



Texas Environmental, Health, and Safety Audit Privilege Act

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Overview of the Texas Environmental, Health, and Safety Audit Privilege Act:

What is the Audit Privilege Act?

Where can I find the Audit Privilege Act?

What guidance is available on the Audit Privilege Act?

What are the timeframes for conducting an Audit Privilege Act audit?

What submittals are required under the Audit Privilege Act and to whom should they be submitted?

Who can I contact for more information?

Texas Environmental, Health, and Safety Audit Privilege Act (“Audit Privilege Act”) History

Approved in 1995 by the 74th Texas Legislature through House Bill 2473;

Amended in 1997 by the 75th Texas Legislature through House Bill 3459;

**Amended in 2013 by the 83rd Texas Legislature through Senate Bill 1300
(verbiage added concerning pre-acquisition audits); and**

**In 2017 the 85th Texas Legislature passed Senate Bill 1488 which
codified the Audit Privilege Act in the Texas Health and Safety Code.**

What is the Texas Environmental, Health, and Safety Audit Privilege Act?

Purpose:

The purpose of the Audit Privilege Act is to encourage regulated entities to conduct voluntary audits to determine compliance with environmental, occupational, health, and safety laws. The Audit Privilege Act provides conditional immunity from administrative or civil penalties for certain violations discovered during the audit that are voluntarily disclosed, corrected within a reasonable amount of time, and meet all conditions of the Audit Privilege Act.

What is considered privileged or confidential under the Audit Privilege Act?

- A Notice of Audit or Disclosure of Violation will not be considered privileged or confidential under the Audit Act.
- Information required for a Disclosure of Violations (violation, citation, violation start and end dates, corrective-action plan, and corrective-action target completion date, etc.) is considered basic information required to be voluntarily disclosed in order for a person to claim immunity pursuant to Audit Privilege Act.

**Neither the privilege nor the immunity applies if an audit was conducted in bad faith, or if the person fails to take timely, appropriate action to achieve compliance, among other conditions.

Where can I find the Audit Privilege Act?

