## 324.14804 Request for disclosure by state or local law enforcement authorities; objection; petition; in camera hearing; determination by court; disclosure pending appeal.

Sec. 14804. (1) A request by state or local law enforcement authorities for disclosure of an environmental audit report shall be made by a written request delivered by certified mail or a demand by lawful subpoena. Within 30 business days after receipt of a request for disclosure or subpoena, the person asserting the privilege may make a written objection to the disclosure of the environmental audit report on the basis that the environmental audit report is privileged. Upon receipt of such an objection, the state or local law enforcement authorities may file with the circuit court, and serve upon the person, a petition requesting an in camera hearing on whether the environmental audit report or portions of the environmental audit report are privileged or subject to disclosure. The motion shall be brought in camera and under seal. The circuit court has jurisdiction over a petition filed under this subsection requesting a hearing. Failure of the person asserting the privilege to make an objection to disclosure waives the privilege as to that person.

(2) Upon the filing of a petition for an in camera hearing under subsection (1), the person asserting the privilege in response to a request for disclosure or subpoena under this section shall provide a copy of the environmental audit report to the court and shall demonstrate in the in camera hearing all of the following:

(a) The year the environmental audit report was prepared.

(b) The identity of the person conducting the audit.

(c) The name of the audited facility or facilities.

(d) A brief description of the portion or portions of the environmental audit report for which privilege is claimed.

(3) Upon the filing of a petition for an in camera hearing under subsection (1), the court shall issue an order under seal scheduling, within 45 days after the filing of the petition, an in camera hearing to determine whether the environmental audit report or portions of the environmental audit report are privileged or subject to disclosure. The counsel for the state or local law enforcement agency seeking disclosure of the information contained in the environmental audit report and the counsel for the person asserting the privilege shall participate in the in camera hearing but shall not disclose the contents of the environmental audit report for which privilege is claimed unless the court so orders.

(4) The court, after in camera review, shall require disclosure of material for which privilege is asserted, if the court determines that either of the following exists:

(a) The privilege is asserted for a fraudulent purpose.

(b) Even if subject to the privilege, the material shows evidence of noncompliance with state, federal, regional, or local environmental laws, permits, consent agreements, regulations, ordinances, or orders and the owner or operator failed to either take prompt corrective action or eliminate any violation of law identified during the environmental audit within a reasonable time, but not exceeding 3 years after discovery of the noncompliance or violation unless a longer period of time is set forth in a schedule of compliance in an order issued by the department of environmental quality, after notice in the department's calendar, and following the department's determination that acceptable progress is being made.

(5) The court, after in camera review, shall require disclosure of material for which privilege is asserted if the court determines that the material is not subject to the privilege.

(6) If the court determines under this section that the material is not privileged, but the party asserting the privilege files an application for leave to appeal of this finding, the material, motions, and pleadings shall be disclosed unless the court specifically determines that all or a portion of such information shall be kept under seal during the pendency of the appeal.

**History:** Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

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