

EPA Announces Renewed Emphasis on Self-Disclosure of Violations

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EPA's audit policy has been in place since the mid-1990s and provides a process for regulated industry to disclose certain violations of environmental law discovered during an audit in exchange for various incentives, including penalty mitigation. On May 15, 2018, EPA announced a renewed emphasis on its audit policy as part of its 2018-2022 strategic plan. The announcement encourages use of EPA's online eDisclosure system to report noncompliance, and notes that self-disclosures to EPA have increased by 75% since the tool was launched in 2015. Of the approximately 545 self-disclosures made annually via the eDisclosure system, over half involve Emergency Planning and Community Right-to-Know Act (EPCRA) violations, such as noncompliance with Tier II or Form R reporting requirements. EPA reiterates that the audit policy allows EPA to waive the economic benefit penalty component, stating that of the over 10,500 disclosures made to EPA under the audit policy, EPA has sought to recover the economic benefit component in less than 1% of cases.

EPA's announcement highlights the 2008 New Owner Audit Policy, which sets forth how EPA applies its audit policy to new owners of regulated facilities. The New Owner Audit Policy encourages buyers to make a fresh start at their newly acquired facilities by addressing environmental noncompliance that began prior to acquisition in exchange for penalty mitigation beyond what is provided in EPA's existing audit policy. EPA intends to expand its outreach and education efforts to encourage use of the New Owner Audit Policy.

Finally, EPA highlighted the ongoing development of its New Owner Clean Air Act Audit Program for the oil and natural gas industry. The program will initially be made available to upstream exploration and production sites.

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