

# ***EPA's New eDisclosure Portal***

***Streamlining Implementation  
for Self-Disclosed Violations***

**Webinars for Stakeholders**

*June 10, 2015*

*June 15, 2015*

**Special Litigation & Projects Division  
Office of Civil Enforcement  
Office of Enforcement & Compliance Assurance**



## Purpose of Webinars

- Describe EPA's plan for a new streamlined "Next Generation" approach to more efficiently process disclosed violations submitted to the Agency under the Audit Policy and the Small Business Compliance Policy
- Allow stakeholders to:
  - learn how the new eDisclosure system will be designed and implemented
  - share their views and ask questions about the approach
  - begin preparing for the expected Fall 2015 launch



## Outline of the Webinar

- Overview of eDisclosure Approach
- Process and Timing
- Implementation Details
- Questions



# Overview of eDisclosure Approach

- EPA believes strongly in the benefits of the Audit Policy and the Small Business Compliance Policy: to provide penalty mitigation and other incentives for companies to self-police, disclose, correct and prevent violations.
- Over the past several years, EPA has been evaluating how best to realize these benefits. Companies have suggested that EPA could streamline implementation of the Audit Policy for more routine disclosures to make the process faster, more efficient, and to save time and resources for regulated entities and EPA, while still retaining the incentives to self-police environmental problems.
- The regulated community also emphasized that a key time to encourage self-auditing and self-disclosure is when new companies are purchased or acquired because that is when companies are very motivated to fix problems and make a fresh start.



# Overview of eDisclosure Approach

- EPA has decided to modernize implementation of these self-disclosure policies by creating a centralized web-based “eDisclosure” portal to meet these goals, and in a way that also will be easy for small businesses to use.
- Under the automated eDisclosure system, large and small businesses with some of the more routine types of violations will quickly get their disclosures resolved. At the same time, EPA is retaining the incentives outlined in its New Owner Policy and will continue to accept and process new owner disclosures outside the automated eDisclosure system.



## Process and Timing

- After considering input received as a result of EPA's public engagement webinars, EPA will build out and target the launch of eDisclosure for the Fall of 2015.
- Simultaneous with the launch, EPA will issue a *Federal Register* notice describing in detail how EPA plans to implement the Audit Policy and Small Business Compliance Policy.
- Prior to launch, implementation of the Audit Policy, New Owner Policy and Small Business Compliance Policy remains unchanged, and EPA will evaluate on a case-by-case basis whether to enter into new audit agreements outside the New Owner context.





# Existing Audit Policy Conditions

1. **Systematic Discovery** - *required for 100% penalty mitigation, otherwise only 75% mitigation*
2. **Voluntary Discovery**
3. **Prompt Disclosure** – *within 21 days of discovery*
4. **Discovery, Disclosure Independent of Government/Third Party Plaintiff**
5. **Correction and Remediation** - *within 60 days after discovery unless written agreement/order*
6. **Prevent Recurrence**
7. **No Repeat Violations** – *can't have same or closely related violation at same facility w/i past 3 yrs*
8. **Other Violations Excluded** (*serious actual harm, imminent and substantial endangerment*)
9. **Cooperation**



# Existing Small Business Compliance Policy Conditions

## Primary Differences from Audit Policy Conditions:

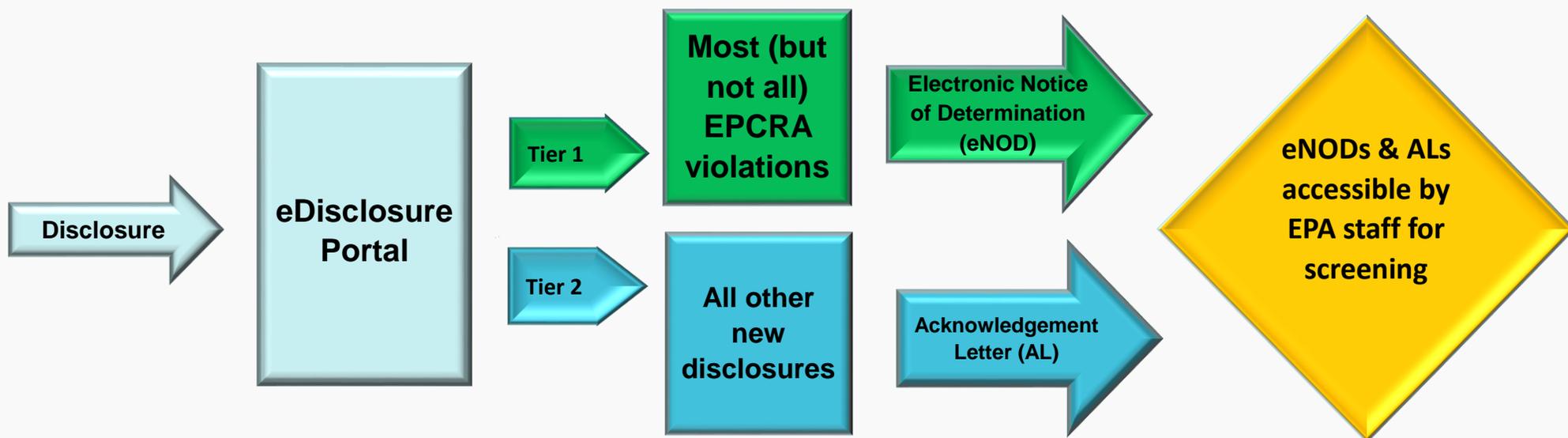
- 1. Systematic Discovery** *100% penalty mitigation even if discovery is not systematic*
- 5. Correction/Remediation** *within 90 days after discovery unless written schedule/order  
(maximum time allowed is 360 days, only under certain circumstances)*
- 7. No Repeat Violations** *similar 3-year bar as Audit Policy plus can't have more than one violation of any environmental requirement for past five years*

