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NEWS

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as “equals” in “unison” with politicians to write laws to govern your life. Big Business has “a VOICE and a VOTE,” according to newly exposed documents. **DO YOU?**

Uniform State Environmental Audit Privilege Act

Summary

ALEC's model Uniform State Environmental Audit Privilege Act is designed to encourage environmental compliance of the private sector by making environmental audits privileged to protect the confidentiality of communications relating to voluntary internal environmental audits.

Model Legislation

Section 1. {Short Title}

This act shall be known and may be cited as the Uniform State Environmental Audit Privilege Act.

Section 2. {Legislative findings and declarations} The legislature finds and declares that:

(A) In order to encourage owners and operators of facilities and other persons conducting activities regulated under {insert state's environmental laws}, or the federal, regional or local counterpart or extension of such statutes, both to conduct voluntary internal environmental audits of their compliance programs and management systems and to assess and improve compliance with such statutes, an environmental audit privilege is recognized to protect the confidentiality of communications relating to such voluntary internal environmental audits.

(B) An environmental Audit Report shall be privileged and shall not be admissible as evidence in any legal action in any civil, criminal or administrative proceeding, except as provided in Section 4 of this Act.

Section 3. {Definitions}

(A) “Environmental Audit.” A voluntary, internal and comprehensive evaluation of one or more facilities or an activity at one or more facilities regulated under {insert state's environmental laws}, or the federal, regional or local counterpart or extension of such statutes, or of management systems related to such facility or activity, that is designed to identify and prevent non-compliance and to improve compliance with such statutes. An environmental audit may be conducted by the owner or operator, by the owner's or operator's employees or by independent contractors.

(B) “Environmental Audit Report.” A set of documents, each labeled “Environmental Audit Report: Privileged Document” and prepared as a result of an environmental audit. An environmental audit report may include field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer generated or electronically recorded information, maps, charts, graphs and surveys, provided such supporting information is collected or developed for the primary purpose and in the course of an environmental audit. An Environmental Audit Report, when completed, may have three components:

- (1) An audit prepared by the auditor, which may include the scope of the audit, the information gained in the audit, conclusions and recommendations, together with exhibits and appendices;
- (2) Memoranda and documents analyzing portions or all of the audit report and potentially discussing implementation issues; and
- (3) Even if the subject to the privilege, the material shows evidence of non-compliance with {insert state's environmental laws}, or with the federal, regional, or local counterpart, and appropriate efforts to achieve compliance with such laws were not promptly initiated and pursued with reasonable diligence upon discovery of non-compliance.

(C) A party asserting the environmental and audit privilege described in Section 1(B) of this Act has the burden of demonstrating the applicability of the privilege, including, if there is evidence of non-compliance with {insert state's environmental laws}, or the federal, regional or local counterpart or extension of such statutes, proof that appropriate efforts to achieve compliance were promptly initiated and pursued with reasonable diligence; provided, however, that a party seeking disclosure under Section 3(B)(1) of this Act has the burden of proving the conditions for disclosure set forth in Section 3(B)(2).

Section 4. {Application of privilege audit}

(A) The privilege described in Section 1(B) of the Act does not apply to the extent that it is waived by the owner or operator of a facility at which an environmental audit was conducted and who prepared or caused to be prepared The Environmental Audit Report as a result of the Audit.

(B) In a civil, criminal or administrative proceeding, court of record, after an in camera review consistent with the {insert state} rules of civil procedure, shall require disclosure of material for which the privilege described in Section 1 (B) of this Act is asserted, if such court determines that:

- (1) The privilege is asserted for a fraudulent purpose;
- (2) The material is not subject to the privilege; or
- (3) Even if subject to the privilege, the material shows evidence of non-compliance with {insert state's environmental laws}, or with the federal, regional or local counterpart or extension of such statutes, and appropriate efforts to achieve compliance with such laws were not promptly initiated and pursued with reasonable diligence upon discovery of noncompliance.

(D) A party asserting the environmental privilege described in Section 1(B) of this Act has the burden of demonstrating the applicability of the privilege, including, if there is evidence of noncompliance with {insert State's environmental laws}, or the federal region or local counterpart or extension of such statutes, proof that appropriate efforts to achieve compliance were promptly initiated and pursued and pursued with reasonable diligence; provided, however, that a party seeking disclosure under Section 4 (B) (1) of this Act has the burden of proving that the privilege is asserted for a fraudulent purpose and, in a criminal proceeding, the State has the burden of proving the conditions for disclosure set forth in Section 4(B)(2).

Section 5. {Disclosure of Privileged Audit}

(A) The State, having probable cause to believe a criminal offense has been committed under {the state's environmental laws} based upon information obtained from a source independent of an Environmental Audit Report, may obtain an Environmental Audit Report for which a privilege is asserted under Section 1 (B) of this Act pursuant to search warrant, criminal subpoena or discovery as allowed by {State's rules of criminal procedure}. The State shall immediately place the report under seal and shall not review or disclose the contents of the report.

