



Program Spotlight



Office of Enforcement and Compliance Assurance

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EPA Celebrates Key Anniversaries by Releasing Updated Audit Policy FAQs

This past year marked several major anniversaries in the history of EPA’s Audit Policy Program, including the 35th anniversary of EPA’s first environmental auditing policy statement, the 25th anniversary of the first Audit Policy, the 20th anniversary of the current versions of the Audit Policy and Small Business Compliance Policy, and the 5th anniversary of the launch of eDisclosure. EPA is taking the occasion of these various anniversaries to celebrate the success of the Audit Policy Program, remind regulated entities about the benefits of the various self-disclosed violation policies, and inform the public about updated Frequently Asked Questions.

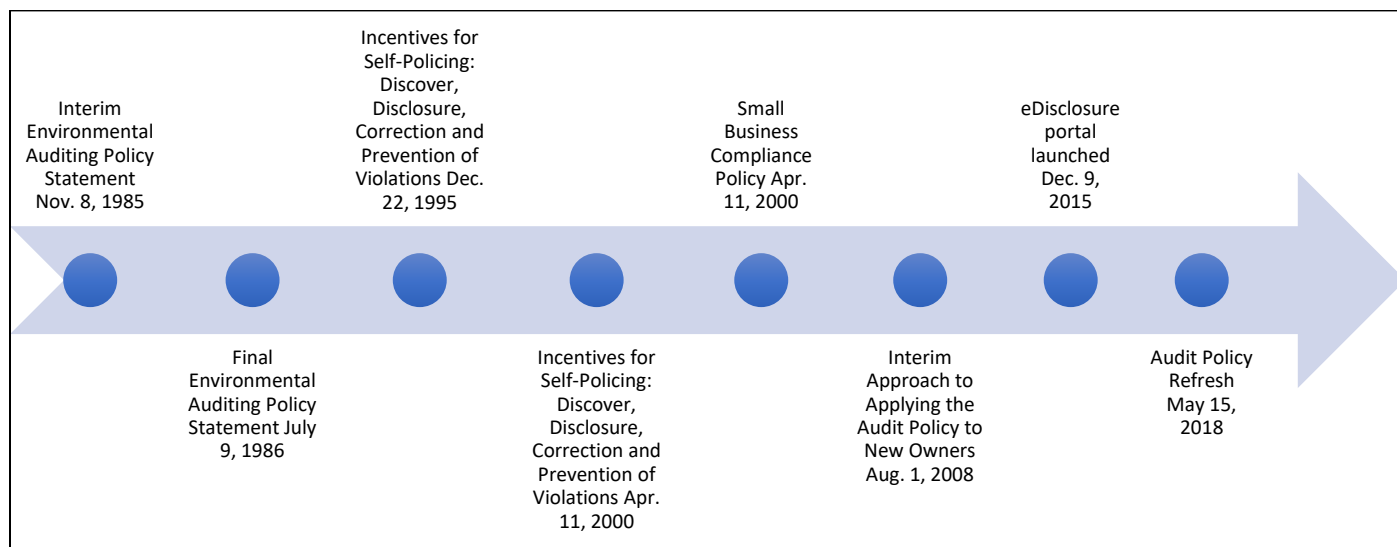


FIGURE 1: MAJOR MILESTONES IN THE AUDIT POLICY PROGRAM

EPA has a robust Audit Policy Program that incentivizes the voluntary discovery, disclosure and timely correction of violations by providing for reduced penalties when the conditions of the applicable self-disclosed violation policy are met. EPA’s Audit Policy Program is comprised of three self-disclosed violation policies, and the eDisclosure system which is an online system for receiving and automatically processing violation disclosures under two of the self-disclosed violation policies. As described further below, an entity that self-discloses a violation in a manner that satisfies the conditions of the applicable self-disclosed violation policy may qualify for a 75 or 100% reduction of the gravity component of any penalty. While the conditions of the three self-disclosed violation policies vary slightly, each requires voluntary and independent discovery of the violation, as well as prompt disclosure and correction. In addition, these self-disclosed violation policies generally are not available for repeat violations, or

violations that resulted in serious actual harm, or may have presented an imminent and substantial endangerment. More information about EPA’s Audit Policy Program generally is available at <https://www.epa.gov/compliance/epas-audit-policy>.

Audit Policy Conditions

1. Systematic Discovery*#
2. Voluntary Discovery*
3. Prompt Disclosure*
4. Discovery and Disclosure Independent of Government or Third-Party Plaintiff
5. Correction and Remediation^
6. Prevent Recurrence
7. No Repeat Violations^
8. Other Violations Excluded*
9. Cooperation*

* Modified for New Owner Audit Policy

Not applicable to Small Business Compliance Policy

^ Modified for Small Business Compliance Policy

From 1995-2020, over 10,000 entities voluntarily self-disclosed violations at nearly 28,000 facilities under EPA’s Audit Policy Program. More than half of these self-disclosed violations have been for Emergency Planning and Community Right-to-Know Act (EPCRA) reporting violations.

