

A man in a dark suit, light shirt, and striped tie is shown from the chest up. He is pointing his right index finger towards the text on the right. Overlaid on his chest and the background are several circular digital icons connected by thin white lines. The icons include a bar chart, a handshake, a gear, and a pie chart. The background is a blurred cityscape with a bright light source in the upper left corner.

## **Thursday, July 21, 2022 Workshop H**

**Proactive Strategies to Avoid  
U.S. EPA's Efforts to Strengthen  
Enforcement of Violations by  
Increasing Facility Inspections  
... Internal Environmental Audits  
Best Management Practices**

# Your Panelists



**Christina Wieg -**  
*Environmental Attorney*



**Marcus Glasgow -**  
Supervising Attorney, Special  
Investigations Unit, Emergency  
Response



**Katy Schick -**  
*Corporate Environmental, Health,  
and Safety Manager*



**JD Gibbs -**  
*Associate Director*





**Question #1 – What's the difference between an audit and an inspection?**

## Inspection vs. Audit

**Inspection:** An inspection looks for compliance issues, safety hazards and unsafe practices throughout a facility. Often closed questions requiring Yes/No answers. Usually performed by those familiar with the workplace

**Audits:** An audit evaluates programs and practices within an organization. Usually performed by an independent person from outside the company or maybe another department/facility.



# Inspections



More regular than audits

Checklist driven (Yes/No with brief comments)

Determine whether safeguards are in place

Examine whether the equipment presents any hazards

Gather air, water, and other samples to test for hazardous substances

Observe work practices to identify unsafe actions

Conditions that present a hazard are to be corrected or controlled immediately

# Audits



Higher level (processes, roles and responsibilities, training provision, etc.)

Measure and collect information about a program's reliability and effectiveness

Look at whether a company's program meets the company's stated goals

Examine training

Active (routine) and reactive audits (e.g., accident investigation)

Shortfalls - may take longer to implement such as

A change to documented procedures

Amendment to a training regime or

Change in culture (Everyone involved)

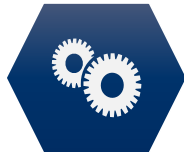


**Question #2 – Why Do We Conduct Inspections AND/OR audits and how frequently should we?**

## Question #2 – Why?



A duty of care to employees and neighbors.



To ensure continued compliance.



Regulatory obligation (ISO or RMP/PSM).



Reduce risk or interruption to the business



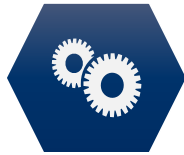
Internal cross-fertilization of experience and ideas



## Question #2 – How frequently?



Performance in past  
audits/compliance  
history



Recent  
acquisition/expansion.



