



Wisconsin's Environmental Compliance Audit Program 2007 Annual Report

Pub CO- 509 4/2007



Wisconsin's Green Tier Law contains provisions for two new voluntary environmental programs, the Environmental Results Program known as Green Tier and the Environmental Compliance Audit Program. This is the second annual report on Wisconsin's Environmental Compliance Audit Program that is required by Section 299.85(9m) Wisconsin Statutes and covers the period from April 1, 2006 to March 31, 2007.

Creation of the Program

Section 299.85 Wisconsin Statutes established the Environmental Improvement Program, which is more commonly known as Wisconsin's Environmental Compliance Audit Program. The program was created for progressive companies that strive to keep in compliance with all Wisconsin Department of Natural Resources (Department) and U.S. Environmental Protection Agency's (EPA) regulations. The voluntary program encourages facilities to conduct environmental compliance audits by providing substantially less financial risk through limited liability for violations disclosed as part of an audit.

Wisconsin's Compliance Audit Program was modeled after EPA's audit policy (Federal Register, Vol. 65, No. 70, Tuesday, April 11, 2000). Companies and other facilities that choose to participate in the Environmental Compliance Audit program do not have to enroll in other parts of Green Tier, although those that appear to have superior environmental performance are encouraged to do so.

Implementation of the Program

The Green Tier law became effective April 30, 2004. Companies can obtain information about the program through a fact sheet (Pub CO-57, attached) and a web page (<http://dnr.wi.gov/org/caer/cea/environmental/auditing.htm>), which describe the Environmental Compliance Audit Program and how to participate.

Table 1 provides the information required by Section 299.85(9m) Wisconsin Statutes on participation and correction of violations during the first three years of the program. The Department will continue to provide similar information in future annual reports.

To date, eleven Wisconsin facilities have notified the Department of their intent to perform an Environmental Compliance Audit. Five facilities have submitted an Environmental Compliance Audit Report since the beginning of the program. Facilities that want to continue to participate in the program must submit a report to the Department within 45 days after the date of the final written report of findings of the environmental compliance audit of the facility. To participate in the program the facility must also complete the environmental compliance audit, including the final written report of findings, within 365 days after providing notice. Two facilities that originally submitted a notice of intent (NOI) to perform a compliance audit did not file a report within the 365 days and, therefore, their notice of intent has expired.

Participation in Wisconsin's Compliance Audit program is consistent with trends across the United States and with USEPA's Audit Policy. For example, EPA reported that nine Wisconsin facilities had violations resolved under U.S. EPA's Audit Policy ("Incentives for Self-Policing" Policy) in the five years between 2000 and 2004 (reference: <http://www.epa.gov/Region5/orc/r5cases.htm>). Interest in the program has been equivalent although the number of final reports during its first three years has been somewhat less.

Future

The Department is using a continuous improvement approach to implement the voluntary Environmental Compliance Audit Program. Department staff are using their experience with facilities that participate in the program to improve and refine it. Since the program is relatively new, at this time the Department does not have any basis for recommending changes in it.

 Wisconsin Compliance Audit Program More information	
<u>Web</u>	<u>Contacts</u>
<p>http://greentier.wi.gov</p> <p>Compliance Auditing:</p> <ul style="list-style-type: none">• Web page• Fact sheet• Notification Form• Environmental Compliance Audit Report Template	<ul style="list-style-type: none">▪ Kim McCutcheon (608) 275-3207 Kim.McCutcheon@wisconsin.gov▪ Mark McDermid (608)267-3125 Mark.McDermid@wisconsin.gov

Wisconsin's other voluntary program, Green Tier, established by 2003 Wisconsin Act 276 creates co-benefits for regulated and unregulated entities (businesses, communities, trade associations, etc.) aspiring to differentiate themselves by systematically delivering superior environmental performance. The Department is submitting the first Green Tier Biennial Progress Report in May 2007 under separate cover.



Green Tier: Less Waste, Lower Costs, Healthy Communities

Compliance Audits

An Environmental Improvement Program

Pub CO-507 rev 4/2007

The voluntary compliance auditing provisions of Wisconsin Act 276, the Green Tier law, are designed for progressive businesses and other regulated entities that strive to keep in compliance with all Wisconsin Department of Natural Resources (DNR) and U.S. Environmental Protection Agency (EPA) regulations. These provisions are modeled after EPA's audit policy and encourage businesses to voluntarily audit their own environmental compliance and commit to correct violations. By using this program, Wisconsin businesses face substantially less financial risk and limited liability for violations disclosed as part of the audit.

The law contains specific protections that prevent use of the law to deflect penalties for known or serious violations. Practices employed for economic gain without sufficient regard for environmental consequences are not eligible.

Purpose and Intent

The program is intended to encourage compliance audits that improve both awareness of regulatory requirements and compliance with those requirements. The program also builds working relationships between companies and the Department of Natural Resources (DNR) that are based on performance and open communications.

