

**Environmental Auditing Since EPA's 1986 Audit Policy**

by

Bertram C. Frey, Deputy Regional Counsel, EPA Region 5 and  
Karry A. Johnson, Extern, EPA Region 5.

COPYRIGHT © 2000. All rights reserved by the copyright owners.

**Environmental Auditing Since EPA's 1986 Policy**

**Bertram C. Frey and Karry A. Johnson\***

Environmental auditing has become an important tool for achieving and maintaining compliance with pollution control standards. Generally defined as a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements,<sup>1</sup> an environmental audit may have various purposes: it may verify compliance with environmental requirements, evaluate the effectiveness of environmental management systems (EMS) already in place, or assess risks from regulated and unregulated materials and practices.<sup>2</sup>

A primary purpose of auditing is to help improve the effectiveness of basic environmental management by verifying that management practices are functioning and

---

\* Bertram C. Frey, B.A. Haverford College (1969), J.D. Washington University School of Law (1974). Mr. Frey is Deputy Regional Counsel for EPA Region 5, Chicago. Karry A. Johnson, B.S. Black Hills State University (1997), J.D. candidate University of South Dakota School of Law. Ms. Johnson served as a summer extern with EPA Region 5. Any opinions expressed in this article are those of the authors and do not represent an endorsement of any point of view by the Environmental Protection Agency or the Environmental Law Institute. By citing World Wide Web site links, the authors make no representation or endorsement, express or implied, concerning an individual link or the content within it.

adequate. Environmental audits evaluate direct compliance activities such as obtaining permits, installing controls, monitoring compliance, reporting violations, and keeping records. It is

---

<sup>1</sup> Environmental Auditing Policy Statement, 51 Fed. Reg. 25,003, 25,006 (1986), [hereinafter 1986 Policy]. The International Organization for Standardization (ISO) has in effect adopted EPA's definition of environmental auditing (*Compare* 1986 Policy at 25,004, 25,006-07 *with* ISO 14010). The ISO 14000 series establishes internationally-accepted standards for environmental management. While laws, regulations, and compliance requirements vary from country to country, the ISO 14000 series of standards provide, *inter alia*, common standards for environmental auditing and management systems. For more information on ISO and the ISO 14000 series of standards, see <<http://www.iso.ch/>>.

<sup>2</sup> 1986 Policy at 25,006.

important to note that auditing does not in any way serve as a substitute for compliance activities, nor does it replace regulatory agency inspections.

Audits can be conducted by independent internal or third party auditors. Larger organizations generally have greater resources to devote to an internal auditing team, while smaller entities are more likely to use outside auditors.

The federal environmental laws do not require a regulated facility to have an auditing program. Ultimate responsibility for environmental compliance, however, lies with the top management, who has a strong incentive to use means such as auditing to secure reliable information on a facility's compliance history and status. Environmental auditing has developed for sound business reasons, particularly to help regulated entities manage pollution control affirmatively over time instead of reacting to crises. Auditing can result in improved environmental performance. Auditing can also help communicate effective solutions to common environmental problems, bring attention to upcoming regulatory requirements, and generate protocols and checklists which help facilities better manage themselves.

This article reviews how the United States Environmental Protection Agency (EPA) has defined, treated, encouraged and provided incentives for environmental auditing in its policies and practices. The article also briefly addresses how the Department of Justice (DOJ) gives consideration to auditing in criminal prosecutions. In addition, the article reviews how audits have been negotiated or required as conditions of enforcement settlements, criminal sanctions and "delisting" determinations. Next, the article discusses: 1) how state laws have treated environmental auditing under the common law and under recently enacted environmental audit

privilege and/or immunity statutes, 2) how EPA has responded to the new laws, and 3) how the new laws have impacted, or not, the level of audit activity. Finally, the article addresses the incentives offered by EPA's 1995 Self-Policing Policy,<sup>3</sup> sets forth the conditions that must be met in order to qualify for the incentives offered, reviews how the 1995 Policy is being implemented, and covers recently announced, proposed revisions to the 1995 Policy. The article basically proceeds chronologically, beginning with the 1986 Policy and ending with the proposed revisions to the 1995 Self-Policing Policy.

### **EPA's 1986 Audit Policy**

It is EPA policy to encourage the use of environmental auditing by regulated entities to help achieve and maintain compliance with environmental laws and regulations, as well as to help identify and correct unregulated environmental hazards. Recognizing that voluntary auditing programs can result in better identification, resolution, or avoidance of environmental problems, EPA first issued an audit policy in July 1986. This policy statement specifically: 1) encourages regulated entities to develop, implement and upgrade environmental auditing programs; 2) discusses when the Agency may or may not request audit reports; 3) explains how EPA's inspections and enforcement activities may respond to regulated entities' efforts to assure compliance through auditing; 4) endorses environmental auditing at federal facilities; 5)

---

<sup>3</sup> Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 60 Fed. Reg. 66,705 (1995) [hereinafter 1995 Policy]. Also available at <[http://www.epa.gov/region5/orc/audits/audit\\_resources.htm](http://www.epa.gov/region5/orc/audits/audit_resources.htm)>. The 1995 Policy applies to the assessment of penalties for any violations under all of the federal environmental statutes that EPA administers, and supercedes any inconsistent provisions in media-specific penalty or enforcement policies and EPA's 1986 Environmental Auditing Policy Statement. To the extent that existing EPA enforcement policies are not inconsistent, they will continue to apply in conjunction with this policy. 1995 Policy at 66,712.

encourages state and local environmental auditing initiatives; and 6) outlines elements of effective auditing programs.<sup>4</sup>

EPA has broad statutory authority to request relevant information on the environmental compliance status of regulated entities.<sup>5</sup> Nevertheless, EPA believes routine Agency requests for audit reports could inhibit auditing in the long run, decreasing both the quantity and the quality of audits conducted.<sup>6</sup> EPA therefore does not routinely request environmental audit reports.<sup>7</sup> But EPA and state and local environmental protection agencies may seek audit reports during investigations that precede an enforcement action. Private groups, including citizens environmental groups, may also seek disclosure during discovery in citizen suits and toxic tort litigation.

EPA will not promise to forgo inspections, reduce enforcement responses, or offer other incentives in exchange for implementation of environmental auditing or other sound environmental management practices. Although environmental audits may complement inspections by providing self-assessment to assure compliance, they are in no way a substitute for regulatory oversight. In addition, certain EPA programs like the Resource Conservation and Recovery Act (RCRA) require minimum facility inspection frequencies, to which not only EPA

---

<sup>4</sup> 1986 Policy at 25,004.

<sup>5</sup> *E.g.*, Clean Water Act Section 308, 33 U.S.C. §1318; Clean Air Act Section 114, 42 U.S.C. §7414; Resource Conservation and Recovery Act Section 3007, 42 U.S.C. § 6927.

<sup>6</sup> 1986 Policy at 25,007.

<sup>7</sup> *Id.*

and the states but also owners and operators of regulated facilities must adhere.<sup>8</sup>

While EPA inspections of self-audited facilities will continue, to the extent that compliance performance is considered in setting inspection priorities, facilities with a good compliance history may be subject to fewer inspections. Moreover, in fashioning enforcement responses to violations, it is EPA policy to take into account, on a case by case basis, the honest and genuine efforts of regulated entities to avoid and promptly correct violations and underlying environmental problems.<sup>9</sup> When regulated entities take reasonable precautions to avoid noncompliance, expeditiously correct underlying environmental problems discovered through audits or other means, and implement measures to prevent their recurrence, EPA may exercise its discretion to consider those actions as honest and genuine efforts to assure compliance.<sup>10</sup> Such consideration applies particularly when a regulated entity promptly reports violations or compliance data which otherwise were not required to be recorded or reported to EPA.<sup>11</sup>

Nonetheless, it is fair to observe that EPA and DOJ have protected prosecutorial discretion first, leaving the fate of audit reports with individual enforcement and prosecution teams or circumstances. The 1986 Policy (as well as the 1995 Policy) expressly reserves EPA's right to request audit summaries or reports on a case-by-case basis whenever: 1) audits are conducted under consent decrees or other settlement agreements requiring them, 2) a company

---

<sup>8</sup> Compare 42 U.S.C. § 6927(e) with 42 U.S.C. § 6924(a)(2) and 40 C.F.R. § 264.15.

<sup>9</sup> 1986 Policy at 25,007.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

has asserted its environmental management practices in mitigation or as a defense, or 3) state-of-mind or intent is a relevant element of inquiry, such as during a criminal investigation or as to the gravity of a civil penalty.<sup>12</sup>

While the 1986 Policy remains in effect, some provisions have been superceded by the 1995 Policy.<sup>13</sup> The provisions of the 1995 Policy and the proposed revisions to it will be discussed in detail later.

