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AN INDEPENDENT, NON-PARTISAN ENVIRONMENTAL EDUCATION AND POLICY RESEARCH CENTER.

Whither Audit Policies at EPA and the States?

April 16, 2013

The seminar will begin shortly.

*For audio, dial **1-857-232-0300***

*Participant code **33699#***



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Questions for the panel?

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(moderator)



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EPA's Audit Policy

- Encourages self policing through auditing
- Encourages transparency with agencies
- Incentives:
 - No or reduced gravity penalty
 - No referral for criminal prosecution
 - No routine requests for internal audit reports

Conditions for Penalty Mitigation

- Systematic discovery (75% penalty mitigation if not met)
- Voluntary disclosure
- Prompt disclosure—21 days
- Disclosure independent of government or 3rd-party plaintiff
- Correct and remedy
- Prevent recurrence
- Not repeated violation
- Excludes:
 - Serious harm to environment
 - Imminent and substantial endangerment
 - Violation of consent agreement
- Cooperation

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Audit Policy Resources

- **EPA Audit Policy, 2000 FR Notice**

<http://www.epa.gov/compliance/resources/policies/incentives/auditing/auditpolicy51100.pdf>

- **New Owner Policy, 2008 FR Notice**

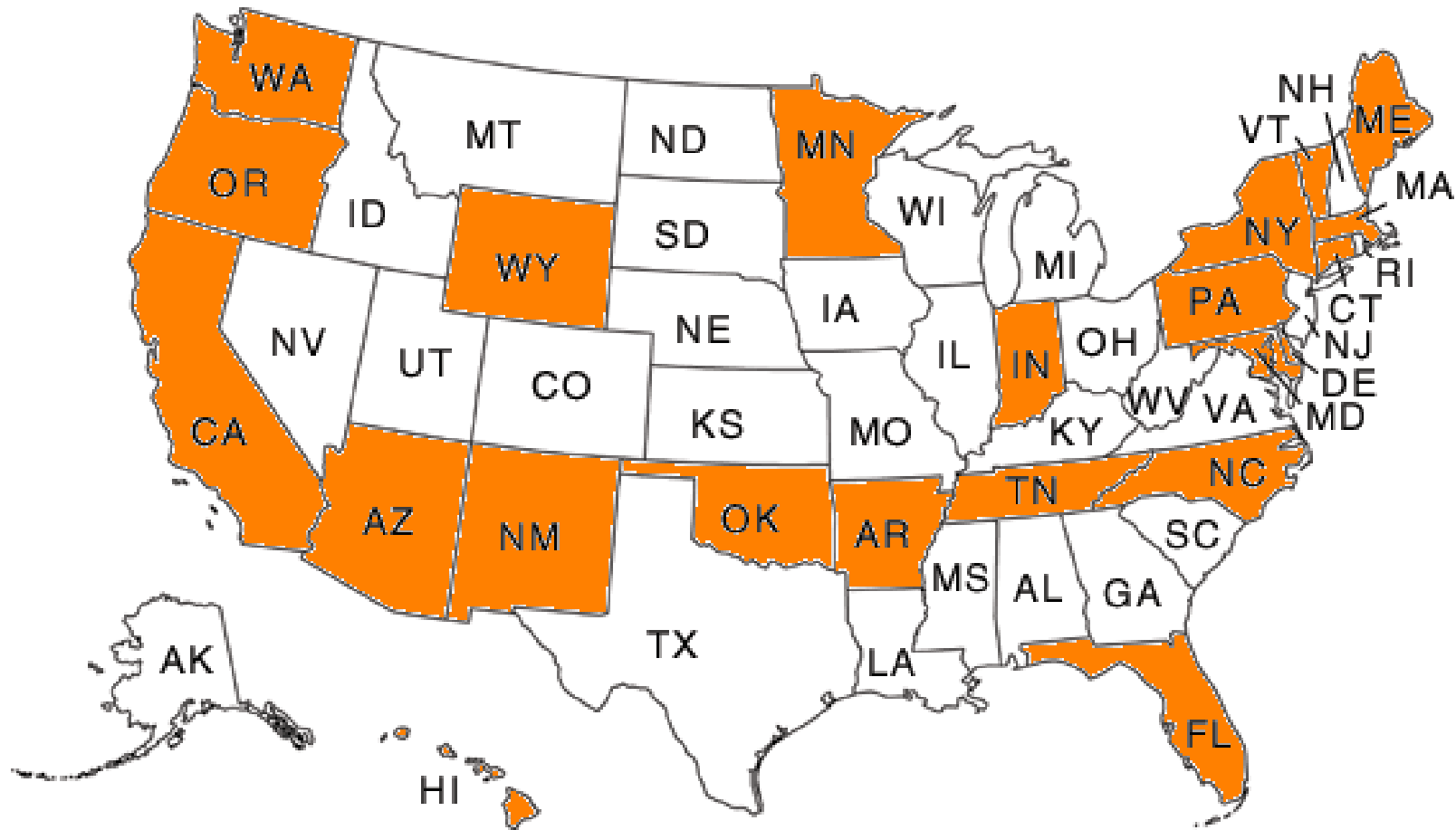
<http://www.gpo.gov/fdsys/pkg/FR-2008-08-01/pdf/E8-17715.pdf>



Audit Policy Resources

- **Audit Policy Information on EPA's website:**
<http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>
- **New Owner Information on EPA's website:**
<http://www.epa.gov/compliance/incentives/auditing/newowners-incentives.html>
- **For questions about the Audit Policy, contact Phil Milton, National Audit Policy Coordinator at (202) 564-5029, or milton.philip@epa.gov**

