



AUDIT POLICY UPDATE

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Corporate-Wide Audit Agreements: *An Effective Approach for Companies to Improve Environmental Compliance*

The U.S. Environmental Protection Agency (EPA) encourages companies with multiple facilities to take advantage of the Agency's Audit Policy (*Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, 60 Fed. Reg. 66706 (Dec. 22, 1995)) to conduct corporate-wide audits and develop corporate-wide compliance systems. The Audit Policy eliminates gravity-based penalties for companies that voluntarily discover, promptly disclose and expeditiously correct violations of federal environmental law.

During the past 18 months, EPA has negotiated corporate-wide agreements with companies to audit and correct violations of federal PCB requirements at natural gas facilities, emergency notification and spill prevention requirements at 17 telecommunication companies, Clean Air Act federal fuel standards at a major airline, and Toxic Substances Control Act (TSCA) violations at two major chemical companies.

See Page 2 for information on how to develop an auditing agreement with EPA.

Recently, EPA and a major manufacturer entered into a voluntary agreement under which the manufacturer will audit, disclose and correct any violation of Clean Air Act New Source Review (NSR) standards at 40 facilities.

This agreement potentially involves the correction of Clean Air Act applicability determinations made years ago by a previous owner. Without this

for the audit, disclosures and compliance, and provides for a nationwide settlement at the audit's conclusion.

This is a landmark agreement because of the amount of resources committed to conduct the audit and correct violations, and the potential environmental benefits that will result from correction of any violations.

The audit agreement allows for the efficiencies of analyzing similar processes and resolving all violations at one time, in addition to the benefits gained from EPA and the company working together to bring 40 facilities into compliance.

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agreement, such errors in applicability determinations would potentially expose the new owner to the extensive and unpredictable costs associated with an enforcement action. The agreement establishes a three-year commitment by the company to audit its facilities at a cost of more than \$2,000,000, and highlights the value of corporate-wide agreements in the context of acquisitions.

The audit itself involves a detailed review and analysis of whether any changes at the facilities triggered NSR requirements, including BACT/LAER and air quality impact analysis/offsets. The agreement establishes a schedule

Benefits of Corporate Auditing Agreements

Corporate auditing agreements are proving to be effective mechanisms to resolve a broad range and number of corporate-wide violations discovered during environmental audits. These agreements are an optimal compliance tool for companies with facilities located in more than one EPA Region to ensure that the disclosures are processed on the same schedule and with one point of contact in the Agency. These agreements allow companies to plan a corporate-wide audit with an advanced

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understanding between the company and EPA regarding schedules for conducting the audit and disclosing violations beyond the current 10-day disclosure requirement for single-facility disclosures.

For companies, this approach provides the opportunity to evaluate corporate practices and environmental compliance without the stigma of an enforcement action, and removes the uncertainty and cost of litigation, attorneys' fees and sanctions for violations. An agreement provides companies with assurance that violations disclosed over an extended schedule will meet EPA's expectations for timely disclosure. This approach also can provide an opportunity for companies to design and implement practices that incorporate environmental compliance into corporate operations. For EPA, corporate auditing agreements provide an efficient and economical means of improving and ensuring environmental compliance.

How to Develop a Corporate Audit Agreement

Companies interested in conducting an auditing agreement should contact their EPA Regional office for the area in which the facilities are located or, in the case of multi-Regional facilities, **contact Leslie Jones at EPA's Office of Regulatory Enforcement, at (202) 564-5123 or Email: jones.leslie@epa.gov**. For companies

Corporate audit agreements: EPA and the company can reach mutually acceptable terms regarding schedules for audit commencement and completion, and a final disclosure report.

unsure whether an auditing agreement best suits their needs, they may, for a limited time, engage in an anonymous dialogue for the purpose of exploring potential terms of an agreement.

Corporate auditing agreements are designed to address potentially high-volume disclosures. 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. EPA will require that an auditing agreement be in writing and that the facilities to be audited be identified. Based on the breadth and complexity of the audit, EPA and the company can reach mutually acceptable terms regarding schedules for audit commencement and completion, and a final disclosure report. All agreements are expected to have a schedule for violation corrections and to define injunctive relief. The company and EPA can also define in advance economic benefit for certain violation types (where applicable) and violations ineligible for relief. Such definitions provide the company with advanced knowledge of

potential statutory penalties for specific violation types. In developing schedules and the parameters of a corporate auditing agreement, EPA strives to treat competitors similarly.

In developing an auditing agreement, EPA will coordinate with EPA Regions to ensure that the proposed facilities are not ineligible for the Audit Policy due to an ongoing enforcement action or any inspection that might occur during the audit period. In all cases, however, companies that are subject of a corporate-wide investigation by EPA are ineligible for Audit Policy relief. EPA will coordinate an expedited and comprehensive resolution of all disclosures. For violations involving a state-approved program, EPA will notify the state of the disclosure.

EPA understands that, as with most enforcement actions, confidentiality is important to companies. EPA will protect settlement discussions associated with the audit, and findings conducted and disclosed under an agreement, consistent with EPA's handling of enforcement matters and EPA's "Confidentiality and Information Received Under Agency's Self-Disclosure Policy" (1997). Typically, disclosures and related documents are withheld from public release until such time as the Agency and the self-discloser have formally settled the case.

See page 3 for a list of Audit Policy information documents found on EPA's Website.

AUDIT POLICY UPDATE

The *Audit Policy Update* is published periodically for the Assistant Administrator for Enforcement and Compliance Assurance by the Office of Regulatory Enforcement. The newsletter is intended to provide information to the public and regulated communities regarding developments under the EPA Audit Policy. Editor: Virginia Bueno, (202) 564-8684. Email: bueno.virginia@epa.gov. Co-Editor: Leslie A. Jones, (202), 564-5123; Email: jones.leslie@epa.gov. Change of address or subscription requests should be sent to the editor. Reproduction and wide dissemination of the newsletter is highly encouraged.

Audit Policy Internet Resources

- @ **Audit Policy Support Documents**
<http://www.epa.gov/oeca/ore/apolguid.html>

- @ **Audit Policy: Incentives for Self-Policing**
<http://www.epa.gov/oeca/auditpol.html>

- @ **Audit Policy Interpretive Guidance (Questions and Answers)**
<http://www.epa.gov/oeca/audpolguid.pdf>

- @ **'Audit Policy Update' (Newsletter)**
<http://www.epa.gov/oeca/ore/auditupd.html>

- @ **Confidentiality of Information Received Under Agency's Self-Disclosure Policy**
<http://www.epa.gov/oeca/sahmemo.html>

- @ **Memorandum--Subject: Implementation of the Environmental Protection Agency's Self-Policing Policy for Disclosures Involving Potential Criminal Violations**
<http://www.epa.gov/oeca/oceft/audpol2.html>

- @ **Policy on Compliance Incentives For Small Businesses**
<http://www.epa.gov/oeca/smbusi.html>

- @ **Memorandum--Subject: Reduced Penalties for Disclosures of Certain Clean Air Act Violations**
<http://www.epa.gov/oeca/ore/caa-tit.pdf>

- @ **Optional Form for Disclosure Submittal**
<http://www.epa.gov/oeca/ore/checklist.pdf>

- @ **Audit Policy Evaluation**
<http://www.epa.gov/oeca/oppa/ape.htm>

- @ **'Enforcement Alert' (Newsletter)**
<http://www.epa.gov/oeca/ore/enfalert>



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