Audit Policy EPA’s [Audit Policy](#) (“Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,” 65 Fed. Reg. 19618 (Apr. 11, 2000)), safeguards human health and the environment by providing several major incentives for regulated entities to voluntarily discover and fix violations of federal environmental laws and regulations. To take advantage of these incentives, regulated entities must voluntarily discover, promptly disclose to the EPA, expeditiously correct, and prevent recurrence of future environmental violations. See text box for conditions that must be met to qualify for penalty mitigation.

More specifically, under the Audit Policy an entity may receive:

- Reduction of 100% of gravity-based penalties if all nine of the Audit Policy’s conditions are met. The EPA retains its discretion to collect any economic benefit that may have been realized as a result of noncompliance.
- Reduction of 75% of gravity-based penalties where the disclosing entity meets all of the Audit Policy’s conditions except for Condition 1 - Systematic Discovery.

In addition, if all of the applicable conditions under the Audit Policy are met, EPA will not recommend criminal prosecution for entities that disclose criminal violations.

Small Business Compliance Policy [The Small Business Compliance Policy](#), 65 Fed. Reg. 19630 (Apr. 11, 2000), applies to companies with 100 or fewer employees and provides penalty mitigation as an incentive to participate in on-site compliance assistance programs and to conduct environmental audits to discover, disclose and correct violations in a timely manner. Unlike the Audit Policy, a small business may qualify for 100% reduction of the gravity component of any civil penalty even if the violation is not discovered as part of a systematic audit as well as have more time to correct the violations. More information about the Small Business Compliance Policy can be found at <https://www.epa.gov/compliance/small-business-compliance>.

New Owner Audit Policy EPA developed the [New Owner Audit Policy](#) (“Interim Approach to Applying the Audit Policy to New Owners,” 73 Fed. Reg. 44991 (Aug. 1, 2008)), to provide additional incentives to new owners to make a “clean start” at their newly acquired facilities. The policy applies to new owners that meet all the conditions of the New Owner Audit Policy, and within 9 months of the transaction closing either (i) promptly disclose violations to EPA, or (ii) enter into an audit agreement with EPA.

New owners meeting the conditions of the New Owner Audit Policy potentially can receive additional penalty reductions beyond what is provided in the Audit Policy, and penalty mitigation for a greater range of environmental violations than would be eligible under the Audit Policy. EPA also modified the conditions related to systematic discovery and prompt disclosure as applied to new owners. Moreover, as part of entering into a new owner audit agreement, a new owner can negotiate audit scope and timing, as well as when it will disclose any violations found as part of its new owner audit (e.g. when it will file its final report). More information about the New Owner Audit Policy is available at <https://www.epa.gov/compliance/epas-interim-approach-applying-audit-policy-new-owners>.

Updated Frequently Asked Questions

As part of its effort to renew emphasis on, and interest in, the Audit Policy Program, EPA updated and consolidated existing interpretive guidance and FAQs. [EPA’s Audit Policy Program: Frequently Asked Questions](#) supersedes the [Audit Policy Interpretive Guidance \(1997\)](#), [Audit Policy: Frequently Asked Questions \(2007\)](#) and [eDisclosure FAQs \(2015\)](#) in part because some of the questions and answers in those three documents are no longer relevant. [EPA’s Audit Policy Program: Frequently Asked Questions](#) incorporates issues discussed in those three documents that remain relevant, including any updates, in a user-friendly manner.

