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840677 - WARD, DAVID

Number of Requests in Group: 1  
Approximate Number of Lines: 220  
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The Current Database is CO-ST-ANN  
Your Terms and Connectors Query:

"VOLUNTARY DISCLOSURE"

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ADMIN RECCRD

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CO ST s 13-25-126.5  
C.R.S.A. § 13-25-126.5

**WEST'S COLORADO REVISED STATUTES ANNOTATED**  
**TITLE 13. COURTS AND COURT PROCEDURE**  
**EVIDENCE**  
**ARTICLE 25. EVIDENCE--GENERAL PROVISIONS**

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Current through End of 1997 1st Ex. Sess.

§ 13-25-126.5. Documents arising from environmental self-evaluation-- admissibility in evidence

(1) The general assembly hereby finds and declares that protection of the environment is enhanced by the public's voluntary compliance with environmental laws and that the public will benefit from incentives to identify and remedy environmental compliance issues. It is further declared that limited expansion of the protection against disclosure will encourage such voluntary compliance and improve environmental quality and that the voluntary provisions of this act will not inhibit the exercise of the regulatory authority by those entrusted with protecting our environment.

(2) For the purposes of this section, unless the context otherwise requires:

(a) "Administrative law judge" means any person appointed to be an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S.

(b) "Environmental audit report" means any document, including any report, finding, communication, or opinion or any draft of a report, finding, communication, or opinion, related to and prepared as a result of a voluntary self-evaluation that is done in good faith.

(c) "Environmental law" means any requirement contained in article 20.5 of title 8, C.R.S., articles 7, 8, 11, and 15 of title 25, C.R.S., or article 20 of title 30, C.R.S., in regulations promulgated under such provisions, or in any orders, permits, licenses, or closure plans under such provisions.

(d) "In camera review" means a hearing or review in a courtroom, hearing room, or chambers to which the general public is not admitted. After such hearing or review, the content of the oral and other evidence and statements of the judge and counsel shall be held in confidence by those participating in or present at the hearing or review, and any transcript of the hearing or review shall be sealed and not considered a public record, until and unless its contents are disclosed by a court or administrative law judge having jurisdiction over the matter.

(e) "Voluntary self-evaluation" means a self-initiated assessment, audit, or review, not otherwise expressly required by environmental law, that is performed by any person or entity, for itself, either by an employee or employees employed by such person or entity who are assigned the responsibility of performing such assessment, audit, or review or by a consultant engaged by such person or entity expressly and specifically for the purpose of performing such assessment, audit, or review to determine whether such person or entity is in compliance with environmental laws. Once initiated, such voluntary self-evaluation shall be completed within a reasonable period of time. Nothing in this section shall be construed to authorize uninterrupted voluntary self-evaluations.

(3) An environmental audit report is privileged and is not admissible in any legal action or administrative proceeding and is not subject to any discovery pursuant to the rules of civil procedure, criminal procedure, or administrative procedure, unless:

(a) The entity or person for whom the environmental audit report was prepared, whether the environmental audit report was prepared by the entity or by a consultant hired by the entity, waives the privilege under this section;

(b)(I) A court of record, or, pursuant to section 24-4-105, C.R.S., an administrative law judge, after an in camera review, determines that:

(A) The environmental audit report shows evidence that the person or entity for which the environmental audit report was prepared is not or was not in compliance with an environmental law; and

(B) The person or entity did not initiate appropriate efforts to achieve compliance with the environmental law or complete any necessary permit application promptly after the noncompliance

with the environmental law was discovered and, as a result, the person or entity did not or will not achieve compliance with the environmental law or complete the necessary permit application within a reasonable amount of time.

(II) For the purposes of this paragraph (b) only, if the evidence shows noncompliance by a person or entity with more than one environmental law, the person or entity may demonstrate that appropriate efforts to achieve compliance were or are being taken by instituting a comprehensive program that establishes a phased schedule of actions to be taken to bring the person or entity into compliance with all of such environmental laws.

(c) A court of record, or, pursuant to section 24-4-105, C.R.S., an administrative law judge, after an in camera review, determines that compelling circumstances exist that make it necessary to admit the environmental audit report into evidence or that make it necessary to subject the environmental audit report to discovery procedures;

(d) A court of record, or, pursuant to section 24-4-105, C.R.S., an administrative law judge, after an in camera review, determines that the privilege is being asserted for a fraudulent purpose or that the environmental audit report was prepared to avoid disclosure of information in an investigative, administrative, or judicial proceeding that was underway, that was imminent, or for which the entity or person had been provided written notification that an investigation into a specific violation had been initiated; or

(e) A court of record, or, pursuant to section 24-4-105, C.R.S., an administrative law judge, after an in camera review, determines that the information contained in the environmental audit report demonstrates a clear, present, and impending danger to the public health or the environment in areas outside of the facility property.

