

**AUDIT POLICY AGREEMENT
BY AND BETWEEN
THE WISCONSIN ASSOCIATION OF INDEPENDENT
COLLEGES AND UNIVERSITIES, PARTICIPATING INSTITUTIONS
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 5**

WHEREAS environmental auditing plays a critical role in protecting human health and the environment by identifying, correcting, and ultimately preventing violations of environmental regulations; and

WHEREAS the Wisconsin Association of Independent Colleges and Universities ("WAICU") wishes to facilitate its members' ability to obtain the benefits of the United States Environmental Protection Agency ("EPA") Audit Policy; and

WHEREAS to obtain the benefits of the Audit Policy, individual WAICU member colleges and universities (the "Participating Institutions") wish to perform a self-audit program for compliance with the regulations promulgated or authorized by EPA set forth in Section III below, to disclose violations found to EPA, and to correct said violations (the "Audit Program"); and

WHEREAS performance of the Audit Program by the Participating Institutions will implement the purpose of the Audit Policy to enhance the protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent violations of Federal environmental law; and

WHEREAS performance of the Audit Program by the Participating Institutions will benefit EPA by allowing EPA to more efficiently use its resources in obtaining regulatory compliance within its jurisdiction; and

WHEREAS to obtain the benefits of the performance of the Audit Program by the Participating Institutions, EPA is willing to enter into this Audit Policy Agreement with WAICU on behalf of itself and its member Participating Institutions providing for implementation of the Audit Program (the "Agreement");

NOW THEREFORE, WAICU, the Participating Institutions and EPA agree as follows with the understanding that this Agreement is governed by the terms of the Audit Policy, except to the extent that those terms are explicitly modified below:

I. DEFINITIONS

- A. **Audit** means the environmental compliance audit conducted at the Participating Institution by a team of Peer Auditors under the terms of the Audit Policy and covering the regulatory programs listed in Section III of this Agreement ("Scope of the Audit").

- B. **Audit Policy** means "Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" published at 65 Fed. Reg. 19618 (April 11, 2000).
- C. **Audit Program** means the arrangement by which the Participating Institutions cooperate and pool their resources to facilitate completion of Audits using Peer Auditors.
- D. **Corrective Action** means the action taken by the Participating Institution to correct a violation identified in the Audit.
- E. **Disclosure Report** means the written report submitted by the Participating Institution to EPA which discloses violations discovered prior to and during the Audit and which includes an analysis of whether and how the disclosure meets the criteria of the Audit Policy, and the Corrective Action the Participating Institution has taken or intends to take to remedy each violation.
- F. **Effective Date** means the date this Agreement is signed by the Regional Administrator, U.S. Environmental Protection Agency, Region 5.
- G. **Final Audit Report** means the written report submitted to the Participating Institution that identifies violations discovered during the Audit.
- H. **Final Compliance Report** means the written report submitted by the Participating Institution to EPA which notifies EPA of the completion of Corrective Actions taken, the date of completion, the actions taken to prevent recurrence, a description of the cost of compliance, and any other information necessary to demonstrate that the disclosure and Corrective Action conform to the Audit Policy.
- I. **Final Determination** means the written communication from EPA to the Participating Institution informing the Participating Institution of EPA's final determination of the disposition of the violations addressed in the Disclosure Report and the Final Compliance Report. The form of the communication may include but is not limited to a Notice of Determination or a Consent Agreement and Final Order.
- J. **Participating Institution** means a college or university that is a member of WAICU and that has elected to participate in the Audit Program and this Agreement.
- K. **Peer Auditor** means an individual from a Participating Institution trained for purposes of the Audit Program to conduct an Audit at another Participating Institution.
- L. **Responsible Official** means a person who is authorized to bind a Participating Institution.

II. SCHEDULE

- A. Turning Bird Consulting, Ltd. has been retained by WAICU as its consultant. Within thirty (30) days of the Effective Date of this Agreement, WAICU's consultant will complete a set of electronic audit templates specific to colleges and universities that parallel the EPA Audit Protocols published at <http://www.epa.gov/Compliance/incentives/auditing/protocol.html>.
- B. On or before August 1, 2008, WAICU and its consultant will begin to train suitable personnel from the Participating Institutions as Peer Auditors to perform audits in each of the regulatory programs identified in Section III below. No Peer Auditor will audit the college or university (i.e., Participating Institution) by which he or she is employed. Audits will be conducted under the supervision of Turning Bird Consulting, Ltd. or another professional auditor and consultant experienced in conducting college and university environmental compliance audits and acceptable to EPA.
- C. Audits will be conducted on the timetable set forth in Appendix B.
- D. Participating Institutions will complete the Audits and submit Disclosure Reports and Final Compliance Reports to EPA Region 5, in accordance with the Audit Policy and this Agreement, according to the schedule set forth in Appendix B.

