

# Whitepaper



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**DATE:**

August 27, 2013

## Environmental Compliance Peer-Audit Program



MOVE YOUR ENVIRONMENT FORWARD



## Environmental Compliance Peer-Audit Program

Since college campuses are like small cities, environmental compliance has often been a challenge for colleges and universities. Recognizing this, the U.S. Environmental Protection Agency (“EPA”) implemented a college and university initiative encouraging colleges to seek amnesty from fines and penalties under the EPA’s “Audit Policy” to avoid EPA inspections and significant fines.

Traditionally, to apply the Audit Policy, colleges perform self-audits using outside consultants at a significant financial cost and with modest long-term effect. Consequently, Halloran & Sage, LLP (“Halloran & Sage”) and HRP Associates, Inc. (“HRP”) have developed an innovative peer-audit program that addresses both these issues by utilizing on-campus personnel to conduct audits at peer colleges under a negotiated agreement with the EPA.

HRP and Halloran & Sage have administered the peer-audit program for more than three hundred (300) colleges and universities in twelve (12) states. To date, no college or university in the program has been assessed a fine or penalty by the EPA while achieving regulatory compliance under the peer audit program.

### **GOING GREEN ON CAMPUS: COMPLIANCE BEFORE SUSTAINABILITY**

College students and faculty embrace “green” goals, such as mitigating climate change, reducing their carbon footprint, promoting sustainability, and establishing other initiatives to build a “green campus”. Yet, ironically and typically, many college campuses are not in compliance with the fundamental regulations that exist to protect human health and the environment. Admittedly, the means employed by college campuses to “go green” are impressive, and the pursuit of “sustainability” is ubiquitous. Colleges are building sustainable housing, preparing environmentally preferable food, procuring green or renewable power, and purchasing hybrid vehicles. But how can a college go green or seek sustainability without first achieving basic environmental compliance with basic environmental regulations?

Colleges understand that implementing sustainable practices is beneficial for their public image and more students are considering the environmental practices of a college when deciding where to enroll. Accordingly, Princeton Review, the Association for the Advancement of Sustainability in Higher Education, Forbes, Grist, and Sierra Magazine and others are rating colleges based on their “greenness”.

While the pursuit of wind turbine power or retrofitting buildings to increase energy efficiency is commendable, the EPA and state environmental agencies routinely find violations on college campuses of the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), and the Clean Air Act (CAA).

Therefore, before greenness or sustainability can truly be realized, institutions of higher education must first achieve basic regulatory compliance.

### **COLLEGES AND UNIVERSITIES ARE ROUTINELY OUT OF COMPLIANCE**

The EPA has “found significant compliance problems” on college campuses. Common violations include improper handling, storage and disposal of hazardous waste; improper chemical storage in laboratories; air quality problems; stormwater runoff and wastewater discharges; inadequate underground storage tank management; sewage treatment facilities that are not operating properly; and improper abatement of lead-based paint and asbestos.

These violations are especially problematic to the EPA and the community-at-large because colleges are establishments for higher-learning and education. When students observe improper procedures, they learn improper procedures, and the problem of non-compliance is perpetuated both at the college and later outside of the classroom when the student enters the workforce.

Compliance with federal hazardous waste regulations may be less glamorous than the pursuit of reducing a campus’s carbon footprint in an effort to quell climate change, but the impact on the students, staff and the local environment is greater.



## Environmental Compliance Peer-Audit Program

The peer-audit program provides a solution to the problems of limited regulatory awareness, lack of time, and lack of funding which colleges must overcome to achieve regulatory compliance.

### **COLLEGES AND UNIVERSITIES MAY HAVE LIMITED ENVIRONMENTAL REGULATORY AWARENESS**

There is no shortage of creative and innovative thinking at America's institutions of higher learning, but there is a deficiency in familiarity with the complex environmental regulations that apply to all campuses.

Typically, colleges and universities have decentralized organization, where departments function independently and faculty work autonomously. Often there is no single employee dedicated to environmental health and safety on a campus. Where there is a person solely responsible to ensure compliance with the environmental regulations, that person is faced with the challenge of educating all the individuals in areas where environmental safety is a concern, such as professors, facilities personnel, students, and administration.

Some college personnel believe that colleges are exempt from federal and state environmental regulations but, in fact colleges and universities are not exempt regardless of their size or non-profit status and are held to most of the same standards as a regulated industry.