# eDisclosure Implementation Details





## Two-Tiered System with Different Types of Resolution



**These two Tiers are paths through the eDisclosure system and should not be confused with EPCRA Tier I and Tier II inventory reports.**



## Tier 1 v. Tier 2

<b>Tier 1</b>	<p><u>Includes:</u></p> <ul style="list-style-type: none"><li>- EPCRA violations that meet <i>all</i> Audit Policy conditions</li><li>- EPCRA violations that meet <i>all</i> Small Business Compliance Policy conditions</li></ul> <p><u>But Does <b>Not</b> Include:</u></p> <ul style="list-style-type: none"><li>- CERCLA 103/EPCRA 304 chemical release reporting violations</li><li>- EPCRA violations with significant economic benefit (as defined by EPA)</li></ul>	<p>The eDisclosure system will automatically issue an electronic Notice of Determination (eNOD) confirming that the violations are resolved with no assessment of civil penalties, conditioned on the accuracy and completeness of the submitter's eDisclosure.</p>
<b>Tier 2</b>	<p><u>Includes:</u></p> <ul style="list-style-type: none"><li>- All Non-EPCRA violations</li><li>- EPCRA violations where discloser can only certify compliance with Audit Policy Conditions 2-9 (i.e., discovery was not systematic)</li><li>- EPCRA/CERCLA violations excluded above</li></ul>	<p>The eDisclosure system will automatically issue an Acknowledgement Letter (AL) noting EPA's receipt of the disclosure and promising that EPA will make a determination as to eligibility for penalty mitigation if and when it considers taking enforcement action for environmental violations.</p>



# Why Tier 1 is Limited to EPCRA Violations Meeting All Policy Conditions

- It is easy to confirm compliance with EPCRA reporting requirements.
- EPA has significant experience with providing NODs for these self-disclosed violations (about half the disclosures EPA receives involve EPCRA reporting violations).
- The regulated community suggested such violations for streamlined Audit Policy treatment.



## Three-Step Process

1. Register to File With the Centralized Web-Based Portal
2. Submit Violation Disclosure Report
3. Certify Compliance (Submit Compliance Report)



## **Step One: Register to File With the Centralized Web-Based Portal**

- Register with EPA Central Data Exchange (CDX) system.
- Existing CDX registrants who are already identity-proofed under the Cross Media Electronic Reporting and Recordkeeping Rule (CROMERR) would not be required to re-register with CDX.
- Paper identity proofing is available if electronic ID-proofing fails.



## Step Two: Submit Violation Disclosure Report

- In order to be considered “prompt” under both the Audit Policy and Small Business Compliance Policy, the discloser must report online within 21 days of “discovery” that it may have violated a particular environmental requirement and the date such potential violations were discovered.
- Regulated entities may submit disclosures to give them time to determine whether a violation actually occurred and to more specifically identify the particular violation(s).
- eDisclosure will not be designed to receive or process any information claimed as Confidential Business Information (CBI), so disclosers must submit sanitized (non-CBI) information through the portal.
- Any follow-up CBI that needs to be submitted must be done manually according to EPA procedures and the requirements of 40 CFR Part 2.





## Step Three: Certify Compliance (Submit Compliance Report)

- Within 60 days of submitting an initial online Audit Policy disclosure (or within 90 days of submitting an initial online Small Business Compliance Policy disclosure), the discloser ordinarily must submit a Compliance Report.
- The Compliance Report must identify the specific violations, and certify that the violations have been corrected and that the Audit Policy or Small Business Compliance Policy conditions have been met.
- The compliance reporting deadlines are subject to limited reporting deadline extensions that automatically apply when the violation correction deadline is extended (discussed later).
- The compliance reporting deadlines are different from the deadlines to correct the violations:
  - violation correction deadline: runs from date violations are **discovered**;
  - compliance reporting deadline: runs from date violations are **disclosed** (up to 21 days after discovery).