III. SCOPE OF THE AUDIT

- A. Each Participating Institution will conduct an Audit of its campus and facilities, including any associated off-site facilities. Appendix A lists each of the Participating Institutions that are covered by this Agreement, as of the date of its execution. The parties may add additional Participating Institutions to this Agreement. To obtain the benefits associated with the performance of the Audit Program and the benefits of this Agreement, each additional Participating Institution must, no later than August 1, 2008, notify EPA in writing of its intent to participate. WAICU may provide this notice and information on behalf of any additional Participating Institution. If there are additional Participating Institutions, WAICU will provide EPA with a revised schedule for completion of the Audit Program by August 15, 2008. The revised schedule will not increase the number of audits in any given semester, unless EPA agrees otherwise. The revised schedule will supersede Appendix B of this Agreement.
- B. Each Participating Institution will audit compliance with the following federal regulatory programs:
 - 1. Clean Air Act: Standards of Performance for New Stationary Sources (40 C.F.R. Part 60); National Emission Standards for Hazardous Air Pollutants (40 C.F.R. Part 61); National Emission Standards for Hazardous Air Pollutants for Source Categories (40 C.F.R. Part 63); Chemical Accident Prevention Provisions (40 C.F.R. Part 68); Title V Permits (40 C.F.R. Parts 70, 71); Protection of Stratospheric Ozone (40 C.F.R. Part 82); Applicable

State Implementation Plans (SIPs), including New Source Review Regulations (40 C.F.R. Part 52; 40 C.F.R. § 51.160 et seq.).

2. Clean Water Act: Spill Prevention, Control, and Countermeasures (40 C.F.R. Part 112); The National Pollutant Discharge Elimination System Permits, including storm water management (40 C.F.R. Part 122); General Pretreatment Regulations (40 C.F.R. Part 403).
3. Safe Drinking Water Act: National Primary and Secondary Drinking Water Regulations (40 C.F.R. Parts 141 and 143).
4. Federal Insecticide, Fungicide and Rodenticide Act: Good Laboratory Practice Standards (40 C.F.R. Part 160); Worker Protection Standard (40 C.F.R. Part 170); Experimental Use Permits (40 C.F.R. Part 172); FIFRA 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G).
5. Resource Conservation and Recovery Act: Hazardous Waste Management System, Used Oil Handling, Underground Storage Tanks (40 C.F.R. Parts 260-266, 268, 273, 279, 280).
6. Comprehensive Environmental Response, Compensation, and Liability Act, Emergency Planning, and Community Right-to-Know Act: Designation, Reportable Quantities, and Notification (40 C.F.R. Part 302); Emergency Planning and Notification (40 C.F.R. Part 355); Hazardous Chemical Reporting: Community Right-to-Know (40 C.F.R. Part 370).
7. Toxic Substances Control Act: Pre-manufacture Notification (40 C.F.R. Part 720.36); Lead-Based Paint Poisoning Prevention in Certain Residential Structures (40 C.F.R. Part 745); Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions (40 C.F.R. Part 761); Asbestos (40 C.F.R. Part 763); Good Laboratory Practice Standards (40 C.F.R. Part 792).

- C. The facilities and documents to be audited at the Participating Institutions are set forth in Appendices C and D. The benefits of this Agreement shall extend only to those facilities within the Participating Institutions that are audited.

IV. DISCLOSURE REPORT

- A. Each Participating Institution will disclose to EPA violations discovered during the Audit.
- B. This disclosure will be made in a written Disclosure Report submitted to EPA within twenty-one (21) days of the Participating Institution's receipt of the Final Audit Report. The Disclosure Report will be in a format consistent with the template set forth in Appendix E.

- C. Each written Disclosure Report will contain an analysis of whether and how the disclosure meets the criteria of the Audit Policy.
- D. A Participating Institution will provide any additional information requested by EPA to process the Disclosure Report under the Audit Policy within the time frame identified by EPA in its request for information.

