



Audit Policy Update

FROM THE ASSISTANT ADMINISTRATOR:

Voluntary auditing programs play an important role in helping companies meet their obligations to comply with environmental law. EPA's Audit Policy, effective in January of 1996, encourages self-policing by cutting penalties for any violations that are discovered, disclosed and corrected through voluntary audits or compliance management programs. Nor will EPA recommend criminal prosecution of regulated entities in these circumstances, although individuals remain liable for their own criminal conduct. The policy includes safeguards to protect the public and the environment, excluding violations that may result in serious harm or risk, reflect repeated noncompliance or criminal conduct, or allow a company to realize a significant economic gain from its noncompliance. (See page 4 for a more complete summary).

So far, 105 companies have disclosed violations under of the policy proving that environmental auditing can be encouraged without blanket amnesties or audit privileges that would excuse serious misconduct, frustrate enforcement, encourage secrecy, boost litigation, and/or lead to public distrust. This newsletter is the second in a series of updates on implementation of EPA's audit policy, and includes information on settlements, interpretive guidance, and similar state policies. A complete copy of the audit policy and copies of settlements discussed below can be obtained by calling (202) 260-7548 or faxing (202) 260-4400 and referencing docket number C-94-01. For more information, call Brian Riedel, editor of *Audit Policy Update*, at (202) 564-4187.

Steve Herman, Assistant Administrator
Office of Enforcement and Compliance Assurance

105 Companies Disclose Violations Under Audit Policy

To date, 105 companies have disclosed environmental violations at more than 350 facilities under the EPA interim and final Audit/Self-Policing Policies. Among these disclosures, EPA has already settled cases/matters with 40 companies and 48 facilities, and has agreed to waive all penalties in most of these cases.

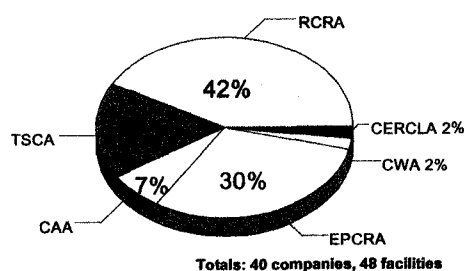
Three recent settlements are featured in this month's issue.

Companies Receiving Audit Policy Relief:

Acadia Polymers, Irongate, VA
Alyeska Pipeline, Prudhoe Bay, AK (2 facilities)
Austin Sculpture, Pharr, TX
Auto Trim, Inc., Brownsville, TX
Baldwin Piano & Organ, Trumann, AR
Bortec Industrial Inc., El Paso, TX
BP Exploration & Oil, Inc., Port Angeles, WA
CENEX, Laurel, MT
Clearwater Co., Pittsburgh, PA
Coilcraft, Inc., El Paso, TX
Cook Composites & Polymers, N. Kansas City, MO
General Electric Corp., Waterford, NY
Gobar Systems, Inc., Brownsville, TX

Goulston Technologies, Inc., Monroe, NC
Hasbro, Inc., El Paso, TX
Invacare, Inc., McAllen, TX
Kingsford Products, Louisville, KY
Koch Refining Co., Corpus Christi, TX
Lambda Electronics, Inc., McAllen, TX
Magnetek, Inc., Brownsville, TX
Microfoam Corp., Utica, NY
Midwestern Machinery, Minneapolis, MN
Minolta Co., Ramsey, NJ
Norton Company, Stephenville, TX
O'Neill Industries, Philadelphia, PA
Outboard Marine Corp., El Paso, TX
Ozark-Mahoning Co., Tulsa, OK
Shure Brothers, Inc., El Paso, TX
Siemens Electromechanical Co., El Paso, TX
Simplot Dairy Products, Nampa, ID
Sunbeam-Oster Co., Bay Springs, MS
Sunbeam-Oster Co., Couthatta, LA
Sunbeam-Oster Co., Hattiesburg, MS
Sunbeam-Oster Co., McMinnville, TN
Sunbeam-Oster Co., Neosho, MO (2 facilities)
Sunbeam-Oster Co., Shubata, MS
Sunbeam-Oster Co., Waynesboro, MS
Transportation Electronics, El Paso, TX
TRW Vehicle Safety Systems, McAllen, TX
TRW Automotive Products Remfg., McAllen, TX
Teccor Electronics, Inc., Brownsville, TX
Thomson Saginaw Ball Screw, Saginaw, MI
Unocal Corp., Cook Inlet, AK
Vastar Resources Inc., La Plata County, CO
Wells Manufacturing Co., McAllen, TX
Zeneca, Inc., Wilmington, DE

