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Navigating an Audit and Bringing Your Facility Back into Compliance

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Why Do an Audit?

- Determine Compliance Status
 - Peace of Mind
 - Selling Point to Customers/Investors/Third Parties
 - Identify Training Needs
 - Audit Itself can be Informative
- Civil Penalty Reduction
 - Achieve Compliance with Reduced or No Civil Penalty
 - Agencies Respect Proactive Facilities



Self Disclosure and Audit Policies

- EPA Audit Policy
 - April 2000, 65 FR 19618 “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations
 - Incentives for Self-Disclosure
 - Up to 100% reduction of gravity based penalties (75% if not discovered through a systematic discovery process)
 - No Recommendation for Criminal Prosecution
 - No Routine Request for Audit Reports



Conditions for Penalty Mitigation

1. Systematic Discovery (75% mitigation vs. 100%)
 - 75% Mitigation vs. 100%
2. Voluntary Discovery
 - Not discovered by legally required monitoring
3. Prompt Disclosure
 - EPA = 21 Days
4. Independent Discovery and Disclosure
 - Discovery before EPA or another regulator would have identified through its own investigation



Conditions for Penalty Mitigation

5. Correction and Remediation
 - Within 60 days
6. Prevent Recurrence
7. No Repeat Violations
8. Not eligible for violations causing serious action harm, imminent and substantial harm, or violations of prior order or agreement
9. Cooperation with Agencies



How to Self-Disclose

- EPA launched eDisclosure Portal at the end of 2015
 - Large number of self-disclosed violations has caused problems with EPA's ability to resolve pending disclosures
 - eDisclosure Portal streamlines disclosure
 - Two Categories of Disclosures
 - Category 1 – EPCRA
 - Category 2 – Non-EPCRA or EPCRA where only conditions 2-9 are met



EPA eDisclosure

- EPA Announced Portal Lunch on December 9, 2015 (80 FR 76476)
- Web-based – Must first register with EPA's Central Data Exchange system (<http://www.epa.gov/cdx/>)
- Not designed to deal with CBI – must sanitize information submitted online



EPA eDisclosure

- Must Understand Violations
 - May be under several laws/regulations
 - Practical standpoint – Leave plenty of time if dealing with multiple facilities and multiple violations
- Must Certify Compliance
 - Must certify compliance within 60 days
 - May ask for Extensions



EPA eDisclosure

- During eDisclosure receive immediate notice if Ineligible for electronic Notice of Determination (category 1) or Acknowledgement Letter (category 2)
- Limited extensions available for Compliance Certification
- eDisclosures are “Spot Checked”



IDEM Disclosure

- IDEM’s Audit Policy – originally effective April 5, 1999, Revised on February 5, 2010
- Very similar to EPA Policy (9 factors)
- Different self-disclosure policy: 45 Days



IDEM Disclosure

- Send Disclosure to:

Self-Disclosure and Environmental
Audit Administrator
IDEM
100 North Senate Avenue, IGCN 1301
Indianapolis, IN 46204

- IDEM sends and acknowledgment letter



IDEM Disclosure

- Voluntary Environmental Audits
 - Covered by Ind. Code §13-28-4 *et seq.*
- Report Not Routinely Requested
- Statute Does Not Apply
 - Documents required to be collected by permit or regulation
 - Criminal investigations or proceedings
 - Failed to apply for required permit within 90 days
 - If compliance efforts not promptly initiated



IDEM Disclosure

- IDEM may request further information
- IDEM may request entry of Agreed order
- IDEM may follow up with inspections



What To Do After The Audit?