Size/age of site



Accident/incident  
history



Number of regulations  
applicable to the facility



**Question #3 – What are the pros and cons of conducting an audit?**



**Question #4 – Who should conduct the audits/inspections?**

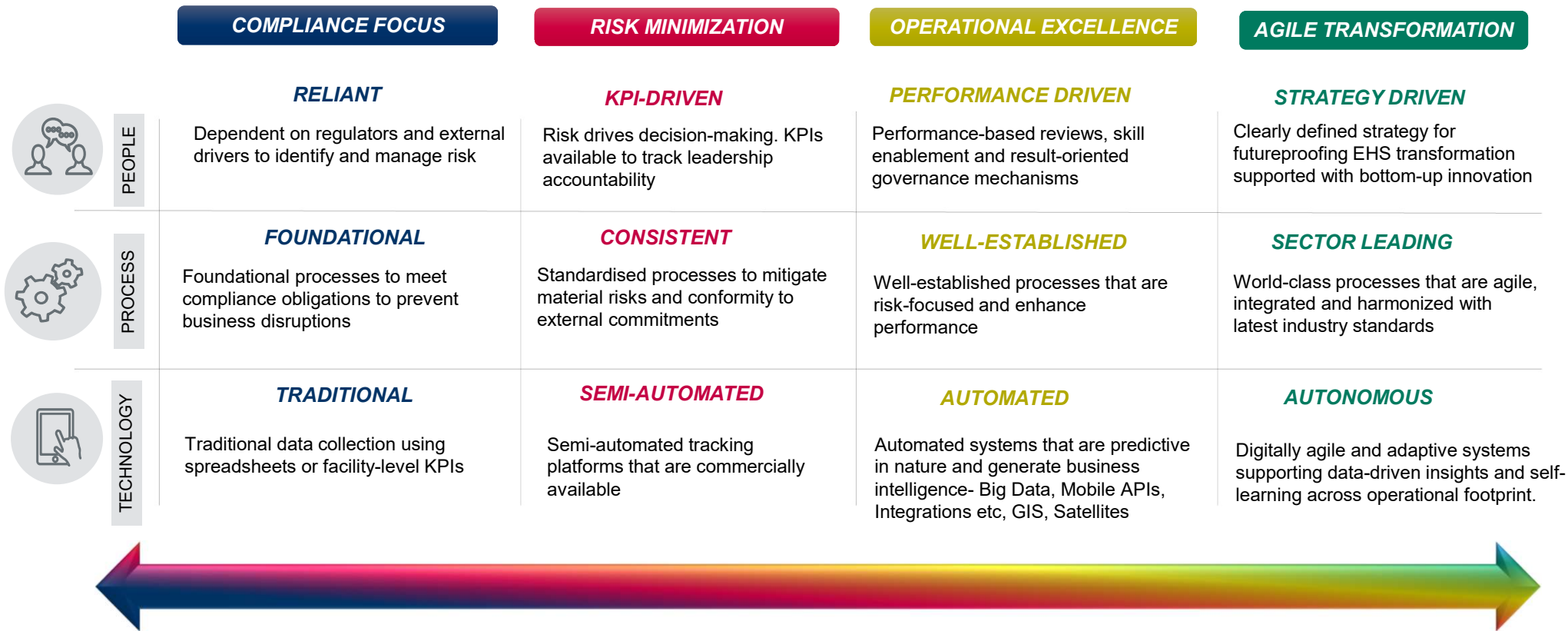
**EHS staff**  
**Maintenance**  
**Dedicated internal auditors**  
**Part-time internal auditors**  
**Auditors from different division**  
**Consultants**  
**Regulators**  
**Some combination of the above**





