Self-Disclosure Policy and the Federal Government

Federal Environmental Symposium East
June 2, 2008
Audit Policy

• The EPA Audit Policy, "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," has been in effect since 1995

• To encourage regulated entities to voluntarily discover, disclose, correct, and prevent violations of federal environmental requirements
Purpose of the Audit Policy

• To enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent violations of federal environmental requirements

• As incentive, EPA will forgo all gravity based (non-economic benefit) penalties when the regulated entity satisfies all policy conditions
Purpose of the Audit Policy (cont.)

• As incentive, EPA will forgo all gravity based (non-economic benefit) penalties when the regulated entity satisfies all policy conditions
Conditions

• The violation was identified voluntarily

• The violation was discovered through:
  – an environmental audit; or
  – an environmental management system

• (75% reduction possible otherwise)
Conditions

- Promptly disclose violations in writing to EPA (within 21 days of discovery)

- In USEPA Region III, send to:
  Samantha P. Beers, Director
  Enforcement, Compliance and Environmental Justice (3EC00)
  USEPA Region III
  Philadelphia, Pennsylvania 19103
Conditions

• Must promptly correct violations (usually within 60 days)

• Correcting the violation includes remediating any environmental harm associated with the violation, as well as implementing steps to prevent a recurrence of the violation
The Policy Excludes

- Violations that result in serious actual harm or present an imminent hazard to public health, safety, or the environment
- Repeat violations (within three years)
The Policy Excludes

- Violations identified through any legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial/administrative order or consent agreement
- Violations that are part of a pattern of similar violations across a multi-facility organization within the past five years
The Policy Excludes

- Criminal violations of individuals (entities generally exempt)
Audit Agreements

- Audit agreements allow EPA and the ‘facility’ to reach mutually acceptable terms regarding schedules for conducting the audit, and disclosing and correcting any violations discovered.
Advantages of Audit Agreements

• More time to disclose and correct violations
• Other flexibility can be built into agreement to meet needs
• Single point of contact for all environmental regulatory issues
Steps to Negotiate an Audit Agreement

- Contact EPA for current model agreement
- Submit commitment letter
- EPA submit draft agreement
- EPA discusses comments, if any, with facility
- Draft agreement developed for final review
- Final agreement signed
How to Disclose

- Submit disclosure under the Audit Policy, in writing within 21 days of discovery or

- Submit disclosures pursuant to deadlines in a negotiated auditing agreement
The Numbers

• In 2007, around 500 self-disclosures were processed nation-wide
• Guess how many Federal Facilities?
  – One (1)
• Amount of Gravity penalty waived
  – $34,000,000
Our First Agreement

• Bureau of Prison
  – 16 facilities included in the agreement
  – Flexible schedule
Thank you !!!

José J. Jiménez
Federal Facilities Program
U.S. Environmental Protection Agency - Region III
Phone: 215-814-2148
Jimenez.jose@epa.gov