State Self-Disclosure Policies



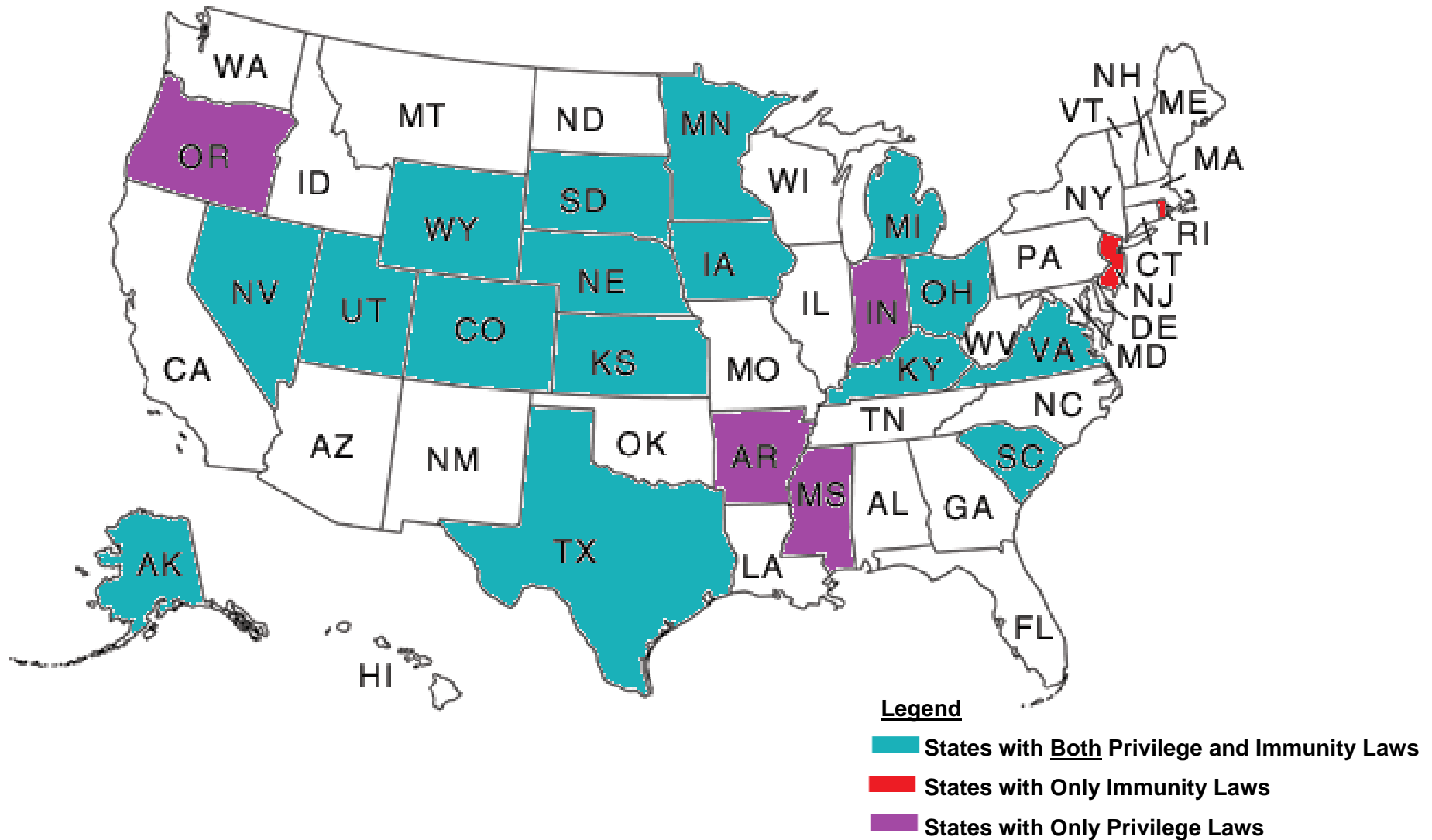
Legend

 States with Self-Disclosure Policies

State Self-Disclosure Policies

- Total of 21 states have enacted self-disclosure policies, similar to EPA's *Audit Policy*
- Certain states provide different disclosure periods:
 - Within 10 days: AZ, MD, NM, VT
 - Within 30 days: CT
 - Within 60 days: WY
 - Promptly: NY, NC, OK, PA
- Certain state policies apply only to small businesses:
 - AZ, ME, MA, NY

State Privilege and Immunity Laws



State Privilege and Immunity Laws

- EPA opposed to audit privilege and immunity laws that exist in some states
(see 70 Fed. Reg. 19,618, 19,623 (Apr. 11, 2000))
- Total of 22 states currently have privilege and/or immunity laws
 - 5 other states had previously enacted such laws:
 - AZ (never became effective)
 - ID (sunset 12/31/97)
 - MT (sunset Oct. 1, 2001)
 - NH (sunset (7/1/03)
 - IL (repealed 8/12/05)

When to disclose noncompliance

- Easily discoverable
 - Cannot fix problem without highlighting prior noncompliance
 - Failures to report
- Impossible to correct but can show steps to prevent recurrence
 - Unusual event
 - Employee wrongdoing
- Widespread misapplication of law that requires re-training
 - “Internal” need to make example
- Widespread noncompliance requiring time to correct

Reasons not to disclose

- Can't meet requirements of policy
 - Need more time to investigate
 - Discovery triggered by outside event
 - Can't get management buy in to correct
 - Programmatic correction is expensive and funds not available
 - Not likely to avoid prosecution
- Corporate culture
 - Punishment and blame
- Penalty reduction not significant enough
- Waiver of privileges
- Better result directly through regulator or prosecutor
- “Cost-Benefit” calculus

Thank you for attending today's seminar!

For upcoming seminars, please visit www.eli.org.



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