

EPA to Increase Review of Voluntary Self-Disclosures of Violations

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On June 30, 2022 the EPA Office of Inspector General (“OIG”) issued the results of an evaluation to determine if EPA’s process for screening self-reported environmental violations through electronic disclosure is effective. (Click here to read the report, [“Additional Internal Controls Would Improve the EPA’s System for Electronic Disclosure of Environmental Violations.”](#)) The OIG determined the EPA Audit Policy Program does not have adequate internal controls in place to ensure that the EPA’s screening process for verifying eligibility for coverage under the EPA Audit Policy is effective and that significant concerns, such as criminal conduct and potential imminent hazards, are identified and addressed by the Office of Enforcement and Compliance Assurance (“OECA”) and the EPA regions. OIG recommended actions to develop national guidance for screening eDisclosure disclosures, provide training, develop performance measures and a monitoring plan to track effectiveness and identify opportunities for improvement.

EPA Audit Policy

On December 22, 1995 EPA issued its initial Audit Policy (60 FR 66706) which provided penalty reduction and mitigation incentives for facilities to undertake voluntary audits, take corrective actions and disclose the violations to EPA in a timely manner. The Audit Policy requires compliance with the following nine criteria:

1. Systematic discovery of the violation through an environmental audit or the implementation of a compliance management system.
2. Voluntary discovery of the violation was not detected as a result of a legally required monitoring, sampling or auditing procedure.
3. Prompt disclosure in writing to EPA within 21 days of discovery or such shorter time as may be required by law. Discovery occurs when any officer, director, employee or agent of the facility has an objectively reasonable basis for believing that a violation has or may have occurred.
4. Independent discovery and disclosure before EPA or another regulator would likely have identified the violation through its own investigation or based on information provided by a

third- party.

5. Correction and remediation within 60 calendar days, in most cases, from the date of discovery.
6. Prevent recurrence of the violation.
7. Repeat violations are ineligible, i.e., the specific (or closely related) violations have occurred at the same facility within the past 3 years or those that have occurred as part of a pattern at multiple facilities owned or operated by the same entity within the past 5 years; if the facility has been newly acquired, the existence of a violation prior to acquisition does not trigger the repeat violations exclusion.
8. Certain types of violations are ineligible such as those that result in serious actual harm, those that may have presented an imminent and substantial endangerment, and those that violate the specific terms of an administrative or judicial order or consent agreement.
9. Cooperation with EPA by the disclosing entity is required.

On December 9, 2015 EPA updated it's the Audit Policy (80 FR 76476) and required electronic reporting to modernize the implementation of the self-disclosure policy. EPA created a centralized web-based "eDisclosure" portal to receive and automatically process self-disclosed civil violations of environmental law. To be eligible for full or partial penalty mitigation, a regulated entity must meet either all nine conditions or Conditions 2–9 set forth in the Audit Policy. The eDisclosure process contains two categories of submissions.

Category 1 disclosures include EPCRA violations that meet all none conditions. For these disclosures, the eDisclosure system automatically will 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 disclosure. EPA has stated they will spot check the disclosures to ensure conformance with EPCRA, the Audit Policy, and eDisclosure requirements.

Category 2 disclosures include non-EPCRA disclosures including EPCRA disclosures that do not meet the Category 1 criteria. For these disclosures, the eDisclosure system automatically will issue an Acknowledgement Letter 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. EPA will screen Category 2 disclosures for significant concerns such as criminal conduct and potential imminent hazards., EPA will screen for significant concerns (e.g., criminal conduct, imminent hazard).

Since 1995 more than 10,000 entities have voluntarily self-disclosed violation at nearly 28,000 facilities under the Audit Policy. More than 2,000 disclosures have been submitted to EPA via the eDisclosure system since 2015. The breakdown of the violations by statute are approximately 55.3% EPCRA, 17 % Clean Air Act, 12.7% TSCA, 8.1% FIFRA and 3.5% RCRA. ([Click here to read the EPA's 2021 Updated Audit Policy report.](#))

OIG Evaluation

OIG evaluated disclosures for the period June 2021 to May 2022 with an emphasis on Category 2

disclosures. OIG found that EPA does not have adequate internal controls to ensure that the process for screening Category 2 disclosures of environmental violations is effective and that significant concerns, such as criminal conduct and potential imminent hazards, are identified and addressed by OECA and the EPA regions. There is no formal, written national guidance or training that explains how staff should screen Category 2 disclosures or that describes staff responsibilities for the screening process. As a result, most regions are screening for significant concerns inconsistently or not at all, and some regional staff are confused about who is responsible for this task. Further, while the EPA believes that the eDisclosure program benefits the Agency and the regulated community, the EPA does not have performance measures and does not systematically track eDisclosure data to identify the impacts of the Audit Policy Program.

The OIG recommended the following actions be taken to improve the review process to ensure the self-disclosures qualify for the benefits of the Audit Policy.

1. Develop national guidance that includes a process for screening eDisclosure submissions for significant concerns, such as criminal conduct and potential imminent hazards.
2. Provide eDisclosure-specific training to EPA Headquarters and regions to clarify expectations, establish staff responsibilities, and communicate best practices.
3. Develop performance measures for the eDisclosure system and a monitoring plan to track its effectiveness.
4. In coordination with EPA regions, assess eDisclosure system functionality to identify and implement improvements.

EPA agreed with all of the recommendations and has identified corrective actions that will be taken along with estimated completion dates for recommendation 2 is September 30, 2022 and September 30, 2023 for the remaining recommendations.

Future Disclosures

Going forward, self-disclosures of violations submitted under the Audit Policy will be subject to increased review by EPA to verify the reporting facility meets all of the Audit Policy criteria and are eligible for penalty mitigation. While EPA has infrequently found self-disclosures to be ineligible for the benefits of the Audit Policy, it is expected that EPA's heightened scrutiny will identify self-disclosures of violations that do not meet the Audit Policy criteria and therefore do not qualify for penalty mitigation and may be subject to enforcement action.

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