

VERMONT AGENCY OF NATURAL RESOURCES
POLICY: INCENTIVES FOR SELF-AUDITS AND ENVIRONMENTAL COMPLIANCE

A. Purpose, Scope, Applicability

This policy seeks to encourage greater compliance with the laws and regulations which protect human health and the environment by encouraging persons to voluntarily discover, disclose, correct, and prevent violations of state environmental requirements. This policy shall be used in conjunction with 10 V.S.A. Chapter 201 and the Environmental Administrative Penalty Rules (EAPR), which establish the basis for determining penalties for environmental violations. This policy promotes compliance self-audits by allowing lower (mitigated) penalties than provided in the EAPRs for violations which were discovered through a voluntary audit or a compliance management system that demonstrates due diligence and then are promptly disclosed and corrected. To further promote compliance, the policy also allows for reduced (mitigated) penalties for any violation voluntarily discovered and promptly disclosed and corrected, even if not found through an audit or compliance management system.

This policy applies to any person regulated under the Vermont environmental laws administered by the Vermont Department of Environmental Conservation. This policy is **not** applicable to violations of Vermont's Act 250 regulations.

This policy does not apply to noncompliance which: (i) results in substantial actual harm, or presents an immediate threat of substantial harm to the environment or an immediate threat to public health, or (ii) relates to the specific terms of any judicial or administrative order or consent agreement/assurance of discontinuance.

B. Definitions

For purposes of this policy, the following definitions apply:

“ANR” is the Vermont Agency of Natural Resources.

“Environmental audit” means a systematic, documented, periodic (at least every other year), and objective review of facility operations and practices related to meeting environmental requirements.

“Due diligence” encompasses the person's systematic efforts, appropriate to the size and nature of its business, to prevent, detect, and correct violations through a compliance management system which incorporates all of the following:

1. compliance policies, standards, and procedures that identify how employees and agents are to meet the laws, regulations, permits, and other sources of authority for environmental requirements;
2. assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;

3. mechanisms for systematically assuring that compliance policies, standards, and procedures are being carried out, including: a) monitoring and auditing systems reasonably designed to detect and correct violations; b) periodic evaluation of the overall performance of the compliance management system, and c) a means for employees or agents to report violations of environmental requirements without fear of retaliation;
4. efforts to effectively communicate the compliance standards and procedures to all employees and other agents will be evidenced through both written instructions and training;
5. appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards, and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and
6. procedures for the prompt and appropriate correction of any violations and any necessary modifications to the regulated person's program to prevent future violations.

"Environmental audit report" means the analysis, conclusions, and recommendations resulting from an environmental audit, but does not include data obtained in, or testimonial and other evidence concerning, the environmental audit.

"Person" means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the State of Vermont or any agency, department, or subdivision of the state, federal agency, or any other legal or commercial entity subject to state environmental laws, rules and permits.

"Small business" means a person, corporation, partnership, or other entity who employs 100 or fewer individuals (on a company-wide basis).

"Small municipality" means municipalities with populations of 2,000 or less.

C. Incentives for Self-Evaluation

1. Potential Penalty Mitigation: The following penalty mitigation applies where a penalty is sought for self-disclosed violations through an emergency or administrative order or an assurance of discontinuance under 10 V.S.A. Chapter 201:
 - a. If a person's voluntary disclosure of a violation meets all of the criteria in Section D. below, no penalty will be sought.
 - b. If a person's voluntary disclosure of a violation meets criteria in Section D.2 through D.10 below but fails to meet D.1, the maximum penalty sought will be the amount attributable to 10 V.S.A. Section 8010(b)(5)(the calculated economic benefit portion of a penalty).
2. No Routine Request for Audits: ANR will not request to review an environmental audit report for the purpose of initiating a civil or criminal investigation of the person. For example, ANR will not request an environmental audit report during routine inspections. However, if the Agency has

independent reason to believe a violation has occurred and has not been reported, ANR may seek to access the audit through the judicial discovery process or other appropriate processes.

