

## Office of Enforcement and Compliance Assurance

# eDisclosure Information Sheet

### *EPA's Plan for Modernizing Implementation of Its Audit Policy & Small Business Compliance Policy*

**EPA's eDisclosure portal will be a new, centralized, "Next Generation" web-based system for more efficiently receiving and processing violations disclosed to EPA under its self-disclosure policies.**

#### **What is EPA's Audit Policy? What is the Small Business Compliance Policy?**

Issued in 2000, these policies offer penalty mitigation and other incentives for companies that discover, promptly disclose, and expeditiously correct environmental violations, and take steps to prevent future violations.

#### **Why is EPA changing how it implements these policies?**

EPA believes strongly in the benefits of the Audit Policy and the Small Business Compliance Policy: to provide penalty mitigation and other incentives for companies to self-police, disclose, correct and prevent violations.

Companies have suggested that EPA could streamline implementation of the Audit Policy for more routine disclosures to make the process faster, more efficient, and to save time and resources for regulated entities and EPA, while still retaining the incentives to self-police environmental problems. They also have emphasized that a key time to encourage self-auditing and self-disclosure is when new companies are purchased or acquired because that is when companies are very motivated to find and fix problems and make a fresh start.

EPA is modernizing implementation of these self-disclosure policies by creating a centralized web-based "eDisclosure" portal to meet these goals, and in a way that also will be easy for small businesses to use. Under the automated

eDisclosure system, large and small businesses with more routine types of violations will more quickly get their disclosures resolved. At the same time, EPA is retaining the incentives outlined in its New Owner Policy and will continue to accept and process new owner disclosures outside the eDisclosure system.

#### **What types of violations can be resolved through the new eDisclosure portal?**

The portal can accept new disclosures involving almost all types of civil violations.

Pre-existing unresolved EPCRA disclosures can be resubmitted through the eDisclosure system within 90 days after launch of the portal, but pre-existing disclosures that are subject to audit agreements will be resolved outside the eDisclosure system through a Notice of Determination (NOD), Consent Agreement and Final Order (CAFO), or Consent Decree (CD).

New owners may use the portal to disclose violations, but the portal is not designed to apply the August 2008 New Owner Policy. To provide the benefits of the New Owner Policy, EPA will accept and process new owner disclosures outside the eDisclosure system.

#### **How does the eDisclosure process work?**

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.

The Compliance Report is ordinarily due within 60 days of submitting an initial online Audit Policy disclosure (or within 90 days for Small Business Compliance Policy disclosures), but limited reporting deadline extensions are possible in certain circumstances.

### How will self-disclosed violations be resolved through the eDisclosure portal?

Disclosures resolved through the portal will be resolved as a “Tier 1” or “Tier 2” disclosure.

**Tier 1 Disclosures** include EPCRA violations that meet all Audit Policy or Small Business Compliance Policy conditions, but do *not* include: (1) CERCLA 103/EPCRA 304 chemical release reporting violations; or (2) EPCRA violations with significant economic benefit as defined by EPA.

For disclosures that qualify as Tier 1, the eDisclosure system will automatically issue an **electronic Notice of Determination (eNOD)** confirming that the violations are resolved with no assessment of civil penalties, conditioned on the accuracy and completeness of the submitter’s certified eDisclosure.

**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 (*i.e.*, discovery was not systematic), and (3) EPCRA/CERCLA violations excluded from Tier 1.

For disclosures that qualify as Tier 2, the eDisclosure system will automatically issue an electronic **Acknowledgement Letter (AL)** confirming EPA’s receipt of the disclosure, and promising that EPA will make a determination as to eligibility for penalty mitigation if and when it considers taking an enforcement action for environmental violations.

### Can the correction period be extended?

To obtain an eNOD, Tier 1 disclosers must correct their violations: (a) within 60 days of the date of discovery to obtain penalty mitigation under the Audit Policy; or (b) within 90 days of the date of discovery to obtain penalty mitigation under the Small Business Compliance Policy.

Extensions of the correction deadlines are only

available for Tier 2 disclosures, and some extension requests require the discloser to provide an online explanation or justification.

### Without an “eyes-on” review of self-disclosures prior to their automatic processing under Tier 1 or Tier 2, how will EPA ensure that submitters do not game the system to their own advantage?

EPA will spot check Tier 1 disclosures for possible errors and inconsistencies, and Tier 1 eNODs are conditional upon the accuracy of the representations made by the submitter. EPA will screen Tier 2 disclosures for criminal violations and other serious issues. In addition, if and when EPA considers taking enforcement action for environmental violations, it may determine that Tier 2 disclosures are not eligible for penalty mitigation. EPA believes that these safeguards will help to ensure the integrity of the data submitted through the eDisclosure portal.

### Can consultants, attorneys, or agents acting on behalf of a regulated entity disclose violations through eDisclosure?

Consultants, attorneys, or other agents may disclose violations through the eDisclosure portal on behalf of a regulated entity. The portal requires anyone submitting information to be identity-proofed, and to specify on whose behalf the filing is being made.

### When will eDisclosure be available?

After considering input received as a result of the June 2015 public engagement webinars, EPA will build out the eDisclosure system and target its launch for Fall 2015. At the same time as the launch, EPA will issue a *Federal Register* notice describing in detail how it will implement the Audit Policy and Small Business Compliance Policy. Prior to launch, implementation of these policies remains unchanged.

### EPA Websites

<http://www2.epa.gov/compliance/epas-audit-policy>

<http://www2.epa.gov/enforcement/small-businesses-and-enforcement>

### Contact for Further Information

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