
Wisconsin Legislative Council

ACT MEMO



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2021 Wisconsin Act 78 [2021 Senate Bill 151]

Environmental Compliance Audit Program

2021 Wisconsin Act 78 makes changes to the environmental audit compliance program, a program that defers civil enforcement and provides considerations regarding possible criminal prosecution if a regulated entity¹ voluntarily submits an environmental compliance audit report to the Department of Natural Resources (DNR) and satisfies certain other requirements. Specifically, the act does all of the following:

- Changes the time periods during which civil action is deferred and a regulated entity must correct environmental violations from 90 days to 60 days generally, to 180 days for small business stationary sources,² and to 360 days for small business stationary sources if a correction involves a pollution prevention modification.³
- Removes a requirement that a regulated entity notify DNR, no fewer than 30 days before beginning the audit, of the date on which the audit will begin, the site or facility or the operations or practices at a site or facility to be reviewed, and the general scope of the audit.
- Removes a requirement for a public notice and comment period regarding a proposed compliance schedule and any stipulated penalties resulting from an audit.
- Adds a new category to the list of considerations DNR and the Department of Justice (DOJ) must make when deciding whether to pursue a criminal action. Specifically, the act requires DNR and DOJ to consider whether a regulated entity is a small business stationary source with a “minor violation.”⁴

Effective date: August 8, 2021

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¹ In this context, a “regulated entity” is a public or private entity that is subject to environmental requirements under any of a broad range of specified state and local environmental regulations. [s. 299.85 (1) (f), Stats.]

² “Small business stationary source” means a stationary source that emits no more than 50, 75, or 100 tons of regulated pollutants per year, depending on the circumstances, and satisfies certain other criteria. [s. 285.79 (1), Stats.]

³ Although “pollution prevention modification” is not defined in the act, another section of ch. 299, Stats., defines “pollution prevention” to mean any action that: (a) prevents waste from being created; (b) reduces the amount of waste that is created; or (c) changes the nature of waste being created in a way that reduces the hazards to public health or the environment posed by the waste. [s. 299.13 (1) (dm), Stats.] Various federal statutes also refer to certain “pollution prevention” measures, including equipment modifications.

⁴ “Minor violation” means a rule violation voluntarily disclosed by an independently owned and operated business with 25 or fewer full-time employees, gross annual sales of less than \$5 million, and a history of compliance, if the violation does not cause serious harm to the public, is not willful, and is not likely to be repeated. [s. 227.04 (a), Stats.]