Breakdown of Settlements by Type



GE: Curbing Methanol Emissions from Storage Tanks

General Electric, Inc. voluntarily discovered, disclosed and corrected violations of the Clean Air Act (CAA) at its silicone manufacturing facility in Waterford, New York. The violations resulted from a lack of proper pollution control equipment on two methanol storage tanks. Methanol fumes are a hazardous air pollutant that contributes to smog and can cause serious health problems. EPA and the Department of Justice agreed to waive the substantial "gravity-based" component of the penalty, which reduced the actual penalty in the case to \$60,684, reflecting the amount of economic benefit the company gained from noncompliance.

DOJ APPLAUDS GE SETTLEMENT

"This is a great example of what happens when companies examine their facilities, identify problems, fix them, and let the public know. It illustrates this Administration's commitment to provide incentives for those who perform prompt and responsible environmental audits."

Lois Schiffer, Assistant Attorney General
Environmental and Natural Resources Division
Department of Justice

VASTAR: Cutting CO Emissions

Vastar Resources Inc., a natural gas production company, voluntarily discovered, disclosed and corrected Clean Air Act (CAA) violations involving lack of proper pollution control equipment to limit the emission of carbon monoxide (CO) at facilities located on the Southern Ute Indian Reservation in La Plata County, Colorado. High levels of CO can cause serious health problems -- especially for young children, elderly and those with heart and respiratory ailments. However, EPA does not believe that CO levels were that high in this case. The company disclosed the violations after it took over operation of the facility from another company and conducted a compliance audit. The company then quickly brought itself into compliance by installing the proper control equipment, which will reduce CO emissions by 3,700 tons or 80% per year. Because the company met all of the conditions of the Audit Policy, the gravity-based penalty of several hundred thousand dollars was waived. Under the settlement, the company's penalty was limited to \$137,949, which represents the economic benefit the company gained from not initially installing the proper equipment.

CENEX: Helping Prevent Manufacture of Unsafe Chemicals

CENEX, Inc., a Montana company, disclosed and corrected its failure to file reports under the Inventory Update Rule (IUR) of the Toxic Substances Control Act (TSCA). The IUR requires manufacturers of chemicals listed on EPA's TSCA Inventory to report current data on production volume, plant site and site-limited status. This data forms the basis for distinguishing which chemicals must undergo a review for health and environmental effects. Under the Audit Policy, EPA mitigated \$318,750 which represents 75% of the unadjusted gravity-based penalty, resulting in a total penalty of \$106,250.

OZARK-MAHONING: Cleaning Up & Reporting Spill of Ferric Sulfate & Hydrofluoric Acid

Penalties were completely waived under the Audit Policy for the Ozark-Mahoning Company which voluntarily discovered, disclosed and corrected CERCLA and NPDES reporting violations at its Tulsa, Oklahoma facility. The company had failed to report to the National Response Center a spill of two CERCLA hazardous substances, ferric sulfate and hydrofluoric acid, in violation of CERCLA 103(a). The company promptly remediated the spill area and state authorities verified proper remediation.

In other violations, the company incorrectly reported pH values under its NPDES permit on four occasions. High acidity (pH) levels in waters can have a profoundly harmful effect on water quality and ecosystems. Accurate reporting of pH levels is critical for monitoring and maintaining water quality and ecosystems. Because the company met all of the Policy conditions and did not gain economically from the CERCLA and NPDES violations, the penalties were reduced to zero. Ordinarily the penalties for these types would have been approximately \$8,250 for the CERCLA violation and \$40,000 (\$10,000 maximum for each) for the four NPDES violations.

