

PMA's Self-Certification Program & Other Environmental Compliance Tools

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In the thirty plus years that federal and state agencies have regulated the environment and health and safety, companies have made tremendous strides to learn and comply with complex laws that govern emissions to the air, land, and water and other matters relating to hazardous substances. In fact, companies have made such progress that the traditional regulatory command and control structure often fails to promote environmentally beneficial practices. Now, regulated entities are looking for ways to differentiate themselves from those who simply meet minimum requirements and to receive recognition for their good performance. Regulators, in turn, are increasingly seeking to encourage and reward performance that exceeds minimum standards. In this new landscape, regulated entities often benefit by reducing their compliance and operating costs, while agencies decrease their investigative, enforcement and oversight costs.

PMA is on board this trend: PMA's self-certification program was developed to help members demonstrate their compliance with environmental and health and safety requirements. The program is related to and overlaps with federal and state programs and policies which also encourage voluntary compliance with, and exceedance of, environmental and/or health and safety requirements. PMA also has an environmental management system template.

PMA's Self-Certification Program

PMA's self-certification program was established to help its members work toward goal two of the PMA Strategic Plan:

To enable all member companies to demonstrate compliance with all applicable health, safety, environmental, and transportation regulations by means of self-certification programs within five years.

PMA's regulatory compliance self-certification program embodies its commitment to safety, health and the environment and has four tiers. Several PMA member companies have already certified to Levels I (Commitment) and II (Compliance).

Level I certification requirements include:

- PMA membership
- management commitment to a proactive approach to meet or exceed all applicable federal, state and local health, safety and environmental regulations
- management commitment of resources to ensure compliance
- certification of accurate application information
- commitment to maintain certification qualifications during the two-year certification period.

Level II requirements include:

- management commitment
- compliance with OSHA regulations
- employee monitoring for MBOCA and isocyanates
- compliance with environmental regulations
- compliance with community right-to-know requirements
- ISO 14001 (see below) registration or annual review to ensure that the company maintains its qualifications for Level II
- regular safety, health and environmental reviews
- system to promptly correct problems and discrepancies
- system to ensure compliance
- certification to accuracy of information on application
- commitment to maintain certification qualifications during the two-year certification period

Level III (Leadership) was added in 2003. Each criteria for this level has a point value and at least 50 total points are needed to qualify for Level III. A minimum of 20 points must come from Health and Safety and another 20 points must come from environmental activities. The additional 10 points may be earned from the above options or from experience in health, safety and environmental management systems. If the required point level is not maintained for longer than 60 days, the company must inform the PMA office so that Level III status can be revoked. Moreover, companies must certify to

the accuracy of application information and commit to maintain certification qualifications during the two-year certification period.

Level IV (Mentoring) also was added in 2003. A company must: meet and exceed Leadership Level requirements, scoring at least 60 points; participate in one or more ways as a company representative to PMA Regulatory Affairs programming; certify to the accuracy of information on its application; and, commit to maintain the qualification during the two-year certification period.

ISO 14001: In addition to PMA's regulatory compliance self-certification program, PMA also has an ISO 14001 template. The International Organization for Standardization (ISO) is composed of industry and government standards bodies from more than 100 countries and promotes and facilitates the exchange of goods and services world-wide by developing international manufacturing, trade and communication standards. On September 1, 1996, ISO published an environmental management system standard to provide direction for managing, measuring, improving, and communicating the environmental aspects of operations. Elements of an ISO 14001 environmental management system ("EMS") include:

- policy development
- process for developing objectives and targets
- corporate commitment to pollution prevention
- identification of regulatory requirements
- determination of impacts
- planning
- implementation and operation
- resource allocation
- training
- checking and performance measurement, including a process to audit the EMS and compliance
- corrective action
- internal and external communication links.

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ISO 14001 relies on changing organizational commitments, focus, and behavior to encourage improved corporate conduct. It does not establish pollutant values or performance levels, establish test methods, require or establish final performance goals, require surpassed regulatory compliance limits, mandate best achievable technologies, or require disclosure of performance levels or audit results. Finally, although ISO 14001 is voluntary, some customers "mandate" compliance by selecting suppliers on the basis of whether they meet ISO 14001 criteria.