### **Audits Under the Department of Justice’s Policy Regarding Criminal Prosecutions**

DOJ’s July 1, 1991 policy entitled, “Factors in Decisions on Criminal Prosecutions For Environmental Violations in the Context of Significant Voluntary Compliance or Disclosure Efforts By the Violator,” accords limited consideration to environmental audits. It states that in determining whether to prosecute, DOJ attorneys should consider if the target has made “voluntary, timely and complete disclosure.” The policy offers a range of examples of such cooperation, most of which have the effect of throwing the target on the mercy of the prosecutor in order to protect it from prosecution. This strategy has worked in a number of instances to prevent a criminal prosecution, but the quid pro quo has almost always been a comprehensive and expensive civil settlement. Indeed, many of EPA’s most far-reaching, multi-facility, company-wide, judicial consent decrees have had elements of this settlement dynamic.

### **Audit Provisions as Conditions of Enforcement Settlements, Criminal Sanctions, or “Delisting”**

EPA’s February 1991 “Policy on the Use of Supplemental Environmental Projects in

---

<sup>12</sup> *Id.* at 25,007-08; 1995 Policy at 66,708-09, 66,711-12.

<sup>13</sup> 1995 Policy at 66,712; see *supra* note 3.

EPA Settlements” (most recently updated effective May 1, 1998)<sup>14</sup> clearly recognizes that certain types of environmental auditing projects will qualify to reduce the gravity amount of a civil penalty in settlement with the agency. Audits that could be required as injunctive relief, however, are not acceptable. Nevertheless, an audit project may be considered by EPA if the defendant/respondent undertakes qualifying pollution prevention assessments, environmental quality assessments or compliance audits. The company must agree to provide EPA with a copy of the audit report. Usually, the company must also agree that after conducting the audit, it will correct the problems, both with respect to management and environmental practices, uncovered by the audit. In general, compliance audits are acceptable as SEPs only when the defendant/respondent is a small business or community.<sup>15</sup>

To date, the DOJ and EPA have negotiated over 150 federal court consent decrees requiring environmental auditing. The consent decrees vary from a mere mention of auditing<sup>16</sup> to setting out the procedures to be taken in exacting detail.<sup>17</sup> The auditing provisions from a

---

<sup>14</sup> Memo from James M. Strock, Assistant Administrator, to Regional Administrators, Deputy Regional Administrators, Regional Counsels, Regional Program Division Directors, Assistant Administrators, General Counsels, Program Compliance Directors and Associate Enforcement Counsels, February 12, 1991. The SEP policy was most recently updated effective May 1, 1998. <<http://www.epa.gov/oeca/sep/sepfinal.html>>.

<sup>15</sup> *Id.*, May 1, 1998 update, at D.5.

<sup>16</sup> More than 50 federal consent decrees make references to environmental auditing, but in not enough detail to be summarized in the tables accompanying this article. Several state court orders and two Canadian provincial court orders also require auditing. In addition, there has recently been a plea agreement in a *United States v. B.P. Exploration (Alaska), Inc.*, District Court of Alaska, dated September 23, 1999, which requires audits of their environmental management systems. See *infra* endnote 1.

<sup>17</sup> See tables at the end of this article. In addition to the cases in the tables, EPA has entered into informal agreements where the requirements to do audits are not contained within



number of federal court consent decrees, as well as some EPA administrative orders, are summarized in the tables that accompany this article. The tables categorize the types of provisions contained in the settlement documents for easy reference and comparison. The decrees and orders delineate the type of audit to be performed (e.g., field audit, lab audit, facility audit, and/or compliance audit) and whether or not the entity must file reports as part of the audit. Some consent decrees require an audit of a company's environmental management system. Almost all decrees require reporting to governmental agencies of audit results. Superfund orders and decrees comprise about half of the items in the tables. Almost all of the Superfund orders or decrees require audits of laboratories that analyze samples of hazardous substances and field audits of sampling procedures and techniques at Superfund sites. Orders and decrees under EPA's other programs in the tables generally require compliance audits at specific facilities. A few settlements require that the company pay stipulated penalties for redress of violations uncovered in an audit.<sup>18</sup> The frequency of the audit(s) is sometimes specified, but often left to the entity's discretion. The tables also analyze whether the order or decree requires an entity to

---

judicial or administrative orders, but nonetheless the companies have agreed to perform audits and disclose results. *E.g.*, Arizona Chemical Company, December 1998.

<sup>18</sup> *E.g.*, *U.S. v. Darling International, Inc.*, C.V. No. 97-1611 (D. Minn., order entered September 12, 1997); *U.S. v. Rhone-Poulenc Ag. Co., and Union Carbide Chemical and Plastics Co., Inc.*, C.V. No. 2:90-0929 (S.D. W.Va., order entered December 19, 1991); *U.S. and Natural Resources Defense Council v. Wheeling-Pittsburgh Steel Corp. (Allenport Facility)*, C.V. No. 89-237 S (W.D. Pa., order entered November 4, 1992). Other consent decrees require the payment of stipulated penalties for the violation of auditing provisions or of the audit work plan, but not for the violations themselves discovered under such provisions or work plan. *E.g.*, *U.S. v. E.I. Dupont de Nemours & Co. (Chamber Works)*, C.V. No. 91-768 (D. N.J., order entered May 21, 1991); *U.S. v. Grumman St. Augustine Corp.*, C.V. No. 91-141-CIV-J-16 (M.D. Fla., order entered July 20, 1993); *U.S. v. New Haven Foundry, Inc.*, C.V. No. 97-71842 (E.D. Mich., order entered June 23, 1997).

implement an environmental management system and, if so, whether auditing was required as a component of that system. In addition, approximately 15 consent decrees require audits of an existing environmental management system. Finally, the tables list whether an audit is to be performed as part of a Supplemental Environmental Project (SEP).<sup>19</sup>

Generally, neither the EPA general civil penalty policy<sup>20</sup> nor the various program-specific civil penalty policies<sup>21</sup> directly address the issue of environmental auditing. One exception is the TSCA program, which, in its penalty policies,<sup>22</sup> has considered self-confession and environmental auditing in mitigating penalties. Nevertheless, prior to the 1995 Policy where consideration of environmental auditing in mitigating penalties has occurred under a program-specific penalty policy, it has almost always been on a case by case basis using the SEP policy as justification.<sup>23</sup>

EPA's July 24, 1992 guidance entitled, "Procedures To Implement the Guidelines of the U. S. Sentencing Commission for Organization Defendants,"<sup>24</sup> addresses the use of

---

<sup>19</sup> See tables at end of this article.

<sup>20</sup> "New Civil Penalty Policy," Memo from Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring to Associate Administrators, Assistant Administrators, General Counsels, Inspector General, Regional Administrators and Staff Office Directors, February 16, 1984.

<sup>21</sup> *E.g.*, "A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties," February 16, 1984.

<sup>22</sup> TSCA Civil Penalty Policy, 45 Fed. Reg. 59,770 (1980); "Polychlorinated Biphenyls (PCB) Penalty Policy," April 9, 1990.

<sup>23</sup> See *supra* note 3.

<sup>24</sup> Memo from Herbert H. Tate, Jr., Assistant Administrator for Enforcement, to Regional Administrators, Deputy Regional Administrators, and Regional Counsels, July 24, 1992.

environmental auditing in sentencing. Auditing can be imposed as a condition of probation. The Sentencing Guidelines themselves, which expand the use of remedial orders as conditions of probation, contain explicit provisions for the imposition of measures that can be characterized as auditing at Section 8D1.4(c).<sup>25</sup> Also, a sentencing court can take into consideration the existence of an effectively functioning environmental auditing program in imposing a sentence.<sup>26</sup>

In addition, EPA's October 31, 1991 policy regarding the role of corporate attitude, policies, practices, and procedures in determining whether to remove a facility from the EPA list of violating facilities following a criminal conviction<sup>27</sup> offers further guidance on the use of environmental audits. As a practical matter, the policy requires a corporation that desires to be removed from the list of violating facilities ("delisted") to create and implement an effective compliance and auditing program, including a program to take expeditious steps to correct violations, once identified.<sup>28</sup>

### **Common Law Privileges and Environmental Audit Privilege and/or Immunity Statutes that Protect Audit Information**

A number of commentators on environmental auditing have written of the balance that must be struck between the public interest in uncovering environmental violations and the

---

<sup>25</sup> United States Sentencing Commission Guidelines, §8D1.4(c). The guidelines are at <<http://www.ussc.gov/>>.

<sup>26</sup> Memo from Herbert H. Tate, Jr., *supra* note 24, at 5 (referring to 52 [sic] Fed. Reg. 64,785).

<sup>27</sup> EPA Policies Regarding the Role of Corporate Attitude, Policies, Practices, and Procedures, in Determining Whether to Remove a Facility from EPA List of Violating Facilities, 56 Fed. Reg. 64,785 (1991).

