

ENCLOSURE 1 – Introduction to Audit Policy

This enclosure provides an introduction to the Audit Policy and outlines, for Participating Hospitals,¹ information which will be needed in the Disclosure Report, clarifies a few Audit Policy conditions that might be confusing, discusses State coordination, and provides the contact name and address for submission of the Disclosure Report.

What is EPA's Audit Policy?

The EPA Audit Policy, formally titled *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, safeguards human health and the environment by providing several major incentives for regulated entities to voluntarily come into compliance with federal environmental laws and regulations. Please visit the following website to review the incentives and the nine associated Policy conditions.

<http://www.epa.gov/compliance/incentives/auditing/index.html>

Briefly, the incentives include

- significant or complete penalty reduction (i.e., no gravity-based penalties if all nine of the Policy's conditions are met; reduction of gravity-based penalties by 75% where the disclosing entity meets all of the Policy's conditions except detection of the violation through a systematic discovery process);
- no recommendation for criminal prosecution for entities that disclose criminal violations if all of the applicable conditions under the Policy are met. Policy Condition 1, "Systematic discovery," is not a requirement for eligibility for this incentive, although the entity must be acting in good faith and adopt a systematic approach to preventing recurring violations;
- no routine requests for audit reports would be made.

The nine policy conditions are summarized in the table below.

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

¹ Participating Hospitals are those hospitals which notify EPA of their intent to conduct an environmental audit and to provide EPA with a Disclosure Report by June 20, 2009.

Condition Number	Audit Policy Condition
8	Certain violations are not eligible.
9	Cooperation by the disclosing entity is required.

What Information is Needed in a Disclosure Report?

Submission of the facility's audit report is not needed. However, to determine whether a facility has met the criteria in the Audit Policy, EPA will need violation-specific information and factual information specific to each Audit Policy condition.²

General Information: In order to ensure that the Agency has complete information on the violations that may have occurred, we request information on the Participating Hospital's compliance record. Specifically, please provide the following information as it pertains to the following areas.

- Facility name;
- Facility type (if appropriate);
- Facility address (street, city, state, zip code);
- Date facility began operations;

Violation Specific Information: At a minimum, please include the following information for each disclosed violation:

- Nature of potential violation(s) (e.g., failure to submit annually to the LEPC, SERC, and the fire department; a completed chemical inventory form; etc.);
- Dates of possible noncompliance³ (e.g., March 1, 2003 - present);
- Chemical(s) involved (if appropriate);
- Quantity of material(s) (lbs.) (e.g., amount stored, released, spilled, or disposed of; amount of waste uncharacterized; etc.);
- Date audit team commenced/completed audit;
- Date EPA notified of possible noncompliance;
- Date facility returned to compliance; and
- Actions taken to return to compliance (e.g., Tier II form submitted to the LEPC, SERC, and fire department, etc.).

For each violation or aggregate of violations for a facility, determine the **cost to return to compliance**. Such costs should include: internal staff or outside consultants' time to become familiar with the regulations, to determine which chemicals meet/exceed reporting thresholds, to prepare forms/plans, to submit forms to appropriate agencies, or fees collected by state or other regulatory agencies. If available, the Agency would also

² To help in organizing violation-specific and response to the Audit Policy conditions, Region 4 has developed a Voluntary Self-Disclosure Template. Please contact Wesley Hardegee at (404) 562-9629 or Hardegee.wes@epa.gov for an electronic copy of this template. Use of Region 4's template is not required, and your facility is free to modify Region 4's template or use another format to self-disclosure.

³ Please note that if information is unavailable regarding the dates of possible noncompliance, EPA will assume five years of noncompliance.

like to hear of any pollution prevention activities that might have come out of correcting noncompliance.

Adherence to Audit Policy Conditions: Please provide all available factual information which addresses conditions one through nine of the Audit Policy in your final audit report.

How are Certain Audit Policy Conditions to be Applied at Participating Hospitals?

