

EPA Launches eDisclosure Portal to Modernize Voluntary Disclosures

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On December 9, 2015, the ***Environmental Protection Agency (EPA)*** launched its long-awaited ***eDisclosure*** portal. The portal receives and automatically processes self-disclosed civil violations. EPA states that it created the portal to streamline its Audit Policy and Small Business Compliance Policy to make the process faster and save resources. The Audit Policy and Small Business Compliance Policy offer penalty mitigation for violations where the regulated entity meets specific conditions, including voluntary discovery, prompt disclosure and correction, and taking steps to prevent future violations.

Those using the portal must: 1) register with the system, 2) promptly disclose their violations online within 21 days of discovery, and 3) submit an online Compliance report certifying that any noncompliance was timely corrected.

EPA will separate disclosures into two categories – “Tier 1” and “Tier 2.” Tier 1 disclosures include certain Emergency Planning and Community Right-to-Know Act (EPCRA) violations that meet all Audit Policy or Small Business Compliance Policy conditions. For Tier 1 disclosures, the portal will automatically issue an electronic Notice of Determination (eNOD) confirming that the violations are resolved with no civil penalties. Tier 2 disclosures include: 1) all non-EPCRA violations, 2) EPCRA violations where the violator can only certify compliance with Audit Policy Conditions 2-9, and 3) EPCRA/Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) violations excluded from Tier 1.^[1] For Tier 2 disclosures, the portal will automatically issue an electronic Acknowledgment Letter (AL) confirming EPA’s receipt of disclosure, and promising EPA will make a determination regarding penalty mitigation if it takes enforcement action.

Consultants, attorneys, or other agents may disclose violations through the portal on behalf of a regulated entity. While EPA seeks to make disclosure easier and faster with the new portal, faster is not always better. Entities will be required to electronically submit sensitive information that may become publicly available and should therefore exercise caution and care when using the portal.

EPA’s announcement of the eDisclosure portal launch in the Federal Register is accessible here:

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-09/pdf/2015-30928.pdf>

EPA's website for the eDisclosure portal is accessible here:

<http://www.epa.gov/compliance/epas-edisclosure>

[1] An EPCRA violation consists of a failure to report information on chemical storage, usage, or release into the environment, while a CERCLA violation consists of the unpermitted release of a hazardous substance into the environment.

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