

Sample Disclosure Follow-up Letter

"The sample letter below is an example of the type of follow-up communication that the Agency sends a company after receiving a self disclosure pursuant to EPA's Audit Policy. The letter provides companies with clear guidance on the kind of information needed by EPA to better understand the potential violations and determine whether a company's disclosure meets the conditions of the Audit Policy."

Via Facsimile and U.S. Mail/
Return Receipt Requested

Name
Title
Company
Address

Dear Mr./Ms. Name:

The United States Environmental Protection Agency ("EPA") is in receipt of your letter dated *dd/mm/yyyy*, in which you disclose, on behalf of *Company*, possible non-compliance with reporting requirements under [*Environmental Statutes*]. EPA appreciates *Company*'s willingness to self-police, disclose, and correct violations at its facilities in a timely manner.

In your *mm/dd/yyyy* letter, you stated that *Company* will attempt to complete inspections of its facilities within *xx* days. The Agency agrees with your proposed schedule to complete the facility audits and requests that *Company* submit the information requested in this letter no later than *mm/dd/yyyy*. In addition, we ask you to provide brief monthly reports on or about the 15th of each month discussing the status of the audits and correction of violations.

1. Corporate Structure

Please describe the corporate structure, including all parent and subsidiary corporations.

2. Audit Policy Criteria

To determine whether *Company* has met the criteria in the Audit Policy, EPA will need additional factual information specific to each of the criteria in the Audit Policy. Please provide us with all available factual information to address conditions one through nine of the Audit Policy as soon as possible, but no later than *dd/mm/yyyy*. Attached to this letter is a copy of a questionnaire which includes the information needed by the Agency. (See Attachment A). If you believe you have already provided sufficient information in response to a specific condition, please advise the Agency, in writing.

3. Facility Compliance

In addition, pursuant to the Audit Policy, we ask that you provide the following information for each potential violation, if relevant, so that the Agency has complete information on the violations that may have occurred and on each facility's compliance record.

Facility name;
Facility type (if appropriate);
Facility address (street, city, state, zip code);
Date facility began operations;
Nature and description of potential violation(s) and specific regulatory, permit and/or statutory provision violated; **(include state references where appropriate)**
Dates of possible non-compliance;
Chemical(s) involved;
Quantity of materials (lbs.) stored, released, spilled or disposed of;
Capacity of tank(s) or other equipment;
Date emission source(s), tank(s) or treatment unit(s) etc., was installed;
Date emission source(s), tank(s) or treatment unit(s) etc., began operations;
Brief description of emission source(s), tank(s) or treatment unit(s) etc.,
Date audit team discovered possible noncompliance;
Identify the name, title, and employer of each individual who discovered the violation.
Date EPA notified of possible noncompliance, if earlier than periodic self-disclosure;
Date potential violation corrected or estimated to be corrected;
Date remedial actions taken and/or planned to correct potential violation; and

4. Cost of Compliance

For each violation, determine the cost to return to compliance. Such costs may include internal staff or outside consultants' time to become familiar with the regulations, determining which chemicals meet/exceed reporting thresholds, preparing forms/plans/permits, submitting forms to appropriate agencies, fees collected by state or other regulatory agencies, release detection equipment, and secondary containment or start-up costs for plan implementation or tank monitoring.

Conclusion

After we have received your response, we will consider the specific violations which occurred, calculate a proposed penalty, and determine whether the Audit Policy applies. It is our goal to attempt to resolve this matter as expeditiously as possible with your cooperation. As previously mentioned, we ask that you send us the requested information as soon as possible, but no later than *dd/mm/yyyy*. If at any time you determine that *the company* will need more time to provide the requested data and to come into compliance, please submit a proposed schedule and your justification for an extension of time.

EPA appreciates *Company's* willingness to timely self-police, disclose, and correct violations at its facilities. *XXXX*, of my staff, will serve as your primary contact. Please send your submissions directly to him/her. If you have any questions concerning this matter, please contact me at (202) 564-XXXX or the staff contact at (202) 564-XXXX.

Sincerely,

Multimedia Enforcement Division (2248A)
Office of Regulatory Enforcement

Enclosures

ATTACHMENT A

SELF-DISCLOSURE QUESTIONNAIRE

Provide the following information for each potential violation at all of the facilities disclosed by *Company*. Please correlate each answer to the specific violation.

1. Describe the violation and state the specific regulatory or statutory provision violated.
2. Explain how the violation was discovered. Please be as detailed as possible.
3. State whether the violation of a federal, state, or local regulation was discovered by means of a systematic, internal, environmental audit or through a compliance management system..

If *Company* believes that the violation was discovered through a “compliance management system,” as defined in EPA’s Audit Policy, explain, in detail, how the *Company*’s practices and procedures leading to the discovery of the violation constitute such a system.

If the violation was discovered by means of an environmental audit, provide the following information:

- A. State the date(s) on which the environmental audit or systematic procedure or practice that identified the violation was being conducted.
- B. State the frequency of environmental audits of the *Company* facilities involved. State the date(s) on which the last environmental audit was conducted at each facility prior to your disclosure.
- C. State whether the facilities have a written policy or directive to follow up on audit findings to correct identified problems and prevent their recurrence.

Provide the *Multimedia Enforcement Division (MED)* with a copy of this written policy or directive.

- D. Describe the relationship between the involved facilities and the person(s) responsible for conducting environmental audits. Explain how *Company* ensures the auditor’s tasks or inquiries are carried out in an objective and unobstructed manner. Include in your answer a discussion of the manner in which personnel, financial, or other potential conflicts of interest are avoided between employees of the facility and the individuals conducting an audit.
- E. Provide a copy of written audit policies and procedures for the facility. The requested policies and procedures should indicate the scope of the audit, the process for examining audit findings, the protocol for communicating audit results

to *Company* management, auditor conflict of interest policy, auditor education and training requirements, and follow-up measures.

4. Was the violation identified through an activity which *Company* was legally required to perform, such as under a State or Federal statute, regulation or permit, or under the terms of a judicial or administrative order or consent agreement? If so, identify the authority under which the activity was required.
5. Is the violation required to be reported under any Federal or State statute, regulation or permit? If so, identify each such statute, regulation or permit.
6. State the date on which the violation was discovered. If *Company* believed additional analysis or information was needed after the audit/systematic procedure or practice to determine whether a violation existed, state the reasons for the additional analysis.
7. If disclosure of the violation was not within twenty-one days of the date of discovery, or such shorter period as may be provided by law, please explain, in detail, the reasons that the violation was not disclosed within ten days of discovery.
8. Identify the name, title, and employer of each individual who discovered the violation.
9. If the violation was discovered by an independent auditor, (that is, by a person not employed by *Company*), provide the date and the manner in which *Company* was made aware of the violation.
10. Explain in detail all measures taken to correct or remediate the violation. Provide an estimate of the length of time it took or will take to complete these measures. If *Company* estimates that more than 60 days will be needed to correct the violation, please explain fully and provide the opinion of any technical or engineering expert relied upon to arrive at that estimate.
11. Explain in detail all measures taken or to be taken to ensure that the violation disclosed will not be repeated. Include in your discussion any improvements made to *Company*'s environmental auditing or due diligence efforts in an attempt to prevent recurrence of the violation.
12. Did the violation result in any serious actual harm to human health or the environment? Provide a full explanation of how this conclusion was reached.
13. Did the violation present or may it present, any form of endangerment to public health or the environment? Provide a full explanation of how this conclusion was reached.
14. Did the violation violate the specific terms of a judicial or administrative order or consent agreement? If so, please identify the order or agreement.