

## **SERC Audit Disclosure Response Protocol**

**Background:** Ohio's amended audit privilege and immunity law became effective on September 30, 1998. The purpose of this law is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, promptly disclose and expeditiously correct violations of environmental laws. Under the law, the owner or operator of a facility may perform a voluntary self-evaluation ("audit") designed to improve compliance or identify, correct, or prevent noncompliance with environmental laws. In return for performing a proper audit, the owner or operator can qualify for immunity from the gravity portion of any civil penalty for the violations disclosed. Also, the audit and documents used to conduct the audit are privileged.

Because a company ultimately has the burden of proving in court that it is entitled to immunity, it is not the SERC's role or even ability to "grant or deny" immunity. Rather, it is ultimately a question for a court to answer. Accordingly, in our communication, we will only be issuing an opinion as to whether the submittal contains all of the information required by ORC 3745.72.

**Content of Disclosures:** R.C. §3745.72(C) requires that all disclosures must be in writing, dated, and hand delivered or sent by certified mail to the director of the state agency that has jurisdiction over the alleged violation. For violations of R.C. §3750, disclosures must be sent to the Director of Ohio EPA and the Director of Department of Public Safety who serve as the SERC Co-Chairs. The disclosure must contain all of the following information:

- (i) the name, address, and telephone number of the owner or operator making the disclosure;
- (ii) the name, title, address, and telephone number of one or more persons associated with the owner or operator who may be contacted regarding the disclosure;
- (iii) a brief summary of the alleged violation of environmental laws, including, without limitation, the nature, date, and location of the alleged violation to the extent that the information is known by the owner or operator; and
- (iv) a statement that the information is part of an environmental audit report and is being disclosed under R.C. §3745.72 in order to obtain the immunity provided by that section.

### **Procedure for Processing Disclosures:**

Step 1 Upon receiving an audit disclosure request for violation(s) of ORC 3750, on behalf of the SERC, Ohio EPA staff will determine if the disclosure meets the statutory requirements. Ohio EPA will also determine whether the SERC has jurisdiction over the alleged violation(s).

- a. If the SERC does not have jurisdiction over the disclosed violation(s) Ohio EPA will ensure that a copy of the disclosure is to be delivered to the appropriate state agency. No further action will be taken by the SERC.

- b. If the SERC has jurisdiction but the disclosure fails to contain all the necessary information, the Ohio EPA will notify the disclosing party and request any missing information.
- c. If the disclosure contains violation(s) for which SERC has jurisdiction as well as violations under the jurisdiction of another state agency, Ohio EPA will process the disclosure independently, as well as, comply with step 1a.

Step 2: If the disclosure has the requisite information, or upon receipt of all necessary information, Ohio EPA, within fourteen days of receipt of the disclosure, shall send a copy of the notice and the disclosure to the SERC Executive Committee, and send, by certified mail, notice of the SERC's jurisdiction over the violation(s) contained in the disclosure to the owner or operator who submitted the audit disclosure.

Step 3: Ohio EPA will schedule an inspection at the facility or site; unless it is determined that an inspection is not necessary.

Step 4: Ohio EPA shall draft a recommendation letter, and forward it to the AGO.

Step 5: Following review of the recommendation by the AGO, Ohio EPA will forward the recommendation to the Executive Committee.

Step 6: In closed session, the Executive shall review the recommendation, and ultimately shall determine the course of further action. The recommendation shall include a motion for the SERC Co-Chairs to send a follow-up letter to the company informing them of the results of the investigation and what action, if any, the Executive Committee plans to take.

Appendix A

Record of Disclosures: \_\_\_\_\_

Company Name: \_\_\_\_\_

Location:

Disclosure Number:

Lead Investigator:

Relevant Dates:

Date Forwarded to other agencies (if applicable):

Date Acknowledgment Letter to Company:

Date of Inspection(s) (if any):

DATE OF FOLLOWUP LETTER TO OWNER \_\_\_\_\_

Date of Follow Enforcement Action(s) (if any):

OAC Rule(s)/ORC Section(s) Violation:

Brief Description as to How Violations Were Addressed:

Brief Description of Environmental Benefits Gained Through Compliance:

\_\_\_\_\_ R.C. 3745.72 disclosures addressed  
\_\_\_\_\_ R.C. 3745.72 disclosures not addressed

If disclosures not addressed, explain why:

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