PRAISE for EPA'S POLICY

"It is an excellent policy which worked as intended in our case. Compliance with the terms of the policy results in penalty elimination or mitigation. This encourages proactive environmentally responsible behavior by companies trying to do the right thing in terms of complying with our nations environmental laws."

Peter J. Platzer
President, Midwestern Machinery Co., Inc

"It [The Audit Policy] worked quite well for us."

Rosa Delgado
Warehouse Manager, Austin Sculpture

Audit/Disclosure Can Affect Decision to Prosecute

At least three companies have not been charged with an environmental crime due to their voluntary disclosure of violations uncovered in an audit or internal investigation and their cooperation in the investigation and prosecution of subsidiary corporations or culpable individuals. While EPA has not formally invoked the 1995 Audit Policy in these cases, the decision not to charge them criminally stemmed from the same considerations now expressly set forth in the Audit Policy.

For example, in one such case, on February 7, 1996, the United States Department of Justice announced that Chiquita Brand, International was not prosecuted due to its voluntary disclosure that its subsidiary, John Morrell and Company, had illegally dumped slaughterhouse waste into the Big Sioux River in Sioux Falls, South Dakota for years and had deliberately submitted false discharge monitoring reports to conceal its crimes. John Morrell and Company and several of Morrell's corporate officials now stand convicted of conspiracy and various Clean Water Act felonies, but the government declined to prosecute Chiquita, citing the parent company's voluntary disclosure and cooperation as the prime factors. The Office of Criminal Enforcement, Forensics, and Training is establishing a process whereby criminal enforcement consideration of the Audit Policy will be made by a committee at the headquarters level. For questions regarding application of the Audit Policy in the criminal context, contact Michael Penders at (202) 564-2480.

Audit Policy Interpretive Guidance Released

✓ The Agency's Audit Policy Quick Response Team (QRT) has completed work on the Audit Policy Interpretive Guidance which addresses 16 issues arising under the Policy. The Guidance, covers such issues as:

- When Repeat Violations Bar Penalty Mitigation
- When a Violation "May Have Been Discovered"
- Discovery of Violations Under CAA Title V Permit Applications
- Discovery of Violations During Audits Required by Settlements

The Interpretive Guidance is in the Audit Policy Docket and available on the OECA Home Page at:

<http://es.inel.gov/oeca/epapolguid.html>

The QRT was formed to expeditiously, fairly, and consistently resolve nationally significant issues involving application of the Audit Policy in specific cases. Each major media enforcement program, the Department of Justice and EPA Regions are represented on the QRT, which is chaired by the Office of Regulatory Enforcement within EPA's Office of Enforcement and Compliance Assurance (OECA). For more information on the Guidance, call Gary Jones at (202) 564-4002.

Florida and California Adopt Policies Similar to Audit Policy

U.S. EPA Regional Administrator John H. Hankinson, Jr., in a letter dated September 26, 1996, applauded the state of Florida for adopting a policy modeled on EPA's. Mr. Hankinson reassured Virginia Wetherell, Secretary of the Florida Department of Environmental Protection (DEP) that, "EPA would cooperate closely with Florida by eliminating duplicative reporting or burdensome paperwork." Hankinson said, "[W]e see no need for any additional administrative or bureaucratic processes that may burden Florida's ability to carry out its environmental programs."

"I am very pleased the EPA is working with the Department to streamline the procedure and reduce the amount of paperwork required of regulated interests who desire to take advantage of EPA's and DEP's self-audit policies. This determination by EPA is a significant addition to the incentives we have identified for regulated interests to establish a self-audit program. The policy is good for business and good for the environment and offers an excellent opportunity for EPA, DEP and regulated interests to work in partnership toward mutually beneficial goals."

Virginia B. Wetherell
Secretary, Florida DEP

A copy of the letter is available in the Audit Policy Docket. For further information about the Florida DEP Directive on Incentives for Self-Evaluation, contact Molly Palmer at (206) 553-6521. The California EPA also has recently adopted an audit policy similar to the U.S. EPA Audit Policy. For further information about the Cal EPA Policy on Incentives for Self-Evaluation, contact Gerald Johnston at (916) 322-7310.

