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Memorandum of Agreement
Between
The State of Wyoming
And
The United States Environmental Protection Agency
Regarding Self-Audits Conducted Pursuant to State Law

I. Preamble

This Memorandum of Agreement (Agreement) is entered into by the State of Wyoming and the United States Environmental Protection Agency (EPA) - Region VIII (collectively, the parties), to establish procedures and policies for administration of the Wyoming Audit Privilege and Immunity Law (self-audit law). The parties agree to encourage greater compliance with laws and rules protecting public health and the environment by promoting a greater degree of self-policing in the regulated community. This Agreement is a companion document to be read in conjunction with the Wyoming Attorney General's letter opinion of July 10, 1997, for implementation of the self-audit law.

II. Background: Wyoming State Audit Program

Wyoming's audit law provides incentives to regulated entities to self-disclose noncompliance with environmental requirements found through environmental audits. Wyo. Stat. Ann. §§ 35-11-1105 and 35-11-1106 (2017). The EPA's Audit Policy also provides incentives for self-disclosure of noncompliance. 65 Fed. Reg. 19,618 (Apr. 11, 2000). Generally, neither policy applies if the self-disclosure occurs after a facility is already under investigation for violations of the applicable environmental law.

According to the Wyoming Attorney General's letter opinion of July 10, 1997, regarding Wyoming's audit law, WDEQ retains the authority to obtain penalties and injunctive relief for violations of federally delegated programs. Specifically, that opinion states that "WDEQ retains all the authority it had prior to the passage of the audit privilege and immunity law to recover civil penalties for violations that result in significant economic benefit or that result in serious harm or present an imminent and substantial endangerment to public health or the environment under federally-delegated programs."

Wyoming's self-audit law meets minimum requirements for Federal delegation.

III. Applicability

Except for the Wyoming Attorney General's ~~formal~~ letter opinion of July 10, 1997, this document supersedes any prior agreements between EPA and Wyoming regarding implementation of the Wyoming self-audit law, and supersedes EPA penalty policies that would otherwise apply to civil violations of Federal environmental statutes that Wyoming is

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authorized to administer where such violations are addressed under Wyoming's self-audit law.

This agreement does not apply to EPA's authorities to investigate and prosecute criminal violations.

IV. Agreement

In no case shall EPA selectively target or investigate Wyoming entities solely on the basis that they have sought penalty immunity under Wyoming's self-audit Law.

In any case in which an entity conducts an audit under the Wyoming Audit Law EPA will not request an environmental audit report to initiate a civil investigation of the entity or the facilities that were the subject of the audit.

Nothing in this memorandum of agreement affects EPA's authority to obtain information from sources other than an audit report. Nor does this agreement preclude EPA's use of such independently obtained information, even if it also is included in an audit report.

EPA will closely communicate with upper management of WDEQ prior to conducting inspections or using EPA information gathering authorities to evaluate the compliance of Wyoming facilities with federal laws that Wyoming is authorized to implement. If, during such communication, EPA identifies a facility as being of interest to EPA, and such facility has participated in Wyoming's self-audit program, Wyoming shall notify EPA of that fact. Any dispute over whether EPA should undertake inspections or information gathering at a facility that participated in Wyoming's self-audit program shall be elevated to the Regional Administrator and the Director and, if necessary, the OECA Assistant Administrator.

If EPA determines that a facility that participated in Wyoming's self-audit program has violations of federal environmental statutes that Wyoming is authorized to implement that were not disclosed or were disclosed but have not been corrected or are not subject to an enforceable order requiring correction under Wyoming Statute § 35-11-1106 (2017), EPA may take an enforcement action after closely communicating with upper level management of WDEQ. In a circumstance where upper management in the Region and Wyoming do not agree on a matter, the matter shall be elevated first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator, for a decision.

In general, EPA defers to state penalty mitigation for self-disclosures as long as state policy meets minimum requirements for Federal delegation. *See* 65 Fed. Reg. 19,624. In general, Wyoming's self-audit law waives penalties for violations that are self-disclosed. However, as stated in Wyoming Statute § 35-11-1106 (2017) and in the Wyoming Attorney General's letter opinion of July 10, 1997, Wyoming retains penalty authority for specific circumstances. EPA will defer to Wyoming's judgment on the assessment of penalties under its self-audit law except as described in this paragraph. EPA may consider asking Wyoming to seek penalties under its retained authorities where Wyoming's pattern and practice of penalty mitigation results in implementation of a federally delegated program that is less stringent than the federal program (see Wyo. Stat. Ann. § 35-11-1106(a)(iv)). If Wyoming rejects such a request, EPA retains authority to take direct action under its own authorities.

However, prior to taking such an action, EPA will communicate closely with upper management of WDEQ and, if needed, will elevate any disagreements first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator.

Nothing in this memorandum of agreement affects EPA's authority to seek injunctive relief to correct ongoing violations of federal law which are not already being addressed by Wyoming or to address an imminent and substantial endangerment.

Wyoming will develop a methodology to measure any increased participation in and compliance benefits from Wyoming's self-audit program.

V. Agreement Modification

This Agreement may be modified by the Parties to ensure consistency with state programs and federal requirements for program delegation. Any revisions or modifications to this Agreement must be in writing and signed by all Parties in order to become effective. In the event the Wyoming self-audit law is amended EPA and Wyoming will confer and make any revisions necessary to this MOA.

VI. General Provisions

This Agreement does not create any substantive or procedural right, duty, obligation or benefit, implied or otherwise, enforceable by law or in equity, by persons who are not party to this agreement, against Wyoming or EPA, their officers or employees, or any other person. This Agreement does not direct or apply to any person outside of the State of Wyoming and EPA.

VII. Termination

This Agreement may be terminated at any time by either Party after notice in writing is provided to the counterparty 60 days before the desired termination date. In the event the Agreement is terminated, EPA intends to continue to honor the terms of this MOA for those reporting entities that had final action taken by Wyoming prior to the termination date.

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