Although EPA cannot prejudge a Disclosure prior to submission, here are some insights into application of the Audit Policy conditions under the regional initiative established by the Agency's October 2008 letter.

- Audit Policy Condition 1, "**Systematic Discovery**," calls for the violation to be discovered through an environmental audit or a compliance management system. For a Participating Hospital to satisfy Audit Policy Condition 1, it must agree to perform future audits or develop/implement, within a specific timeframe, an Environmental Management System (EMS) which includes, at a minimum, ongoing compliance.⁴
- While Condition 3 of the Audit Policy, "**Prompt Disclosure**," requires facilities to disclose within 21 days of finding potential violations, the Agency's interpretive guidance document (*Audit Policy Interpretive Guidance, (January, 15, 1997)*) allows a facility to submit a list of facilities it intends to evaluate, instead of disclosing each violation within 21 days. In the spirit of this interpretation and because EPA recognizes that a consolidated reporting framework is appropriate in many circumstances, the Agency will consider the hospital's agreement to participate in this regional initiative to satisfy Audit Policy Condition 3.
- Regulatory evaluations remain a critical component of EPA's approach and inspections of hospitals have occurred and will continue. If an inspection reveals non-compliance, formal enforcement action remains possible. However, with regard to Audit Policy Condition 4, "**Independent Discovery and Disclosure**," any civil violations discovered at a Participating Hospital, which was scheduled to be audited subsequent to the discovery, shall be available for resolution by the Audit Policy. In other words, the Audit Policy's fourth condition is not negated by an inspection that occurs after a hospital accepts participation in this initiative and before completion of the Participating Hospital's audit.
- Audit Policy Condition 5, "**Correction and Remediation**," requires that violations be corrected within 60 days of discovery. Discovery occurs when any officer, director, or employee or agent of the facility has an objectively reasonable basis for believing that a violation has or may have occurred. If, at any time, a Participating Hospital determines that it requires additional time to complete the required corrective action, please submit a request, including a proposed schedule and your justification for an extension of time.

⁴ An EMS is a set of processes and practices that enable an organization to reduce its environmental impacts and increase its operating efficiency (i.e., it allows an organization to systematically manage its environmental and health safety matters). Most EMS are built on the "Plan, Do, Check, Act" model. This model leads to continual improvement. For more information on EMS, please see the following URL: <http://www.epa.gov/ems/>.

Note that corrective action may actually be completed before submission of the Disclosure Report.

What Deliverables are Required of a Participating Hospital?

In addition to the Disclosure Report due on June 20, 2009, by a Participating Hospital, there are two other deliverables needed to keep EPA apprised of the audit's progress. These Progress Reports should include a description of the noncompliance, actions planned and taken to promptly correct the violations, a brief narrative describing the Participating Hospital's progress toward completing the evaluation and any requests for extensions to the 60-day correction period with detailed rationale.

EPA expects to receive a final Disclosure Report that includes information regarding the Participating Hospital's conformance with the Audit Policy, facility compliance, and costs to return to compliance. If, at any time, the Participating Hospital determines that it will need more time to provide the requested data and to come into compliance, please submit a request, including a proposed schedule and your justification for an extension of time.

What is the Relationship of this Regional Initiative to States and what State Coordination is Occurring?

This is a federal, regional initiative designed and implemented by EPA. The EPA Audit Policy only applies to violations of federal environmental laws and statutes. State laws that do not have a federal equivalent are not required to be disclosed to Region 4.

The Region will inform the respective State of Participating Hospitals and provide pertinent correspondence. EPA will further inform the State of the results of EPA's processing of the Disclosure Report.

Disclosure Reports submitted to Region 4 will not be deemed compliant with the reporting requirements set forth in a State's audit policy or statute, which may contain provisions more stringent than or in addition to federal requirements. If a Participating Hospital wants to obtain direct benefits from audit policies or audit privilege statutes that might exist at the State level, please contact the State for further information.

To whom do Participating Hospitals Submit the Deliverables?