**Question #5 - Where do you want to focus your audit?**

# EHS&S Audit Spectrum: Where do you want to focus?





**Question #6 – What are the drivers of your audit program?**



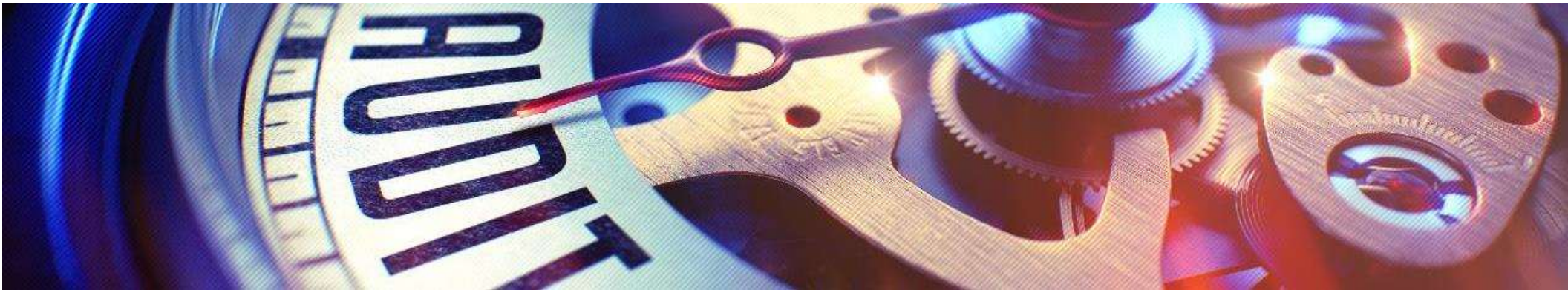
# *Business Drivers*





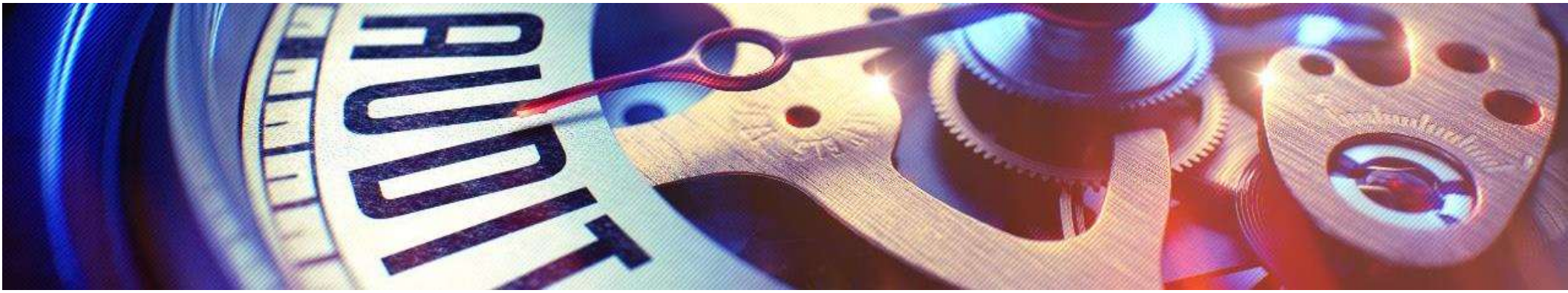


**Question #7 – What is Ohio EPA’s position with respect to audits?**



## Ohio's Environmental Audit Privilege Law: Key Terms/Concepts

- Codified in Ohio Revised Code 3745.70 through 3745.73. (effective March, 1997).
- ORC 3745.70(A): Defines “Environmental Audit”
- Audit Must be “*Voluntary*”
  - Audit is not required by law, prior litigation, or an order by a court or a government agency; and
  - Do not know or have reason to know that a government agency has commenced an investigation or enforcement action that concerns a violation of environmental laws involving the activity or that such an investigation or enforcement action is imminent.



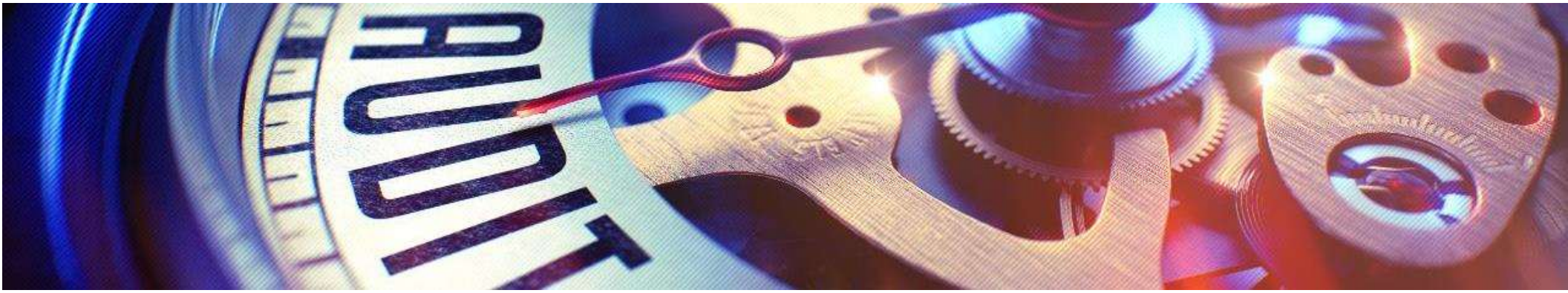
## Ohio's Environmental Audit Privilege Law: Key Terms/Concepts

### What is “voluntary?” – ORC 3745.72(B)

- The disclosure is made promptly after the audit;
- Good faith effort made to achieve compliance as quickly as practicable;
- Compliance is achieved as quickly as practicable or within such period as is reasonably ordered by the State;
- The owner or operator cooperates with the State in investigating the cause, nature, extent, and effects of the noncompliance;
- Disclosure is not otherwise required by law; and
- Do not know or have reason to know that government has commenced an investigation or enforcement action.



