

SECOND REGULAR SESSION

SENATE BILL NO. 989

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS GROSS, KLINDT, RUSSELL AND NODLER.

Pre-filed January 6, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

3573S.01I

AN ACT

To amend chapter 640, RSMo, by adding thereto two new sections relating to environmental protection.

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

Section A. Chapter 640, RSMo, is amended by adding thereto two new sections, to be known as sections 640.045 and 640.048, to read as follows:

640.045. 1. As used in this section and section 640.048, the following terms shall mean:

- (1) "Department", the department of natural resources;**
- (2) "Environmental management system", a system used by a regulated entity to document systematic efforts appropriate to the size and nature of its business to prevent, detect, and correct noncompliance of any environmental law or regulation through all of the following:**

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

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

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

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

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

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

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

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

(5) "Environmental requirements", compliance with state, federal, or other political subdivisions' environmental laws and regulations;

(6) "Regulated entity", any corporation, partnership, sole proprietorship, limited liability company, or other business entity or state agency or political subdivision which is regulated under state or federal environmental laws or regulation;

(7) "Violation":

(a) Any violation of federal, state, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of noncompliance, conviction or plea agreement; or

(b) Any act or omission for which the regulated entity has previously received penalty mitigation from the department or other regulated entity.

2. If a regulated entity establishes that it satisfies all of the conditions of this section and section 640.048, the department shall not seek penalties for noncompliance of any state or federal laws, regulations, permits, or orders relating to environmental requirements discovered and disclosed by the entity.

3. Neither the department nor the attorney general, nor any prosecuting attorney, will request or use an environmental audit report to initiate a civil investigation of an entity, including, but not limited to, the use of such report in an inspection conducted by the department. If the department has independent reason to believe that a violation has occurred, the department may seek any information relevant to identifying a violation or determining liability or extent of harm. An environmental audit report is not admissible as evidence in any legal action in any civil or administrative proceeding instituted by any other third

party.

640.048. 1. In order to avoid penalties issued by the department pursuant to section 640.045, a regulated entity must discover the violation as follows:

(1) The violation of the environmental law, regulation, ordinance, or permit was discovered through an environmental audit or an environmental management system reflecting the regulated entity's due diligence in preventing, detecting, and correcting the violation. The regulated entity must provide accurate and complete documentation to the department as to how its environmental management system meets the criteria for due diligence outlined in this section and how the regulated entity discovered the violation through its environmental management system. The department may require the regulated entity to make publicly available a description of its environmental management system;

(2) The violation was discovered voluntarily and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order. The provisions of this subdivision shall not apply if:

(a) Emissions noncompliance was detected through a continuous emissions monitor or alternative monitor established in a permit where any such monitoring is required;

(b) Noncompliance of the National Pollutant Discharge Elimination System (NPDES) discharge limits was detected through required sampling or monitoring; or

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

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

(4) The regulated entity discovered and disclosed the violation to the department prior to:

(a) The commencement of a federal, state, or local agency inspection or investigation, or the issuance by such agency of an information request to the regulated entity where the department determines that the facility did not know

that it was under civil investigation, and the department determines that the entity is otherwise acting in good faith;

(b) Notice of a civil suit by a third party;

(c) The filing of a complaint by a third party with the department;

(d) The reporting of the violation to the department or other state or federal agency by an employee of the entity who is authorized to speak on behalf of the regulated entity; or

(e) Imminent discovery of the violation by the department;

2. For an entity that owns or operates multiple facilities, if one facility is already the subject of an investigation, inspection, information request, or third-party complaint, nothing shall preclude the regulated entity from complying with the provisions of this section and section 640.045 with regard to other facilities owned or operated by the same regulated entity.

3. The regulated entity shall correct the violation within sixty calendar days from the date of discovery, certify in writing that the violation has been corrected, and take appropriate measures as determined by the department to remedy any environmental or human harm due to the violation. The department may order an entity to correct a violation within a specific time period shorter than sixty days whenever correction in such shorter period of time is feasible and necessary to protect public health and the environment adequately. If more than sixty days will be needed to correct the violation, the regulated entity must notify the department in writing before the sixty-day period has expired. The department may require a regulated entity to enter into a written agreement, administrative consent order, or judicial consent decree as a condition of obtaining relief pursuant to this section and section 640.045.

4. The department may require a regulated entity to agree in writing to demonstrate how it will prevent a recurrence of the violation including improvements to its environmental auditing or environmental management system.

5. In order for the provisions of this section and section 640.045 to apply:

(1) No other violation shall have occurred at the reporting facility within three years of the current violation or occurred at any facility owned or operated by the regulated entity within five years of the current violation;

(2) The violation shall not be one which resulted in serious actual harm to the environment, or may have presented an imminent and substantial danger to human health or the environment, or violates the specific terms of any judicial administrative order;

(3) The regulated entity shall cooperate as requested by the department and provide such information as is necessary and requested by the department to

determine applicability of the provisions of this section and section 640.045.

6. The department will make publicly available the terms and conditions of any compliance agreement reached pursuant to the provisions of this section and section 640.045, including the nature of the violation, the remedy, and the schedule for returning to compliance.

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