



# **Applying the Audit Policy to New Owners**

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# Audit Policy to Date

- Encourages companies to self-police and return to compliance
- Provides penalty mitigation
- Aware that we need to streamline process to improve implementation



# Audit Policy Results

- Resolved disclosures of over 3,500 entities at nearly 10,000 facilities
- Sector focused Compliance Incentive Programs (CIPs) have been successful
  - Colleges and Universities (Regions 1, 2, 3, 4, and 9)
  - Healthcare (Regions 1 and 2)
- However, the majority of disclosures have been of reporting violations
  - While these disclosures are important, there are no pollution reductions or injunctive relief

# How can EPA increase pollution reductions under the Audit Policy?

- Industry has expressed concerns both about having to pay penalties for economic benefit, and, conversely, about compromising the level playing field.
- Industry has also been apprehensive of other Audit Policy conditions and requirements.
- EPA doesn't want to undermine economic benefit or other enforcement program principles.
- How do we address concerns and encourage disclosures that achieve significant outcomes?

# Tailored Incentives for New Owners



- EPA is exploring the idea of offering tailored incentives to new owners to encourage them to self-audit and disclose violations at their recently acquired facilities
- May present an opportunity to achieve significant environmental benefits more quickly than might otherwise happen

# Why New Owners?

- New owners may be well-situated and motivated to focus on, and invest in, making a clean start, by addressing environmental issues
  - Not responsible for facility when violation arose
  - May already be auditing and assessing new facilities
  - Funding to fix problems may be available or budget commitments still relatively flexible
  - Opportunity to manage and reduce risk by addressing and disclosing noncompliance
  - May have equitable argument that economic benefit shouldn't be assessed

# Public Comment Sought on New Owners Incentives Idea

- Who is a bona-fide “new owner” and what should a pilot program require?
- Whether, for policy reasons, EPA should calculate and/or assess economic benefit differently?
- Should EPA allow new owners a limited opportunity to use the Audit Policy to disclose violations where there is a duty to discover and correct?

# Sampling of Public Comments

- General support for idea
- Program needs to be functional, transparent and predictable
- Tension exists between fool proof and workable program
- Enforcement presence encourages disclosures



# Issues Raised in Public Comments

- How broadly do we define “new owner” and should we include a wide range of transactions?
- Should EPA exclude spin-offs?
- How should we treat owners who had prior controlling interest?
- Whether and how do we eliminate or reduce penalties for economic benefit?

# Issues Raised in Public Comments

- Is there a window of opportunity for reporting violations where there is a duty to discover and report, e.g., Title V, DMRs, RMPs?
- Is a separate press approach for settlements resulting from a New Owners program needed?
- How much time should be allowed for pre- and post-acquisition findings?

# NACAA Involvement

- Discussion of New Owners idea on Enforcement and Compliance Committee Call
- Formation of EPA/NACAA Workgroup to discuss issues
- Comments from Group on Issue paper

# Next Steps

- EPA will soon publish a *Federal Register* Notice describing and seeking public comment on the interim approach.