**Question #8 – What are some of the potential benefits of using Ohio EPA’s Audit Policy?**

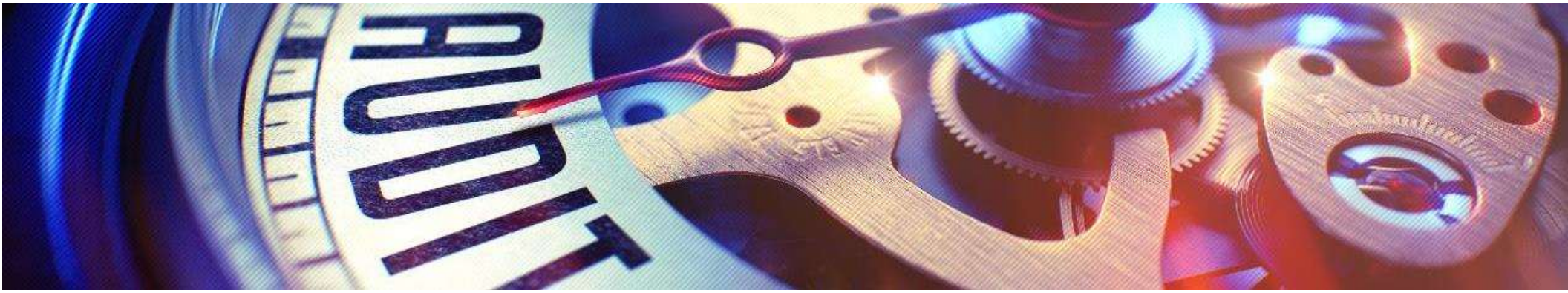


## Ohio's Environmental Audit Privilege Law: Benefits to be Gained

- **Immunity**
  - Immune from any administrative and civil penalties for the specific violation voluntarily disclosed: ORC 3745.72
- **Privilege**
  - Contents of an environmental audit report.
  - Contents of communications between and among the owner, operator, employees, and contractors that are necessary to the audit and made in good faith as part of the audit.
  - Not admissible as evidence or subject to discovery in any civil or administrative proceeding (not criminal) and a person who possesses such information as a result of conducting or participating in an environmental audit shall not be compelled to testify in any civil or administrative proceeding concerning the privileged portions of the environmental audit.

