



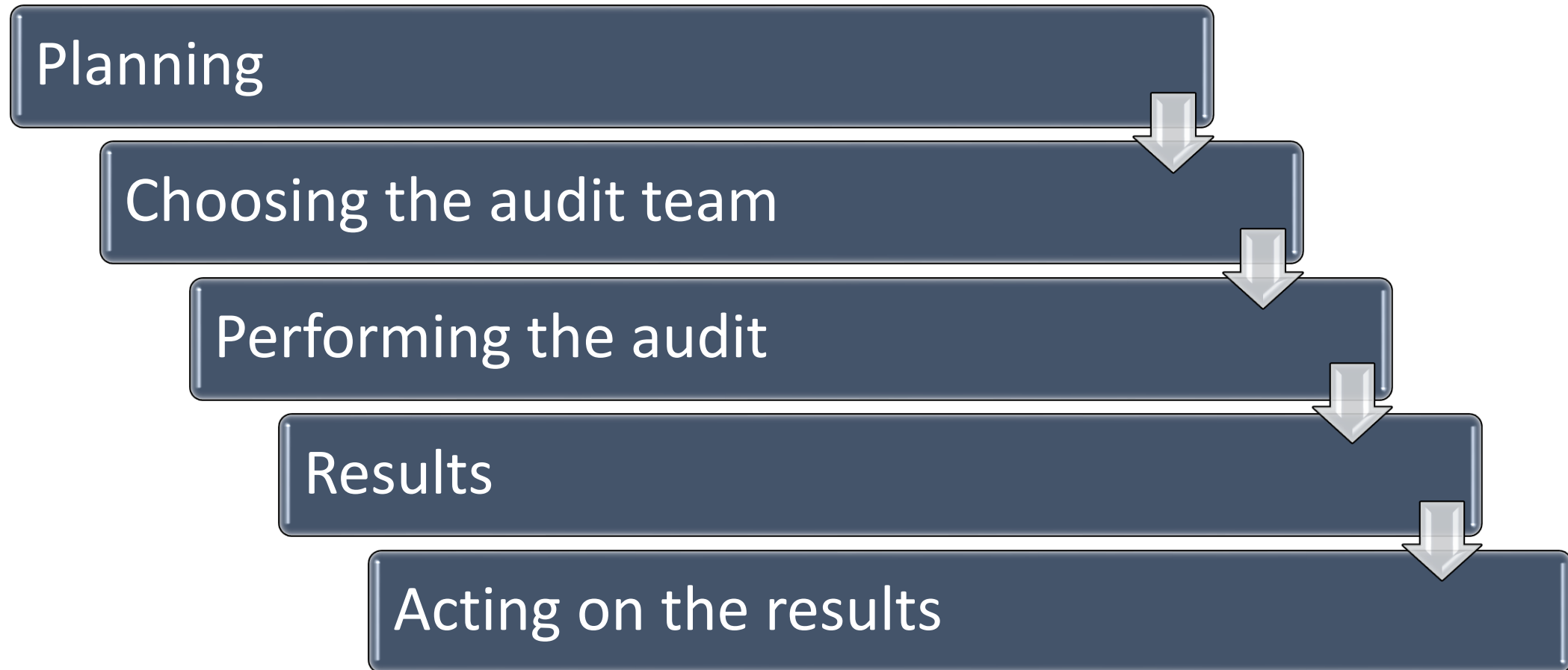
# Voluntary Compliance Auditing

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# Audit Process



# Self-Audit Regulations: Region 7 States

- **Kansas**

- Privilege for environmental audit information in civil or administrative proceedings.
- Penalty immunity for certain administrative and civil penalties.
- KAN. STAT. ANN. §§ 60-3332 to 60-3339