V. CORRECTIVE ACTION

- A. The Participating Institution will correct the violations discussed in the Disclosure Report, and take steps necessary to prevent the recurrence of such violations.
- B. Whenever possible, the Participating Institution will correct the violations within sixty (60) days of the Participating Institution's receipt of the Final Audit Report. In those instances in which a Participating Institution is unable to correct a violation within the sixty (60) day time frame, it will request an extension of time from EPA in writing and provide an abatement schedule, accompanied by a justification of the requested extension. Any such request for extension must be submitted to EPA prior to the expiration of the 60 day time frame.
- C. If the Participating Institution discovers violations after the Effective Date of this Agreement but before the conduct of the Audit at that Participating Institution, the following will apply:
 - 1. Whenever possible, the Participating Institution will correct the violation(s) within sixty (60) days of discovery. In those instances in which a Participating Institution is unable to correct a violation within the sixty (60) day time frame, it will request an extension of time from EPA in writing and provide an abatement schedule, accompanied by a justification of the requested extension. Any such request for extension must be submitted to EPA prior to the expiration of the 60 day time frame.
 - 2. The Participating Institution will disclose any such violation(s) in the Disclosure Report submitted to EPA following the completion of the Audit at that Participating Institution. The Disclosure Report will specifically identify any such violation(s), and advise EPA of the Corrective Action that has been completed and when that Corrective Action was completed.
- D. Any extension of the sixty (60) day abatement period will be subject to EPA approval.

VI. FINAL COMPLIANCE REPORT AND TERMINATION

- A. Once the Corrective Actions have been completed, the Participating Institution will submit a Final Compliance Report to EPA notifying EPA of the completion of the Corrective Actions, the date of completion, the actions taken to prevent recurrence, a description of the cost of compliance, and any other information

necessary to demonstrate conformance with the Audit Policy. The Final Compliance Report will be in a format consistent with the table of contents template set forth in Appendix F.

- B. The Participating Institution is not required to make any further report concerning the disclosed violations or the status of Corrective Actions after submission of the Final Compliance Report unless requested to do so in writing by EPA.
- C. This Agreement will terminate with respect to each Participating Institution after the Participating Institution has advised EPA of its choice whether to perform a subsequent environmental audit or implement an environmental or compliance management system, as set forth in Section IX.A.2.b., and EPA has issued an appropriate Final Determination under Section VII.F.
- D. In the event that a Participating Institution files a Disclosure Report and subsequently discovers a violation that was not included in the Disclosure Report, nothing in this Agreement shall prevent the Participating Institution from disclosing such violation, correcting it and, where the Audit Policy criteria are met, obtaining the benefits of the Audit Policy.

VII. APPLICATION OF AUDIT POLICY

- A. Based upon the Disclosure Report and any additional information received under Section IV.D., EPA will determine for each Participating Institution the violations which occurred, an initial proposed penalty, if any, and whether the Audit Policy applies. EPA will address all violations under the terms of the Audit Policy, unless otherwise specifically provided in this Agreement.
- B. Except as provided in Section II.D.8. of the Audit Policy, EPA will not impose gravity-based penalties for violations if such violations are timely disclosed and corrected, and provided that the applicable provisions of the Policy and this Agreement are met. See 65 Fed. Reg. 19620, 19625 (April 11, 2000).
- C. If EPA considers economic benefit penalties for any violations, EPA will consider the most appropriate methods for coming into compliance when calculating potential economic benefit penalties, provided that such methods comply with regulatory requirements.
- D. EPA will not request a copy of the Final Audit Report submitted to the Participating Institution, except as provided in Section II.C.4 of the Audit Policy. See 65 Fed. Reg. 19620, 19625 (April 11, 2000).
- E. EPA will document its completion of the processing of each Disclosure Report and Final Compliance Report with a written Final Determination. After submission of the Disclosure Report, EPA will identify the violations which occurred, identify an initial proposed penalty, if any, and state whether the Audit Policy applies.

- F. If any violations are determined to be ineligible for relief, EPA will explain the basis for the denial of relief in the Final Determination.
- G. Violations discovered by a Participating Institution during the term of this Audit Policy Agreement and disclosed to EPA in the Disclosure Report will be deemed to have met the systematic discovery and prompt disclosure conditions of the Audit Policy and will receive consideration under the Audit Policy unless EPA determines that these violations are otherwise ineligible. Correction of violations must be made in accordance with the Audit Policy and this Agreement. Violations not disclosed and corrected, whether or not discovered in the Audit or otherwise, are not covered by this Agreement and the Participating Institution will not receive the benefits of the Audit Policy for such violations.