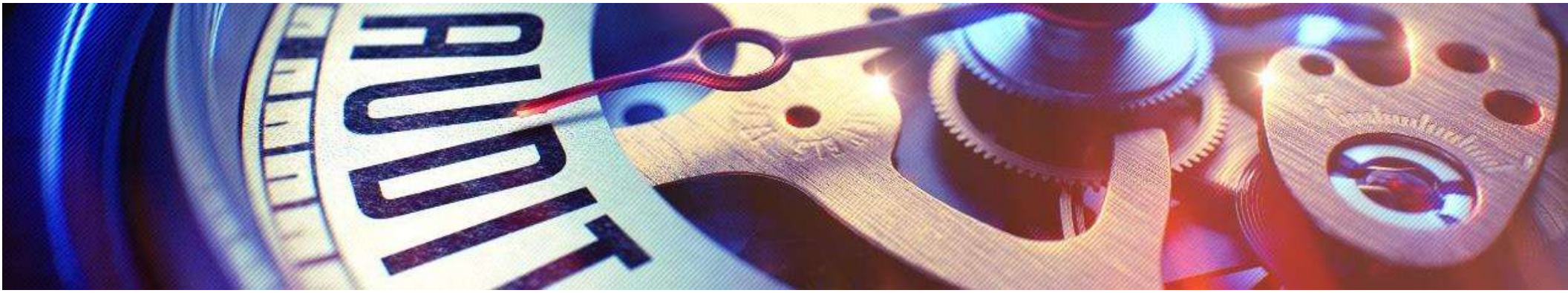


**Question #9 – What are some of the exceptions to privilege and immunity?**



## **Ohio's Environmental Audit Privilege Law: Exceptions to Privilege**

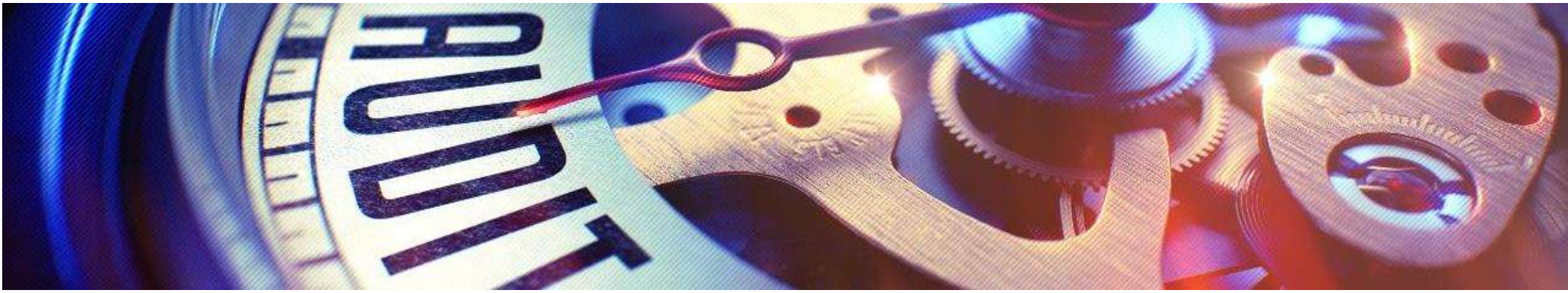
- Voluntary Waiver.
- Finding of a court that privilege does not apply.
- Information is required by law to be collected, developed, maintained, reported, disclosed publicly, or otherwise made available to a government agency.
- The information is obtained from a source other than an environmental audit report, including, without limitation, observation, sampling, monitoring, a communication, a record, or a report that is not part of the audit on which the audit report is based.



## **Ohio's Environmental Audit Privilege Law: Exceptions to Privilege**

- The information is collected, developed, made, or maintained in bad faith or for a fraudulent purpose.
- Person waives the privilege by engaging in conduct that manifests a clear intent that the information not be privileged. If an owner or operator introduces part of an environmental audit report into evidence in a civil or administrative proceeding to prove that the owner or operator did not violate, or is no longer violating, any environmental laws, the privilege provided by this section is waived with respect to all information in the audit report that is relevant to that issue.





## Ohio's Environmental Audit Privilege Law: Exceptions from Immunity

- If violation has resulted in significant economic benefit to the owner or operator of the facility or property – not immune from eco ben component.
- Significant violations that constitute pattern of continuous or repeated violations. ORC 3745.72(E)(1)
- With respect to a specific violation, the violation resulted in serious harm or in imminent and substantial endangerment to human health or the environment. ORC 3745.72(E)(2)
- The violation is of a specific requirement of an administrative or judicial order. ORC 3745.72(E)(3)



**Question #10 – Can you walk us through Ohio EPA’s audit disclosure response protocol?**



**Question #11 – How does USEPA’s audit policy differ from Ohio’s?**



## ***US EPA's Audit Policy***

- **“Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations” (April 11, 2000)**
  - Provides incentives for regulated entities to voluntarily discover and fix violations of federal environmental laws and regulations.
- **“EPA’s Audit Policy Program: Frequently Asked Questions (FAQs)” (January 2021)**



## ***US EPA's Audit Policy - Specific to New Owners***

- **“EPA announced the Interim Approach to Applying the Audit Policy to New Owners” (“Interim Approach) (August 1, 2008).**
  - Applies to new owners that within 9 months of transaction closing, promptly disclosed violations enter into audit agreement with EPA and meets all modified conditions for new owners.
  - An eligible new owner must certify that:
    - Prior to the transaction, it was not responsible for environmental compliance at the facility, which is the subject of the disclosure, did not cause the violations being disclosed and could not have prevented their occurrence.
    - The violation which is the subject of the disclosure originated with the prior owner; and
    - Prior to the transaction, neither the buyer nor the seller had the largest ownership share of the other entity, and they did not have a common corporate parent.