(4) The self-evaluation privilege created by this section does not apply to:

(a) Documents or information required to be developed, maintained, or reported pursuant to any environmental law or any other law or regulation;

(b) Documents or other information required to be available or furnished to a regulatory agency pursuant to any environmental law or any other law or regulation;

(c) Information obtained by a regulatory agency through observation, sampling, or monitoring;

(d) Information obtained through any source independent of the environmental audit report or any person covered under section 13-90-107(1)(j)(I)(A);

(e) Documents existing prior to the commencement of and independent of the voluntary self-evaluation;

(f) Documents prepared subsequent to the completion of and independent of the voluntary self-evaluation; or

(g) Any information, not otherwise privileged, including the privilege created by this section, that is developed or maintained in the course of regularly conducted business activity or regular practice.

(5)(a) Upon a showing by any party, based upon independent knowledge, that probable cause exists to believe that an exception to the self-evaluation privilege under subsection (3) of this section is applicable to an environmental audit report or that the privilege does not apply to the environmental audit report pursuant to the provisions of subsection (4) of this section, then a court of record or, pursuant to section 24-4-105, C.R.S., any administrative law judge, may allow such party limited access to the environmental audit report for the purposes of an in camera review only. The court of record or the administrative law judge may grant such limited access to all or part of the environmental audit report under the provisions of this subsection (5) upon such conditions as may be necessary to protect the confidentiality of the environmental audit report. A moving party who obtains access to an environmental audit report pursuant to the provisions of this subsection (5) may not divulge any information from the report except as specifically allowed by the court or administrative law judge.

(b)(I) If any party divulges all or any part of the information contained in an environmental audit report in violation of the provisions of paragraph (a) of this subsection (5) or if any other person or entity knowingly divulges or disseminates all or any part of the information contained in an environmental audit report that was provided to such person or entity in violation of the provisions of paragraph (a) of this subsection (5), such party or other person or entity is liable for any damages caused by the divulgence or dissemination of the information that are

incurred by the person or entity for which the environmental audit report was prepared.

(II) If any public entity, public employee, or public official divulges all or any part of the information contained in an environmental audit report in violation of the provisions of paragraph (a) of this subsection (5) or knowingly divulges or disseminates all or any part of the information contained in an environmental audit report that was provided to such public entity, public employee, or public official in violation of the provisions of paragraph (a) of this subsection (5), such public entity, public employee, or public official shall be guilty of a class 1 misdemeanor, may be found in contempt of court by a court of record, and may be assessed a penalty not to exceed ten thousand dollars by a court of record or an administrative law judge.

(6) Nothing in this section limits, waives, or abrogates the scope or nature of any statutory or common-law privilege.

(7) A person or entity asserting a voluntary self-evaluation privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of an environmental audit report has the burden of proving that such privilege does not exist under this section.

(8) Notwithstanding the provisions of subsection (3) of this section, the existence of an environmental audit report shall be subject to discovery proceedings pursuant to the rules of civil procedure, criminal procedure, or administrative procedure; except that the contents of such a report or any other privileged information contained therein shall remain confidential.

(9) This section applies only to all voluntary self-evaluations that are performed during the period beginning June 1, 1994, and ending June 30, 1999.

CREDIT(S)

1997 Main Volume

Added by Laws 1994, S.B.94-139, § 1, eff. June 1, 1994. Amended by Laws 1996, S.B.96-208, § 11, eff. June 1, 1996.

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL AND STATUTORY NOTES**

1997 Main Volume

Section 4 of Laws 1994, S.B.94-139, adding this section, provides:

**"Effective date--applicability.** This act shall take effect upon passage and shall apply to all legal actions and administrative proceedings commenced on or after said date."

The 1996 amendment, in par. (2)(c), substituted "article 20.5 of title 8, C.R.S., articles 7, 8, 11, and 15" for "articles 7, 8, 11, 15, and 18".

**CROSS REFERENCES**

Testifying without consent, exceptions, see § 13-90-107.

Voluntary disclosure arising from self-evaluation, see § 25-1-114.5.

**LAW REVIEW AND JOURNAL COMMENTARIES**

Colorado's environmental audit privilege statute: Striking the appropriate balance? Virginia Morton Creighton, 67 U.Colo.L.Rev. 443 (1996).

Perverse incentives of environmental audit immunity. David A. Dana, 81 Iowa L.Rev. 969 (1996).

Privileges for environmental audits: Is mum really the word? John Davidson, 4 S.C.Envntl.L.J. 111 (1995).

State statutory privilege for environmental audits: Is it a suit of armor or just the emperor's new clothes? 29 Ind.L.Rev. 647 (1996).

C. R. S. A. § 13-25-126.5

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