

Gavel to Gavel: New law rewards voluntary EHS audits

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The Oklahoma Environmental, Health and Safety Audit Privilege Act recently codified in 27A O.S. § 1-4-110, et seq., is designed to encourage voluntary compliance with environmental and occupational health and safety, or EHS, laws.

The act is in keeping with a national trend toward immunity from civil and administrative penalties for regulated entities

that perform voluntary EHS audits and then remedy and disclose any discovered violations. Regulated entities in this context will include operators of oil and gas leaseholds, pipelines, and processing plants, as well as operators of underground petroleum storage tanks, to name a few. As an added incentive, the act provides that reports generated during the audit process are privileged and, therefore, not admissible as evidence nor subject to discovery in civil actions or administrative proceedings.

To properly invoke the act's protections, the audit must be a systematic and voluntary evaluation of compliance with state and federal EHS laws and regulations. Upon the discovery of a violation, the act requires that the regulated entity immediately initiate efforts to achieve compliance. The regulated entity must also promptly disclose the violation by written notice to the appropriate regulatory agency and then cooperate with the agency in connection with any further investigation.

The act is meant to incentivize proactive behavior. Therefore, regulated entities are not protected when a violation is discovered by happenstance or when the violation has already been independently detected by the appropriate regulatory agency. Any violation discovered pursuant to an audit already required by law is similarly excluded for the fact that such an audit is not deemed voluntary.

In addition, the act explicitly excludes protection in light of certain types of violations, such as those which result in injury or imminent and substantial risk of serious injury to persons, property, or the environment, or which are the result of willful or reckless conduct. Certain other exclusions also apply, and in any case, the burden is on the regulated entity to show that it has satisfied each requirement of the act.

At bottom, although strings are attached, the act creates an attractive option for regulated entities that wish to get in front of potential EHS issues and thereby curb their civil and administrative liability.

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