- **Missouri**

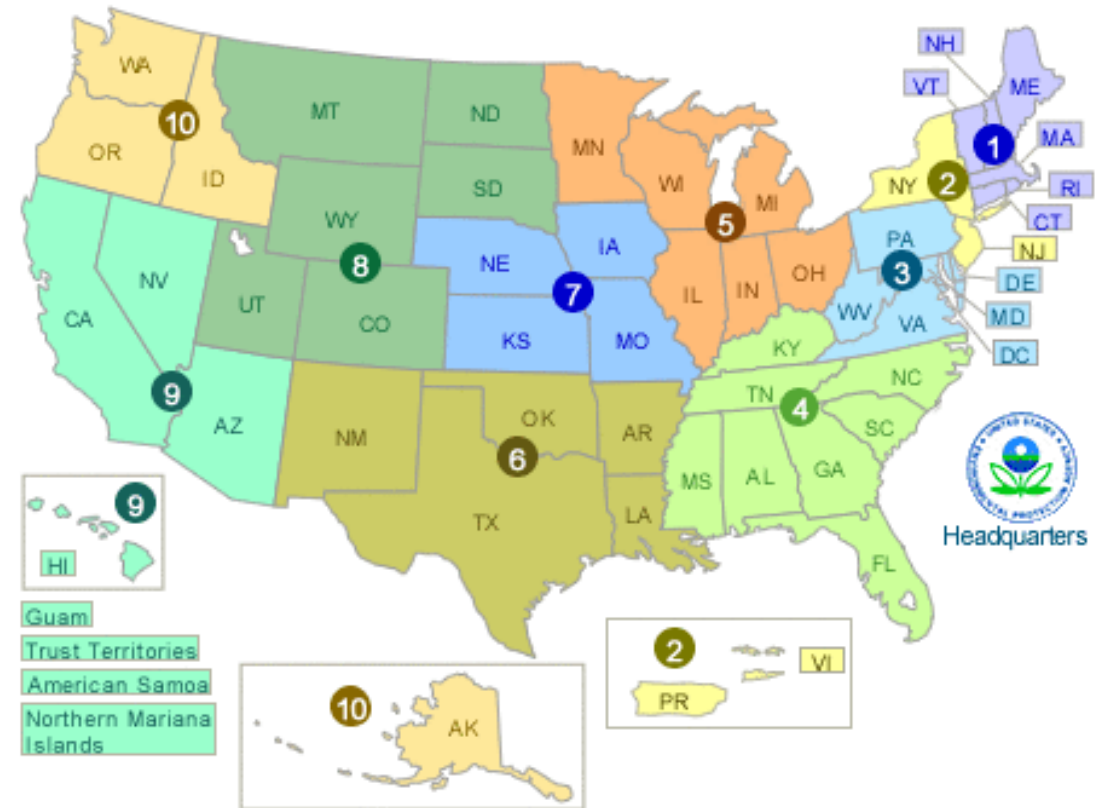
- No law or self-disclosure policy in effect.

- **Nebraska**

- Privilege for environmental audit information in civil or administrative proceedings.
- Penalty immunity for certain administrative and civil penalties.
- NEB. REV. STAT. §§ 25-21,254 to 25-21,264