- Not Finished
 - Determine Corrective Action Quickly
 - Certify Compliance or Compliance Efforts with Agency
- Distribute Audit Amongst Various Facilities to Ensure Compliance (chance at future disclosures may be limited due to “No Repeat Violations” Factor)
- Develop Action Plan





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NAVIGATING EHS COMPLIANCE AUDITS; PREPARATION, MANAGEMENT, FOLLOW-UP, AND CORRECTIVE ACTION

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Discussion Topics

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- Navigating Environmental Health and Safety Compliance Audits, Follow-up and Corrective Actions
 - What is an EHS Compliance Audit
 - Why are Audits Conducted
 - What Does an EHS Audit Entail
 - Audit Scope and Contracting Considerations
 - What To Expect During An Audit
 - How To Prepare For An Audit
 - How To Manage the Audit Process
 - Implementing Proper Corrective Action



What is a Compliance Audit?

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- An Evaluation and verification of the compliance status of a facility; either to a specific standard, group of standards, permit conditions, or corporate policy requirements
 - Can be internal or external
 - Can be comprehensive or limited in scope
 - Can involve legal counsel
 - Can form a basis for Voluntary Self-Disclosure and penalty reduction
 - Can create a “Privileged” Audit Report document
 - Is encouraged by EPA and State regulatory agencies by way of policy and statute



Why Are EHS Audits Conducted?

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- ❑ To satisfy specific requirements or obligations: ISO certification, VPP, ESP, Sustainability Program, continuous improvement, shareholder/stakeholder or other
- ❑ To create a benchmark for comparison and trending
- ❑ To identify and assess risk of penalty, injury or harm
- ❑ To help set EHS priorities or assess EHS need
- ❑ As part of a compliance settlement agreement
- ❑ As preparation for a facility sale or acquisition
- ❑ To support company EHS commitment, and foster adoption of good management practices
- ❑ **Because it is better to have your auditor discover compliance issues than your enforcement inspector**



What does the E/HS/EHS Audit Process Typically Entail?

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- ❑ Observations of plant operations, processes and systems
- ❑ Review of EHS permits, plans and regulatory applicability
- ❑ Review of EHS related practices and procedures
- ❑ Scrutiny of EHS related notifications, reporting, training, inspections and recordkeeping, especially that required by permits and/or applicable regulations
- ❑ Review of EHS Required plans and programs
- ❑ Review of monitoring and testing data and reports
- ❑ Review of historic records and compliance history
- ❑ Review of any consent orders or decrees
- ❑ Lots of questions about procedures and processes



Audit Scope: Some Advance Considerations

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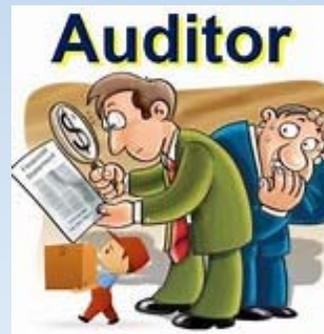
- Defining Audit scope, schedule and timeframe
 - What is going to be reviewed: comprehensive or limited
 - Should a specific audit protocol or checklist be used
 - What is the schedule/agenda for the audit activities
 - Are the audit results to be privileged and confidential
 - Who should attend opening meeting: Legal? Corporate?
 - Over what period of time should the audit be focused?
 - How many auditors should be involved, and How long should the audit last?
 - What operations will the auditors need to see or observe?
 - Who might need to be interviewed during the audit?
 - Who should attend the closing meeting and presentation of results?



Contracting with a 3rd Party Auditor: Considerations

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- Independence / Objectivity / Conflicts of Interest
- Audit Experience and Expertise
- Qualifications / Certifications
- Industry familiarity
- Reputation
- References
- Proximity
- Cost/ Affordability
- State and Local regulatory knowledge
- Competency, Honesty, Integrity, and Professionalism



What to Expect / Request of the Auditor

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- What should you expect/request of your auditor?
 - A pre-audit document request for permits, plans
 - A pre-audit questionnaire and/or a list of documents expected to be reviewed onsite
 - A pre-Audit Conference call to discuss all of the above
 - A proposed agenda for the audit activities
 - A full and competent assessment of compliance status and risk
 - Daily debriefing of all potential findings, compliance issues or areas of concern
 - Full disclosure of any audit findings and any potential findings at the daily debriefings and closing meeting



