

## EPA's Small Business Compliance Policy Can be Used to Eliminate Civil Penalties for Self-Disclosure of Violations of Environmental Regulations

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EPA has two programs to encourage companies, by reducing or waiving civil penalties, to voluntarily disclose violations of environmental regulations and come into compliance. The first of these programs is EPA's Audit Policy, which requires that the violations be discovered as a result of a qualifying environmental audit or the implementation of an environmental management system. Thus, eligibility under the Audit Policy hinges on a company having enacted proactive and effective environmental compliance procedures before the violation is discovered by a governmental agency. This requirement makes the Audit Policy an ineffective tool for companies that have not undergone the expense of establishing comprehensive audit or environmental management system programs. The second EPA program is much more flexible, but is only available for smaller companies. This program, called the Small Business Compliance Policy, is tailored for companies with 100 or fewer employees (across all facilities and operations owned by the small business). The greatest advantage of the Small Business Compliance Policy over the Audit Policy is that the violation need only be discovered voluntarily, not necessarily as the result of an audit or environmental management system, for the company to be eligible for penalty mitigation.

### Going Light Green

By David Welch, Everchem Specialty Chemicals

#### Repairing Broken Pallets

Pallets are expensive. Over a year's time pallet expense can add up to a significant amount of money. Broken pallets are a nuisance and take up too much volume when disposed of in a dumpster.

Consider adopting a policy of repairing broken pallets in-house during "slack time" (idle time during material changeover, breakdowns, etc.). All it takes is a few simple hand tools and supplies such as hammer, nails and a hand saw. If in-house repair is not practical, find a pallet repair company in your area and arrange for periodic free pickups. At least you will reduce your disposal costs.

If you have any ideas for going "light green," please contact the PMA office at [info@pmahome.org](mailto:info@pmahome.org).

The Small Business Compliance Policy states that EPA will eliminate or reduce the gravity component of any civil penalties associated with a violation assuming the small business meets certain conditions. The policy states that EPA may still levy a fine for economic benefit that may have been realized as a result of non-compliance; however, we are unaware of any instance of EPA levying such a fine. Following is a brief description of the eligibility criteria for the Small Business Compliance Policy; companies qualifying as small businesses should be aware of these criteria in the event they may wish to avail themselves of the protections offered by the program at some point in the future. The violation must have been discovered by the small business itself or through compliance assistance efforts (e.g., through a state technical assistance provider). The following means of discovery do not qualify: EPA or state compliance inspection, a response to an agency information request, or a "whistleblower" employee.

- The violation must have been discovered voluntarily, not through monitoring, sampling or auditing that is required by law.
- The violation must be disclosed in writing to EPA within 21 days of discovery.
- The small business corrects the violation and remedies any associated harm within 180 days of discovery (an additional 180 days may be granted if the remedy includes pollution prevention activities).
- The same (or closely related) violation must not have occurred at the same facility within the past three years.
- The company has not used the policy or been subject to enforcement action for the same or similar violation in the last three years.
- The company must not have been subject to two or more enforcement actions for any environmental violations within the past five years.
- The violation must not have caused serious harm to public health, safety or the environment, and must not present an imminent and substantial endangerment.
- The violation must not have involved criminal conduct.

As outlined above, there are limitations to the Small Business Compliance Policy. However, small businesses will generally find that the Small Business Compliance Policy is more flexible than the Audit Policy, and hence the preferred policy for self-reporting violations of environmental regulations. Finally, keep in mind that many states have implemented comparable compliance policies for violations of state environmental regulations. Make sure to check your state's administrative code for details prior to disclosing a violation so you retain eligibility for all available protections.