

# Overview of TSCA CDR Enforcement

**Mark Garvey**  
**Senior Attorney**  
**Office of Civil Enforcement**

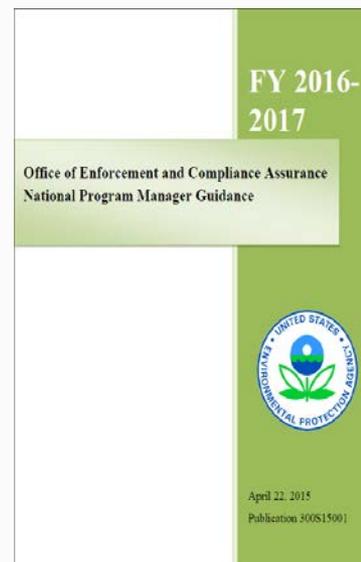
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# Enforcement Activities for New and Existing Chemicals 2016-2017

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- Developed in coordination with OCSPP and published in the National Program Managers Guidance.
- Focus on chemical manufacturing (including import), distribution, processing, use and disposal of new and existing chemicals.



## B. TSCA New and Existing Chemicals Programs

### Activities:

EPA regions opting to engage in compliance monitoring and assurance activities for TSCA New and Existing Chemicals should:

- Focus on chemical manufacturing (including importing), distribution, processing, use, or disposal of new chemicals. Focus monitoring and enforcement efforts on ensuring facility compliance with TSCA § 5 - new chemicals requirements such as Pre-manufacturing Notice (PMN); Significant New Use Rules (SNUR's); Low Volume Exemptions (LVE's), and on chemicals of concern including short chained and other chlorinated paraffins, fractions, Work Plan and other priority or Action Plan chemicals or targets.
  - Implement the Compliance Monitoring Strategy for the Toxic Substances Control Act (September 16, 2011)<sup>10</sup> including Appendix B which addresses New and Existing Chemicals.
  - Obtain information through inspections and/or subpoena as appropriate. Increase the use of TSCA subpoenas for investigation of potential noncompliance.
  - Initiate civil enforcement actions, as appropriate, to bring facilities into compliance, consistent with national policy.
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- Target existing chemical reporting and record keeping requirements such as TSCA § 4, 8 and the 2016 Chemical Data Reporting Rule.

<sup>10</sup> The TSCA CMS, including Appendix B, can be found at: <http://www2.epa.gov/sites/production/files/2014-01/documents/tsca-cms.pdf>.

## Enforcement – Subpoena, Inspection, Penalties

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- TSCA § 16 (a)(2): a civil penalty shall be assessed by the Administrator after a hearing
- Penalty authority implemented through ERPs

# Enforcement Response Policy

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## **TSCA Sections 8, 12, & 13 in one ERP**

- TSCA Section 5 in a separate ERP
- Statute allows for Per Day penalty

## **For CDR – Per chemical, per facility** is basis for assessing violations

- Each chemical not reported is a separate violation (multiplied by each manufacture/import facility)

[https://www.epa.gov/sites/production/files/documents/erp8\\_12r.pdf](https://www.epa.gov/sites/production/files/documents/erp8_12r.pdf)

## Types of CDR violations under the TSCA 8, 12, and 13 ERP

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- Failure to report a chemical(s) to the CDR Rule
- False/incorrect/misleading reporting
- Failure to establish/keep records as required
- Failure to maintain records/report in a manner that meets the standard required in the rule

# Enforcement Response Policy

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## **Determining the Level of Action**

- Notice of Noncompliance (minor violations of TSCA section 8 reporting)
- Administrative Civil Penalties (Administrative Complaint/Consent Agreement and Final Order)
- Criminal Action – misdemeanor
- Notice of Determination (NOD) – eDisclosure under the Agency’s Audit Policy

## **Mitigating Factors considered under the ERP**

- Good faith and attitude (timely corrective action)
- Such other matters as justice may require
- Self-disclosure of violations
- Ability to pay