Settled Audit Policy Case/Matter Documents Contained in Audit Policy Docket

The Audit Policy Docket contains document related to cases and matters settled under the Audit Policy to date. Examples of documents include disclosure letters, EPA responses, Consent Agreements and Consent Orders, and letters of intent not to enforce. In addition, the Docket contains hundreds of other documents, such as the new Interpretive Guidance, and comments and letters related to the Policy and environmental auditing. The Docket is accessible by calling (202) 260-7548 or faxing (202) 260-4400 and referencing docket number C-94-01.

Other Self-Disclosure Programs

The EPA Audit Policy is but one example of how compliance incentives have encouraged companies to disclose and correct violations without providing blanket amnesties. Other

examples include the TSCA Compliance Audit Program (CAP) and EPA Region 7's Subpart 000 (Clean Air Act, testing and reporting) Voluntary Compliance Program. Under CAP, about 125 companies disclosed approximately 11,000 "substantial risk" TSCA section 8(e) reports in exchange for reduced penalties and an overall penalty cap of \$1 million per company. Under the Subpart 000 program, 52 nonmetallic mineral processing companies in Missouri self-disclosed violations of air emission (NSPS) reporting and/or testing requirements in exchange for dramatically reduced penalties. In both programs, participants paid the economic benefit they gained from noncompliance. For more information about the TSCA CAP, call Caroline Ahearn at (202) 564-4163, or about the subpart 000 program, call Becky Dolph, at (913) 551-7281.

Summary of Audit Policy

Voluntary audit programs play an important role in helping companies meet their obligation to comply with environmental laws. EPA's audit policy, effective in January of 1996, will greatly reduce and sometimes eliminate penalties for companies that discover, disclose and correct violations through voluntary audits or compliance management programs, while including safeguards to protect the public and the environment from the most serious violations.

The Policy requires companies to:

- promptly disclose and correct violations,
- prevent recurrence of the violation, and
- remedy any environmental harm.

The Policy excludes:

- repeated violations,
- violations that result in serious actual harm, and
- violations that may present an imminent and substantial endangerment.

Corporations remain criminally liable for violations resulting from willful or conscious avoidance of their legal duties, and individuals remain liable for criminal wrongdoing. EPA retains discretion to recover the economic benefit gained as a result of noncompliance, so that companies will not be able to obtain an economic advantage over their competitors by delaying investment in compliance. Companies that do not discover violations through an audit or CMS, yet meet all of the other Policy conditions, will receive 75% mitigation of gravity-based penalties.

The Final Audit/Self-Policing policy was published in the *Federal Register* on December 22, 1996 (60 FR 66706). It took effect on January 22, 1996. For further information, contact the Audit Policy Docket or call 202-564-4187.



WHOM TO CALL:

Regulated entities that wish to take advantage of the Policy should fax or send a written disclosure to the appropriate EPA Regional contact listed below. Note that the written disclosure must be made within 10 days of the violation's discovery:

Region 1 (CT,ME,MA,NH,RI,VT), Sam Silverman:
617-565-3441 (telephone) / 1141 (fax)

Region 2 (NJ,NY,PR,VI), John Wilk:
212-637-4059/4035

Region 3 (DE,DC,MD,PA,VA,WV), Janet Viniski:
215-566-2999/2905

Region 4 (AL,FL,GA,KY,MS,NC,SC,TN),
Bill Anderson: 404-562-9655/9663

Region 5 (IL,IN,MI,MN,OH,WI), Tinka Hyde:
312-886-9296/353-1120

Region 6 (AR,LA,NM,OK,TX), Chuck Sheehan:
214-665-2175/3177

Region 7 (IA,KS,MO,NE), Becky Dolph:
913-551-7281/7925

Region 8 (CO,MT,ND,SD,UT,WY), Michael Risner:
303-312-6890/6953

Region 9 (AZ,CA,HI,NV), Leslie Guinan:
415-744-1339

Region 10 (AK,ID,OR,WA), Jackson Fox:
206-553-1073/0163