

60-3333. Environmental audit report; privilege; admissibility of report's contents; exceptions; burden to establish applicability of privilege. (a) Material that is included in an environmental audit report generated during an environmental audit conducted after July 1, 1995, is privileged and confidential and is not discoverable or admissible as evidence in any civil or administrative proceeding, except as specifically provided by this act. Failure to label each document within the environmental audit report as a privileged document does not constitute a waiver of the environmental audit privilege or create a presumption that the privilege does not apply.

(b) If an environmental audit report, or any part thereof, is subject to the privilege recognized in this section, neither any person who conducted the audit nor anyone to whom the audit results are disclosed, unless such disclosure constitutes a waiver of the privilege under K.S.A. 60-3334, can be compelled to testify regarding any matter which was the subject of the audit and which is addressed in a privileged part of the audit report.

(c) 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 or produce documents related to the preparation of or any privileged part of an environmental audit or any component listed in subsection (b) of K.S.A. 60-3332, and amendments thereto.

(d) An employee of a regulatory 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 activity at a regulated facility or operation.

(e) A party asserting the privilege under this section has the burden of establishing the applicability of the privilege. If there is evidence of noncompliance with environmental laws, such party must prove that appropriate efforts to achieve compliance were initiated promptly upon discovery and pursued with reasonable diligence.

History: L. 1995, ch. 204, § 2; L. 2006, ch. 30, § 3; July 1.