EPA’s AUDIT POLICY & SMALL BUSINESS COMPLIANCE POLICY

As it pertains to the Emergency Planning & Community Right-to-Know Act (EPCRA) Section 313 *aka* Toxics Release Inventory (TRI) reporting
5 MAJOR PROVISIONS OF EPCRA

- Emergency Planning (sections 301 - 303)
- Emergency Release Notification (section 304)
- Community Right-to-Know Reporting (sections 311 - 312)
- Toxic Release Inventory (TRI) Reporting (Section 313 of EPCRA)
- Miscellaneous Provisions (sections 321 - 329)
EPCRA § 313 is the law. (42 U.S.C. § 11023) Regs (40 C.F.R. § 372)

TRI is the main database where the data collected, pursuant to the law, resides. EPA websites make the data available to everyone!
Self-disclosing is actually a fairly simple matter.......
Importantly, the Audit Policy is not just for EPCRA § 313.

The Audit Policy can be used to disclose violation(s) of any federal environmental law.

Be aware that some states have their own Audit Policies.

Because EPCRA § 313 is solely federally enforced, i.e., no state has been delegated enforcement authority, self-disclosing for violations of EPCRA § 313 is made solely to the “feds.”
EPA’s Audit Policy & Self-disclosing Violations

• Appears TCEQ has their own policy:

  • A Guide to the Texas Environmental, Health, and Safety Audit Privilege Act, RG 173, November 2013

• Presentation today, however, deals solely with the federal Audit Policy.

• The Audit Policy can be used to disclose violation(s) of any federal environmental law.

• Must have discovered the violation independent of any federal or state investigation.
EPA’s Audit Policy & Self-disclosing Violations

• Permissible to make a disclosure for facilities not being investigated stemming from a sister facility’s uncovered violations by state or federal investigation.

• Realize that it is important to notify EPA in writing within 21 days that a violation has been discovered, or that potential violations exist, to meet the Prompt Disclosure Condition.

• Self-disclosures are implemented through one of two avenues:
Self-disclosing EPCRA § 313 violations to EPA

- **EPA’s Audit Policy**: 65 Fed. Reg. 19618, April 11, 2000
  (There are 9 conditions of which all 9 must be met to receive 100% gravity-based penalty mitigation)

- **EPA’s Small Business Compliance Policy**: 65 Fed. Reg. 19630, April 11, 2000 – only for small businesses, i.e., with < 100 employees (not as many conditions to meet to receive 100% gravity-based penalty mitigation)

- **Special consideration for New Owners**: 73 Fed. Reg. 44991, August 1, 2008.
Self-disclosing EPCRA § 313 violations to EPA

• **EPA’s Normal Audit Policy (9 Conditions):**
  1. Systematic Discovery (Environmental Audit or Compliance Management System)
  2. Voluntary Discovery
  3. Prompt Disclosure (21 days)
  4. Independent Discovery and Disclosure (*before an inspection!*)
  5. Correction and Remediation
  6. Prevent Recurrence
  7. No Repeat Violations (same or closely related in past 3 years)
  8. Certain Violations Excluded (actual harm to the environment, imminent and substantial endangerment to public health)
  9. Cooperation
Self-disclosing EPCRA § 313 violations continued

- EPA’s Small Business Compliance Policy (4 Conditions):

1. Have a good compliance record – not subject to enforcement for the same violations within the last 3 years; not subject to enforcement actions in past 5 years & not used the Small Business Compliance Policy in past 3 years.

2. Voluntarily discovered the violation, e.g. on-site compliance assistance or voluntary audit.

3. Disclosed the violation within 21 days of discovery.

4. Corrected the violation within 180 days of discovery.
Self-disclosing EPCRA § 313 violations continued

• Region 6 visualizes self-disclosing as a two-step process.

• The following is only applicable for disclosing violations of EPCRA § 313. If disclosing for multi-media violations, or multi-regional violations, call the EPCRA § 313 Enforcement Coordinator (moi) for further instructions.

• First step: notify the EPA in writing within 21 days if you know there is a violation or that you think there is a violation. Follow up in writing. Satisfies the “within 21-day” notification condition of the Audit Policy.

• Second step: submit the self-disclosure.
Self-disclosing EPCRA § 313 violations *continued*

- Once confirmed a self-disclosure is being made, request copy of one or both of the self-disclosure checklists.

- The *disclosure*, at a minimum, should identify means of discovery, type of violation(s) & facility location.

- Fill out the appropriate checklist and submit to me.

- Last part of checklist facility attests to its compliance with EPCRA § 313 & all disclosed violations are resolved.
Self-disclosing EPCRA § 313 violations *continued*

- If ALL Conditions are met, in either Policy, ....

- 100% gravity-based penalty mitigation is granted.