<sup>28</sup> *Id.* at 64,789.

competing interest of fostering an environment in which business and industry are encouraged to monitor and correct environmental problems.<sup>29</sup> The oldest of the privileges protecting confidential communications is the attorney-client privilege. That privilege has been narrowly construed by the courts and does not protect facts about a company's environmental management practices and compliance status uncovered by an environmental audit.<sup>30</sup> Similarly, neither the attorney work-product privilege nor the "self-evaluative" privilege will protect factual material disclosed in an audit report.<sup>31</sup>

In July of 1993, however, Oregon enacted the first statute in the nation that codifies a self-evaluative privilege for environmental audits. The new privilege bears some similarity to provisions in the Federal Rules of Evidence and many state evidence codes that prohibit the use of evidence of subsequent remedial measures to establish a party's negligence.

As of August 1999, 24 states have adopted some form of environmental audit privilege and/or penalty immunity law.<sup>32</sup> Audit privilege laws generally protect environmental information

---

<sup>29</sup> Compare McLeod, Douglas P. and Kirk R. Marty, *Can You Afford to Perform an Environmental Audit?*, 5<sup>th</sup> Update (1998), with Rosemarin, Carey S. and Gary W. Ballesteros, *Audits Good Even Though State Law and Federal Policy Differ*, Chicago Lawyer, June 1995. Both articles, as well as a number of others, can be found at [http://www.epa.gov/region5/orc/audits/audit\\_articles.htm](http://www.epa.gov/region5/orc/audits/audit_articles.htm).

<sup>30</sup> *National Labor Relations Board v. Harvey*, 349 F. 2d. 900, 906 (1965); see *U.S. v. Nixon*, 418 U.S. 683, 709-10 (1974); *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981); see also McLeod, Douglas P. and Kirk R. Marty, *supra* note 29, at 1-2.

<sup>31</sup> *Stout v. Illinois Farmers Ins. Co.*, 852 F. Supp. 704 (1994); *Solarex Corp. v. Arco Solar, Inc.*, 121 F.R.D. 163 (1988); but see *Reichhold Chemicals, Inc. v. Textron, Inc.*, 157 F.R.D. 522, 524 (Florida 1994).

<sup>32</sup> **Privilege and Immunity:** Colorado (Colo. Rev. Stat.,13-25-126.5, 25-1-114.5 (1994)), Kentucky (Ky. Rev. Stat. Ann., 224.01-040 (1994)), Minnesota (Minn. Stat. Ann., 114C.20 *et seq.* (1995)), Wyoming (Wyo. Stat. 35-11-1105 *et seq.* (1995)), Utah (Utah Code Ann., 19-7-101

related to an audit from disclosure to the public or regulatory agencies and prohibit the use of the information in judicial or administrative proceedings, including enforcement settlements.<sup>33</sup> Audit immunity laws typically provide immunity from penalties for violations discovered during an audit and reported to a regulatory agency.<sup>34</sup> Proponents of audit privilege and/or immunity laws suggest that the laws are needed to encourage companies that do not currently audit to begin to do so; to encourage more auditing by companies that already audit; and for immunity laws, to encourage disclosure and prompt correction of environmental violations.<sup>35</sup>

EPA has consistently opposed such laws because of their effect on public access to information and on the states' ability to enforce regulations to protect human health and the

---

*et seq.* (1995)), Texas (Texas Civ. Stat., 4447cc (1995)), Kansas (Kan. Stat. Ann., 60-3332 *et seq.* (1995)), Virginia (Va. Code, 10.1-1198 *et seq.* (1995)), Michigan (Mich. Comp. Laws Ann., 324.14801 *et seq.* (1996)), South Carolina (S.C. Code Ann., 48-57-10 *et seq.* (1996)), New Hampshire (N.H. Rev. Stat. Ann., 147-E:1 *et seq.* (1996)), Ohio (Ohio Rev. Code Ann., 3745.70 *et seq.* (1996)), Montana (Mont. Code Ann., 75-1-1202 *et seq.*, 80-1-301 *et seq.* (1997)), Alaska (Alaska Stat., 9.25.450 *et seq.* (1997)), Nevada (Nev. Rev. Stat., 445C.010 *et seq.* (1997)), Nebraska (Neb. Rev. Stat., 25-21, 254 *et seq.* (1998)), Iowa (1998 Chapter 1109 (1998)), South Dakota (S.D. Codified Laws Ann., 1-40-33 *et seq.* (1996)); **Privilege Only:** Oregon (Ore. Rev. Stat., 468.963 (1993)), Indiana (Ind. Code, 13-28-4-1 *et seq.* (1994)), Illinois (Ill. Comp. Stat. Ann., 415-5/52.2 (1995)), Arkansas (Ark. Stat. Ann., 8-1-301 *et seq.* (1995)), Mississippi (Miss. Code Ann., 49-2-71 (1995)); **Immunity Only:** Rhode Island (R.I. Gen. Laws, 42-17.8-1 *et seq.* (1997)). Idaho also enacted an audit privilege/immunity law in 1995, but it sunset on December 31, 1997 (Idaho Code, 9-801 *et seq.* (1995)).

<sup>33</sup> Nancy K. Stoner and Wendy J. Miller, *National Conference of State Legislatures Study Finds That State Environmental Audit Laws Have No Impact on Company Self-Auditing and Disclosure of Violations*, 29 E.L.R. 10,265 (May 1999).

<sup>34</sup> *Id.*

<sup>35</sup> Stoner, et al., *supra* note 33, at 10,266; e.g., Roger Walker, *Environmental Audit Laws and Small Business* (1997); E. Lynn Grayson and Christina M. Landgraf, *EPA's Audit Policy and State Audit-Privilege Laws: Moving Beyond Command and Control?*, 27 E.L.R. 10,243 (May 1997).

environment.<sup>36</sup>

Completed in 1998, a National Conference of State Legislatures (NCSL) study concluded that the existence of an audit privilege and/or immunity law does not appear to influence the disclosure of violations by a facility.<sup>37</sup> NCSL also found that the existence of such laws does not appear to influence the level of audit activity.<sup>38</sup> Of the facilities surveyed, 88% reported that they were conducting audits and between one-fourth and one-third said they had disclosed a violation. There was no difference in responses based on whether the state in which the facility operated had an audit law, an audit policy, or no audit law or policy.<sup>39</sup> The NCSL study concludes that the advocated benefits of audit privilege/immunity laws may not exist.

### **EPA's 1995 Self-Policing Policy**

On December 18, 1995, EPA issued its revised audit policy which became effective on January 22, 1996. More of a self-policing policy than an audit policy, it was designed to

---

<sup>36</sup> "Effect of Audit Immunity/Privilege Laws on States' Ability to Enforce Title V Requirements," Memo from Steven Herman, Assistant Administrator, OECA and Mary Nichols, Assistant Administrator, OAR to Jackson Fox, Regional Counsel Region 10, April 5, 1996, at 2.

<sup>37</sup> Larry Morandi, National Conference of State Legislatures, *State Environmental Audit Laws and Policies: An Evaluation* (1998). The study is available at <http://www.ncsl.org/programs/esnr/audits.htm>.

<sup>38</sup> *Id.* at 1.

<sup>39</sup> *Id.* Fourteen states have adopted self disclosure policies: California (July 8, 1996, revised December 1998), Connecticut (October 23, 1996), Delaware (April 11, 1997), Florida (April 1, 1996), Maryland (June 24, 1997), Massachusetts (April 26, 1997), Minnesota (January 24, 1995), New Mexico (February 5, 1999), New York (August 12, 1999), North Carolina (September 1, 1995), Pennsylvania (September 25, 1996), Tennessee (November 27, 1996), Vermont (December 14, 1996), and Washington (December 20, 1994). Oklahoma has adopted a rule, effective June 1, 1997. The rule replaced an audit policy. Oklahoma's rule allows for waiving and mitigating civil and administrative penalties under certain circumstances.

“enhance the protection of human health and the environment” and encourage greater compliance with environmental laws and regulations.<sup>40</sup> Incentives are available to those who voluntarily discover and disclose violations, when specified conditions are met. These incentives are discussed below.

First, gravity-based penalties (i.e., non-economic benefit) are eliminated or reduced for voluntary disclosures that meet the terms of the 1995 Policy. Gravity-based penalties are eliminated when violations are found through either an environmental audit or a compliance monitoring program, either of which must meet EPA’s requirements, and are voluntarily and promptly disclosed and corrected. The environmental audit must be systematic, objective and periodic, as defined under the 1986 Audit Policy. The compliance monitoring system must also meet certain requirements. These include standards and procedures that outline how employees are to meet compliance, a method for overseeing compliance, mechanisms to assure compliance (including monitoring and audits to detect and correct violations), efforts to communicate standards to employees and agents, incentives to managers and employees to comply with policies, procedures for prompt and appropriate correction of any violations, and measures to prevent future violations. Gravity-based penalties are reduced by 75% when a violation is voluntarily discovered, promptly disclosed and expeditiously corrected, even if it was not found through an environmental audit or a compliance management system.

---

<sup>40</sup> Similar policies were issued for small businesses (Policy on Compliance Incentives for Small Businesses, 61 Fed. Reg. 27,984 (1996)) and small communities (“Policy on Flexible State Enforcement Response to Small Community Violations,” Memo from Steven A. Herman, Assistant Administrator, to Assistant Administrators, General Counsels, Regional Administrators, Deputy Regional Administrators, Regional Counsel and Regional Enforcement Coordinators (November 22, 1995)).

