

**ENVIRONMENTAL****EPA ROLLS OUT NEW eDISCLOSURE SYSTEM FOR AUDIT POLICY DISCLOSURES**

by Sharon R. Newlon & Kelly M. Martorano

On June 10 and 15, 2015, the U.S. Environmental Protection Agency (EPA) rolled out a new system for e-reporting violations being disclosed pursuant to EPA's audit policy, eDisclosure, which is expected to go online as soon as Fall 2015. The new system was designed to streamline the implementation of the audit policy, resolve routine disclosures quickly, and save the time and resources of EPA and the regulated community.

The new system divides reported violations into Tier I and Tier II. Tier I violations are limited to most Emergency Planning and Community Right-to-Know Act (EPCRA) violations if they meet the nine existing EPA audit policy conditions. Tier II violations include all other violations, as well as EPCRA violations involving release reporting or those violations not identified in the course of an audit. Under the new system disclosures must be e-filed within 21 days of discovery of the violation and a compliance report must be e-filed within 60 days of discovery.<sup>1</sup> Upon the filing of the compliance report, Tier I violations will trigger an immediate electronic notice of determination, confirming that the violations are resolved, subject to the accuracy of the disclosure. Tier II violations will trigger an acknowledgement letter noting that EPA will determine the applicability of the audit policy to the disclosed violations if and when it considers potential enforcement. The new system does not apply to new owners of existing businesses that qualify for special audit policy treatment, though they can use the new system if they choose to do so.

Disclosures may be withdrawn from the system before the deadline for e-filing the compliance report. If the disclosure is not withdrawn, and the compliance report is not timely filed, the system will record the reported violation and send the discloser a notice of non-qualification. A filer can request a 30-day extension to file the compliance report, and it will be granted automatically.<sup>2</sup> If more time is needed, the request must include a justification. While the system will reflect the additional time, the extension is not considered automatically granted, and EPA can later determine that the violation was not promptly corrected. EPA will screen Tier II submittals for significant concerns such as potential criminal conduct or imminent hazards. As with current policy, EPA will release information regarding resolved disclosures in response to FOIA requests, but may withhold information regarding unresolved disclosures on a case-by-case basis under the enforcement exception. EPA has also established a procedure for addressing unresolved disclosures that are pending when the new system comes on line.

If you have any questions regarding the new eDisclosure system, the benefits of conducting an environmental compliance audit, or the procedures for securing penalty reductions, immunity and/or privilege protection under the EPA and state environmental audit programs, please contact Sharon Newlon or Kelly Martorano:



**Sharon R. Newlon** is a Member in Dickinson Wright's Detroit office. She can be reached at 313.223.3674 or [snewlon@dickinsonwright.com](mailto:snewlon@dickinsonwright.com).



**Kelly M. Martorano** is Of Counsel in Dickinson Wright's Troy office. She can be reached at 248.433.7274 or [kmartorano@dickinsonwright.com](mailto:kmartorano@dickinsonwright.com).

<sup>1</sup>Under the Small Businesses Compliance Policy, small businesses have up to 90 days to file a compliance report.

<sup>2</sup>For small businesses, an automatic 90-day extension can be obtained.

**ENVIRONMENTAL ATTORNEYS**

**Margaret A. Coughlin** is a Member in Dickinson Wright's Troy office. She can be reached at 248.433.7272 or [mcoughlin@dickinsonwright.com](mailto:mcoughlin@dickinsonwright.com).



**Anna M. Maiuri** is a Member in Dickinson Wright's Troy office. She can be reached at 248.433.7558 or [amaiuri@dickinsonwright.com](mailto:amaiuri@dickinsonwright.com).



**Kenneth A. Hodson** is a Member in Dickinson Wright's Phoenix office. He can be reached at 602.285.5046 or [khodson@dickinsonwright.com](mailto:khodson@dickinsonwright.com).



**Darlene T. Marsh** is a Member in Dickinson Wright's Nashville office. She can be reached at 615.620.1716 or [dmarsh@dickinsonwright.com](mailto:dmarsh@dickinsonwright.com).

*This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the fields of environmental law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered here.*