## ***US EPA's Audit Policy - Small Business and Oil and Natural Gas***

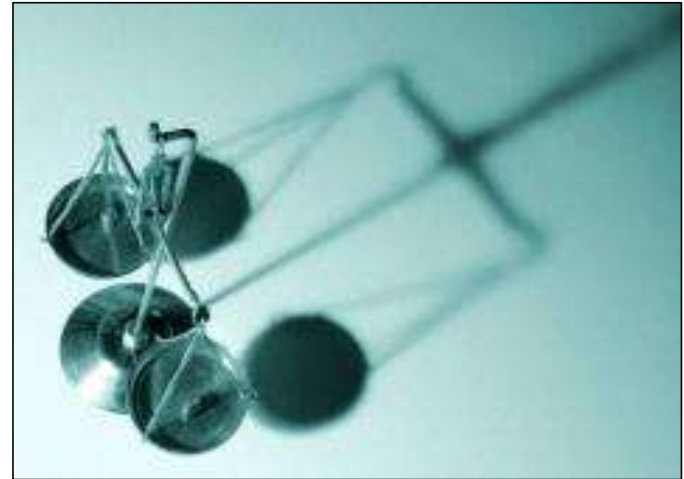
- **“The Small Business Compliance Policy” (April 11, 2000)**
  - Those with 100 or fewer employees.
- **“Oil and Natural Gas Exploration and Production Facilities New Owner Audit Program” (March 29, 2019)**
- **“Oil and Natural Gas Exploration and Production Facilities New Owner Audit Program Questions and Answers”**
  - Tailored for new owners of upstream oil and natural gas exploration and production facilities.



**Question #12 – What are some of the potential benefits of using US EPA’s Audit Policy?**

# US EPA's Audit Policy: Benefits

- **Significant penalty reductions**
  - 100% reduction of gravity-based penalties if all conditions met (EPA maintains discretion on economic benefit penalty)
  - 75% reduction of gravity-based penalties where all conditions met except detection of violation through a systematic discovery process
- **No recommendation for criminal prosecution when criminal violations disclosed**
  - systematic discovery not required for this incentive but requires good faith and adopt a systemic approach to reoccurring violations
- **No routine requests for audit reports from US EPA**







**Question #13 – What are the requirements of using US EPA's Audit Policy?**

# US EPA's Audit Policy: Requirements

- **Systematic discovery**
  - environmental audit or compliance management system
  - does not require advance notice of audit nor is there a time limit on audit completion
- **Voluntarily discovery**
  - Not through legally required monitoring, sampling or auditing procedure
  - Does not require affirmative admission of violation, "stating violation may have occurred is sufficient."
- **Promptly disclose to EPA**
  - in writing within 21 days of discovery or shorter as required by law
  - "objectively reasonable basis for believing that a violation has or may have occurred"
- **Independent discovery and disclosure**
  - before regulator would likely have identified violation through its own investigation or info provided by third party

# US EPA's Audit Policy: Requirements

- **Expeditious correction and remediation**
  - in most cases, within 60 calendar days from date of discovery
  - requires submittal through eDisclosure System
  - special procedures for New Owners and criminal violations – directly to audit policy contacts
- **Prevent recurrence of future environmental violations**
- **Repeat violations are ineligible**
  - same or closely related violation occurred at same facility within the past 3 years or part of a pattern at multiple facilities owned by same entity within past 5 years
  - guidelines specific to “newly acquired” facilities
- **Certain types of violations are ineligible**
  - results in serious actual harm, present imminent and substantial endangerment, violate terms of administrative or judicial order or consent agreement
- **Cooperation**



**Question #14 – What should companies looking to use these programs be cautious of?**

# US EPA Audit Policy

**Use caution when utilizing the US EPA voluntary audit program for violations associated with:**

- Air Pollution Violations at Title V Permitted Sources (see Q&A #5, US EPA' Audit Policy Program Frequently Asked Questions, January 2021)
- Surface Water Violations at NPDES Permitted Sources (see Q&A #6, US EPA' Audit Policy Program Frequently Asked Questions, January 2021)



# Voluntary Environmental Audits Programs

## Ohio EPA v. US EPA

The US EPA policy has many more specific requirements and underlying policy and tailored programs (new owner, oil and gas, etc.).