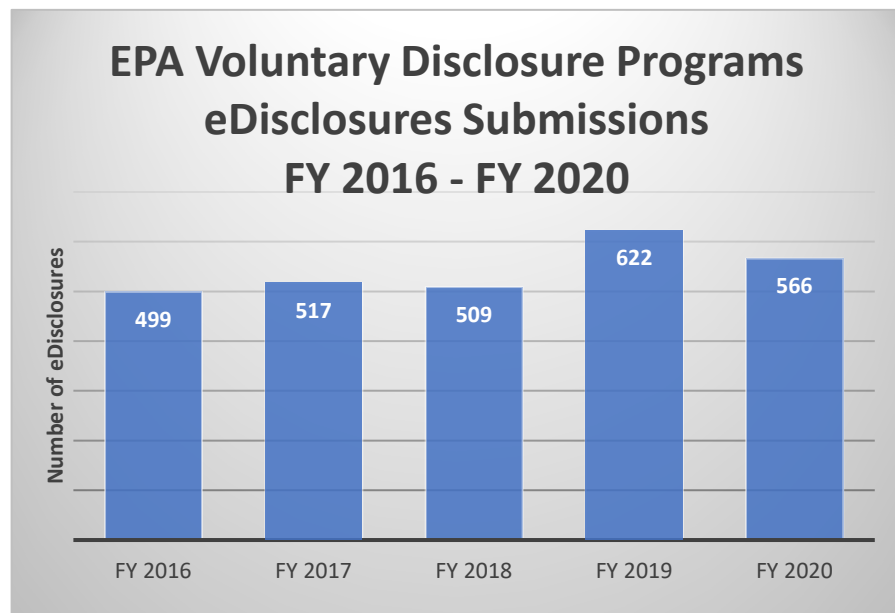


FIGURE 2 FIVE FISCAL YEAR SNAPSHOT OF NUMBER OF EDISCUSSION SUBMISSIONS

eDisclosure System

In 2015, the EPA modernized implementation of its self-disclosed violation policies by creating a centralized web-based eDisclosure portal to receive and automatically process self-disclosed civil violations of environmental law. Under the automated eDisclosure system, large and small businesses are quickly able to resolve certain routine types of disclosures, saving time and resources for regulated entities and EPA. The

EPA launched the eDisclosure system to continue the benefits of self-disclosed violation policies and more efficiently provide penalty mitigation and other incentives for companies that self-police, disclose, correct, and prevent violations. More than 2,800 disclosures have been submitted to EPA via the online eDisclosure system since its launch in 2015.

The eDisclosure system automatically generates one of three possible responses, depending on the type of disclosed violation, and whether the disclosing entity was able to timely disclose and/or certify that it met all applicable self-disclosed violation policy conditions – (i) an electronic Notice of Determination (eNOD); (ii) an Acknowledgement Letter noting EPA’s receipt of the disclosure and notifying the entity that the EPA will make a determination as to eligibility for penalty mitigation if and when it considers taking enforcement action for environmental violations; or (iii) an Ineligibility Letter indicating that the disclosure or compliance information was not timely submitted or did not meet the conditions of the applicable self-disclosed violation policy and notifying the entity that EPA will take into account all relevant facts and circumstances surrounding any violation if and when it considers taking an enforcement action. More information about the eDisclosure system and possible responses can be found at <https://www.epa.gov/compliance/epas-edisclosure>.

eDisclosure

All self-disclosed civil violations made under the Audit Policy or the Small Business Compliance Policy must be made through the eDisclosure portal; EPA no longer enters into audit agreements under the Audit Policy or Small Business Compliance Policy.

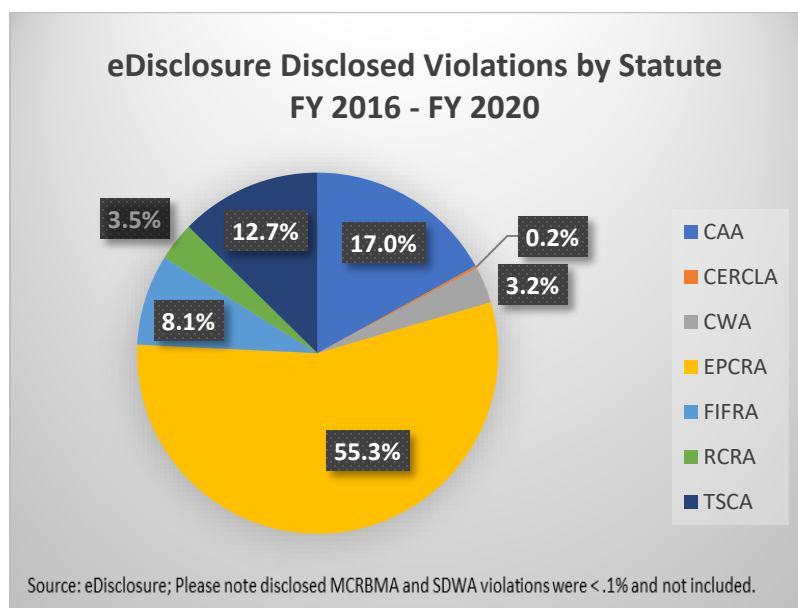


FIGURE 3 STATUTE DISTRIBUTION OF VIOLATIONS SUBMITTED VIA eDISCLOSURE

This Program Spotlight addresses select provisions of EPA’s Audit Policy Program using plain language. Nothing in this Program Spotlight is meant to replace or revise any self-disclosed violation policies, EPA regulatory provision, the Code of Federal Regulations, the Federal Register, or statute.