VIII. COMPLIANCE INSPECTIONS

- A. Nothing in this Agreement shall limit the authority of EPA to conduct any inspections or information gathering under applicable federal law.
- B. If EPA discovers a civil violation during an EPA compliance inspection of a facility or unit, and the facility or unit that was inspected was scheduled under this Agreement to be audited after the EPA compliance inspection, EPA shall treat such discovered violation as having been disclosed by the Participating Institution and will resolve such violation under the terms of the Audit Policy and this Agreement, provided that the discovered violation falls within the scope of the Audit.

IX. MISCELLANEOUS PROVISIONS

- A. Systematic Discovery and Future Evaluation and Improvement:
 - 1. Condition 1 of the Audit Policy is "Systematic Discovery of the Violation Through an Environmental Audit or a Compliance Management System." For first time audits, EPA considers Condition 1 satisfied if the entity commits to take action within a reasonable time period that will result in future evaluation and improvement.
 - 2. For purposes of this Agreement, EPA deems Condition 1 satisfied for each Participating Institution as follows:
 - a. Each Participating Institution hereby commits that, within 36 months of submittal of the Final Compliance Report, it will either
 - (1) begin the next environmental audit, or
 - (2) begin implementation of an environmental or compliance management system that incorporates elements appropriate to colleges and universities.

- b. In the Final Compliance Report, the Participating Institution will advise EPA of its choice and of the schedule for the conduct of the next environmental audit or implementation of the environmental or compliance management system.

B. Notification and Certification of Disclosure Reports:

1. Appendix A identifies the Responsible Official for submission of each Participating Institution's Disclosure Report. The Disclosure Report shall contain the following certification signed by the Responsible Official, "I certify under penalty of law that this document was prepared at my direction, and to the best of my knowledge and belief, the information submitted is true, accurate and complete. Furthermore, I understand that eligibility for, and any reduction of penalties under, the EPA Audit Policy and this Agreement is conditioned on the truth and completeness of this disclosure."
2. The Participating Institutions designate the following individuals as their contact persons to receive all communications from EPA concerning this Agreement:

Linda H. Bochert, Esq.
Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
P.O. Box 1806
Madison, WI 53701-1806
(608) 283-2271 (t)
(608) 283-2275 (f)
lhbochert@michaelbest.com

and/or

Victoria Justus
Turning Bird Consulting, Ltd.
39 South Duke Street
York, PA 17401
(717) 851-0614 (t)
(717) 851-0180 (f)
victoria@turningbirdconsulting.com

3. The EPA designates the following individual as its contact person:

Alan Walts, Acting Director
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-13J)
Chicago, IL 60604-3590
(312) 353-8894 (t)
(312) 886-9697 (f)
walts.alan@epa.gov

4. The parties may re-designate their contact persons and Responsible Officials in writing at any time.
- C. Compliance with Laws and Regulations: Neither the existence of this Agreement nor compliance with this Agreement relieves the Participating Institution of the obligation of continued compliance with the regulations covered by this Agreement, and all other federal, state and local laws and regulations.
- D. Reservation of Rights: EPA reserves its rights to proceed against a Participating Institution for violations outside the scope of the Audit and violations within the scope of the Audit that are not timely disclosed or timely corrected. EPA reserves the right to commence an action against any person, including a Participating Institution, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This Agreement is not intended, and shall not be construed, to resolve any claim for criminal sanctions now pending or sought in the future, and shall not limit the right of the United States to pursue criminal sanctions for violation of law.
- E. Wisconsin Department of Natural Resources (WDNR): It is anticipated that WAICU and the Participating Institutions will enter into a companion agreement with WDNR under the terms of the Wisconsin “Environmental Improvement Program” set forth in Wis. Stat. § 299.85, which will address audit requirements, penalties and liability issues under state law. EPA will inform WDNR of the execution of this Agreement and provide a list of Participating Institutions to WDNR. Nothing in this Agreement restricts WDNR from acting as it deems appropriate.
- F. Authority of WAICU to Sign on Behalf of and to Bind Its Members: WAICU represents that it has the authority to sign this Agreement on behalf of and to bind each of the Participating Institutions listed on Appendix A and any that may subsequently be added to Appendix A.
- G. Modification: This Agreement may be modified by a writing signed by the parties.

X. LIST OF APPENDICES

Appendix A: List of Participating Institutions and Responsible Officials

Appendix B: Schedule for Conduct of Audits

Appendix C: Facilities to be Audited

Appendix D: Documents to be Audited

Appendix E: Disclosure Report Template

Appendix F: Final Compliance Report Template: Table of Contents

