

The Rhode Island Environmental Compliance Incentive Act Policy

July 2002

The Rhode Island Environmental Compliance Incentive Act (Title 42 “State Affairs and Government”, Chapter 42-17.8) was created to encourage regulated entities to perform voluntary self-evaluations of their compliance programs and management systems, and to thereby improve compliance with such statutes and/or regulations without fear of retaliation. This document is intended to assist entities wishing to take advantage of the Act by establishing basic RI DEM policies for handling the reporting and other activities required under the Act.

Incentives

Subject to eligibility requirements described below, if a regulated entity satisfies the conditions set forth in Sections 42-17.8-4 through 7 of the Act, and has thoroughly complied in a timely manner with any agreement or consent order entered into with the Department to resolve the violations disclosed by the regulated entity, the Department shall not:

1. Assess gravity-based penalties for any violation of environmental laws reported by the regulated entity;
2. Refer the regulated entity to the attorney general or other governmental authority for civil or criminal prosecution related to the violation(s) disclosed by the regulated entity; provided, however, that nothing in this section shall be construed to limit any attorney-client privilege or deliberative process privilege otherwise provided or established by law;
3. Request or use a regulated entity’s environmental audit report(s) as a regular means of investigation or as a basis for initiating administrative, civil, or criminal actions.

The regulated entity should note the following:

- A. This Act is not an “Audit Privilege” statute. Information from audits and due diligence activities can be requested by DEM under certain circumstances and the reports are subject to administrative/court ordered production under certain circumstances.
- B. This Act requires DEM to respect a regulated entity’s privacy with regard to its environmental compliance efforts so long as that entity in return respects the people and the environment of the State of Rhode Island by using sound environmental management practices as part of its normal operations, and by using good faith, best efforts to comply with regulatory requirements, discover violations, mitigate damage, and remediate any resultant environmental harm.
- C. This Act does not eliminate DEM’s right to recover costs expended in responding to a violation and any amounts necessary to offset a regulated entity’s economic benefit derived from its noncompliance with law or regulation.

Eligibility

A regulated entity can only take advantage of these incentives if the entity complies with conditions set forth in Sections 42-17.8-4 through 7 concerning “Eligibility Exceptions,” “Discovery of Environmental Non-compliance,” “Disclosure of Non-compliance,” and “Compliance, Remediation and Mitigation of Violations,” respectively.

Self-evaluation of an entity’s operations and/or a regulated entity’s discovery of violations must be the result of regular *due diligence* activities. ***Due diligence*** shall mean a regulated entity’s regular, customary and systematic efforts to prevent, detect, and correct violations by consistently employing practices in its operation that ensures protection of the natural environment through the use of an *environmental management system*.

An ***environmental management system*** is defined (in Section 42-17.8-2) as a systemic and objective mechanism for assuring that compliance policies, standards and procedures are being carried out, including monitoring and auditing systems reasonably designed to detect and correct violations and periodic evaluation of the overall performance of the environmental management system. The environmental management system of any business shall include provisions for commitment of the management of the business to the environmental management system, to pollution prevention, and to the principle of sustainability. An environmental management system shall lead to an exemplary record of compliance with environmental laws which shall include, but shall not be limited to: (1) evidence that the business has not been found in violation of any environmental law, other than a secondary violation as defined in this statute, within the preceding three (3) years; and (2) has complied with the provisions of applicable general statutes, and any orders of the director under those statutes, with regard to any secondary violation, as defined in those statutes. An environmental management system must also meet the following criteria:

1. The system must implement specific policies and procedures for employees and agents that explain how to comply with environmental laws;
2. The system must identify those persons or positions within the business that are: (A) responsible for monitoring/overseeing compliance, (B) authorized to act to stop violations, achieve compliance, and mitigate violations, and (C) responsible to report violations to the business and/or regulators;
3. The system must lay out a procedure for employees to report violations to the business and/or regulators;
4. The system must explain how employees are educated about the system and the policies/procedures in it;
5. The system must layout a procedure for modifying the system itself to prevent reoccurrence of violations.

The activities must also be *voluntary* in nature. *Voluntary* activities are those activities not the result of legally mandated monitoring, sampling or reporting requirements prescribed by law, judicial or administrative order, or consent agreement. Examples of activities that would not be considered voluntary are, but are not limited to, violations of air permits discovered through a

continuous emissions monitor, or violations of NPDES discharge limits detected through required sampling.

Notification

In order to qualify for incentives, a regulated entity's discovery of violations must be followed by a written submission to the Department of an accurate and complete documentation regarding how it exercises due diligence to prevent, detect and correct violations according to the criteria outlined in Section 42-17.8-2. (Companies with environmental management systems in place will most likely keep this information as part of their internal documentation.) Written notices shall be sent to the following address:

Rhode Island Department of Environmental Management
Office of Technical and Customer Assistance
235 Promenade Street, Room 250
Providence, RI 02908-5767
Attn.: RI Environmental Compliance Incentive Act Notification

Disclosure

In order to qualify for incentives, a regulated entity must fully disclose discovered violations as follows:

1. Each specific violation shall be disclosed, in writing, within fifteen (15) days (or such shorter period provided by law) of discovery, identifying the violation itself, how the violation was discovered (audit, due diligence), supporting data, and all actions taken or to be taken by the entity to bring itself into compliance, mitigate harm, or remediate damage.
2. The violation must be disclosed prior to commencement of federal, state or local agency inspection; the issuance by a federal, state or local agency of an information request to the regulated entity; notice of citizen suit; filing of civil or criminal complaint by government entity or third party; the reporting of the violation to the Department by a third party; or the reporting of the violation to the Department by an independent source, provided that the date of discovery is documented in the official report of the Department.

Written notice must be submitted to OTCA within the specified time period. OTCA will distribute it to the appropriate offices. Written notices shall be sent to the above address.

Mitigation of Violations

Once disclosed, violations must be corrected within sixty (60) days. The entity shall certify to the Department in writing that the violations have been corrected, and take appropriate measures as determined by the Department, to remedy any environmental harm or threat to public health and safety resulting from the violation.

If more than sixty (60) days is required, or if compliance or remedial measures are lengthy, and/or complex, the entity may be required to enter into a publicly available compliance agreement with the Department, administrative consent order or judicial consent decree as specified in Section 42-17.8-7 of the Act. The entity must also agree, in writing, to take steps to prevent a recurrence of the violation(s), which may include improvements to its environmental auditing or due diligence efforts.

DEM/OTCA is available to answer questions related to the Environmental Compliance Incentive Act. OTCA also provides on-site technical assistance to help entities reduce pollution, as well as provide assistance with entities interested in developing sound environmental management systems. Feel free to contact OTCA at 222-6822 ext. 4412.

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Department of Environmental Management