

NDDEQ Environmental Audit Policy

1. Statement of Policy

The State of North Dakota has implemented a procedure for industry to conduct self-audits of operations to assess environmental compliance. The audits are voluntary, internal, and comprehensive evaluations that are intended to prevent noncompliance with environmental laws, rules, or permits enforced under chapters 23.1-04 (Hazardous Waste), 23.1-06 (Air Pollution), 23.1-08 (Solid Waste), 38-08 (Gas & Oil Resources), or 61-28 (Surface Water Pollution). Environmental audits may be conducted by an owner, operator, or prospective owner or operator. Environmental audits are expected to provide benefits to industry, regulators, the public, and the environment in North Dakota.

2. Starting an Audit

An Environmental Audit may be conducted at any time. However, to gain protection against enforcement, the process described in N.D.C.C. ch. 32-40.2 and summarized in this guidance must be followed. Audit information, including notification and document submission notification instructions, can be found on the North Dakota Department of Environmental Quality (Department) website at: <https://deq.nd.gov/Director/>.

Note that all audit documents and correspondence must be submitted in writing to: deq-legal@nd.gov. This email address should be added to the company's address book as all communication will be through this email and may contain time sensitive information.

2.1. Notification

The company conducting the audit must notify the Department, in writing, before beginning the audit. The notification can refer to multiple divisions or programs. This notification should include:

- a. Name of regulated entity conducting the audit. This may be the owner, operator, or prospective owner/operator. If an employee or independent contractor is conducting the audit on behalf of the owner, operator, or prospective owner/operator, include this information in the notification.
- b. Facilities to be audited. Include a geographic reference (Township Range Section and Latitude/Longitude), applicable permit /identification numbers, 911 address, North Dakota Industrial Commission (NDIC) file # (For Oil & Gas wells), and EPA ID number for RCRA facilities.
- c. Scope of Audit. Identify the specific rules and requirements that will be audited. For example, "Compliance with NPDES Construction Stormwater Requirements" is acceptable. "Various Environmental Requirements" is not acceptable.
- d. Contact Person. Provide name, address, telephone number, and email for the primary point of contact for the audit, in case there are any questions.

- e. Start Date. Date the audit is anticipated to start and the projected end date. If this start date changes, the Department must be notified of the change prior to the start of the audit. Notifications should be submitted at least 10 business days prior to the anticipated start date to allow the Department time to adequately review the notification.
- f. If the scope of the audit includes rules and requirements under N.D.C.C. ch. 38-08, the NDIC must be notified. The company must contact the NDIC for its notification requirements.

2.2. Response

Once the Department has reviewed the notification and determined the required information (Section 2.1) has been included, a response will be sent to the company from the Department Legal Team.

3. Timing of the Audit

3.1. The regulated entity has 180 days, from the start date (2.1)(e), to complete the audit.

- a. An extension of the 180 days may be requested in writing to the Department. The request must include the length of the requested extension, the reason for the extension, and any changes to the information provided with the initial notification.
- b. Any request for extension must be submitted at least 10 business days in advance of expiration of the initial 180 days for the audit.

3.2. Interrupted or continuous audits are not permitted under N.D.C.C. § 32-40.2-01(3).

4. Reporting Violations

4.1. Within 45 days of discovery, violations discovered during the audit must be reported to the Department to qualify for a penalty exemption.

4.2. Reporting a violation discovered during an audit is mandatory if required:

- a. Under N.D.C.C. chs. 23.1-04 (Hazardous Waste), 23.1-06 (Air Pollution), 23.1-08 (Solid Waste), 38-08 (Gas & Oil Resources), or 61-28 (Surface Water Pollution), or any rule or permit implementing those chapters;
- b. By federal law or rule; or
- c. By any administrative or court order.

4.3. The notification of discovered violations should contain:

- a. A completed Summary Table Form;
- b. A description of the violation;
- c. The specific law, rule, or permit condition violated;
- d. Impacts to the environment or public health from the violation;
- e. Timing of the violation, including number of occurrences found;

- f. Corrective actions that have been or will be taken; and
- g. Mitigation efforts to reduce occurrence of noncompliance issues (Best management practices, quality assurance/quality control, Preventative Maintenance, etc.).

4.4. Upon receipt, the notification of discovered violations will be routed to the appropriate program, which will evaluate the violations for potential enforcement consistent with N.D.C.C. § 32-40.2-01(2) and provide comments on the corrective actions, if necessary.

4.5. If no violations are discovered during the audit, the Department requests that the auditing company submit confirmation in writing to the Department at the conclusion of the audit. The audit will be considered closed after the appropriate time periods described above.

5. Correcting Violations

5.1. Violations must be corrected within **60 days of discovery** unless:

- a. The Department determines it is not possible to correct the violation within 60 days; and
- b. The Department has granted an extension not to exceed 365 days from discovery date.

5.2. Requesting an Extension

- a. An extension of the 60 days may be requested in writing to the Department. The request must include the length of the requested extension, the reason for the extension, and any changes to the information provided with the initial notification.
- b. Any request for extension must be submitted at least 10 business days in advance of expiration of the initial 60-day period for correcting violations.

5.3. Summary Table. An updated Summary Table Form must be sent to the Department to confirm correction of the violations reported.

6. Exceptions

6.1. The Department may seek to collect civil penalties for a violation if any one of the following is true:

- a. The violation caused imminent or substantial harm to human health or the environment.
- b. The violation was found by the Department before it was disclosed in writing.
- c. The violation is not corrected according to section 5.
- d. The regulated entity established a pattern of repeated violations of environmental law, rule, permit or order by committing the same or similar violation that resulted in the imposition of a penalty by a regulatory agency more than once within two years prior to disclosure.
- e. The violation was willful.
- f. The violation was the result of gross negligence.

- g. Waiver of penalty authority for the violation would result in a state program less stringent than the federal program or the waiver would violate any federal rule required to maintain primacy.
- h. The regulated entity intentionally misrepresented material facts concerning the violation disclosed or the nature or extent of any damage to human health or the environment.
- i. The regulated entity initiated a self-audit to avoid liability for a violation after the Department's knowledge or imminent discovery.
- j. The violation is outside the scope of the audit identified in the notification.
- k. The regulated entity has not met the notification or reporting requirements in N.D.C.C. § 32-40.2-01, as described in this document.

6.2 Even if penalties are sought for reasons listed under section 6.1, self-reporting of the violation may be considered as a mitigating factor.

7. Privileged Environmental Audit Report

7.1. Under N.D.C.C. § 32-40.2-01(6), an environmental audit report is privileged and not admissible as evidence in a civil action or proceeding.

7.2. The privilege does not apply to the various disclosures, notifications, and other information submitted by an auditing company to the Department under N.D.C.C. § 32-40.2-01. Although the information submitted to the Department may be included in the auditing company's environmental audit report, the Department does not require the submission of the entire environmental audit report. If the company chooses to provide the entire environmental audit report to the Department, the entire environmental audit report will be considered an open record under N.D.C.C. ch. 44-04, no matter how the audit report is labeled.

8. If you have any questions, contact deq-legal@nd.gov.

This policy is intended to be entirely consistent with N.D.C.C. ch. 32-40.2 which pertains to Environmental Audits and is not meant to expand or eliminate duties and provisions described therein. It should be used as a guide only for discussion and tracking purposes between members of the regulated community and the Department.

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