### **COLLEGES AND UNIVERSITIES MAY HAVE LIMITED FUNDS TO COMPLY WITH COMPLEX ENVIRONMENTAL REGULATIONS**

Costs to achieve environmental compliance may include expenditures for education, consultants, training, capital projects, new personnel and legal assistance. Economic downturns heighten the financial concerns to achieve compliance because finance directors are analyzing their budgets for ways to decrease spending. The costs to achieve environmental compliance can be significant but not as high as many colleges suspect and, as explained below, the potential liability arising from the failure to comply with environmental regulations far outweighs the cost of achieving compliance.

#### **Colleges and Universities May Not Have Time to Comply with Complex Environmental Regulations**

The demands on the college staff and faculty are exceptional. In addition to teaching, faculty must conduct research, pursue grants, address departmental issues, advise students, and provide additional service to the college. As a result, they have little time to ensure that their laboratories are compliant with all the ever-changing environmental regulations. In the same regard, facilities personnel are burdened with ensuring that the campus is operating properly irrespective of ensuring that all operations are compliant. Because environmental compliance is typically not part of the campus culture, finding time to address compliance is difficult.

### **FAILURE TO ACHIEVE COMPLIANCE MEANS SIGNIFICANT RISK OF EPA ENFORCEMENT**

Notwithstanding the foregoing, the failure to comply with environmental regulations has significant repercussions. The EPA and state agencies have an array of tools at their discretion to enforce the federal and state environmental laws, such as:

- Administrative penalties;
- Administrative orders requiring pollution abatement;
- Civil actions with injunctive relief;
- Civil penalties of up to \$37,500 per violation per day of violation; and/or
- Criminal sanctions against organizations and against individuals.

For the most part, the federal environmental laws establish liability regardless of intention or motive (i.e., strict liability). The EPA has statute-specific policies that it uses to calculate penalties for areas of non-compliance. For example, under RCRA (the solid and hazardous waste regulations) the EPA considers the potential for harm and the extent of deviation from the legal requirement when calculating penalties. RCRA violations, the most common violation found on college campuses, can range from \$129 to \$37,500 per violation, per day.



## Environmental Compliance Peer-Audit Program

### **EPA ENFORCEMENT HISTORY AT COLLEGES AND UNIVERSITIES**

Gaining momentum in New England in 2001 and moving southward and westward, the EPA's regional offices have launched independent enforcement and compliance initiatives focusing on colleges and universities. As early as 2002 and as recently as 2007, the EPA's regional offices have sent letters to colleges and universities informing campus administrators of the agency's intent to target their institutions and encouraging them to perform voluntary self-audits.

Through these college compliance initiatives, the EPA has performed both single media (i.e. just air pollution) and multimedia inspections (i.e. air, water, hazardous waste, etc. together) at a number of institutions and has assessed significant fines and penalties.

For example, at the University of Rhode Island, the university settled an enforcement action for \$800,000 in civil penalties and supplemental environmental projects. Similarly, at the University of Hawaii a penalty settlement included a monetary fine of \$505,000 and supplemental environmental projects costing in excess of \$1.2 million for a total penalty of almost \$1.8 million.

While the University of Hawaii may represent an extreme scenario, numerous other colleges including Yale, the University of New Hampshire, Boston University, Brown University, and the Massachusetts Institute of Technology have undergone similar multi-media EPA inspections and have settled penalty assessments between \$300,000 and \$850,000.

Not to be overlooked, single media inspections, particularly in the area of hazardous waste management, can result in significant monetary fines. For example, New York and New Jersey area colleges have recently had penalties between \$23,000 and \$280,000 for single media inspections.

The EPA has noted that colleges often lack awareness of their responsibilities under the various environmental laws and may be putting their faculty, staff and students at risk. With this in mind, EPA headquarters in Washington, DC has identified colleges and universities as a priority target and the EPA regional offices have executed this agenda. No particular higher education sector is immune from scrutiny as the EPA has performed inspections at large and small, and public and private institutions. It is clear that the EPA considers environmental compliance at all colleges a significant concern and will continue its focus in this sector.

### **WHAT'S THE ANSWER?**

Voluntary environmental self-audits and corrective actions are the most logical solution to fix non-compliant campus conditions, and as outlined below peer-audits, a type of voluntary audit, are the most effective and cost efficient method to perform voluntary environmental audits.