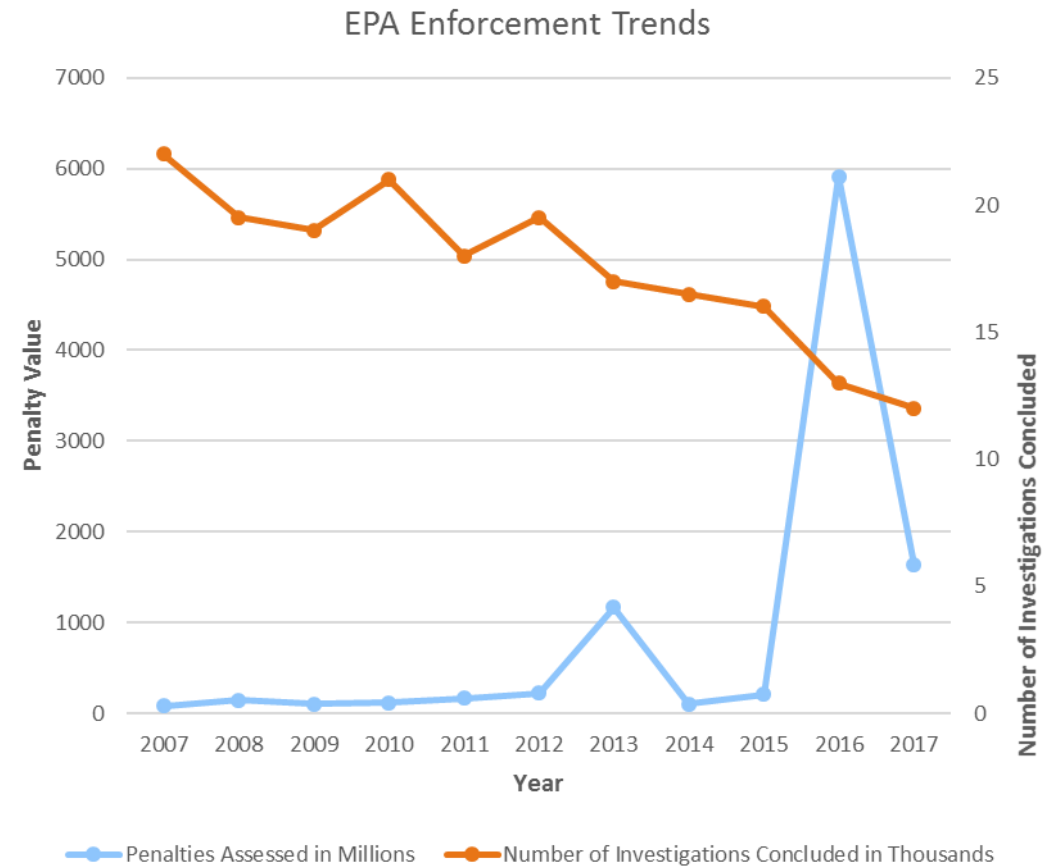
- **Iowa**

- Privilege for environmental audit information in civil or administrative proceedings.
- Penalty immunity for certain administrative and civil penalties.
- IOWA CODE §§ 455K.1 to 455K.9



