

Take the Offensive: Self-Policing Environmental Audit Programs Help Limit Your Liability

SCS ENGINEERS

By Tony Kollasch

As part of a more cooperative approach between industry and regulators, some federal and state programs encourage firms to monitor their own regulatory compliance and voluntarily report violations. In return, the programs generally limit the liability for organizations that are making a good faith effort to investigate and correct violations.

If you are ‘taking the offensive’ on your environmental responsibilities, there are a few things you should know in advance. Some regulations are enforced only at the federal level by the Environmental Protection Agency (EPA). Among these are elements of the Emergency Planning and Community Right-to-Know Act (EPCRA). This includes the Toxic Release Inventory (TRI) and certain releases of extremely hazardous substances into the environment. Some regulations are found only at the state level. For instance, if you have a minor source air permit issued by your state, non-compliance with that permit would be reported only to the state and not to EPA.

EPA Programs

Audit Policy

EPA’s Audit Policy, Incentives for Self-Policing: *Discovery, Disclosure, Correction and Prevention of Violations* safeguards human health and the environment by providing incentives for regulated entities to come into compliance with the federal environmental laws and regulations. The Audit Policy reflects the input of industry, trade associations, state environmental program practitioners, and public interest groups.

The policy was designed to provide major incentives for regulated entities that voluntarily discover, promptly disclose, and expeditiously correct non-compliance. Incentives include reduced or eliminated gravity-based penalties, as well as not recommending criminal prosecution provided certain conditions are met.

Facilities report through the eDisclosure portal at EPA’s Central Data Exchange (CDX). There are no advance agreements needed when self-reporting through eDisclosure.

Small Business Compliance Policy

Additional incentives are available to small businesses, those with 100 or fewer employees. Furthermore, the EPA has resources available to help small businesses learn about environmental compliance. Small businesses can take advantage of the [resources information sheet](#) with links to a variety of guides, services, and assistance programs. Self-disclosure for small businesses utilizes eDisclosure.

New Owner Audit Policy

A tailored audit policy provides incentives for new owners that want to make a “clean start” with their newly acquired facilities. New owners cannot be responsible for any of the compliance issues that occurred prior to acquiring the facility and must enter into an audit agreement within nine months of closing the ownership transaction. Unlike large businesses taking advantage of the Audit Policy and small businesses utilizing the Small Business Compliance Policy, new owners must first enter into an agreement with EPA and will not report violations using CDX.

Wisconsin Program

Enviro-Check

Wisconsin Department of Natural Resources (WDNR) has updated its audit policy called [Enviro-Check](#), with similar benefits and framework. There are four steps to participate in the Enviro-Check program:

- Step 1 – Notify WDNR (30 days before audit)
- Step 2 – Conduct Audit (within 365 days of application submittal)
- Step 3 – Submit Report (within 45 days of completing the audit)
- Step 4 – Take Corrective Action (within 90 days of report)

As described above, the benefits of the new Program are that a facility who is operating in good faith can limit its liability for violations that it can correct. These situations happen on facilities inherited during consolidations and properties where historic operations were completed by other parties. Even the most diligent companies can find issues on newly acquired facilities and these programs allow owners to correct them while protecting their liability related to identifying the issues.

Need Help Getting Started?

You can use these additional resources to learn more about self-policing programs, or contact SCS Engineers to discuss options.

1. <https://www.epa.gov/compliance/epas-audit-policy#incentives>
2. <https://dnr.wi.gov/topic/EnviroCheck/>
3. <https://www.epa.gov/agriculture>

For more information, contact Tony Kollasch tkollasch@scsengineers.com or Mark Hammers mhammers@scsengineers.com in Madison, WI. Tony Kollasch has 20+ years of experience helping industrial, commercial, utility, state, municipal, and agricultural companies with environmental compliance services. Mark Hammer has 5+ years of experience as an engineer in the environmental field. His areas of expertise include regulatory compliance, sustainable practices, and chemical management. 🌱

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