# Disclosers Who Do Not Timely Certify Compliance

- A regulated entity may withdraw its disclosure before submitting its Compliance Report and certification, for example:
  - where someone submitted a disclosure and then determined that no violations actually occurred; or
  - where a Tier 2 discloser ultimately determined that it cannot certify compliance with Conditions 2-9 of the Audit Policy.
  
- For whatever reason, if a discloser does not timely certify compliance with conditions of the Audit Policy or Small Business Compliance Policy, the eDisclosure system automatically will:
  - record the entity's attempt to disclose violations and notify it that EPA will retain such record of violation; and
  - send the discloser a notice that the disclosure does not qualify for Audit Policy or Small Business Compliance Policy penalty mitigation through the eDisclosure system.



# Can the Violation Correction Period be Extended?

For Tier 1 Disclosures: **No**

To obtain an electronic Notice of Determination (eNOD), disclosers must correct their violations:

- within 60 days of the date of discovery for those seeking penalty mitigation under the Audit Policy; or
- within 90 days of the date of discovery for those seeking penalty mitigation under the Small Business Compliance Policy.



# Can the Violation Correction Period be Extended?

For Tier 2 Disclosures Pursuant to the Audit Policy: **Yes**

- Tier 2 disclosers seeking penalty mitigation under the Audit Policy can make an online request for 30 additional days (beyond the 60 days already allowed under the policy) to correct their violations, with no explanation required.
- Such requests will be considered granted at the time of the request, and the eDisclosure system will automatically extend the Compliance Report due date by an amount equal to the correction period extension (e.g., if you get 30 extra days to correct, you get 30 extra days to certify compliance).



# Can the Violation Correction Period be Extended?

For Tier 2 Disclosures Pursuant to the Audit Policy: **Yes**

- Tier 2 disclosers seeking penalty mitigation under the Audit Policy can make an online request for more than 30 additional days to correct their violations, provided the violation correction date does not extend beyond 180 days after the date of discovery.
- To make such a request for an extension of more than 30 days, disclosers must include in the eDisclosure system a justification for such extension.
- Upon such request, the eDisclosure system will automatically extend the Compliance Report due date by an amount equal to the correction period extension, but the request is not considered granted or denied at the time of the request.
- EPA is more likely to scrutinize requests for extension beyond 30 additional days and ultimately may decide that correction was not prompt, if and when it considers taking an enforcement action for environmental violations.



# Can the Violation Correction Period be Extended?

For Tier 2 Disclosures Pursuant to the Small Business Compliance Policy: **Yes**

- Tier 2 disclosers seeking penalty mitigation under the Small Business Compliance Policy can make an online request for 90 additional days (beyond the 90 days already allowed under the policy) to correct their violations, with no explanation required.
- Such requests are considered granted at the time of the request and the eDisclosure system will automatically extend the Compliance Report due date by an amount equal to the correction period extension (e.g., if you get 90 extra days to correct, you get 90 extra days to certify compliance).

