



GREEN TIER

Wisconsin's Environmental Compliance Audit Program 2009 Annual Report

Pub CO- 510 05/2009



Wisconsin's Green Tier Law, 2003 Wisconsin Act 276 contained provisions for two new voluntary environmental programs, Green Tier and an Environmental Compliance Audit Program. This is the fourth 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, 2008 to March 31, 2009.

Creation of the Program

Section 299.85 Wisconsin Statutes established the Environmental Improvement Program, more commonly known as Wisconsin's Environmental Compliance Audit Program. The program was created for progressive companies that strive to keep in compliance with Wisconsin Department of Natural Resources's (Department) and U.S. Environmental Protection Agency's (EPA) regulations. The voluntary program encourages facilities to conduct environmental compliance audits by providing limited liability for eligible violations disclosed as the result 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. Targeted programs have also been designed to make the compliance audit a first step towards implementation of best practices and progression towards superior environmental performance.

Implementation of the Program

The Green Tier law became effective April 30, 2004. By July 2004 the Department had a fact sheet (Pub CO-507, attached) and a web page (<http://dnr.wi.gov/org/caer/cea/environmental/auditing.htm>) to 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 past five years of the program. The Department will continue to provide similar information in future annual reports. It is worth noting that all violations that were reported under this program were relatively insignificant and were able to be corrected quickly, without substantial or serious environmental harm.

To date, fifty-nine Wisconsin facilities have notified the Department of their intent to perform an Environmental Compliance Audit. Twelve 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. Three facilities that originally submitted a notice of intent (NOI) to perform a compliance audit report have allowed the NOI to expire.

In May 2008, the Department signed the Environmental Compliance Audit Agreement by and between the Wisconsin Association of Independent Colleges and Universities (WAICU) participating institutions and the Wisconsin Department of Natural Resources. With this agreement 16 colleges and universities will be conducting self-inspections of all their environmental activities and disclosing all potential violations identified (4 campuses per semester). The schools will correct all noted problems and, in exchange for their prompt action, will receive deferred civil enforcement for all violations corrected under the program. This is important work because it encourages facilities to be self-reliant and implement continuous improvement programs as well as the immediate benefit of assuring high levels of compliance with environmental regulations. It is also important to note that these are facilities that would not normally be included in inspection schedules by the Department. WAICU is using an extremely rigorous compliance audit protocol and has gone to great lengths training auditors and facilitating collaboration between campuses to share experience and expertise. The Department has seen preliminary results that will be included in next year's report after final reports for the first audits are submitted.

A parallel agreement has also been signed between USEPA and WAICU. That agreement is being used as a model by USEPA for other colleges and universities. WAICU institutions are sharing the same reporting information with both Wisconsin DNR and USEPA for disclosure of potential violations.

Participation in Wisconsin's Compliance Audit program is actually down this year by comparison to other states and the USEPA. Most state programs and USEPA (average per state) experience five to nine audits per year. This year Wisconsin had only one audit that was completed. We expect that number to change for next year as the WAICU audits are completed and other "notices of intent" result in audit reports. Information about USEPA experience can be found at <http://www.epa.gov/Region5/orc/r5cases.htm>.

Future

The Department is using a continuous improvement approach to implement the voluntary Environmental Compliance Audit Program. Department staff is using its experience with facilities that participate in the program to improve and refine it.

The Department has worked closely with the Green Tier Advisors, members of the Wisconsin Legislature, and various stakeholders to craft the January 2008 recommendations from the Green Tier Advisors into legislation (Senate Bill 126 and Assembly Bill 180). The bills include reauthorization for 299.83 and 299.85. In addition, several changes were made to provide certainty for potential participants coming into the program and provisions to encourage more participation in the program while maintaining the protections in the law which prevent using the law to circumvent enforcement for violations that are repetitive, known, or constitute a serious threat to human health and the environment. The changes were taken very seriously and extensively debated in light of the experience that has been gained with the program. As of this writing, the reauthorization package has been considered by the Senate and passed on a 33-0 roll call vote.



Wisconsin Compliance Audit Program

More information

Web

<http://greentier.wi.gov>

Compliance Auditing:

- Web page
- Fact sheet
- Notification Form
- Environmental Compliance Audit Report Template

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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 submits a progress report on the Green Tier program to the legislature biennially (Section 299.83(8)(h) Wisconsin Statutes).

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

Category	April 22, 2004 – March 31, 2006	April 1, 2006 – March 31, 2007	April 1, 2007 – March 31, 2008	April 1, 2008 – March 31, 2009
Total number of facilities notifying the Department of their intent to perform an environmental compliance audit.	5	6	37	11
Total number of environmental compliance audit reports received	1	4	6	1
Number of reports received by County				
• Calumet			1	1
• Columbia		1		
• Manitowoc	1			
• Milwaukee		1		
• Outagamie		1	1	
• Sauk			1	
• Walworth		1		
• Waukesha			3	
Number of regulated entities reporting that are				
• Governmental	0	0	0	0
• Nongovernmental	1	4	6	1
Total Environmental Violations Reported ⁽²⁾	4	25	37	1
Number of violations reported by type, including the number of violations related to				
• Air	0	22	6	1
• Water	4	0	1	0
• Solid Waste	0	0	0	0
• Hazardous Waste	0	1	24	0
• Other Specific Aspects of Environmental Regulation	0	0	0	0
• Reported Items Not Violations	0	2	6	0
Number of violations involving each of the following categories ⁽³⁾				
1. Failure to have a required permit or other approval.	1	1	4	0
2. Failure to have a required plan.	1	2	0	0
3. Violation of a condition of a permit or other approval.	1	6	0	0
4. Release of a substance to the environment.	0	0	0	0
5. Failure to report.	1	7	2	0
6. Other	0	9	31	1

Category	April 22, 2004 – March 31, 2006	April 1, 2006 – March 31, 2007	April 1, 2007 – March 31, 2008	April 1, 2008 – March 31, 2009
Average time to correct the reported violations ⁽⁴⁾	90 Days	Less than 90 Days	90 Days	90 Days
Number of violations not yet corrected, by category	All violations have been corrected	All violations have been corrected	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 regulated entities required longer than 90 days to take corrective action	No regulated entities required longer than 90 days to take corrective action	No regulated entities required longer than 90 days to take corrective action	No regulated entities required longer than 90 days to take corrective action

⁽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.



Compliance Audits

An Environmental Improvement Program

Pub CO-507 rev 8/2008

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 liability 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.

For More Information about Green Tier

Contact DNR's Mark McDermid at 608-267-3125, or visit: <http://greentier.wi.gov/>