As additional incentives, EPA will not recommend a regulated entity for criminal prosecution and will refrain from routine requests for audits if the conditions of the 1995 Policy are met. If the Agency has independent evidence of a violation, it may seek additional information.

In order to receive full benefits under the policy, a violator must meet several conditions. The entity must discover the violation through an environmental audit or compliance monitoring system (“due diligence”). The violation must be discovered voluntarily, not through legally mandated monitoring or sampling requirements prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement. The disclosure must be prompt (within 10 days after discovery<sup>41</sup>) and must be in writing to EPA. The violation must be discovered and disclosed prior to any government investigation, citizen suit, filing of a third party complaint, report of violation by an employee not in authority, or imminent discovery by a regulatory agency. The entity must correct the violation, within 60 days, and remedy any harm that has occurred as a result of the violation. If it will take longer than 60 days to correct, the entity must notify EPA in writing. The regulated entity also must prevent recurrences of violations. This may require improvements to environmental auditing or “due diligence.” The specific violation can not have occurred within the past three years at the same facility, or be part of a pattern of violations by the facility’s parent organization in the past five years. The entity must cooperate fully with EPA to determine the applicability of the policy. There are no penalty reductions available for violations that “resulted in serious actual harm or which may have presented an imminent and

---

<sup>41</sup> EPA is considering changing this requirement to 21 days. 64 Fed. Reg. 26,745 (1999). See *infra* note 47.



substantial endangerment to public health or the environment.” Corporations remain criminally liable for violations that exhibit an ongoing management philosophy or practice that conceals and/or condones violations, or high-level management’s participation in (or willful blindness to) the violation.

In 1995 EPA established the Audit Policy Quick Response Team (QRT) to ensure consistent application of the self-policing policy across the country. The QRT is made up of senior representatives from EPA Headquarters, Regions and the Department of Justice. In January 1997, the QRT developed Audit Policy Interpretive Guidance.<sup>42</sup> The Interpretive Guidance presents a discussion of questions and answers that is intended to aid in the implementation of the policy. The guidance addresses many of the most significant issues raised to the QRT’s attention. The document also sets forth guidance for EPA’s use in exercising its enforcement discretion. EPA also publishes a periodic newsletter on EPA audit policy issues.<sup>43</sup>

In October 1997, EPA established a separate Voluntary Disclosure Board (VDB) to act as a central body for reviewing all possible criminal violations that are disclosed under the policy. Like the QRT, the purpose of the VDB is to ensure consistent application of the policy nationwide.

In May 1998, EPA published a survey<sup>44</sup> as part of its public commitment in the 1995

---

<sup>42</sup> Memo from Steven Herman, Assistant Administrator, to Regional Administrators and Assistant Attorney General, Environment and Natural Resources Division, January 15, 1997. Publicly available at <[http://www.epa.gov/region5/orc/audits/audit\\_resources.htm](http://www.epa.gov/region5/orc/audits/audit_resources.htm)>.

<sup>43</sup> “Audit Policy Update” is available on the Internet at <<http://www.epa.gov/oeca/apolguid.html>>.

<sup>44</sup> Agency Information Collection Activities: Proposed Collection; Comment Request; Audit Policy Customer Satisfaction Survey, 63 Fed. Reg. 25,855 (1998).

Policy to conduct a “study of effectiveness of the policy.” The survey solicited responses relating to the general “effectiveness” of the 1995 Policy in “encouraging voluntary discovery, disclosure, correction and prevention of violations.”<sup>45</sup> The survey sought information on how the policy and its application could be improved. Participation in the survey was voluntary and a respondent could choose to remain anonymous.

On May 17, 1999,<sup>46</sup> EPA announced the preliminary results of its evaluation of the effectiveness of the 1995 Policy, proposed revisions,<sup>47</sup> and requested public comment in several

---

<sup>45</sup> *Id.* at 25,856.

<sup>46</sup> Evaluation of “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations” Policy Statement, Proposed Revisions and Request for Public Comment, 64 Fed. Reg. 26,745 (1999).

<sup>47</sup> EPA has proposed various revisions to the 1995 Policy. The Agency based these changes on the comments received to the survey and the preliminary findings of the effectiveness evaluation. Comments relating to the proposed revision were due July 19, 1999. The revisions would:

1. Broaden the period for “prompt disclosure” from 10 to 21 days and clarify the time of discovery.
2. State that the impending investigation or request for information must “involve the same facility” to fail under the “independent discovery” provision.
3. State that the “no recommendation for criminal prosecution” clause is available for entities that meet all of the conditions except for “Systematic Discovery.”
4. Clarify what is meant by “cooperation” required for disclosures made under the 1995 Policy.
5. Clarify that penalty relief may be available for “good faith” under other enforcement policies for violation disclosures even if the entity does not meet the Audit Policy criteria.
6. Clarify the imminent and substantial endangerment exclusion.
7. Change “due diligence” to “compliance management system”.
8. Describe EPA processes for handling civil and criminal disclosures.
9. Clarify that case information will be released by EPA upon settlement unless a claim of confidential business information is made, another Freedom of Information Act exemption applies, or any other law would preclude its release.
10. Clarify that violations found through the use of an audit or compliance management system performed as a requirement of participation in an Agency Partnership Program

areas. EPA used four criteria to analyze its preliminary findings, as follows: 1) whether environmental or human health improvements result from the policy; 2) whether the policy encourages prompt disclosure and correction of violations; 3) whether the policy encourages improvements in corporate compliance programs; and 4) whether the policy engenders greater awareness of new environmental issues.

### **Preliminary Results of the 1995 Policy**

Using the criteria set out above, EPA, as a preliminary matter, found that:

- Discovery and correction of violations removed pollutants from the environment, reduced health and environmental risks, and improved public information on potential hazards.
- EPA has consistently applied the policy.
- In 27 instances, EPA became aware of new environmental issues as a result of using the policy.
- Use of the policy has been widespread.<sup>48</sup>
- The rate of disclosure has increased every year since the policy been in place.
- Users had a high satisfaction rate: 88% said they would use it again and 84% said they would recommend others to use the policy.
- Most disclosures involved monitoring and reporting violations that occurred in federally-

- 
11. can be considered to have been voluntarily discovered. Note the availability of Interpretive Guidance on issues concerning the availability and application of the Policy.
  12. Clarify that if a facility discloses a violation of a state approved program or one that the State is authorized to administer or enforce, EPA will consult with the State in responding to the disclosure.

<sup>48</sup> As of December 1, 1999, approximately 500 entities have disclosed violations at over 2700 facilities.

run programs.<sup>49</sup>

- The policy encourages improvements in auditing programs and environmental management systems.
- The most common suggested changes were to expand the 10-day disclosure period and to shorten the amount of time taken to process cases.

These findings will aid EPA in making appropriate revisions to the 1995 Policy.

### **Conclusion**

Environmental auditing will continue to be an important tool for measuring and maintaining compliance with environmental standards. Regulated entities continue to voluntarily disclose and correct violations under EPA's 1995 Self-Policing Policy. EPA is fine-tuning the policy to offer the policy's incentives to a broader number of regulated entities and to expedite procedures for resolving disclosures under the policy. EPA also continues to negotiate audits as conditions of settlement in appropriate enforcement cases. Although many states have enacted audit privilege/immunity laws, the laws appear to have little or no effect either on the conduct or frequency of environmental auditing or on the reporting and disclosure of violations by regulated entities. As the NCSL study concludes, entities have audited and disclosed without regard to whether they are located in states that have such laws or in states that do not.

### **Guide to Terms Used in the Table:**

---

<sup>49</sup> Programs other than ones that states are authorized, delegated or approved to administer and enforce.

Yes/No	Item is addressed explicitly in the consent decree or order.
Presumably	Item is not addressed explicitly, but can be inferred, to a high degree of certainty, from the language of the consent decree or order.
Not Specified	Item is not addressed in the consent decree or order.
N/A	Not applicable.

**List of Environmental Laws Referenced in Table:**

Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.* (1998).

Clean Water Act (CWA), 33 U.S.C. § 121 *et seq.* (1998).

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 *et seq.* (1998).

Emergency Response and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11001 *et seq.* (1998).

Endangered Species Act of 1973 (ESA), 16 U.S.C. § 1531 *et seq.* (1998).

Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.* (1998).

Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 321, *et seq.* (1998).

Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601, *et seq.* (1998).

**Guide to Abbreviations Used In Table:**

CEM	Continuous Emissions Monitor.
COM	Continuous Opacity Monitor.
EMS	Environmental Management System. <sup>1</sup>
NESHAP	National Emission Standard for Hazardous Air Pollutants.
SEP	Supplemental Environmental Project.