### **THE WRONG RESPONSE**

One approach to the compliance issue, and the one that colleges across the United States have historically practiced, is to do nothing. A campus can continue its practices as they exist and hope to remain "under the radar", out of the EPA's line of sight. While the problems with this approach are many, they can be summarized quickly; ignoring the problem fails to recognize the issue. While it may be less expensive and easier to ignore the problem in the short run, it is just this "head-in-the-sand" approach that motivated the EPA to make colleges and universities enforcement targets. One might also ask how such an approach squares with the college's educational mission.

### **EPA'S APPROACH: COMPLIANCE INITIATIVES AND VOLUNTARY SELF-AUDITS**

Recognizing colleges and universities failure to embrace their environmental responsibilities, the EPA's regional offices created "college and university initiatives" geared towards educating the noncompliant. These initiatives usually included a series of educational seminars and workshops after which time the regional offices sent letters to academic institutions reminding them of their obligations under the regulations and encouraging voluntary self-audits under the EPA's "Audit Policy" or under a self-audit agreement.



## Environmental Compliance Peer-Audit Program

### **THE EPA AUDIT POLICY**

The EPA Audit Policy is designed to encourage self-detection, disclosure, correction, and prevention of environmental non-compliance through a series of economic incentives and waivers. The main benefits of utilizing the Audit Policy are a reduction in the amount of civil penalties and a determination by the EPA not to recommend criminal prosecution against the disclosing entity.

To achieve these benefits, a regulated entity must self-audit and disclose under strict deadlines, in addition to meeting nine conditions listed in the Audit Policy. The nine conditions are: 1) systematic discovery; 2) voluntary discovery; 3) prompt disclosure; 4) independent discovery and disclosure; 5) correction and remediation; 6) prevent recurrence; 7) no repeat violations; 8) excluded violations; and 9) cooperation.

If all nine criteria are met, then a college is eligible for 100% mitigation of any “gravity-based” penalties and will likely avoid criminal prosecution. Gravity-based penalties are the “fines” usually imposed by the EPA for violations of regulations.

### **THE PROBLEM WITH SELF-AUDITS UNDER THE AUDIT POLICY**

Self-audits under the EPA’s Audit Policy are typically performed by outside auditors because individual colleges and universities do not have the properly trained personnel or regulatory knowledge to complete an environmental audit. Unfortunately, campus-wide audits by outside consultants can be prohibitively expensive and may only represent a temporary solution.

Most colleges are analogous to small cities encompassing a broad range of facilities and services. As such, a campus-wide audit can take a team of outside auditors multiple days to inspect all of the necessary facilities and the cost of this type of audit only increases with the size and complexity of the campus.

Additionally, the use of outside auditors may result in a “them versus us” attitude on campus; thus hindering the ability to effectuate “buy-in” from campus staff and faculty and impeding cultural change on campus. More importantly, an outside auditor is on campus for a finite period of time providing only temporary on-site assistance; the regulatory expertise leaves campus as soon as the audit is complete.

### **A BETTER RESPONSE: PEER AUDITS**

Halloran & Sage and HRP have developed a peer-audit program for colleges and universities. Peer-audits specifically address the problems of limited regulatory awareness, time, and money.

Peer-audits take advantage of the intelligent and creative personnel employed by colleges and universities. The success of the peer-audit concept is its simplicity. A group or consortium of colleges and universities from a particular geographic area contribute a minimum of two faculty, staff and/or administrators per college to the peer-auditor pool.

Halloran & Sage and HRP train these peer-auditors on the nuts and bolts of environmental regulations and campus auditing. Teams of these newly trained “peer-auditors” audit each other’s campuses with the oversight of one or more of HRP’s professional auditors and the use of tablet computers loaded with auditing software.

This method saves an enormous amount of money that would otherwise be spent on outside auditors. Plus, the peer-auditors with their new training and audit experience remain on campus. With experienced and trained personnel on campus, the institutions have on-going resources to establish compliance systems which can continue after the audit. Most importantly, the college and its personnel create a culture of compliance from within. The “buy-in” from campus personnel and the relationships built during the audit create a foundation from which sustainability projects may be launched.



## Environmental Compliance Peer-Audit Program

### **THE BASICS: HOW THE PEER-AUDIT PROGRAM WORKS**

Colleges and universities subscribe to the peer-audit program through their local consortium, usually the state association of colleges, and enter into retainer agreements with Halloran & Sage, as environmental legal counsel and HRP, as the environmental engineering firm. Halloran & Sage negotiates a peer-audit agreement with the EPA's regional office. Then Halloran & Sage and HRP train the peer-auditors after which the colleges schedule and complete their audits with the help of HRP. After the conclusion of the audit, HRP prepares an audit report for the college.