What to Expect /Request From the Auditor (Continued)

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- Ability to discuss issues of interpretation and provide guidance documents or letters of interpretation to support conclusions
- Clear delineation of regulatory compliance issues versus non-regulatory (good management practice) issues
- Discipline to stay within the defined scope of the audit
- Assistance with prioritization or risk ranking of findings
- An opportunity to review and comment on a draft of the audit report before it is made final
- Recommendations on how to correct issues observed
- Clear communication of regulatory basis of each finding including rule citation



How to Prepare for an Audit or Inspection

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- ❑ Clear your schedule
- ❑ Line up Qualified Tour Guides and Escorts as needed
- ❑ Arrange for Auditor Safety Procedure Orientation and Communicate PPE Requirements by area
- ❑ Schedule time with persons likely needing to be interviewed
- ❑ Take care of Audit Logistics:
 - Meeting rooms,
 - Guest Internet Access,
 - Lunch plans,
 - Access to hard copy files and documents
 - Access to Electronic Documents and Files
- ❑ Send required invites to opening and closing meetings



How to Prepare for an Audit or Inspection (Continued)

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- ❑ Have Ready or know how to quickly retrieve the following:
 - ❑ Most recent version of permits, applications and related correspondence
 - ❑ Most recent official versions of plans and written programs
 - ❑ EHS notifications during the audit period
 - ❑ Relevant policies, procedures and work instructions
 - ❑ Required EHS reports with back-up data, calculations and proof of delivery/receipt
 - ❑ EHS records (electronic or hard copy) including training records
 - ❑ Monitoring/ testing results
 - ❑ Copies of registrations, licenses and certifications
 - ❑ Final and/or signed versions of documents
 - ❑ Previous audit/ inspection reports



How to Manage the Audit Process

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- ❑ Inform managers, supervisors and key employees that an EHS inspection or audit is scheduled
- ❑ Notify Corporate EHS, EHS Consultant and/or Legal Counsel as needed
- ❑ Consider having EHS advisors (Corporate EHS, EHS Consultant, and/or EHS Attorney) present or available as needed
- ❑ Secure Process Confidentiality Agreements from Auditors as needed
- ❑ Be present during employee interviews to introduce the auditor, explain questions and clarify responses
- ❑ Escort auditors during plant tour and inspections
- ❑ Arrange interviews as necessary
- ❑ Correct Minor issues during the course of the audit as able
- ❑ Respond promptly to auditor requests for documents or information



Important Audit Considerations

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- ❑ An expectation of no findings may be unreasonable
- ❑ If records are in good order, readily accessible and complete, the audit can move along efficiently
- ❑ An audit or inspection is a snapshot in time, and generally covers the period from the last audit to present
- ❑ A well maintained facility and records makes for a good impression
- ❑ Challenge your auditor, Use the audit as a learning opportunity
- ❑ No two auditors are the same or will observe the exact same issues
- ❑ It may be helpful to provide the auditor with electronic copies of certain plans, procedures, permits and records in advance of the audit
- ❑ An audit does not provide a guarantee of compliance
- ❑ You typically will not have time during the audit to conduct corrective actions
- ❑ **Do not undertake an audit if you do not intend to implement corrective actions**



Implementing Proper Corrective Action

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- Corrective Actions
 - Begin work on corrective actions as soon as the validity of the finding is confirmed
 - Determine need, opportunity or benefit of claiming audit privilege and disclose audit findings accordingly (specific timeframes apply)
 - Indiana environmental audit privilege
 - Federal self-policing audit policy
 - Ensure that the corrective action that is chosen will correct or eliminate the issue and close the finding
 - Prioritize and assign corrective action to proper individuals or entities and set appropriate deadlines



Implementing Proper Corrective Action

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- Corrective Actions (Cont.)
 - Close audit findings promptly and within timeframe committed per any agency disclosures
 - Track corrective actions until closure is complete, and document closure.
- Consider root cause analysis for any serious findings or oversights. Apply lessons learned company-wide.



Questions?

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