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. and the Commonwealth of Pennsylvania v. A-1 Battery, Inc.	U.S. and the State of Louisiana, Dept. of Environmental Quality v. Acadia Woods Add. #2 Sewer Co., et al	U.S. v. Air Products and Chemicals, Inc., et al.
Court	U.S. District Court, Middle District of Pennsylvania	U.S. District Court, Western District of Louisiana	U.S. District Court, District of Maryland
Date Entered	May 8, 1998	July 31, 1998	April 20, 1988
Civil Action No.	3:CV 9803 63	6:98 CV 0687	JH-88-365
Statute Violated	CERCLA	CWA, Louisiana Water Control Law	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes, if requested by EPA b) not specified c) not specified d) not specified e) not specified	a) not specified b) not specified c) not specified d) yes e) not specified	a) yes b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	not specified, but compliance monitoring by an outside auditor is required once a year for five years	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS Provision	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. and Dept. of Environmental Protection v. Ajax/Acorn Manufacturing, Inc., et al.	U.S. v. Alcan Ingot and Recycling Division of the Alcan Aluminum Corp.	U.S. v. Allied-Signal, Inc.
Court	U.S. District Court, Eastern District of Pennsylvania	U.S. District Court, Western District of Kentucky, Owensboro Division	U.S. District Court, Middle District of Pennsylvania
Date Entered	October 10, 1997	May 11, 1993	July 13, 1990
Civil Action No.	89-7421	93-000-3 (CS)	CV-90-0938
Statute Violated	CERCLA	CAA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes, if requested by EPA b) not specified c) not specified d) not specified e) not specified	a) not specified b) not specified c) presumably yes d) presumably yes e) not specified	a) yes b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	“qualitatively audit all three potlines” 4 times/wk for a period of one year; “quantitatively audit all three potlines” 1 time/wk for a period of one year	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. and Commonwealth of Pennsylvania v. American Color and Chemical Corp., et al.	U.S. v. American Cyanamid Co., Inc., et al. (Bush Valley Landfill)	U.S. v. American Cyanamid Co., Inc., et al. (Fike Chemical)
Court	U.S. District Court, Middle District of Pennsylvania	U.S. District Court, District of Maryland	U.S. District Court, Southern District of West Virginia
Date Entered	February 14, 1996	March 10, 1998	February 19, 1997
Civil Action No.	4: CV 92 1352	2-98-27	2: 93-0654
Statute Violated	CERCLA	CERCLA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) not specified c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) not specified c) not specified d) not specified e) not specified
Frequency of Audits	not specified	not specified	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A



<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Archer Daniels Midland, Co.	U.S. and State of Maryland v. Edward Azrael, et al. v. Armco Inc., et al.	U.S. v. Bassett Furniture Industries, Inc.
Court	U.S. District Court, Southern District of Iowa	U.S. District Court, District of Maryland	U.S. District Court, District of Virginia
Date Entered	September 7, 1994	June 7, 1995	October 15, 1999
Civil Action No.	4-94-CV-10436	WN-89-2898	4:99 CV 0044
Statute Violated	CAA	CERCLA	CAA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) presumably yes d) presumably yes e) yes <sup>2</sup>	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes d) yes e) not specified
Frequency of Audits	not specified	not specified	“on a regular, continuing basis”
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	not specified

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Beazer East, Inc.	U.S. and State of Maryland, Dept. of Environment v. Bethlehem Steel Corp.	U.S. and Commonwealth of Pennsylvania v. Joseph M. Blosenski, Jr., et al.
Court	U.S. District Court, Western District of Pennsylvania	U.S. District Court, District of Maryland	U.S. District Court, Eastern District of Pennsylvania
Date Entered	October 9, 1990	September 18, 1997	September 8, 1995
Civil Action No.	90-1314	JFM-97-558, JFM-97-559	93-CV-1976
Statute Violated	CERCLA	RCRA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes b) yes c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) not specified c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified
Frequency of Audits	annual field audits; frequency of lab audits to be specified in a "Work Plan or other EPA-approved plan."	not specified	not specified
Reporting Requirement as part of Audit	yes	not specified	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Board of County Commissioners for Cecil County, MD	U.S. v. BP America Inc., et al. (Army Creek Landfill)	U.S. and State of Louisiana v. Browning-Ferris Industries, Chemical Services, Inc., and Cecos International, Inc.
Court	U.S. District Court, District of Maryland	U.S. District Court, District of Delaware	U.S. District Court, Middle District of Louisiana
Date Entered	December 9, 1996	September 12, 1991	October 18, 1988
Civil Action No.	HMD-96-3082	91-409, 91-418	87-317 Section B
Statute Violated	CERCLA	CERCLA	RCRA, Louisiana Environmental Quality Act <sup>3</sup>
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) yes b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes d) yes e) yes
Frequency of Audits	not specified	“an appropriate number” of field and lab audits.	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	yes
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. and State of Louisiana v. Browning-Ferris Industries, Chemical Services, Inc., and Cecos International, Inc.	U.S. v. Burlington Northern Railroad Co., and Burlington Northern, Inc.	U.S. v. Chevron U.S.A., Inc.
Court	U.S. District Court, Western District of Louisiana, Lake Charles Division	U.S. District Court, District of Montana, Missoula Division	U.S. District Court, Eastern District of Pennsylvania
Date Entered	August 16, 1990	June 26, 1990	September 15, 1992
Civil Action No.	88-0718-LC	89-0-687	88-6681
Statute Violated	RCRA, Louisiana Environmental Quality Act <sup>4</sup>	CERCLA	CAA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) yes	a) yes b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes d) yes, for benzene e) not specified
Frequency of Audits	second audit one year after submission of first audit report	“periodic” lab audits; “at least one field audit per year”	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	yes	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Ciba-Geigy Corp. and Monsey Products	U.S. Colorado & Eastern Railroad Co., et al.	National Wildlife Federation, et al. v. Copper Range Co.
Court	U.S. District Court, Eastern District of Pennsylvania	U.S. District Court, District of Colorado	U.S. District Court, Western District of Michigan, Northern Division
Date Entered	January 4, 1991	September 7, 1990	April 5, 1995
Civil Action No.	91-0009	89-C-1786	2: 92-CV-186
Statute Violated	CERCLA	CERCLA	CAA, CERCLA, EPCRA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes b) yes c) not specified d) not specified e) not specified	a) yes b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes, of COM and CEM equipment only d) not specified e) not specified
Frequency of Audits	“an appropriate number”	“periodic” lab audits; “at least one” field audit per year	annually
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Darling International, Inc.	U.S. and Timothy R.E. Keeney, Commissioner of Environmental Protection of the State of Connecticut v. The Dexter Corp.	U.S. and Commonwealth of Pennsylvania v. E. I. DuPont de Nemours & Co., et al. (Bell Landfill)
Court	U.S. District Court, District of Minnesota	U.S. District Court, District of Connecticut	U.S. District Court, Middle District of Pennsylvania
Date Entered	September 12, 1997	November 13, 1992	April 2, 1997
Civil Action No.	97-1611	H-89-393	3: CV 97-149
Statute Violated	CWA	CWA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes <sup>5</sup> d) yes e) not specified	a) not specified b) not specified c) yes <sup>6</sup> d) yes e) yes	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	follow-up audit required 10-12 months after first audit	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no <sup>7</sup>	no	no
Auditing as part of EMS	yes	yes	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. E. I. DuPont de Nemours & Co. (Chamber Works)	U.S. v. Eagle Picher Industries, Inc.	U.S. v. Elf Atochem North America, Inc.
Court	U.S. District Court, District of New Jersey	U.S. District Court, Western District of Missouri, Joplin Division	U.S. District Court, Eastern District of Pennsylvania
Date Entered	May 21, 1991	September 28, 1990	May 3, 1993
Civil Action No.	91-768	87-5100-CV-SW-8	93-2182
Statute Violated	RCRA	CWA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) yes c) yes d) yes e) yes	a) not specified b) not specified c) yes d) yes e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	not specified	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	yes	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. and State of Texas v. Encycle/Texas, Inc., and ASARCO, Inc.	U.S. v. Environmental International Electrical Services, Inc.	U.S. v. FMC Corp. (Pocatello Plant)
Court	U.S. District Court, Southern District of Texas	U.S. District Court, District of Kansas	U.S. District Court, District of Idaho
Date Entered	April 15, 1999	April 6, 1988	July 13, 1999
Civil Action No.	H-99-1136	88-2084-S	98-0406-E-BLW
Statute Violated	RCRA, CWA, Texas Health and Safety and Water Codes <sup>8</sup>	TSCA	RCRA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) yes	a) not specified b) not specified c) yes d) yes e) not specified	a) not specified b) not specified c) yes d) yes e) yes
Frequency of Audits	annual EMS and compliance audits for 5 years	annual	currently conducts “periodic” audits; must complete a management system audit within 18 months of the date the Pocatello Plant EMS is fully implemented.
Reporting Requirement as part of Audit	yes	yes	not specified
Requires an EMS	yes	no	yes <sup>9</sup>
Auditing as part of EMS	yes	N/A	yes
Auditing as part of SEP Provision	not specified	N/A	not specified