Participation

Participation requires four straightforward steps:

1. Notify DNR 30 days before beginning the environmental compliance audit. Notification should include: the date of the audit, the site or facility or operations or practices to be audited, the general scope of the audit, and a signed statement acknowledging that any violations discovered before the audit begins are not eligible for the civil forfeiture limitations.
2. Conduct an environmental compliance audit within 365 days of the 30-day notice to DNR.
3. Submit an audit report to the DNR that identifies any violations and includes a plan for corrective action. This report should be submitted within 45 days after the final audit report is completed.
4. Ensure the following compliance status when the audit report is submitted:
 - no civil suit filed against the company by the State in the prior two years;
 - no citation issued by DNR or a local governmental unit in the prior two years.

Audit Report

The audit report explains the environmental compliance audit, who conducted it, when it was completed and activities and operations examined. The report will identify:

- violations revealed in the audit and the length of time the violations may have existed;
- actions taken to remedy the violations; and
- commitments to remedy the violations within 90 days, or a compliance schedule to be approved by DNR.

The proposed compliance schedule should have the shortest reasonable period for remedy, explain reasons for the violation, and describe the measures the business will take to minimize the effects of violations and prevent reoccurrence. The audit report may also contain proposed stipulated penalties for failure to comply with the compliance schedule.

A facility may request confidentiality (to protect trade secrets) for any information collected during the audit, except for environmental discharge data.

Enforcement

The potential for civil forfeiture is significantly reduced for violations which are first identified in an environmental compliance audit.

- The State may not bring a civil lawsuit to collect forfeitures for violations identified in the audit report for at least 90 days after the report is submitted, or for the time period given in the compliance schedule presuming the entity follows that schedule.
- If the regulated entity corrects the identified violations within 90 days or within the approved compliance schedule, DNR may impose not more than a \$500 forfeiture per violation, regardless of the number of days that violation existed.
- Rather than refer these matters to the Department of Justice for enforcement, DNR is authorized to issue citations as noted in the law.

Exclusions

This law does not apply if any of the following are true:

1. The disclosed violation presents an imminent threat or may cause serious harm to public health or the environment;
2. DNR discovers the violation before the regulated entity submits its report;
3. The violation results in a substantial economic benefit that gives the regulated entity a clear competitive business advantage;
4. The violation is identified through monitoring or sampling required by permit, statute, rule, judicial or administrative order or consent agreement;
5. The violation is a repeat violation of the same requirement at the same facility committed in the same manner, unless it was caused by a change in business processes or activities;
6. The violation is discovered by the regulated entity before beginning the environmental compliance audit.

Public Notice and Reporting

DNR will issue a public notice and provide at least a 30-day comment period for corrections that exceed 90 days. The DNR may not approve a compliance schedule that exceeds 12 months. The DNR will annually report to the Legislature on the results of the compliance audit reports received.

Table 1. Summary of Environmental Compliance Audit Reports Received & Violations Reported ⁽¹⁾

Category	April, 22 2004 to March 31, 2006	April 1, 2006 to March 31, 2007
Total number of facilities notifying the Department of their intent to perform an environmental compliance audit	5	6
Total number of environmental compliance audit reports received	1	4
Number of reports received by County		
• Columbia		1
• Manitowoc	1	
• Milwaukee		1
• Outagamie		1
• Walworth		1
Number of regulated entities reporting that are		
• Governmental	0	0
• Nongovernmental	1	4
Total Environmental Violations Reported ⁽²⁾	4	25
Number of violations reported by type, including the number of violations related to		
• Air	0	22
• Water	4	0
• Solid Waste	0	0
• Hazardous Waste	0	1
• Other Specific Aspects of Environmental Regulation	0	0
• Reported Items Not Violations	0	2
Number of violations involving each of the following categories ⁽³⁾		
1. Failure to have a required permit or other approval.	1	1
2. Failure to have a required plan.	1	2
3. Violation of a condition of a permit or other approval.	1	6
4. Release of a substance to the environment.	0	0
5. Failure to report.	1	7
6. Other	0	9
Average time to correct the reported violations ⁽⁴⁾	90 Days	Less than 90 Days
Number of violations not yet corrected, by category	All violations have been corrected	All violations have been corrected
Number of regulated entities requiring longer than 90 days to take corrective action and a description of the stipulated penalties associated with the compliance schedules for those corrective actions	No corrective action required longer than 90 days	No corrective action required longer than 90 days

⁽¹⁾This table provides the information required by Section 299.85(9m) Wisconsin Statutes on participation and correction of violations during the first two years of the program. The Department will continue to provide similar information in future annual reports.

⁽²⁾ Not all violations reported were deemed to be violations of the environmental laws.

⁽³⁾ Not all violations reported fit into the violation categories identified under Section 299.85 (9m)(b) Wisconsin Statutes.

⁽⁴⁾ Data on the days to accomplish correction are not captured unless the corrective action exceeds 90 days.