

# APPROACHES TO AUDIT DISCLOSURE

Environmental Law Seminar  
Spring 2017

Presented by  
Tim Wilkins

BRACEWELL

## WHAT'S NEW?

- Changes in enforcement approach
  - “Desktop enforcement” – paper trail, electronic reporting, information requests – agencies looking for anomalies or even confessions
  - Advanced technologies – “facts, not factors”
  - 112(r) general duty clause
  - Most likely to continue in new Administration – resource pressures, expect some pressure to show the cop’s not asleep on its beat, NGO pressure
- Changes in EPA audit policy
  - State programs largely continue
  - EPA moves to eDisclosure for most categories of compliance issues – results in somewhat less certainty

## WHAT'S NEXT?

- Despite the hype, enforcement will continue to be a real risk
- Continued enforcement evolution involving paper trail / electronic / advanced tech / general duty / info requests – low-hanging fruit
- And as enforcement continues, compliance auditing will continue to be important for enforcement readiness and prevention effort
  - But some adaptation is necessary – reg/permit checkbox approach doesn't cover all of this
- Auditing continues to create legal/evidentiary risk
  - Merits privilege AND counseling auditors on appropriate reporting techniques
  - Even if privileged, underlying info may not be – info requests

## KEY TAKEAWAYS

- If enforcement will be driven by
  - Reporting, how do you reduce actionable issue reports and reporting errors?
  - Advanced monitoring, how do you get ahead of that?
  - Cyber footprint, how do you QA/QC that?
  - General duty, how do you evaluate compliance?
  - Information requests, how do you protect information?
  - Seems clear traditional “checkbox” reg/permit auditing isn’t enough
- Audit disclosure gets more complicated with these changes as well
  - Black letter violations easier to write up; how do you write up FLIR-detected emissions or general duty “violations,” for example?
- Merits thoughtful reexamination of approach to audits and disclosure

THANK YOU!



**TIM WILKINS**

+1.512.542.2134

[tim.wilkins@bracewell.com](mailto:tim.wilkins@bracewell.com)

[bracewell.com/wilkins](https://bracewell.com/wilkins)

*This presentation is provided for informational purposes only and should not be considered specific legal advice on any subject matter. You should contact your attorney to obtain advice with respect to any particular issue or problem. The content of this presentation contains general information and may not reflect current legal developments, verdicts or settlements. Use of and access to this presentation does not create an attorney-client relationship between you and Bracewell.*