<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Lewis Frame and Ruth Frame	U.S. v. GATX Corp., General American Transportation Corp.	U.S. v. Georgia-Pacific Corp.
Court	U.S. District Court, Eastern District of Pennsylvania	U.S. District Court, Western District of Pennsylvania	U.S. District Court, Northern District of Georgia, Atlanta Div.
Date Entered	August 3, 1998	July 3, 1995	July 16, 1996
Civil Action No.	98-CV-2844	94-312	1 96-CV-1818-FMH
Statute Violated	CERCLA	CERCLA	CAA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes, if requested by EPA b) not specified c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes d) yes e) not specified
Frequency of Audits	not specified	not specified	“in accordance with G-P’s normal audit cycle/schedule”
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Grumman St. Augustine Corp.	Concerned Citizens For Nuclear Safety, Inc. and Chavez v. U.S. Department of Energy and Siegfried S. Hecker	Concerned Citizens For Nuclear Safety, Inc. and Chavez v. U.S. Department of Energy and Siegfried S. Hecker (Supplemental Consent Decree) <sup>10</sup>
Court	U.S. District Court, Middle District of Florida, Jacksonville Div.	U.S. District Court, District of New Mexico	U.S. District Court, District of New Mexico
Date Entered	July 20, 1993	January 20, 1997	December 9, 1997
Civil Action No.	91-141-CIV-J-16	94-1039 M/WWD	94-1039 JP/WWD
Statute Violated	RCRA	CAA	CAA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) not specified	a) not specified b) not specified c) yes d) yes e) not specified	a) not specified b) not specified c) yes d) yes e) not specified
Frequency of Audits	not specified	1997, 2000, 2002, and 2003 (if necessary)	presumably 1997, 2000, 2002, and 2003 (if necessary)
Reporting Requirement as part of Audit	yes	yes	presumably yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. and State of Delaware v. Hercules, Inc., et al.	U.S. v. Hoosier Energy Rural Electric	U.S. v. Illinois Tool Works, Inc., Slezak Enterprises, Inc.
Court	U.S. District Court, District of Delaware	U.S. District Court, Southern District of Indiana	U.S. District Court, District of Michigan, Southern Division
Date Entered	June 25, 1991	September 30, 1986	July 29, 1998
Civil Action No.	89-CV-562-SLR	TH-85-8-C	1:98-CV-389
Statute Violated	CERCLA	CAA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) audit of CEMs d) not specified e) not specified	a) yes b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	quarterly	not specified
Reporting Requirement as part of Audit	yes	yes	presumably yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. John Morrell & Co. (Partial Consent Decree)	U.S. v. John Morrell & Co. (2 <sup>nd</sup> Partial Consent Decree)	U.S. v. Kalama Chemical, Inc.
Court	U.S. District Court, District of South Dakota	U.S. District Court, District of South Dakota	U.S. District Court, Western District of Washington at Tacoma
Date Entered	April 26, 1996	February 11, 1998	March 31, 1997
Civil Action No.	96-4011	96-4011	C 95 5522 FDB
Statute Violated	CWA	CWA	CAA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes <sup>11</sup> d) not specified e) yes	a) not specified b) not specified c) yes d) yes e) yes	a) not specified b) not specified c) yes <sup>12</sup> d) not specified e) not specified
Frequency of Audits	not specified	not specified	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	yes	no
Auditing as part of EMS	N/A	presumably yes	N/A
Auditing as part of SEP Provision	N/A	N/A	yes

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Ketchikan Pulp Co.	U. S. v. Kowinsky Farms, Inc., et al.	U.S. v. Lord Corporation (Lord Shope Superfund Site)
Court	U.S. District Court, District of Alaska	U.S. District Court, District of Delaware	U.S. District Court, Western District of Pennsylvania
Date Entered	September 19, 1995	April 8, 1992	September 27, 1991
Civil Action No.	A92-587-CV (JKS)	92-04-JJF	91-177E
Statute Violated	CWA, CAA	CERCLA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) yes	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) yes b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	not specified	“an appropriate number”
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	not specified	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Lord Corporation (Saegertown Industrial Area)	U.S. and State of Idaho v. The M.A. Hanna Co., et al.	U.S. v. Marine Shale Processors, Inc., and Recycling Park, Inc., et al.
Court	U.S. District Court, Western District of Pennsylvania	U.S. District Court, District of Idaho	U.S. District Court, Western District of Louisiana, Lafayette Division
Date Entered	March 15, 1994	April 28, 1995	February 20, 1998
Civil Action No.	94-43	83-4179 (R)	CV90-1240
Statute Violated	CERCLA	CERCLA, CWA, ESA, Idaho Environmental Protection and Health Act <sup>13</sup>	RCRA, CWA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) yes, if requested by Trustees b) yes, if requested by Trustees c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes <sup>14</sup> d) not specified e) not specified
Frequency of Audits	not specified	up to one lab audit and field audit per year, if requested	annually
Reporting Requirement as part of Audit	yes	yes, if audit is requested	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v Meadow Gold Dairies, Inc.	U.S. v. Menominee Paper Co., and Bell Packaging Corp.	U.S. v. Modern Trash Removal of York, Inc.
Court	U.S. District Court, District of Montana, Helena Division	U.S. District Court, Western District of Michigan, Northern Division	U.S. District Court, Middle District of Pennsylvania
Date Entered	10/21/93	July 20, 1990	June 14, 1993
Civil Action No.	CV 91-15-H-CCL	88-108-2	92-0819
Statute Violated	CWA	CWA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) not specified	a) not specified b) not specified c) yes d) yes e) not specified	a) yes, if requested by EPA b) presumably no c) not specified d) not specified e) not specified
Frequency of Audits	not specified	not specified	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. and State of Michigan, et al. v. Monitor Sugar Co.	U.S. v. Nassau Metal Corp., Inc., et al.	U.S. v. Neville Land Co. and Wilmington Securities, Inc.
Court	U.S. District Court, Eastern District of Michigan, Northern Division	U.S. District Court, Middle District of Pennsylvania	U.S. District Court, Western District of Pennsylvania
Date Entered	December 10, 1987	July 22, 1998	December 31, 1997
Civil Action No.	85-10309 (CV-BC)	3:96-CV-562	97-1683
Statute Violated	CAA	CERCLA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) COM audit only d) not specified e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) not specified c) not specified d) not specified e) not specified
Frequency of Audits	not specified	not specified	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A