## Examples of TSCA Enforcement Settlements Involving CDR Violations in FY16 – FY17

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- JX Nippon Chemical Texas Inc. (TSCA-HQ-2017-5003) – \$350,000
- Tri-iso TryLine LLC (TSCA-HQ-2017-5001) – \$163,744
- American International Chemical (TSCA-HQ-2016-5002) – \$307,020
- Tricon Energy (TSCA-HQ-2016-5001) – \$327,505
- Shrieve Chemical Company (TSCA-HQ-2016-5009) – \$193,815
- BruggemannChemical (TSCA-HQ-2016-5014) – \$109,599
- Linwood Mining & Minerals Corp. (TSCA-HQ-2016-5015) – \$20,468

# Status of eDisclosure

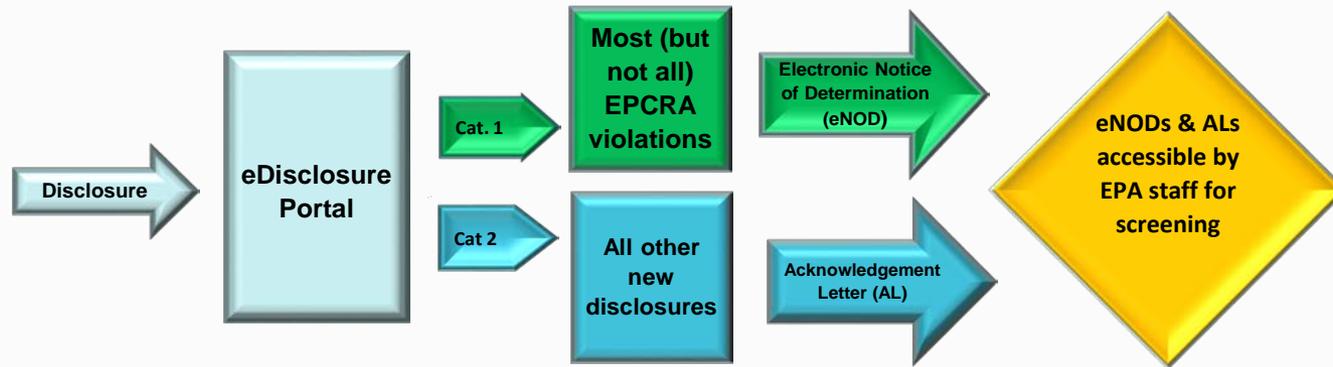
## Self-Policing Incentive Policies

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- On December 9, 2015, [eDisclosure](#) launch announced in the Federal Register, [Notice of eDisclosure Portal Launch: Modernizing Implementation of EPA's Self-Policing Incentive Policies](#).
- EPA believes strongly in the benefits of the Audit Policy and the Small Business Compliance Policy, namely to provide penalty mitigation and other incentives for companies to self-police, disclose, correct and prevent violations.
- All self-disclosed civil violations, with the exception of new owner disclosures, must be made through the centralized web-based eDisclosure portal. The eDisclosure portal streamlines and modernizes EPA's approach to handling disclosures under these two policies. The changes will result in faster and more efficient resolution of self-disclosures, while saving considerable time and resources for regulated entities and EPA.
- Entities that disclose potential violations through the new eDisclosure portal may qualify for one of two types of automated treatment, Category 1 or Category 2.



# Two-Category System with Different Types of Resolution



# Additional Information

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## **Enforcement and Compliance History Online**

- <http://echo.epa.gov/>

## **Enforcement Response Policy TSCA 8, 12 and 13**

- <https://www.epa.gov/enforcement/enforcement-response-policy-erp-reporting-and-recordkeeping-rules-and-requirements-tsca>

## **FY 2014-2018 EPA Strategic Plan**

- [https://www.epa.gov/sites/production/files/2014-09/documents/epa\\_strategic\\_plan\\_fy14-18.pdf](https://www.epa.gov/sites/production/files/2014-09/documents/epa_strategic_plan_fy14-18.pdf)

## **National Program Manager Guidances**

- <https://www.epa.gov/planandbudget/national-program-manager-guidances#fy2016-2017>