



# Self Audit and Disclosure Compliance Incentives OR Enforcement.....

February 2011

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***U.S. EPA Pacific Southwest Region  
Emergency Prevention and Preparedness***



Enforcement is not  
something I like to do

.....REALLY.....





# What Can You Do to Minimize Cost of Enforcement?



- **Comply.....**
- **Self-audit and disclose voluntarily.**





# EPA Audit Policy



- National Policy
- Self-audit and disclosure of violations can result in zero penalty.
- Nine criteria must be met to qualify for 100% penalty relief.
- For eligible violations, must only consider economic benefit in determining penalty.



# Audit Policy 9 Conditions

1. Systematic discovery
2. Voluntary discovery
3. Prompt disclosure
4. Independent
5. Prompt correction
6. Prevent re-occurrence
7. No repeat violations
8. Ineligible violations
9. Cooperation

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



# Systematic

Systematic discovery of a violation through an **internal environmental audit** OR through a **compliance management system**.

**#1**



# Voluntary Disclosure

Identified without any external order to perform:

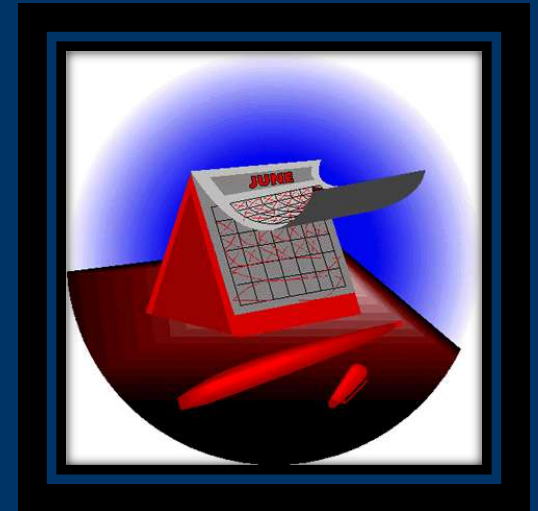
- monitoring,
- sampling, or
- auditing procedures required by statute, regulation, permit, judicial or administrative order, or consent agreement.

#2



# Prompt disclosure.

The violation must be disclosed in writing to EPA within 21 calendar days.



#3



# 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.





# Independent

Violation must be discovered and disclosed before EPA (or another agency) would have found the violation through its own investigation or from a third party.

#4



## What is not an independent disclosure?

1. EPA is already investigating the facility in question.
2. Citizen's group has provided notice of intent to sue.
3. Third party has already filed a complaint.
4. Whistle blower has reported the violation to a government authority.
5. Discovery of the violation by the government was imminent.



# Prompt Correction



Correction and remediation within 60 calendar days, in most cases, from the date of discovery.

#5



# Prevent Recurrence

Must agree to take steps to prevent a recurrence of the violation after it has been disclosed.



#6



# Repeat Violations

## Repeat violations:

- At the same facility within the past 3 years, or
- Part of a pattern of violations within the past 5 years at another facility owned or operated by the same company.

#7



# Ineligible Violations

- Serious actual harm,
- Imminent and substantial endangerment,
- Violate the specific terms of an administrative or judicial order or consent agreement.

#8



# Cooperation

Facility must cooperate with EPA and provide the information needed to determine Policy applicability.



#9



# Benefits



- Gravity-based penalties waived
- Multi-facility disclosures can save company  
\$\$
- Auditing lowers potential for accidents, cut costs of accidents, injuries and liability



# Criminal Violations

Criminal violations may be disclosed also.

Benefit to self-disclosure of criminal violations = EPA will not generally make a recommendation for criminal prosecution.





# The "E" Word...



*(Enforcement...)*



# Enforcement Options

- Notice of Violation (NOV)
- Administrative Compliance Orders
- Expedited Settlement Agreement (ESA)
- Administrative Penalty Orders
- Civil Judicial Referrals
- Criminal Enforcement





# Possible Penalties

- Up to \$37,500 per day, per violation
- Plus multipliers for size of business, duration, etc...
- Criminal action with penalties of up to \$37,500 per day, 3 years in prison, or both
- Citizens suits





# Less Painful Options

Expedited Settlement Agreements (ESAs) for both EPCRA and RMP

- EPCRA \$2,000 penalty for 1<sup>st</sup> time violators of EPCRA 312 in certain cases.
- RMP ESA possible but limited to non-Title V facilities and certain conditions.





If enforcement happens ...



# Supplemental Environmental Projects (SEPs)

- Best possible option when penalty involved!!!
- Benefits both facility and community
- Must pay 25% of penalty in cash
- Credit for up to 80% of \$\$ spent on SEP is possible



# Facility's Choice



- Facility must choose to do SEP.
- Will generally cost more in \$\$, but
- Large return for facility in better protection, PR and general goodwill, and
- Makes EPA HAPPY!





# Got Questions?

## RCRA, Superfund & EPCRA Call Center

(800) 424-9346

Monday - Friday, 9:00 am - 5:00 pm

Eastern Time

Closed Federal Holidays

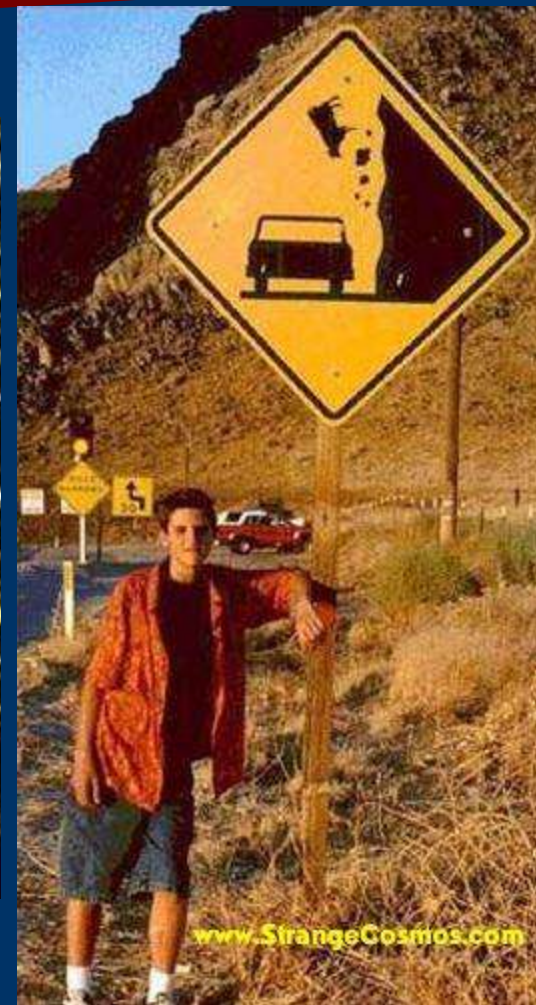
OR

Office of Emergency Management (OEM)

website: <http://www.epa.gov/emergencies>



# Our Final Message and Thanks!!!





# For More Information:

EPA's Enforcement Policies:

[www.epa.gov/compliance/resources/policies/civil](http://www.epa.gov/compliance/resources/policies/civil)