While there is some overlap in requirements between the state and federal program, such as the legal description of what is deemed “voluntary” for audit purposes, there are significant differences in the program as well.

### **examples:**

Ohio EPA has a timeline on when audit must be completed from the time it starts, whereas US EPA does not.

US EPA provide 75% reduction of gravity-based penalties where all conditions met except detection of violation through a systematic discovery process; whereas Ohio EPA does not provide this option.



**Question #15 – How do you use your findings once you have them?**



### ***Audit Report Preparation***



Comprehensive audit report that documents the findings prioritized EHS goals, areas of performance improvement and key capacity enhancement themes.

### ***Insights & Benchmarking***



Smart dashboards with data insights, trends and benchmarks provided to the organization's decision makers on material EHS&S topics.



Credible, data-based insights and findings from the audit process will be combined to provide transformative solutions to the organization in terms of improving EHS compliance and performance on prioritized material issues.

### ***Leadership Engagement to establish future roadmap for performance improvement***



Closing workshop with leaders to discuss the identifiable strengths, systemic weaknesses and design flaws observed across audited sites.

Use the final outcomes from this workshop to devise the corrective action strategy and roadmap.

### ***Performance Tracking & Refinement***



Consultations with the site team on correction action plan progress and closure including assistance on critical actions. Support Corporate HQ with policy, program, measurement and organizational capacity building solutions.





**Question #16 – How do you protect the audit findings? Should you?**



**Question #17 – What does a company need to do to maintain attorney client privilege?**



**Question #18 – What makes an audit program successful?**



### **Well Defined Audit Scope**

The scope must identify auditable topics (type of subject areas should be reasonable for remote auditing)

### **Pre-audit Planning**

Comprehensive data provision upfront and during the audit – time required in preparation by the site is likely to be greater. Pre-audit communication and planning are critical as it contributes to the quality of audits

### **Visual Assessment Provisions**

Ability of the site to provide visual assessment alternatives such as photo, video, livestream etc. contributes to more successful audits.

### **Engagement**

Strong internal stakeholder engagement and communications

### **Network & Connectivity**

Strong connectivity is an absolute must-have for the use of tech-enabled tools during the audit process

### **Building off What Works**

Don't have to constantly re-invent the wheel. Focus on what has worked well in the past and reproduce.

### **Digital Compatibility**

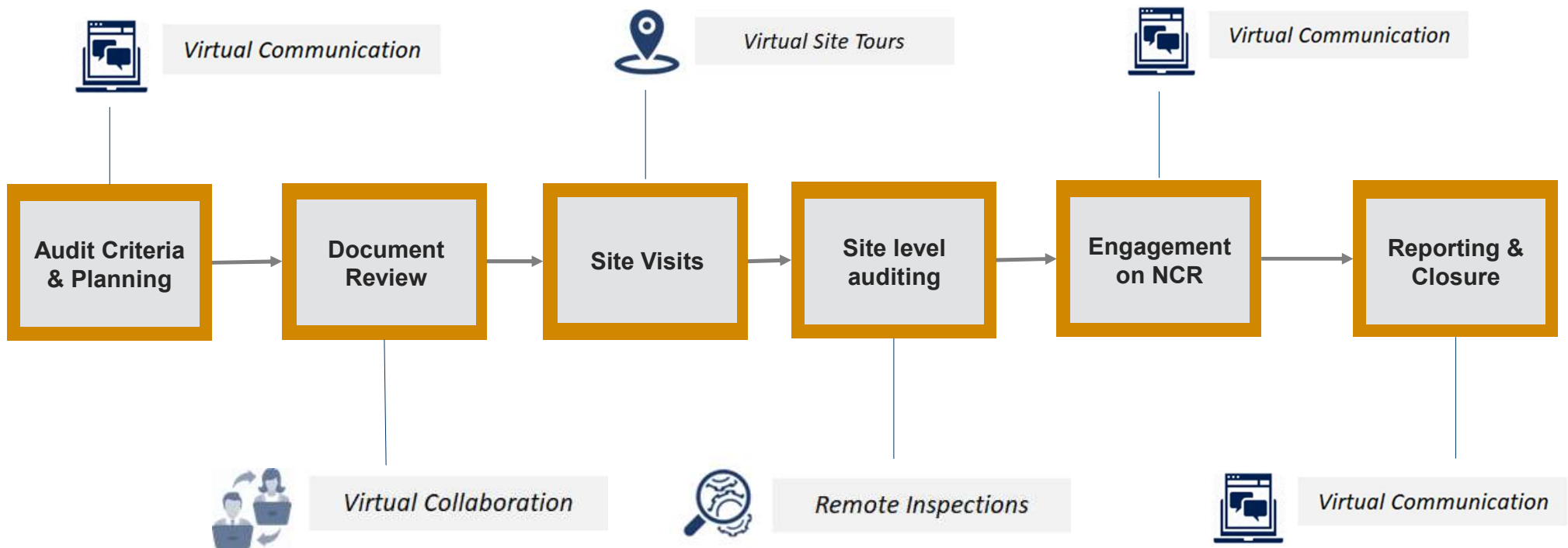
Proper diagnosis of the client's IT security systems and firewalls should be carried out at the outset, to ensure compatibility with tech-enabled solutions