(B) Within 30 days of the State's obtaining an Environmental Audit Report, the owner or operator who prepared or caused to be prepared the report may file with the appropriate court a petition requesting an on camera review on whether the Environmental Audit Report or portions thereof are privileged or subject to disclosure under this Act. Failure by the owner or operator to file such a petition shall waive the privilege.

(C) Upon filing of the petition, to determine whether the Environmental Audit Report or portions thereof are privileged or subject to disclosure under this Act. Such order further shall allow the district attorney or Attorney General to remove the seal from the report to review the report and shall place appropriate limitations on distribution and review of the report to protect against unnecessary disclosure. The district attorney or Attorney General may consult with enforcement agencies regarding the contents of the report as necessary to prepare for the camera review. However, the information used in preparation for the in camera review shall not be used in any investigation or in any legal proceeding, and shall otherwise be kept confidential, unless and until such information is found by the court to be subject to disclosure.

(D) Failure to comply with the review, disclosure or use prohibitions of this Section shall be the basis, in any civil, criminal or administrative proceeding, for suppression of any evidence arising or derived from the unauthorized review, its closure or use. The party failing to comply with this Section shall have the burden of proving that proffered evidence did not arise and was not derived from the unauthorized activity.

(E) The parties may at anytime stipulate to entry of an order directing that specific information contained in an Environmental Audit Report is or is not subject to the privilege provided under Section 1 (B) of this Act.

(F) Upon making a disclosure determination under Section 3(B) of this Act, the court may compel the disclosure only of those portions of an Environmental Audit Report relevant to issues in dispute in the proceeding.

Section 6. {Exemption of Privilege} The privilege described in Section 1 (B) of this Act shall not extend to:

(A) Documents, communications, data, reports or other information required to be collected, developed, maintained, reported or otherwise made available to a regulatory agency pursuant to {insert State environmental law}, or other federal, State or local law, ordinance, regulation, permit or order;

(B) Information obtained by observation, sampling or monitoring by any regulatory agency; or

(C) Information obtained from a source independent of environmental audit.

Section 7.

Nothing in this Act shall limit, waive or abrogate the scope or nature of any statutory or common law privilege, including the work product doctrine and the attorney-client privilege.

Section 8. {Severability clause}

Section 9. {Repealer clause}

Section 10. {Effective date}

Were your laws repealed?

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Sourcebook of American State Legislation 1995

From CMD: This "model" bill would prevent the use of a corporation's internal environmental audits in civil, criminal, or administrative lawsuits. For example, if an energy corporation "fracking" for oil finds in an internal audit that it is poisoning groundwater, a person injured by that poisoned groundwater could not use the internal audit as evidence in a lawsuit. The Act establishes a procedure for obtaining the audit records for a criminal investigation. However, this is of little value in a civil lawsuit for personal injury: the state must have instituted criminal proceedings before a person brings their personal injury lawsuit, and even if some records are released in the course of those criminal proceedings, only records relevant to the criminal charges will be released (which may not necessarily be relevant to the civil lawsuit). The following states had laws similar to this one on their books as of early April 2004, according to the EPA (http://www.epa.gov/region5/enforcement/audit/article_auditlaws/intro.html): Alaska (Alaska Stat. §§ 09.25.450-490 (2002)), Colorado (Colo. Rev. Stat. §§ 13-25-126.5, 25-1-114.5 (2003)), Iowa (Iowa Code Ann §§ 455K.1 to -12 (2002)), Kansas (Kan. Stat. Ann. §§ 60-3332 to -3339 (2002)), Kentucky (Ky. Rev. Stat. Ann. §§ 224.01 to -040 (Banks-Baldwin 2003)), Michigan (Mich. Comp. Laws §§ 324.14801 -14809 (2003)), Minnesota (Minn. Stat. §§ 114C.20-31 (2003)), Mississippi (Miss. Code Ann §§ 49-2-71, 49-17-43, 49-17-427, 17-17-29 (2003)), Nebraska (Neb. Rev. Stat. §§ 25-21,254 -264 (2002)), Nevada (Nev. Rev. Stat. §§ 445C.020 -120 (2002)), New Jersey (N.J. Stat. Ann. §§ 13:1D-125 to -130 (2003)), Ohio (Ohio Rev. Code Ann. §§ 3745.70 -73 (West 2003)), Rhode Island (R.I. Gen. Laws §§ 42-17.8-1 to -4 (2002)), South Carolina (S.C. Code Ann. §§ 48-57-10 to -110 (2002)), South Dakota (S.D. Codified Laws §§ 1-40-33 to -37 (2003)), Texas (Tex. Rev. Civ. Stat. Ann. art. 4447cc (2001)), Utah (Utah Code Ann. §§ 19-7-101 to -109 (2002)), Virginia (Va. Code Ann. §§ 10.1-1198 to -1199 (2003)) and Wyoming (Wy. S. 1977 s 35-11-1105 to -1106 (West 2002)).

ALEC's Corporate Board —in recent past or present

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- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at www.SourceWatch.org.

See also Environmental Audit Privilege and Qualified Disclosure Act

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