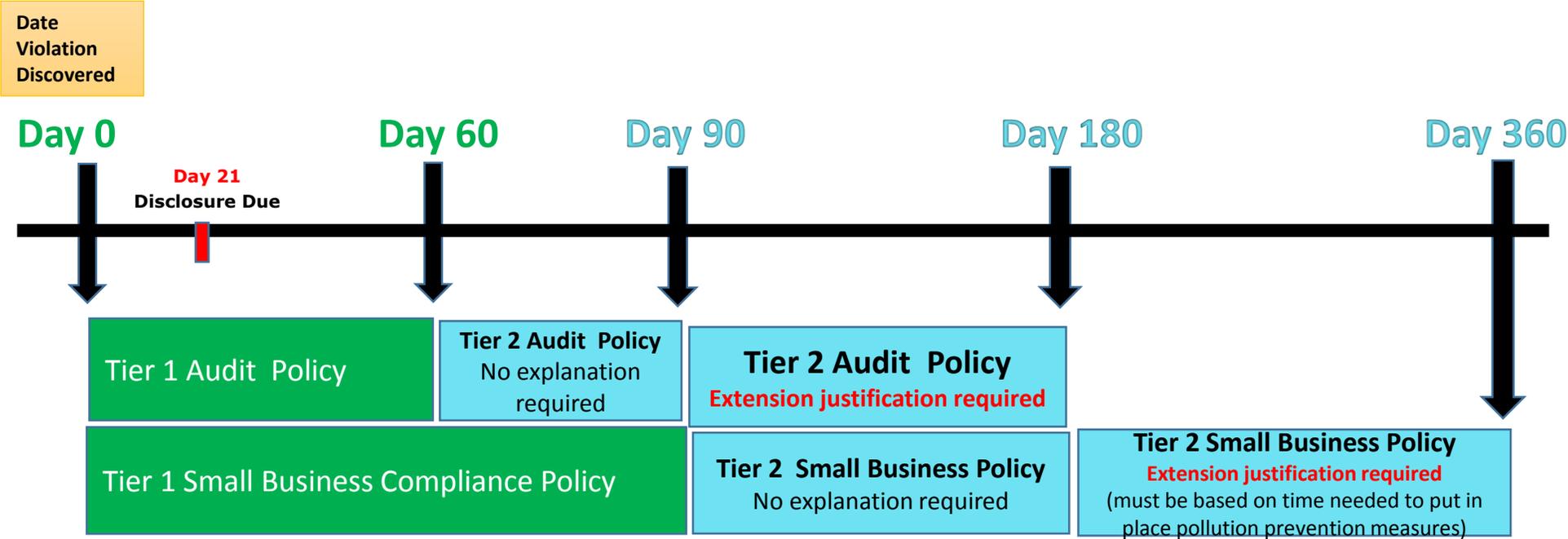


# Can the Violation Correction Period be Extended?

For Tier 2 Disclosures Pursuant to the Small Business Compliance Policy: **Yes**

- Tier 2 disclosers seeking penalty mitigation under the Small Business Compliance Policy can make an online request for more than 90 additional days to correct their violations, provided the violation correction date does not extend beyond 360 days after the date of discovery.
- To make such a request for an extension of more than 90 days, disclosers must include in the eDisclosure system a justification for such extension.
- Extensions of more than 180 days after discovery must be based on the time needed to correct the violation(s) by putting into place pollution prevention measures.
- Upon such request, the eDisclosure system will automatically extend the Compliance Report due date by an amount equal to the correction period extension, but the request is not considered granted or denied at the time of the request.
- EPA is more likely to scrutinize requests for extension beyond 90 additional days and ultimately may decide that correction was not prompt, if and when it considers taking an enforcement action for environmental violations.

# Violation Correction Time Periods





## Post-Submission Follow-Up

### Tier 1 submissions:

- EPA will spot check to ensure conformance with EPCRA the Audit Policy, the Small Business Compliance Policy, and eDisclosure requirements.

### Tier 2 submissions:

- EPA will screen for significant concerns (e.g., criminal conduct, imminent hazard).
- If and when EPA decides to take an enforcement action for environmental violations, it will then make a determination as to whether the discloser is eligible for penalty mitigation.





# Procedure for Processing Pre-Existing Disclosures

- EPA will allow regulated entities with pre-existing unresolved EPCRA disclosures to resubmit their disclosures as a Tier 1 disclosure through the eDisclosure system within 90 days after launching the portal (in such disclosure they must certify that they corrected their violations within 60 days of when they were discovered).
- For pre-existing disclosures subject to an audit agreement or significant settlement negotiations, EPA will resolve such disclosures with a Notice of Determination (NOD), Consent Agreement and Final Order (CAFO), or Consent Decree (CD).
- All other pre-existing disclosures (including pre-existing EPCRA disclosures that are not resubmitted within 90 days of the eDisclosure launch) will be treated as a Tier 2 disclosure and the *Federal Register* Notice announcing the launch of eDisclosure will serve as an Acknowledgement Letter.



## New Owner Disclosures

- EPA's approach to resolving New Owner disclosures is not changing.
- Pre-existing New Owner disclosures will not be resolved through the eDisclosure system but instead will be resolved manually.
- New owners may elect to use the portal to disclose future violations, but EPA also will continue to accept and manually process new owner disclosures outside of the eDisclosure system pursuant to EPA's New Owner Policy and EPA will enter into audit agreements as appropriate with new owners.



## EPA Approach to FOIA Requests Seeking Disclosures

- EPA has always considered *resolved* Audit Policy disclosures as publicly releasable under FOIA and plans to continue such policy (see 1997 Memo “Confidentiality of Information Received Under Agency’s Self-Disclosure Policy”).
- The 1997 memo also states that EPA can withhold *unresolved* disclosures pursuant to the FOIA “law enforcement proceeding” exemption, Exemption 7(A).
- In response to any requests for individual *unresolved* disclosures, EPA will determine on a case-by-case basis whether it reasonably foresees that release would harm an interest protected by a FOIA exemption.
- EPA generally expects to make Tier 1 and Tier 2 disclosures publicly available within a relatively short period of time after their receipt.



# Next Steps

**Finish building  
and testing portal**

**(Summer/Fall 2015)**

**Publish *Federal  
Register* Notice  
launching and  
describing eDisclosure**

**(Fall 2015)**



# Questions





## Contact Info



Phil Milton

[milton.philip@epa.gov](mailto:milton.philip@epa.gov)

202-564-5029