

Take the Offensive – Self-Policing Environmental Audit Programs



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As part of a more cooperative approach between industry and regulators, some federal and state programs have been developed to encourage firms to monitor their own regulatory compliance and voluntarily report violations. In return, the programs generally limit the liability for organizations who 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

“Programs limit the liability for organizations who are making a good faith effort to investigate and correct 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 noncompliance. Incentives include reduced or eliminated gravity-based penalties as well as not recommending criminal prosecution provided certain conditions are met.

Audit Policy

EPA’s Audit Policy, *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*,

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 (found at <https://tinyurl.com/rbulm9u>) 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.

State Programs

Some states have enacted environmental audit privilege and/or penalty immunity laws as well. In particular, we discuss Illinois, Indiana, and Wisconsin. If your state has a policy, you can self-report on violations of state regulations.

Illinois

The Illinois Environmental Protection Agency (IEPA) has no unique state program and adopts the EPA’s program.

Indiana

The Indiana Department of Environmental Management’s (IDEM’s) Self-Disclosure and Environmental Audit Policy provides a number of additional incentives to regulated entities for closely examining their operations and facilities. The Compliance and Technical Assistance Program (CTAP) can provide confidential assistance to answer your questions about the audit policy and process.

Continued on page 14

Continued from page 13

Wisconsin

Wisconsin Department of Natural Resources (WDNR) has updated its audit policy called Enviro-Check. 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)

Additional Resources:

1. <https://www.epa.gov/compliance/epas-audit-policy#incentives>
2. <https://www.in.gov/idem/ctap/2481.htm>
3. <https://dnr.wi.gov/topic/EnviroCheck/>

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