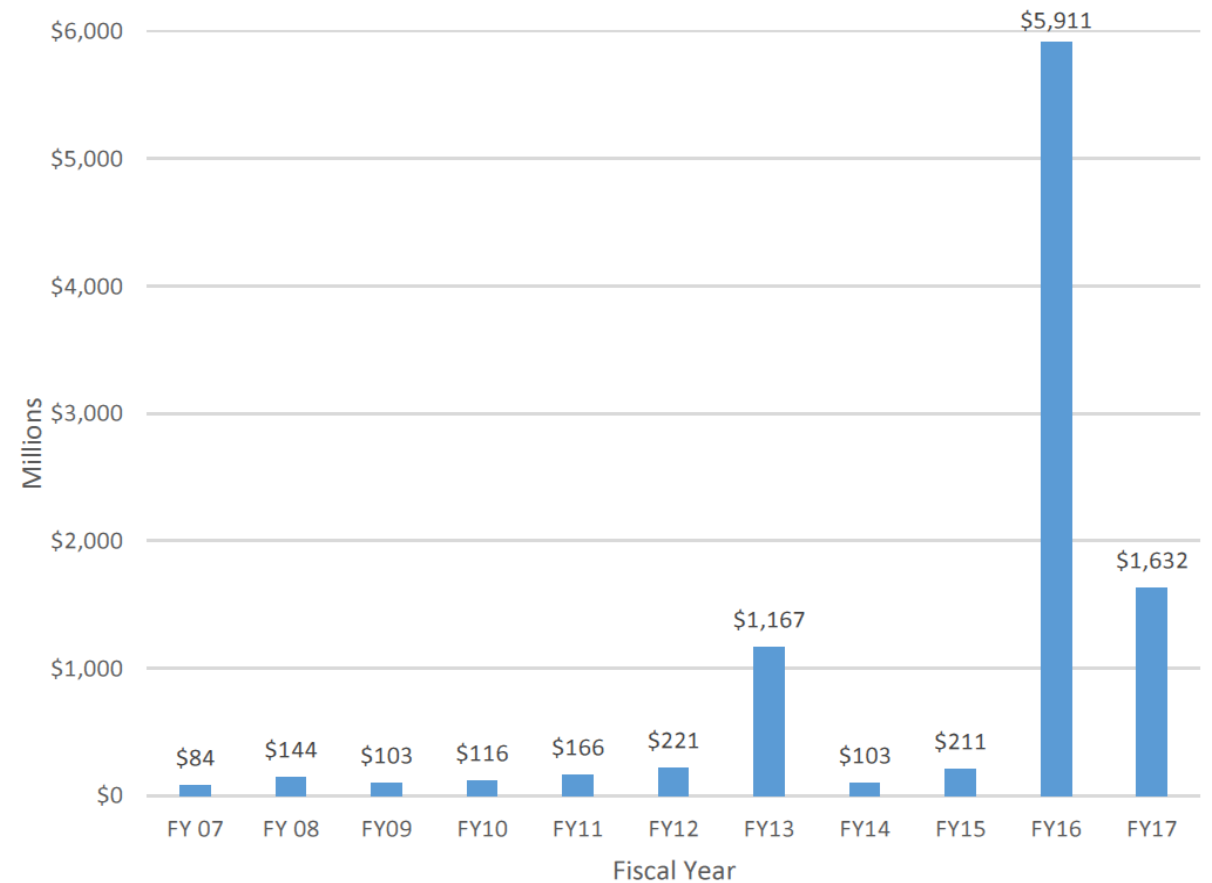
# EPA Policy

- 65 FR 19,618 (04/11/00)
- Incentives:
  - Penalty reductions
  - No recommendation for criminal prosecution
  - No routine requests for audit reports
- Timing:
  - A regulated entity has 21 days from the time it discovers that a violation has, or may have, occurred to disclose the violation in writing to EPA.



# EPA Policy: Penalty Mitigation Requirements

- Systematic discovery
- Voluntary discovery
- Prompt disclosure
- Independent discovery and disclosure
- Correction and remediation
- Prevent recurrence
- Repeat violations are ineligible
- Certain types of violations are ineligible
- Cooperation

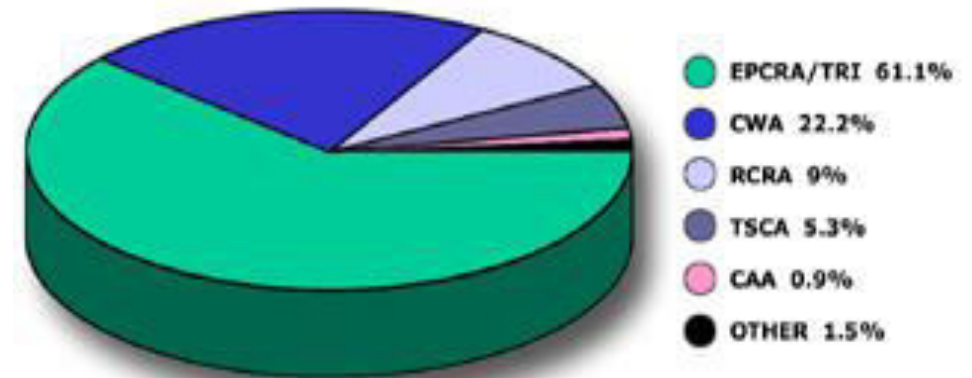


EPA Enforcement and Compliance Annual Results: Administrative and Civil Judicial Penalties Assessed FY 2007-FY 2017

# EPA Policy: eDisclosure Portal

- **eDisclosure portal** for Category 1 or Category 2 disclosures (December 2015)
  - All self-disclosed civil violations, with the exception of new owner disclosures, must be made through the eDisclosure portal
  - No change to substantive audit policy or small business compliance policy – effort to streamline and modernize the approach to disclosures
- **Category 1**: EPCRA violations that meet all Audit Policy or Small Business Compliance Policy conditions
  - Electronic Notice of Determination
- **Category 2**: (1) all non-EPCRA violations; (2) EPCRA violations where the violator can only certify compliance with Audit Policy Conditions 2-9 (i.e., discovery was not systematic), and (3) EPCRA/CERCLA violations excluded from Category 1
  - Electronic Acknowledgement Letter confirming receipt of disclosure, that EPA will make a determination as to eligibility for penalty mitigation if and when it considers taking an enforcement action

**Figure 1. Audit Settlement by Statute**





# DOJ Policy

- Factors considered:
  - Voluntary disclosure
  - Cooperation
  - Preventative measures and compliance programs
- Other factors may be pervasiveness of noncompliance, internal disciplinary action, and subsequent compliance efforts
- The decision to prosecute "generally rests entirely in [the prosecutor's] discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978)



# General Considerations

- Goals of company, extent of operations  
→ extent of compliance program
- Predict, plan, and prepare!!!
- Consider outside counsel
- Afterward: weigh all advantages and disadvantages to actions
- If EPA engages: respond (respond, respond)
- Try to resolve all violations at the lowest level







**Thank you!**

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Questions?