



# How Businesses Can Take Advantage of U.S. EPA's Audit Policy

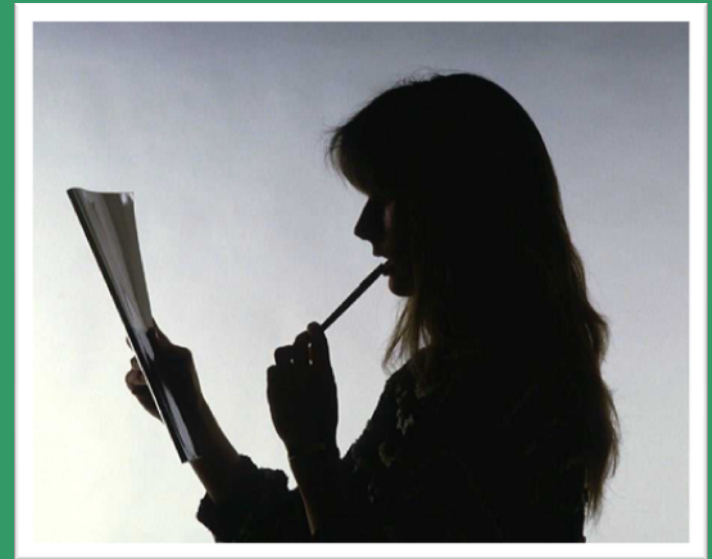
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# OUTLINE

- (1) What is an environmental audit?
- (2) How can businesses take advantage of U.S. EPA's Audit Policy?
- (3) How can businesses take advantage of Illinois' Environmental Audit Law?





What Is An Environmental Audit?

**Environmental Auditing** is the process of determining whether operations and practices are in compliance with regulatory requirements, company policies and procedures, and accepted standards.

It is a systematic, objective evaluation of facility activities for a finite review period designed to:

- Verify compliance with environmental regulations, internal policies, and accepted practices.
- Evaluate the effectiveness of environmental management systems in place, and
- Identify and assess any reasonably foreseeable risks associated with hazardous conditions attributable to company operations and prevent or mitigate such risks.



## What are the Goals of an Environmental Audit?

- Identify and document facility compliance status
- Improve overall environmental performance at facilities
- Assist facility management
- Identify and assess environmental risks
- Optimize Resources
- Provide assurance to senior management
- Increase environmental awareness throughout the company

# What Help Does A Company Need To Conduct An Environmental Audit?



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It depends on the company . . .



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- Plant Manager
- Environmental Health & Safety Manager
- Senior Management
- Outside Environmental Consultant
- Attorney (privilege, audit policy letters, negotiates with agencies)



How can businesses take advantage of U.S. EPA's Audit Policy?

# What Is U.S. EPA's Audit Policy?

- “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations” (65 Federal Register 19,618)
- The goal of the policy is to safeguard human health and the environment by providing several major incentives for regulated entities to voluntarily come into compliance with federal environmental laws and regulations.

# What Are The Benefits of U.S. EPA's Audit Policy?

- No gravity-based penalties if all nine of the Policy's conditions are met.
  - EPA retains the ability to collect economic benefit received due to noncompliance.
  - Reduction of gravity-based penalty by 75% where all conditions met except detection of violation through a systematic discovery process.
- No recommendation for criminal prosecution
- No routine requests for audit reports.

# What Are The Conditions of U.S. EPA's Audit Policy?

1. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance Management System.



# What Are The Conditions of U.S. EPA's Audit Policy?

2. Voluntary Discovery of the Violation—Was Not Detected as a Result of a Legally Required Monitoring, Sampling, or Auditing Procedure.



# What Are The Conditions of U.S. EPA's Audit Policy?

3. Prompt Disclosure of the Violation in Writing to U.S. EPA Within 21 Calendar Days After Discovery.



# What Are The Conditions of U.S. EPA's Audit Policy?

4. Discovery and Disclosure Independent of Government or Third-Party Plaintiff.





# What Are The Conditions of U.S. EPA's Audit Policy?

5. Correction and Remediation within 60 Calendar Days, in Most Cases, From the Date of Discovery.



# What Are The Conditions of U.S. EPA's Audit Policy?

6. Agree to Take Steps to Prevent Recurrence of the Violation.



# What Are The Conditions of U.S. EPA's Audit Policy?

7. Repeat violations are ineligible (*i.e.*, the specific (or closely related) violations occurred at same facility within past 3 years or occurred as a part of a pattern at multiple facilities owned or operated by the same entity within past 5 years).



# What Are The Conditions of U.S. EPA's Audit Policy?

8. Violation must not be excluded from Policy (*e.g.*, those that result in serious actual harm, present an imminent and substantial endangerment, or violate an administrative or judicial order or consent agreement).



# What Are The Conditions of U.S. EPA's Audit Policy?

9. Cooperation with EPA and Provide it with the Information it Needs to Determine Policy Applicability.



# What Are The New Developments Concerning U.S. EPA's Audit Policy?

- “Interim Approach to Applying the Audit Policy to New Owners” (73 Federal Register 44,991):
  - Tailored Audit Policy incentives for new owners that want to make a “clean start” at their recently acquired facilities by addressing environmental noncompliance that began prior to acquisition.

# What Are The New Developments Concerning U.S. EPA's Audit Policy?

- eDisclosure: EPA's Electronic Audit Policy Self-Disclosure System
  - Can be used by facilities nationwide to disclose violations of the Emergency Planning and Community Right-to-Know Act (EPCRA)
  - Can be used by facilities in Region 6 states (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas) to disclose violations of other environmental laws.



How can businesses take advantage of Illinois' Environmental Audit Law?



# What Is Illinois' Environmental Audit Law?

- Section 42(i) of the Illinois Environmental Protection Act (415 ILCS 5/42(i)).
- Provides incentives for voluntary self-disclosure to the Illinois EPA of non-compliance.
- Benefits of the Illinois Law mirror U.S. EPA's Audit Policy

# How Is Illinois' Environmental Audit Law Different from U.S. EPA's Audit Policy?

- Non-compliance must be disclosed in writing within 30 days of discovery.
- Non-compliance must be corrected and any environmental harm remediated in “a timely fashion.”

# Questions

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