Federal and State Agency Encouragement of Voluntary Compliance. In addition to considering participating in PMA's self-certification program and/or ISO 14001 certification, PMA members should consider taking advantage of federal and state programs and policies designed to encourage companies to voluntarily assess their environmental compliance status.

The EPA's Revised Final Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (the "Audit Policy") took effect May 11, 2000 and replaced its 1995 audit policy. The purpose of the Audit Policy is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, promptly disclose and expeditiously correct violations of federal environmental requirements. Incentives include no, or a substantially reduced, civil penalty gravity component. The EPA will not seek a gravity-based penalty if all of the following nine Audit Policy conditions are met:

1. Systematic discovery of the violation through an environmental audit or a compliance management system
2. Voluntary discovery
3. Prompt disclosure
4. Discovery and disclosure independent of the government or a third-party plaintiff
5. Correction and remediation
6. Prevent recurrence
7. No repeat violations
8. Other violations excluded
9. Cooperation

If all of the conditions are met, except for detection of a violation through a systematic discovery process, then gravity-based penalties may be reduced by 75%. Although the EPA retains discretion to collect any economic benefit of noncompliance, the agency will not recommend that the company be criminally prosecuted, and it will not request the entity's voluntary audit reports to trigger enforcement.

Finally, a number of states have promulgated, or attempted to promulgate, privilege laws, immunity laws, privilege and immunity laws, voluntary self-disclosure civil penalty mitigation laws, and self-disclosure policies.¹

Benefits of Participating in Certification and/or Audit Programs. The advantages of participating in certification (such as the PMA self-certification program and ISO 14001) and audit (such as the federal Audit Policy and state systems) programs are numerous and varied. On the environmental front, participation in one or more of the programs can help a company reduce waste generation and/or emissions, increase recycling, prevent spills and pollution, and substitute materials. The benefit to the environment from these actions is augmented by the significant economic benefits to the company, including more efficient use of materials, generation of less volume and lower toxicity

waste, lower compliance costs, elimination or reduction of penalties and forfeitures. These benefits add up to significant long-term cost savings and competitive advantage. Furthermore, companies that participate in one or more of the above-referenced programs will likely enjoy a competitive advantage over companies that do not participate, because customers are increasingly demanding that their suppliers and others with whom they do business meet certain standards, and customers recognize increased reliability from suppliers who go beyond minimum compliance standards and suppliers who have a strong environmental management program.

The bottom line is that enhanced environmental performance benefits participating companies and the environment. And, PMA has developed a framework for member companies to take advantage of programs that promote environmental performance. For more information on how your association can assist your company, please contact Jennifer Gelinsky at PMA.

¹ See U.S. EPA Region 5 – Regional Counsel State Audit Privilege and Immunity Laws & Self-Disclosure Laws and Policies. http://www.epa.gov/region5/orc/audits/audit_apil.htm (last updated August 29, 2005, last checked November 11, 2005) for a list of state laws and policies.

State Environmental Audit Privilege & Immunity Laws

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Most states, as well as USEPA, have developed environmental immunity, state audit privilege and self-disclosure policies. We are nearly complete with a project which assembles summaries on a state by state basis of the self-disclosure, privilege and immunity laws, as well as the policy adopted by USEPA. Please be aware that this information is being assembled and which will be available through the PMA, as a significant member benefit. These state policies generally provide that a company act promptly upon discovery of an environmental violation to report and correct the violation. Most laws provide for immunity from fines and penalties provided that it is self-disclosed within a defined time period, which varies by state policy. We will be providing more information on this program at the annual convention in May, 2006. If you have an occasion to need this information before the annual convention, please do not hesitate to call Donald P. Gallo, PMA legal counsel, or the PMA office to obtain information specific to the state in which your facility or facilities are located, as well as USEPA policy.