D. Criteria for Penalty Mitigation

1. Systematic Discovery: The violation was discovered through:
 - a. an environmental audit; or
 - b. a compliance management system. The person must provide accurate and complete documentation to the Agency as to how it exercises due diligence to prevent, detect, and correct violations according to the criteria for due diligence outlined in Section B. ANR may require as a condition of penalty mitigation that a description of the person's due diligence efforts be made publicly available; or
 - c. a compliance review conducted at a small business as a participant in ANR's Small Business Compliance Assistance Program (this option is only available to small businesses); or
 - d. a compliance review conducted at a small municipality as a participant in ANR's Municipal Compliance Assistance Program (this option is only available to small municipalities).
2. Prompt Disclosure: The person fully discloses the specific violation to ANR in writing within ten days (or such shorter period provided by the pertinent environmental laws, rules, or permits) after it has been discovered that the violation has occurred or may have occurred.
3. Voluntary Discovery: The violation was identified voluntarily and not through monitoring or sampling at a frequency prescribed by statute, regulation, permit, judicial or administrative order, or assurance of discontinuance. Below are examples of specific situations which this policy would not apply to:
 - a. emissions violations detected through a continuous emissions monitor (or alternative monitor established in a permit) when the monitoring was required;
 - b. violations discovered through a compliance audit which was required by a consent order or settlement agreement and
 - c. violation of a National Pollutant Discharge Elimination System (NPDES) discharge limit detected through sampling or monitoring conducted at the frequency required by the permit.

Notwithstanding the above, if the violation was discovered through permit required sampling/monitoring which was consistently performed at or above three times the frequency required by the NPDES permit, this policy could then be applied to the violation.
4. Discovery and Disclosure Independent of Government or Third Party Plaintiff: The violations must be identified and disclosed by the person prior to:

- a. the commencement of a federal, state, or local agency inspection or investigation;
 - b. the issuance of an information request (by a federal, state, or local agency) relating to the violation;
 - c. the notice of a citizen suit;
 - d. the filing of a complaint or reporting of the violation by a third party; or
 - e. the discovery of the violation by a regulatory agency.
5. **Correction and Remediation:** The person corrects the violation within 60 days of discovery (or such lesser period of time as required by the ANR), certifies in writing that the violations have been corrected, and takes appropriate measures as determined by the ANR to remedy any environmental or human harm and threat of harm due to the violation. If more than 60 days will be needed to correct the violation(s), the person must so notify the ANR in writing before the 60 day period has passed. Where appropriate to satisfy criteria D.5 and D.7, the ANR may require the person to enter into an assurance of discontinuance, administrative consent order or judicial consent decree; particularly where compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required.
6. The person did not knowingly commit the violation.
7. **Prevent Recurrence:** The person agrees in writing to take steps to prevent a recurrence of the violation. Such preventative steps may include improvements to its environmental auditing or due diligence efforts.
8. **No Repeat Violations:** The specific violation (or a closely related violation) has not occurred within the previous three years at the same facility. For the purposes of this section, a violation is considered to have been repeated if it was:
- a. any violation of federal, state, or local environmental law previously identified in a judicial or administrative order, assurance of discontinuance, consent agreement or order, judicial complaint, notice of alleged violation, DEC inspection letter, conviction or plea agreement or
 - b. any act or omission for which the person had previously received penalty mitigation from EPA or a state agency.
9. The violation does not present a threat of substantial harm to the public health and/or the environment and neither has it caused or is causing such harm.
10. The violation is not a violation of the specific terms of any judicial order, administrative order, consent agreement or assurance of discontinuance.
11. **Cooperation:** The person cooperates with the ANR by providing all of the information needed by the ANR to determine the applicability of this policy.

E. Agency Response to Disclosure

Unless a legal enforcement document is deemed necessary per criterion D.(5) above, or a penalty is sought by ANR, the ANR will respond by issuing a letter with any required schedule for correction/remediation after verifying that all criteria in Section D above have been met. If any of the criteria D.(2) through D.(10) have not been met, the person will be so notified and the violation will be referred to the regulatory program involved (Air, Wastewater, Hazardous, etc.) for final resolution.

F. Effective Date / Duration of Policy

This policy is effective on the date of signing and will terminate five years thereafter. Earlier termination may occur if the ANR determines there is just cause.

Elizabeth McLain, Secretary
Agency of Natural Resources

4-14-03
Date