- HOWEVER, EPA reserves the right to collect any economic benefit gained by non-compliance.

- If ALL Conditions are met, except for #1, systematic discovery of violations, gravity based penalties are mitigated at 75%.

- If any of Conditions #2 - #9, are not met, policy is denied. Resolved via enforcement + penalties.
Self-disclosing EPCRA § 313 violations continued

• However, the facility may meet disclosure criteria under the current EPCRA § 313 Enforcement Response Policy (ERP):

1) Only failure to report in a timely manner (< 1 year late or > 1 year late) and failure to supply notification are covered.

2) Facility will not be considered for voluntary disclosure reductions if it has been notified of a pending EPCRA § 313 inspection, or the inspection has begun, or the facility has otherwise been notified with respect to compliance with EPCRA § 313.
3) All “qualifying” facilities that self-disclose to EPA and to the State or Tribe where it is located, get a fixed 25% reduction in gravity-based penalty.

4) To get the second reduction, of up to 25% (maximum of 50%), a facility must meet all of the following:

   a) immediately disclosed with 30 days of discovery  
   b) actions taken to insure facility will be compliant with EPCRA § 313 in the future  
   c) for supplier notification disclosures, facility has provided corrected MSDS to all clients  
   d) facility does not have a history of violation for EPCRA § 313 for the two reporting years preceding the calendar year in which the violation was disclosed
5) Economic benefit, however, may still apply, if determined to be SIGNIFICANT.
FREE Live 1-day Workshops & Webinars Again This Year
TRI Workshops for the 2014 Reporting Year (RY)

REGION 6 WILL AGAIN PROVIDE **FREE, ONE DAY LIVE WORKSHOPS & FREE WEBINARS FOR THE 2014 REPORTING YEAR**

- Although FREE, participants **must register** on-line to attend.


- Emails have been sent to all **technical & public contacts** listed on 2013 Forms.

- If you have not received an email notification, contact one of us to have registration and location information emailed to you.
TRI Workshops for the 2014 Reporting Year (RY)

Cities for Live TRI Workshops:
• Houston, TX – March 31, 2015
• Oklahoma City, OK – April 28, 2015
• Dallas, TX – April 29, 2015
• Houston, TX – May 1, 2015
• Baton Rouge, LA – May 21, 2015

Dates & Time for TRI Workshop Webinars:
• Wednesday May 13th (Basic): 9am CST
• Friday May 15th (Advanced): 9am CST
• Tuesday May 26th (Basic): Time To Be Determined
• Thursday May 28th (Advanced): Time To Be Determined
• Monday June 8th (Basic): Time To Be Determined
Useful EPA Internet Addresses
Toxic Release Inventory & other addresses:

- TRI Homepage
  http://www2.epa.gov/toxics-release-inventory-tri-program

- EPA Envirofacts
  http://www.epa.gov/enviro/

- TRI Explorer
  http://iaspub.epa.gov/triexplorer/tri_release.chemical

- Enforcement Compliance & History Online (ECHO)
  http://www.epa-echo.gov/echo/

- EPA’s Central Data Exchange (CDX)
  https://cdx.epa.gov/
Toxic Release Inventory & other addresses continued:

- U.S. EPA Region 6 homepage
  [URL: http://www2.epa.gov/aboutepa/epa-region-6-south-central]

- Audit Policies & Guidance
  [URL: http://cfpub.epa.gov/enforcement/resources/policies/incentives/auditing/]

- State Audit Privilege and Immunity Laws & Self Disclosure Laws & Policies
  [URL: http://www.epa.gov/region05/enforcement/audit/stateaudit.html]

- EPA’s Audit Policy Homepage
  [URL: http://www2.epa.gov/compliance/epas-audit-policy]
Toxic Release Inventory & other addresses continued:

• National Service Center for Environmental Publications (NSCEP)  
  http://www.epa.gov/nscep/index.html


TRI & EPCRA 313 HOTLINE NUMBER:

1-800-424-9346
EPCRA § 313 & TRI INFORMATION
U.S. EPA REGION 6
(800.887.6063)

- Enforcement & Program Lead - Morton E. Wakeland, Jr., Ph.D. ("Mort")
  214.665.8116 or wakeland.morton@epa.gov

- Enforcement Officer/Audit Policy - David Riley
  214.665.2710 or riley.david@epa.gov

- Enforcement Officer/Audit Policy - Stan Lancaster
  214.665.8034 or lancaster.stan@epa.gov

- Senior Inspector - Lawrence ("Larry") Stranne
  214.665.7337 or stranne.lawarence@epa.gov

mailing address:
U.S. EPA Region 6
Toxics Section (6PD-T)
1445 Ross Avenue, Dallas, TX 75202-2733
All faxes: 214.665.6655