Texas Health & Safety Code

TITLE 13. ENVIRONMENTAL, HEALTH, AND SAFETY AUDIT PRIVILEGE ACT

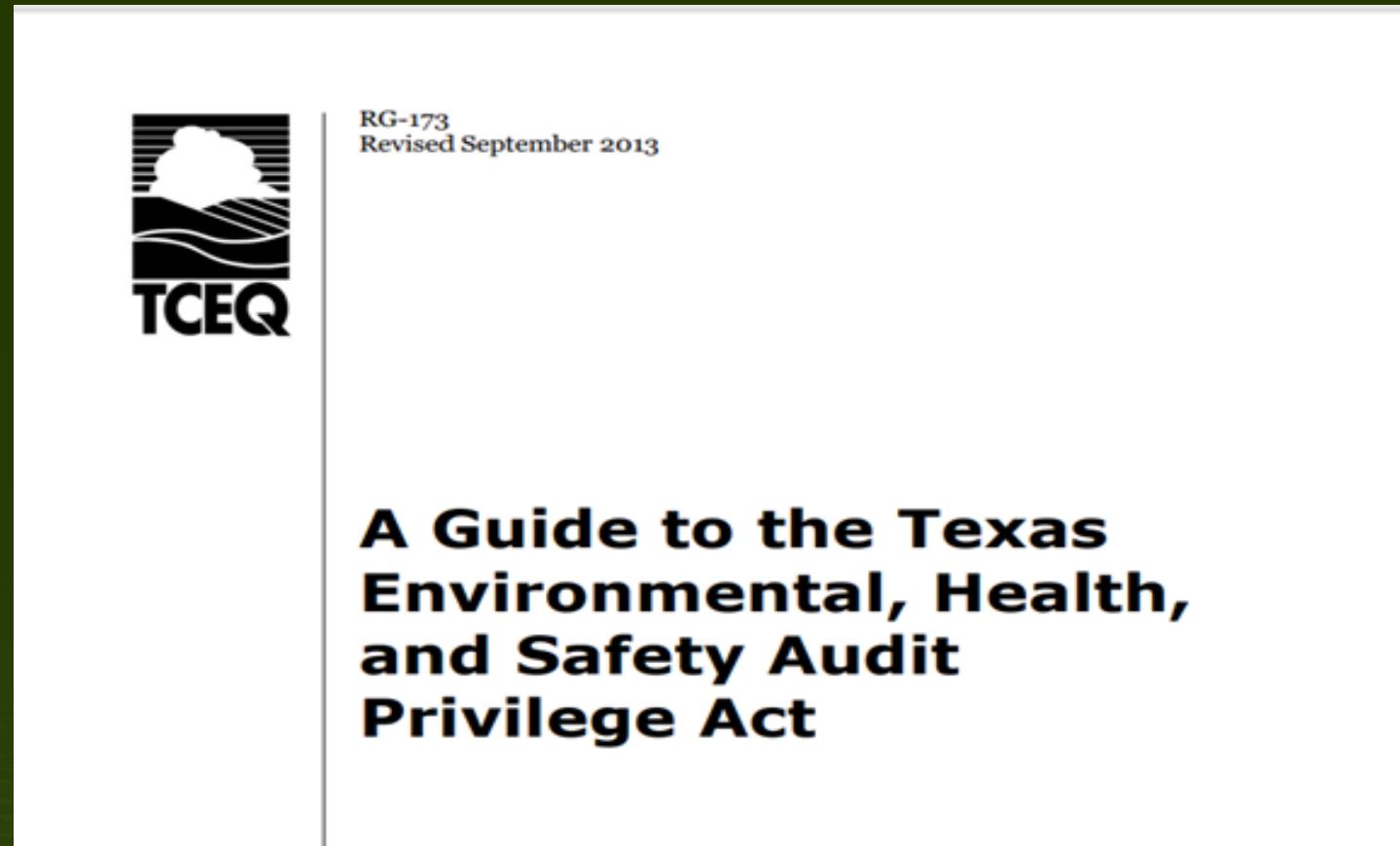
CHAPTER 1101. ENVIRONMENTAL, HEALTH, AND SAFETY AUDIT PRIVILEGE ACT

Sec. 1101.001. SHORT TITLE. This chapter may be cited as the Texas Environmental, Health, and Safety Audit Privilege Act.

<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.1101.htm>

RG-173: Audit Privilege Act guidance

<https://www.tceq.texas.gov/downloads/rules/publications/rg-173.pdf>



What are the timeframes for conducting an Audit Privilege Act audit?

Unless an extension is approved based on reasonable grounds, an audit must be completed within a reasonable amount of time not to exceed six months after the date the audit is initiated (or the acquisition closing date for pre-acquisition audits), per Tex. Health & Safety Code §1101.052

Example:

An audit with a start date of May 17, 2023 must be completed by November 16, 2023.

What submittals are required under the Audit Privilege Act?

- Notice of Audit (NOA) - Example provided in Appendix C of RG-173
- Extension requests - if needed, must be submitted prior to the NOA or DOV deadline
- Disclosure of Violations (DOV)- Example provided in Appendix D of RG-173

Notice of Audit (NOAs) Requirements for NOAs found in TH&SC § 1101.154

To take advantage of immunity provisions of the Audit Privilege Act, a NOA must be submitted in writing notifying the TCEQ that a company is planning to commence an environmental audit. The NOA must include:

- the legal name of the person to be audited, including its TCEQ customer reference number (CN);
- the physical location of the regulated facility or operation to be audited (address including city or town and county);
- a description of the facility or portion of the facility to be audited, including the applicable TCEQ permit number, registration number, regulated-entity reference number (RN);
- specific date and time the audit will commence (time, day, month, and year); and
- a general scope of the audit, with sufficient detail to enable a determination of whether subsequently discovered violations are included.

Notice of Audit (NOAs) Continued

- When you are drafting an NOA for submission, be sure to review the TCEQ's Central Registry database to ensure that you have identified the appropriate CN and RN for your audit.
<https://www15.tceq.texas.gov/crpdb/>
- While a person is not required to obtain a RN for a site, the person cannot receive compliance history benefits for conducting an environmental audit without a CN and RN; however, the person may be eligible for immunity.
- Note on pre-acquisition audits: Prior notice for conducting pre-acquisition audits is not required; however, if the new owner wants to continue the audit, notice that the audit will be continued must be submitted within 45 days after the acquisition closing date and must include a certification statement as detailed in the Audit Privilege Act.

Extension Requests Guidance found in RG-173

- The Audit Privilege Act explicitly limits the audit period to a reasonable amount of time not to exceed six months unless an extension is approved based on reasonable grounds.
- A person may submit a letter requesting an extension of the time period allowed for the completion of the audit investigation.
- Failure to submit a sufficient request could delay or prevent the approval of the extension before the expiration of the audit investigation.

Disclosure of Violations (DOVs)

Requirements found in TH&SC § 1101.151 and 152

Sec. 1101.151 IMMUNITY FOR VIOLATION VOLUNTARILY DISCLOSED (a) except as otherwise provided by this subchapter, a person that makes a voluntary disclosure of a violation of an environmental or health and safety law is immune from an administrative or civil penalty for the violation disclosed.