<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. New Haven Foundry, Inc.	U.S. v. O'Hara, William J., et al.	U.S. v. Occidental Chemical Corporation, Bridgestone/Firestone, Inc. (Occidental Chemical Superfund Site) <sup>15</sup>
Court	U.S. District Court, Eastern District of Michigan	U.S. District Court, Eastern District of Pennsylvania	U.S. District Court, Eastern District of Pennsylvania
Date Entered	June 23, 1997	May 10, 1989	June 19, 1997
Civil Action No.	97-71842	89-1383	96-CV-6558
Statute Violated	RCRA	CERCLA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes b) not specified c) yes d) yes e) not specified	a) yes b) yes c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	"an appropriate number"	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Occidental Chemical Corp. (Pottstown Plant)	U.S. v. Olin Corporation	U.S. v. Pennsylvania Power & Light Co. and Union Gas Co.
Court	U.S. District Court, Eastern District of Pennsylvania	U.S. District Court, Western District of Virginia	U.S. District Court, Eastern District of Pennsylvania
Date Entered	August 11, 1990	July 29, 1997	September 1, 1992
Civil Action No.	89-5687	97-0090-A	92-CV-2730
Statute Violated	CAA	CERCLA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes, as to the vinyl chloride NESHAP only e) not specified	a) yes b) not specified c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified
Frequency of Audits	every 14 months	not specified	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Marvin Pesses, et al.	U.S. v. Pfaltz & Bauer, Inc.	U.S. v. Pizzuto Company, Inc., and Reynolds Metals Co., Inc.
Court	U.S. District Court, Western District of Pennsylvania	U.S. District Court, District of Connecticut	U.S. District Court, Western District of Arkansas, Hot Springs Division
Date Entered	June 19, 1997	December 16, 1996	November 28, 1989
Civil Action No.	90-0654	396 CV 00305 PCD	88-6097
Statute Violated	CERCLA	RCRA, CERCLA	CAA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes, if requested by EPA b) not specified c) not specified d) not specified e) not specified	a) yes b) not specified c) yes d) yes e) not specified	a) not specified b) not specified c) yes, asbestos only d) yes <sup>16</sup> e) not specified
Frequency of Audits	not specified	not specified	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Pneumo Abex Corp., et al.	U.S. v. PPG Industries, Inc., and Aluminum Company of American	U.S. v. Raymark Corporation, et al.
Court	U.S. District Court, Eastern District of Virginia, Norfolk Division	U.S. District Court, Western District of Pennsylvania	U.S. District Court, Eastern District of Pennsylvania
Date Entered	April 25, 1996	October 24, 1991	February 21, 1989
Civil Action No.	2:96-CV-27	91-1276	85-3073
Statute Violated	CERCLA	CERCLA	RCRA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) yes b) yes c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	“an appropriate number” <sup>17</sup>	not specified
Reporting Requirement as part of Audit	yes	yes	presumably yes
Requires an EMS	no	no	No
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. and State of Indiana v. Reilly Industries, Inc.	U.S. v. Reynolds Metals Co. and Westvaco Corp.	U.S. v. Rhone-Poulenc Ag. Co., and Union Carbide Chemical and Plastics Co., Inc.
Court	U.S. District Court, Southern District of Indiana, Indianapolis Division	U.S. District Court, Eastern District of Virginia	U.S. District Court, Southern District of West Virginia
Date Entered	September 19, 1998	November 5, 1997	December 19, 1991
Civil Action No.	5:98 CV 1409	3:97-CV-226	2:90-0929
Statute Violated	CERCLA	CERCLA	CWA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes b) yes c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) not specified c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes d) yes e) yes
Frequency of Audits	not specified	not specified	not specified
Reporting Requirement as part of Audit	presumably yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	not specified
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Rhone-Poulenc Basic Chemicals (Stauffer Chem. Co.)	U. S. v. Ralph R. Riehl, Jr., et al. v. Parker White Metal Co., et al., v. Klausner Barrel Co.	U.S. v. Rohm & Haas Co., and Smithkline Beecham Corp.
Court	U.S. District Court, District of Montana, Butte Div.	U.S. District Court, Western District of Pennsylvania at Erie	U.S. District Court, Middle District of Pennsylvania
Date Entered	March 28, 1989	April 26, 1996	February 9, 1993
Civil Action No.	CV-89-17-BU	89-226 (Erie)	92-1295
Statute Violated	CAA	CERCLA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) of each COM only d) not specified e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified
Frequency of Audits	semi-annual	not specified	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Scovill, Inc.	U.S. v. Harold Shane v. A&B Iron and Metal Co. v. Ace Battery Co., Inc. (Arcanum Iron & Metal Superfund Site)	U.S. v. Terry L. Shaner, et al.
Court	U.S. District Court, Eastern District of Virginia, Norfolk Division	U.S. District Court, Southern District of Ohio, Western Division	U.S. District Court, Eastern District of Pennsylvania
Date Entered	May 18, 1995	March 20, 1998	January 26, 1995
Civil Action No.	3: 95-CV-159	C-3-89-383; 90-0102-C	85-1372
Statute Violated	CERCLA	CERCLA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) yes b) yes c) not specified d) not specified e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	not specified	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Southeastern Pennsylvania Transportation Authority, et al.	U.S. and State of Washington, Dept. of Ecology v. Tacoma, City of	U.S. v. Temrac Inc., and Sunbeam-Oster Co., Inc.
Court	U.S. District Court, Eastern District of Pennsylvania	U.S. District Court, Western District of Washington	U.S. District Court, Eastern District of Pennsylvania
Date Entered	February 25, 1986	June 14, 1994	July 18, 1991
Civil Action No.	86-1094	C94-5193	91-3043
Statute Violated	CERCLA	CWA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes d) yes e) not specified	a) yes b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	every 6 months after the required plant improvements	an “appropriate number” of lab audits at a frequency specified in the work plan; an “appropriate number” of field audits.
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A



<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Texaco Refining & Marketing, Inc., f/k/a Getty Refining and Marketing Co., and Texaco Chemical Co.	U.S. v. Trident Seafoods Corp.	U.S. v. Trustees of Boston University
Court	U.S. District Court, District of Delaware	U.S. District Court, District of Alaska	U.S. District Court, District of Massachusetts
Date Entered	September 1, 1988	February 24, 1998	December 9, 1997
Civil Action No.	86-321-MMS	A97-0093CV (HRH)	97-12261-PBS
Statute Violated	CAA	CWA	CWA, RCRA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes, a "benzene" audit of the refinery d) yes e) not specified	a) not specified b) not specified c) yes d) yes e) yes	a) not specified b) not specified c) yes d) yes e) not specified
Frequency of Audits	not specified	audits every other year	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	yes	yes
Auditing as part of EMS	N/A	yes	yes
Auditing as part of SEP Provision	N/A	N/A	yes

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. TurboCombustor Technology, Inc.	U.S. v. Tyson, Franklin P., Ciba-Geigy Corp. and General Devices, Inc. v. Wyeth Laboratories, Inc., et al.	U.S. and Timothy R.E. Keeney, Commissioner of Environmental Protection of the State of Connecticut v. United Technologies, Inc.
Court	U.S. District Court, Southern District of Florida	U.S. District Court, Eastern District of Pennsylvania	U.S. District Court, District of Connecticut
Date Entered	September 24, 1997	June 21, 1988	August 23, 1993
Civil Action No.	97-14274-CIV-KLR	84-2663	H-90-715 (JAC)
Statute Violated	CWA	CERCLA	RCRA, CWA, Connecticut Water Pollution Control Act
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) not specified	a) yes b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes d) yes e) yes
Frequency of Audits	annually	not specified	annually for three years
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	yes
Auditing as part of EMS	N/A	N/A	yes
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. United Technologies Automotive, Inc.	U.S. v. USX Corporation (Gary Works)	U.S. v. USX Corporation (Yeoman Creek Landfill Superfund Site)
Court	U.S. District Court, Southern District of Ohio, Eastern Div.	U.S. District Court, Northern District of Indiana	U.S. District Court, Northern District of Illinois, Eastern Division
Date Entered	December 11, 1992	January 26, 1999	February 4, 1999
Civil Action No.	2-92-795	2: 98-CV-465 JM	98 C 6389
Statute Violated	CERCLA	CWA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes d) yes e) yes	a) yes b) yes c) not specified d) not specified e) not specified
Frequency of Audits	not specified	annually	not specified
Reporting Requirement as part of Audit	presumably yes	yes	presumably yes
Requires an EMS	no	yes	no
Auditing as part of EMS	N/A	yes	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	Natural Resources Defense Counsel, San Diego Baykeeper, Kenneth J. Moser v. James W. Van Loben Sels and U.S. v. California Dept. of Transportation	U.S. v. Virginia Properties, Inc.	U.S. v. Weyerhaeuser Company
Court	U.S. District Court, Southern District of California	U.S. District Court, Eastern District of Virginia	U.S. District Court, Western District of Wisconsin
Date Entered	March 10, 1998	September 30, 1994	January 3, 1990
Civil Action No.	96-1440-IEG (POR), 97-0037-IEG (POR)	3:94-CV498	89-C-0973-C
Statute Violated	CWA	CERCLA	CAA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) not specified	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes, of CEM only d) not specified e) not specified
Frequency of Audits	annually	not specified	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. and Natural Resources Defense Council, Inc. v. Wheeling-Pittsburgh Steel Corp. (Allenport facility)	U.S. v. Wheeling-Pittsburgh Steel Corp. (Steubenville, Mingo Junction, and Yorkville facilities)	U.S. v. Witco Corporation (The Halloy Chemical Superfund Site)
Court	U.S. District Court, Western District of Pennsylvania	U.S. District Court, Southern District of Ohio, Eastern Division	U.S. District Court, District of Delaware
Date Entered	November 4, 1992	July 16, 1991	April 9, 1992
Civil Action No.	89-237 S	C288-598	92-93
Statute Violated	CWA	CWA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) yes	a) not specified b) not specified c) yes d) yes e) yes	a) yes, if requested by EPA b) yes c) not specified d) not specified e) not specified
Frequency of Audits	every other year	every other year	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	yes	yes	no
Auditing as part of EMS	yes	yes	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>I. Audit Provisions in Federal Court Consent Decrees or Orders</b>			
Consent Decree or Order	U.S. v. Witco Corporation (Trisa Spill Site)	U.S. v Yaffe Iron and Metal Co., Inc.	
Court	U.S. District Court, District of Delaware	U.S. District Court, Eastern District of Oklahoma	
Date Entered	April 19, 1991	February 26, 1997	
Civil Action No.	91-022	Civ-95-308-B	
Statute Violated	CERCLA	CWA	
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) yes b) yes c) not specified d) not specified e) not specified	a) not specified b) not specified c) yes d) yes e) not specified	
Frequency of Audits	“an appropriate number”	only one audit required	
Reporting Requirement as part of Audit	yes	yes	
Requires an EMS	no	no	
Auditing as part of EMS	N/A	N/A	
Auditing as part of SEP Provision	N/A	yes	