Upon receipt of the audit report each college must disclose its violations to the EPA and promptly correct those violations. HRP and Halloran & Sage are available to assist the college in correcting their violations. Upon completion of all the necessary corrective actions and in consultation with the college, HRP produces a Final Compliance Report detailing the work completed at the college and compliance with the conditions of the audit agreement.

After receiving the Final Compliance Report, the regional EPA office provides a Notice of Determination outlining the individual college's compliance with the Audit Policy, the audit agreement, and the disclosed violations for which the EPA is granting penalty waivers.

### **SUCCESS OF THE PEER AUDIT PROGRAM**

Under the Halloran & Sage/HRP peer-audit program, colleges and universities have avoided hundreds of thousands of dollars in fines while achieving compliance. In addition to the penalty waiver, the colleges benefit from avoiding bad publicity as a result of noncompliance. To date, no college or university that has participated in the Halloran & Sage/HRP peer-audit program has been assessed any penalties as a result of their disclosure of environmental compliance violations to the EPA.

### **PENALTIES MITIGATED, WASTE BETTER MANAGED**

The EPA waived an average of \$512,000 in penalties for colleges that participated in the peer-audit program in New Jersey.

The violations at these colleges are representative of the number and type of violations at the approximately eighty additional colleges that have been audited under the Halloran & Sage/HRP peer-audit program. Using a per-violation penalty calculation that was developed with EPA's assistance, the average proposed penalties for colleges and universities that have disclosed violations in Region 4 is estimated to be \$464,832.

In contrast, the average fines waived to date in Indiana is \$2,783,666. Again, to date, no college in the peer-audit program has been assessed any fines or penalties as a result of its disclosure of environmental compliance violations. In addition to the money saved in avoided penalties, the colleges that have participated in the peer-audit program have been able to reduce or limit significant volumes of hazardous waste.

For example, for the first half of institutions in the peer-audit program in Region 4, 5, and 7 approximately 54.6 tons of legacy hazardous waste has been properly disposed of at permitted and licensed facilities. In addition, those same institutions have now identified an additional 95.1 tons of hazardous waste that was previously not known to be hazardous waste and therefore improperly managed.

Perhaps more importantly, since May 2007, almost 3 college faculty, staff, and administrators from colleges in Pennsylvania, New Jersey, Florida, Tennessee, Georgia, North Carolina, Alabama, Indiana, Kansas, Michigan, Arkansas and Texas have received environmental compliance training through the peer-auditor training and additional corrective action media specific training.



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### BEYOND COMPLIANCE: SUSTAINABILITY

After a college has achieved compliance of the environmental regulations under the peer-audit program, a college is better suited to pursue green projects. The protocols, systems, and relationships developed during the peer-audit and corrective action period provide a proper foundation for the development of an Environmental Management System (EMS) – the universally recognized manner in which colleges move towards sustainability. In addition to setting themselves up for EMS, colleges and universities are experiencing a cultural change. Colleges that have successfully completed the peer-audit program have initiated a number of interesting, supplemental green project beyond basic compliance, such as:

- Implementing solid waste recycling programs at educational facilities and residential halls, and even in the surrounding communities;
- Collaborating among campus facilities' department, physics faculty and students to study energy conservation;
- Establishing campus sustainability committees;
- Establishing dedicated staff to serve as campus Environmental Health & Safety ("EH&S") Coordinators;
- Developing and implementing Environmental Management Systems;
- Preparing environmental videos for new student orientation;
- Establishing chemical "swap shops" on campus (between departments) to try to eliminate obsolete/legacy chemicals and to prevent excess chemical ordering; and
- Developing network/informational pages on school intranets for tracking EH&S information, thus providing a network for everyone involved on campus.

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[http://www.epa.gov/Region4/ead/compliance/college\\_university\\_incentive\\_letter.pdf](http://www.epa.gov/Region4/ead/compliance/college_university_incentive_letter.pdf)

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Major Enforcement Actions Against Colleges and Universities in New York, New Jersey, and the Caribbean available at <http://www.epa.gov/region02/p2/college/enforcement.htm>.

U.S. EPA Region 2 Compliance Website available at <http://www.epa.gov/region02/p2/college/>.

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