive relief.

6. Upon application to the department, the time period within which the disclosed violation is corrected under subsection 2 may be extended if it is not practical to correct the noncompliance within the reasonable period of time initially approved by the department. The department shall not unreasonably withhold the grant of an extension. If the

department denies an extension, the department shall provide the requesting party with a written explanation of the reasons for the denial. A request for de novo review of the department's decision may be made to the appropriate court.

7. Immunity provided under this section from administrative or civil penalties does not apply under any of the following circumstances:

a. If an owner or operator of the facility or operation has been found in a civil or administrative proceeding to have committed serious violations in this state that constitute a pattern of continuous or repeated violations of environmental laws, administrative rules, and permit conditions and that were due to separate and distinct events giving rise to the violations within the three-year period prior to the date of disclosure, or if under section 455B.191 an owner or operator of a facility or operation is classified as a habitual violator.

b. If a violation of an environmental law, administrative rule, permit condition, settlement agreement, or order on consent, final order, or judicial order results in a substantial economic benefit which gives the violator a clear advantage over its business competitors.

8. In cases where the conditions of a voluntary disclosure are not met but a good faith effort was made to voluntarily disclose and resolve a violation detected in an environmental audit, the state regulatory authorities shall consider the nature and extent of any good faith effort in deciding the appropriate enforcement response and shall consider reducing any administrative or civil penalties based on mitigating factors showing that one or more of the conditions for voluntary disclosure have been met.

9. The immunity provided by this section does not abrogate the responsibility of a person as provided by applicable law to report a violation, to correct the violation, conduct necessary remediation, or respond to third-party actions.

This chapter shall not be construed to confer immunity from liability in any private civil action except those actions brought pursuant to section 455B.111.

10. Information required by rule to be submitted to the department as part of a disclosure made pursuant to this section is not privileged information.

Sec. 9. NEW SECTION. 455J.9 ABROGATION OF OTHER PRIVILEGES.

This chapter shall not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work product doctrine and the attorney-client privilege.

Sec. 10. NEW SECTION. 455J.10 ENVIRONMENTAL AUDITOR TRAINING PROGRAM.

A training program for and standards for certification of environmental auditors shall be developed jointly by the Iowa waste reduction center and the department. The training program shall be administered by the Iowa waste reduction center. The program shall provide training on the proper conduct of an environmental audit; local, state, and federal environmental ordinances, rules, and laws that apply to businesses in this state; and the environmental audit laws in this state. The program shall be made available to small and large business owners and operators, consulting engineers, regulatory personnel, and citizens through the community college system. A fee may be assessed for participation in the program. Upon completion of the training program, program participants may elect to be tested by the department for certification as an environmental auditor for the purposes of this chapter.

Sec. 11. NEW SECTION. 455J.11 SUMMARY.

On or before December 1 of each year, the department shall make available a summary of the number of environmental audit notices received, the violations, and the remediation status of the violations reported pursuant to this chapter during the preceding fiscal year.

Sec. 12. NEW SECTION. 455J.12 RULEMAKING.

The department shall adopt rules pursuant to chapter 17A necessary to administer this chapter.

Sec. 13. NEW SECTION. 455J.13 COSTS.

The necessary costs incurred by the department under this chapter shall be funded from appropriations made to the department from the general fund of the state.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 681, Seventy-seventh General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved *April 16*, 1998

TERRY E. BRANSTAD
Governor