

US EPA ARCHIVE DOCUMENT

# Summary of EPA's Audit Policy





# EPA Compliance Assurance

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- EPA (OECA) is responsible for maximizing compliance to a universe of over 40 million regulated entities using:
  - 10 federal environmental statutes dealing with prevention and control of pollution, and
  - 28 distinct federal programs under those statutes.
  
- To conduct the work necessary for the 28 programs, OECA utilizes 4 primary tools to pursue compliance, thereby achieving cleaner air, purer water and better-protected lands.
  - Compliance Assistance
  - *Compliance Incentives*
  - Compliance Monitoring
  - Enforcement

# EPA's Audit Policy: Purpose and History

- The purpose of EPA's Audit Policy is to encourage regulated entities to...
  - *voluntarily discover,*
  - *disclose,* ...of federal environmental requirements.
  - *correct, and*
  - *prevent violations*
  
- The Audit Policy is technically known as "*Incentives for Self Policing: Discovery, Disclosure, Correction, and Prevention of Violations*"
  
- Original Policy
  - 60 FR 66706 - Effective January 22, 1996
- Revised Policy
  - 65 FR 19,617 - Effective May 11, 2000
  - [www.epa.gov/compliance/incentives/auditing/auditpolicy.html](http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html)

# Summary of Incentives under EPA's Audit Policy

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- **No routine requests for audit reports**
- **No recommendation for criminal prosecution**
- **Penalty mitigation**

# Audit Policy: Penalty Mitigation

- Civil penalties under the environmental laws generally have 2 components:
  - an amount assessed based upon the severity or "*gravity*" of the violation, and
  - the amount of *economic benefit* a violator received from failing to comply with the law.
  
- Under the Audit Policy,
  - No gravity-based penalties (i.e., *100% gravity-based mitigation*) if all nine of the Policy's conditions are met.
    - EPA retains its discretion to collect any economic benefit that may have been realized as a result of non-compliance.
  - Under the Audit Policy, a *reduction of gravity-based penalties by 75%* where the disclosing entity meets all of the Policy's conditions except detection of the violation through a systematic discovery process.

Condition Number	Short-Hand Summary of Audit Policy Conditions
1	<b><u>Systematic Discovery</u></b> of the violation through an environmental audit or a compliance management system.
2	<b><u>Voluntary Discovery</u></b> , in other words it is not through a legally required monitoring, sampling or auditing procedure.
3	<b><u>Prompt Disclosure</u></b> in writing to EPA within 21 days of discovery or any shorter time required by law.
4	<b><u>Independent Discovery and Disclosure.</u></b>
5	<b><u>Correction and Remediation</u></b> within 60 days, in most cases, from date of discovery.
6	<b><u>Prevent recurrence of a violation.</u></b>
7	<b><u>Repeat violations</u></b> are not eligible for mitigation under the Audit Policy.
8	<b><u>Certain violations are not eligible.</u></b>
9	<b><u>Cooperation</u></b> by the disclosing entity is required.

# What are the Nine Conditions of the Audit Policy?

1. **Systematic Discovery** of the violation through an environmental audit or a compliance management system.
  - If the violation was discovered through an environmental audit or a compliance management system, then systematic discovery likely occurred. NOTE: A 75% penalty reduction is available where the disclosing entity meets all of the Audit Policy's conditions except detection of the violation through a systematic discovery process.





## Conditions of Policy *continued*

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2. **Voluntary Discovery**, in other words it is not through a legally required monitoring, sampling or auditing procedure.



## Conditions of Policy *continued*

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- 3. Prompt Disclosure** in writing to EPA within 21 days of discovery or any shorter time required by law. Discovery occurs when any officer, director, employee or agent of the facility has an objectively reasonable basis for believing that a violation has or may have occurred.



## Conditions of Policy *continued*

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4. **Independent Discovery and Disclosure**, before EPA likely would have identified the violation through its own investigation or based on information from a third party.



## Conditions of Policy *continued*

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- 5. Correction and Remediation** within 60 days, in most cases, from date of discovery.



## Conditions of Policy *continued*

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6. Prevent recurrence of a violation.



## Conditions of Policy *continued*

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- 7. Repeat violations** are not eligible for mitigation under the Audit Policy. In other words, the same or closely related violations that occurred within the past 3 years at the same facility or as part of a pattern of violations within the past 5 years at facilities owned or operated by the same entity are not eligible.



## Conditions of Policy *continued*

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8. **Certain violations are not eligible**: Those that result in serious actual harm; that may have presented an imminent and substantial endangerment; or that violate specific terms of an Administrative or Judicial Order or Consent Agreement.
  
9. **Cooperation** by the disclosing entity is required.



# Corporate Audit Agreements

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- An audit agreement is an effective mechanism for resolving a broad range and number of corporate-wide violations discovered during environmental audits pursued for use with EPA's Audit Policy.
- An audit agreement is an optimal compliance tool for companies with facilities located in more than one location to ensure that the disclosures are processed on the same schedule and with one point of contact in the Agency.
- The audits addressed in an agreement can range from ones that address a specific regulatory requirement to those that involve a comprehensive multi-media review.



# Corporate Audit Agreements

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- An audit agreement is designed to address potentially high-volume disclosures.
- An audit agreement allows regulated entities to plan a facility-wide audit with an advance understanding with EPA regarding schedules and disclosures.
- Key benefit is extended schedule for disclosures beyond the 21-day requirement for routine disclosures.

# Audit Tool – Audit Protocols

- Developed by EPA to assist entities in developing compliance audits.
- Provide detailed regulatory checklists in easy to understand question format.
- Protocols cover: CERCLA, CWA, EPCRA, FIFRA, RCRA, TSCA, SDWA.
  - <http://cfpub.epa.gov/compliance/resources/policies/incentives/auditing/>



## Protocol for Conducting Environmental Compliance Audits for Hazardous Waste Generators under RCRA



EPA Office of Compliance



## Voluntary Disclosure History

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- Over the past eight years, 2,438 disclosures under the Audit Policy have been received and settled nationally. These disclosures covered 4,424 facilities.
- During this same period, EPA Region 4 received and processed 348 disclosures, covering 528 facilities.

# How do You Make a Disclosure under the EPA Audit Policy?

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- **Contact the EPA Region where the entity or facility is located. For Region 4, disclosures should be mailed to:**
  - **Kelly Sisario, Chief  
Enforcement & Compliance  
Planning & Analysis Branch  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303**

# How to Make a Disclosure... *continued*

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- **Where *multiple Regions* are involved, contact EPA HQ.**
  - **Leslie Jones, EPA Headquarters  
(202) 564 - 5123**
  
- ***For criminal violations*, contact: Regional Criminal Investigation Division, EPA HQ, or U.S. Department of Justice.**
  - **James T. ("J.T.") Morgan, EPA HQ  
Criminal Investigations Division  
(202) 564 - 7684**

# What is EPA Region 4's Process for Audit Disclosures?

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- Letter acknowledging receipt of disclosure within 30 days of submitting disclosure.
  
- EPA review includes:
  - > Determine if disclosure meets nine criteria of Policy.
  - > Request additional information, if needed.
  - > Determine whether penalty mitigation is appropriate.

# For More Information - Contact:

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- **Kelly Sisario, EPA Region 4**
  - Branch Chief, Enforcement and Compliance Planning Branch
  - (404) 562 – 9054
  
- **Wesley Hardegree, EPA Region 4**
  - Compliance Assistance Coordinator
  - (404) 562 – 9629
  
- **Paul Schwartz, EPA Region 4,**
  - Lead Attorney on Audit Policy
  - (404) 562 – 9576