<b>II. Audit Policies in EPA Administrative Orders</b>			
Order	In Re Chemical Waste Management, Inc.	Chem-Security Systems, Inc.	In the Matter of Formosa Plastics Corp.
Date Entered	December 19, 1984	July 18, 1985	February 27, 1991
Docket No.	TSCA-84-H-03	1085-06-08-3008P	VI-010-H
Statute Violated	TSCA, RCRA	RCRA	RCRA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) yes	a) not specified b) not specified c) yes d) yes e) not specified	a) not specified b) not specified c) yes d) yes e) not specified
Frequency of Audits	not specified	quarterly audits for one year	annually for four years
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no <sup>18</sup>	no
Auditing as part of EMS	yes	not specified	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>II. Audit Provisions in EPA Administrative Orders</b>			
Order	In the Matter of Halocarbon Products Corp.	Hydrolabs, Inc.	Little America Refining Co.
Date Entered	August 2, 1993	December 8, 1994	October 31, 1994
Docket No.	TSCA-90-H-18	TSCA-94-H-03	TSCA-93-H-09
Statute Violated	TSCA	TSCA	TSCA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) presumably yes d) yes e) not specified	a) not specified b) not specified c) yes d) yes e) not specified	a) not specified b) not specified c) yes, several refineries d) yes e) not specified
Frequency of Audits	“an audit”	only one audit required	only one audit required
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	yes	yes



<b>II. Audit Provisions in EPA Administrative Orders</b>			
Order	Marmab, Inc.	In the Matter of Monsanto Company	In the Matter of Novak Sanitary Landfill Site, et al. <sup>19</sup>
Date Entered	December 8, 1994	January 3, 1990	June 30, 1995
Docket No.	TSCA-94-H-15	TSCA 89-H-21	III-95-52-DC
Statute Violated	TSCA	TSCA	CERCLA
Type of Audit: a) Laboratory b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) not specified	a) not specified b) not specified c) presumably yes d) yes e) not specified	a) yes b) yes c) not specified d) not specified e) not specified
Frequency of Audits	only one audit required	“an audit”	“an appropriate number” of lab audits; “at least one” field audit
Reporting Requirement as part of Audit	yes	yes	yes
Requires an EMS	no	no	no
Auditing as part of EMS	N/A	N/A	N/A
Auditing as part of SEP Provision	yes	N/A	N/A

<b>II. Audit Provisions in EPA Administrative Orders</b>			
Order	In the Matter of the P.D. George Company	In the Matter of Rubber Engineering, Inc., a Division of Baker Hughes, Inc.	In the Matter of Sandoz Crop Protection Corp.
Date Entered	October 2, 1990	September 6, 1989	April 3, 1991
Docket No.	TSCA-89-H-05	EPCRA-VIII-89-01	FIFRA-90-H-7
Statute Violated	TSCA	EPCRA	FIFRA
Type of Audit: a) Lab b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) presumably yes d) yes <sup>20</sup> e) not specified	a) not specified b) not specified c) yes <sup>21</sup> d) presumably yes e) not specified	a) not specified b) not specified c) not specified d) yes <sup>22</sup> e) not specified
Frequency of Audits	“an internal audit”	“an audit”	not specified
Reporting Requirement as part of Audit	yes	yes	yes
Contains an EMS Provision	no	no	no
Auditing as part of EMS Program	N/A	N/A	N/A
Auditing as part of SEP Provision	N/A	N/A	N/A

<b>II. Audit Provisions in EPA Administrative Orders</b>			
Order	Sannor Industries, Inc.	Sara Lee Corp.	Woodlawn Landfill Site, Cecil County
Date Entered	April 22, 1993	November 4, 1993	November 25, 1994
Docket No.	TSCA-92-H-07	EPCRA/CERCLA H-93-01	III-95-05-DC
Statute Violated	TSCA	EPCRA, CERCLA	CERCLA
Type of Audit: a) Lab b) Field c) Facility d) Compliance e) of an EMS	a) not specified b) not specified c) yes d) yes e) not specified	a) not specified b) not specified c) yes d) yes e) not specified	a) yes b) yes c) not specified d) not specified e) not specified
Frequency of Audits	only one audit required	only one audit of multiple facilities required	“an appropriate number” of lab audits; “at least one” field audit.
Reporting Requirement as part of Audit	yes	yes	yes
Contains an EMS Provision	no	no	no
Auditing as part of EMS Program	N/A	N/A	N/A
Auditing as part of SEP Provision	yes	yes	N/A

1. Environmental management systems are programs that help an organization establish and meet its own policy goals through objectives and targets, organizational structures and

accountability, management controls and review functions all with top management oversight. The systems include a commitment to both compliance with environmental laws and prevention of pollution.

Examples of state and Canadian court and administrative orders that contain EMS provisions follow:

*In the Matter of Donsco, Inc.* (No case number specified in copy), Pennsylvania Dept. of Environmental Protection (1998).

*In the Matter of Keystone Cement Co.* (No case number specified in copy), Pennsylvania Dept. of Environmental Protection (1998).

*State of Arizona v. Arizona Water Co.* (CV98-0038), Superior Court of Arizona, Coconino County (1998).

*Dept. of Environmental Management v. Reliance Electric-Highland* (Cause number H-13028), Indiana Dept. of Environmental Management (1998).

*In the Matter of General Motors Corp.* (No case number specified in copy), Delaware Dept. of Natural Resources and Environmental Control (1998).

*In the Matter of Hussey Copper Ltd.* (Docket number 5-97015), Pennsylvania Dept. of Environmental Protection (1997).

*State of California v. San Diego Farah Partners and Behram Baxter* (No case number specified in copy), Superior Court of California, San Diego County (1999).

*Her Majesty the Queen v. Prospec Chemical Ltd.* (51141166P10101/P10102), Provincial Court of Alberta, Judicial District of Fort Saskatchewan (1996).

*Her Majesty the Queen v. Prototype Circuits, Inc., now known as Coretec, Inc.* (No case number specified in copy), Ontario Court (Provincial Division), Toronto Region (1998).

There is one example of a federal plea agreement which contains EMS provisions:

*United States v. B.P. Exploration (Alaska), Inc.*, (A99-0141 CR), U.S. District Court of Alaska (1999).

For more information on environmental management systems, see ISO 14001 (EMS—guidance for use); 14004 (EMS—general guidelines); and 14011 (auditing of EMS).

2. The *Archer Daniels Midland* consent decree requires a comprehensive audit of the company's environmental management practices and procedures and of how the company ensures compliance with all applicable environmental laws and regulations.
3. Louisiana Environmental Quality Act (LEQA), L.R.S. § 30:1051.
4. *Id.*
5. The decree requires a pollution prevention and waste minimization audit for the facility.
6. The decree requires a waste minimization audit for five facilities.
7. The decree, however, requires Darling International, Inc. to continue to implement its environmental compliance and management program.

8. Chapter 361 of the Texas Health and Safety Code, Texas Health and Safety Code Ann. §§ 361.001 *et seq.*, and Chapter 7 of the Texas Water Code, Texas Water Code Ann. §§ 7.001 *et seq.*, and the rules and regulations promulgated pursuant to those statutes.

9. The EMS required under this decree is among the most sophisticated systems found in the orders and decrees analyzed. It requires that the EMS be consistent with “state-of-the-art principles” of environmental management. The EMS will cover, at a minimum, the following 12 key elements: 1) management policies and procedures; 2) organization, personnel, and oversight of EMS; 3) accountability and responsibility; 4) environmental requirements; 5) assessment, prevention and control; 6) environmental incident and noncompliance investigations; 7) environmental training, awareness, and competence; 8) planning for environmental matters; 9) maintenance of records and documentation; 10) pollution prevention program; 11) continuing program evaluation and improvement; and 12) public involvement/community outreach.

10. The supplemental consent decree clarifies certain auditing requirements and provisions concerning coordination of plaintiff’s visits to DOE’s Los Alamos facility that were the subject of a dispute among the parties.

11. The decree requires a pollution prevention and waste minimization audit.

12. The SEP provision of the decree requires a pollution prevention audit and a fugitive emissions audit of defendant’s facility.

13. Idaho Environmental Protection and Health Act (EPHA), Idaho Code §§ 39-101 *et seq.*

14. The decree requires an annual waste management audit.

15. This consent decree incorporates by reference EPA Region III administrative order No. III-94-26-DC, issued June 23, 1994.

16. The decree requires that in connection with all asbestos abatement projects subject to the CAA asbestos NESHAP at Reynolds facilities in Arkansas, Reynolds shall use a specified audit procedure for each contractor to insure that the contractor’s work is in compliance with the asbestos NESHAP.

17. The frequency of lab audits is to be specified in a work plan.

18. The language in this consent order represents a “transitional” period when environmental management systems were first being developed. Even though the order itself does not require an EMS, the position descriptions of both the Environmental Compliance Coordinator and the Environmental Compliance Officer (Exhibit B, 6 and 8, respectively) incorporated into the order require implementation and operation of an EMS.

19. This administrative order is incorporated by reference into and made part of a federal court consent decree in *U.S. v. Air Products and Chemicals, Inc., et al.*, C.V. No. 97-CV-0674 (E.D. Pa., order entered December 30, 1998), but the federal decree itself does not require the audit

20. PDG agrees to conduct an internal audit to review and report on PDG's compliance with TSCA sections 5 and 8.

21. The decree requires Rubber Engineering, Inc. to "develop and implement" an audit of environmental pollutants at its Salt Lake City facility.

22. The audit is to determine whether the pesticide products Sandoz exports are in compliance with FIFRA § 17(a)(2).