Progress Reports and the Disclosure Report are to be submitted to:

US EPA Region 4
Attn: Kelly Sisario, Chief
Enforcement and Compliance Planning and Analysis Branch
Office of Environmental Accountability
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

How will EPA Process the Disclosure?

Upon receipt, the Disclosure Report will be assigned a Docket Number and an EPA attorney will be assigned. A letter will be sent informing the Participating Hospital of EPA's receipt of this Disclosure Report and providing the Docket Number for future reference. Based on the noncompliance statues referenced in the Disclosure Report, the disclosure will be distributed to media programs within the Region.

If, at the time the Disclosure Report is submitted, there are disclosed violations which have not yet been corrected, the Participating Hospital will remain obligated to complete the corrective actions necessary to abate any disclosed violations and to report to the Region in writing the completion of any corrective actions within 30 days after such corrective action has been completed. In such case, EPA may defer completing the processing of the Disclosure Report until the Participating Hospital has reported to EPA the completion of all corrective action(s) or an acceptable schedule is received to completion the corrective action(s).

ENCLOSURE 2 – Example List of Statutes for Audit

1. Clean Air Act (CAA) – Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (NESHAP), Maximum Achievable Control Technology (MACT) Standards, Compliance Assurance Monitoring (CAM), Chemical Accident Prevention Provisions, Title V Permits, Acid Rain Program Provisions and Protection of Stratospheric Ozone (Chlorofluorocarbons) (40 C.F.R. Parts 52, 60, 61, 63, 64, 68, 70, 72 and 82).

All applicable provisions of the above; and the State Implementation Plan Regulations (promulgated pursuant to Section 110 of the Clean Air Act) including the New Source Review regulations at 40 C.F.R. Part 51, Subpart I.

2. Clean Water Act (CWA) – Spill Prevention, Control and Countermeasures (SPCC) Rule – (40 C.F.R. Part 112).
3. CWA – The National Pollutant Discharge Elimination System Permits (40 C.F.R. Part 122) including Phase I and Phase II National Pollutant Discharge Elimination System (NPDES) permitting requirements; General Pretreatment Regulations (40 C.F.R. Part 403).
4. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Emergency Planning, and Community Right-to-Know Act (EPCRA) – Designation, Reportable Quantities, and Notification (40 C.F.R. Part 302); Emergency Planning and Notification (40 C.F.R. Part 355); Hazardous Chemical Reporting: Community Right-to-Know (40 C.F.R. Part 370); Toxic Chemical Release Reporting: Community Right-to-Know (40 C.F.R. Part 372).
5. Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) – Good Laboratory Practice Standards (40 C.F.R. Part 160); State Registration of Pesticide Products (40 C.F.R. Part 162); Worker Protection Standard (40 C.F.R. Part 170); Certification of Pesticide Applicators (40 C.F.R. Part 171); Experimental Use Permits (40 C.F.R. Part 172)
6. Resource Conservation and Recovery Act (RCRA) – Hazardous Waste, Universal Waste, and Used Oil requirements (40 C.F.R. Parts 260-266, 268, 270, 273, 279).

The EPA Region 4 States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee have been authorized by EPA to operate state hazardous waste management programs in lieu of the federal program. Once authorized, a state regulation becomes the applicable regulation. [See, Section 3006(b) of RCRA, as amended, 42 U.S.C. § 6926(b)].
7. RCRA – Underground Storage Tanks (USTs) Technical Standards and Corrective Action Requirements (40 C.F.R. Part 280, Subparts A – H).
8. Toxic Substances Control Act (TSCA) – Pre-manufacture Notification (40 C.F.R. Part 720); Lead-Based Paint Poisoning Prevention (40 C.F.R. Part 745); Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; (40 C.F.R. Part 761).
9. TSCA and NESHAP – Asbestos (40 C.F.R. Part 763, Subpart E and 40 C.F.R. Part 61, Subpart M).
10. Safe Drinking Water Act (SDWA) – National Primary and Secondary Drinking Water Regulations (40 C.F.R. Parts 141 and 143); Underground Injection Control Program (40 C.F.R. Parts 144-148).