Sec. 1101.152. NATURE OF VOLUNTARY DISCLOSURE

(a) A disclosure is voluntary for purposes of this subchapter only if:

(1) the disclosure was made:

(A) promptly after knowledge of the information disclosed is obtained by the person making the disclosure; or

(B) not later than the 45th day after the acquisition closing date, if the violation was discovered during an audit conducted before the acquisition closing date by a person considering the acquisition of the regulated facility or operation;

Disclosure of Violations (DOVs) Continued

TH&SC § 1101.152

- (2) the disclosure was made in writing by certified mail to an agency that has regulatory authority with regard to the violation disclosed;
- (3) an investigation of the violation was not initiated or the violation was not independently detected by an agency with enforcement jurisdiction before the disclosure was made using certified mail;
- (4) the disclosure arises out of a voluntary environmental or health and safety audit;
- (5) the person making the disclosure initiates an appropriate effort to achieve compliance, pursues that effort with due diligence, and corrects the noncompliance within a reasonable time;
- (6) the person making the disclosure cooperates with the appropriate agency in connection with an investigation of the issues identified in the disclosure; and
- (7) the violation did not result in:
 - (A) injury or imminent and substantial risk of serious injury to one or more persons at the site; or

Disclosure of Violations (DOVs) Continued

TH&SC § 1101.152

(B) off-site substantial actual harm or imminent and substantial risk of harm to persons, property, or the environment.

(b) For a disclosure described by Subsection (a)(1)(B), the person making the disclosure must certify in the disclosure that before the acquisition closing date:

- (1) the person was not responsible for the environmental, health, or safety compliance at the regulated facility or operation that is subject to the disclosure;*
- (2) the person did not have the largest ownership share of the seller;*
- (3) the seller did not have the largest ownership share of the person; and*
- (4) the person and the seller did not have a common corporate parent or a common majority interest owner.*

(c) A disclosure is not voluntary for purposes of this subchapter if the disclosure is a report to a regulatory agency required solely by a specific condition of an enforcement order or decree.

Disclosure of Violations (DOVs)

What information is required in a DOV submittal?

Audit Information:

Name of the entity and facility being audited (CN/RN), the start date of audit, and the date of the NOA.

Violation Information for Each Disclosed Violation:

- Certified mail number (submitted via certified mail);
- Violation description;
- Citation and/or permit provision;
- Violation discovery date;
- Violation start date;
- Status (active/resolved);
- Corrective action plan, and
- Scheduled or target completion date.

Preferred Formatting for DOVs

Appendix G Model Addendum to Disclosure of Violation

Disclosure of Violation: Addendum

ABC Company

ABC Plant

RN123456789

Violation	Citation and Permit Provisions	Violation Discovery Date	Violation Start Date	Corrective Action Plan	Schedule or Target Completion Date	Violation Status Completion or Actual Completion Date
1. Failure to register for permit by rule to authorize surface-coating operations.	30 TAC § 106.433(9)	9/15/2013	4/23/2006	Submit Form PI-7 and obtain confirmation from the TCEQ that surface-coating operations are registered under permit by rule.	12/1/2013	Early completion: confirmation received 9/30/2013
2. Failure to properly label used-oil containers. Employees were not trained in labeling procedures.	30 TAC § 328.26(d)	9/15/2013	6/15/2007	All used-oil containers are now properly labeled and employee training regarding labeling procedures was	Complete	Used-oil containers labeled as of 9/20/2013

All Audit Privilege Act Correspondence Should be Submitted to:

A red and orange starburst graphic containing the word "NEW" in white, bold, sans-serif font.

NEW

Ms. Amy Settemeyer, MC 219
Deputy Director, Enforcement Division
Office of Compliance and Enforcement
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

A red and orange starburst graphic containing the word "NEW" in white, bold, sans-serif font.

NEW

With copies to:
TCEQ Regional Office Director

Questions and optional email copies can be submitted to:
ENFAUDIT@tceq.texas.gov

Important Things to Know and Keep in Mind

- Immunity cannot be granted for programs the TCEQ does not have enforcement authority over (Examples: GLO, DPS, or RRC rules; certain EPA programs: SPCC, RFG, RMP, CERCLA, EPCRA, PCBs, asbestos; or city permits) *note this list is not all inclusive.
- Conducting an Audit Privilege Act audit does not preclude you from being investigated by the TCEQ. Staff will continue with their work plan and will respond to duties as required by law and TCEQ policy.
- With regard to Title V violations, consideration for immunity from administrative and civil penalties afforded by the Audit Privilege Act is made on a case-by-case basis and granted only when violations are discovered during a voluntary environmental audit that exceeds the "reasonable inquiry" required by 40 Code of Federal Regulations § 70.5(d).
- This presentation is intended to provide a brief overview of the Audit Privilege Act. Please consult the Audit Privilege Act and RG 173 before conducting an audit and for additional information about privileged documents, burden of proof, identification of violations in a compliance history report, and exceptions to immunity.

Who can I contact for more information about
the Audit Privilege Act?
ENFAUDIT@tceq.texas.gov



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Questions?