**Question #19 – What new technology is out there to help?**

# Technology enablement across the audit value chain

With an array of technology options available in the market, it is critical to assess its relevance and applicability across your audits value chain





*Virtual Communication*

*Virtual Collaboration*

*Virtual Site Tours*

*Remote Inspections*

## Technology Application Categories & Examples:

Technologies that enable a 2-way communication, virtual meetings & interactions between auditor and auditee; using simple technology options like audio, video conferencing.

Blitzz

Microsoft Teams

Skype

Technologies that enable an online, multi-user, multi-media access platform which can support document reviews supported by online collaborations like whiteboards, interviews, break-out reviews etc.

Microsoft Azure

Adobe Connect

Miro

Technologies that enable a 360 Degree site view, allowing the auditor and auditee to conduct a virtual site visit

Blitzz

Google Glass Enterprise Edition 2

RealWear

RealityCheck

Holo Builder

Technologies that enable detailed inspections using advanced features like high level zoom in features, augmented reality, 3D site models etc.

Mira Reality

PTC's Vuforia



**Question #20 – What impacts has/will COVID have on your auditing program?**



## Biographical Information

**Christina Wieg, Environmental Attorney, Frost Brown Todd LLC**  
10 West Broad Street. Columbus, OH 43215  
614 559 7219 [cwieg@fbtlaw.com](mailto:cwieg@fbtlaw.com)

Christina focuses her practice on environmental litigation, transactional and regulatory matters, including work involving the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act and other major state and federal environmental regulatory programs. Prior to joining Frost Brown Todd, Christina was employed by Ohio EPA for more than a dozen years, rising to the level of Supervisor in the Division of Air Pollution Control. There, she performed and oversaw compliance inspections, the drafting and negotiation of state and federal air permits, administrative and judicial enforcement actions, and all other functions of the Division. Her regulatory experience spans numerous industries, including ferro-alloy production, paper mills, asphalt plants & oil/ gas facilities, including wellpads, midstream facilities & fractionation plants.

**Professional Associations** - Christina is a member of the Ohio State Bar Association, Columbus Bar Associations, Women Lawyer of Franklin County and the Deaf & Hard of Hearing Bar Association.

**Education** - Christina graduated Summa Cum Laude from Capital University Law School. Christina received her M.S. in Environmental Studies from Ohio University and her B.A. in Zoology, from Miami University of Ohio.

---

### **Marc Glasgow**

**Supervising Attorney for Criminal Investigations, Emergency Response and Collections**  
Ohio EPA, 50 W. Town Street, Suite 700, Columbus, OH 43215  
614 644 3037 [Marcus.Glasgow@epa.ohio.gov](mailto:Marcus.Glasgow@epa.ohio.gov)

Mr. Glasgow is the supervising attorney for the Office of Special Investigations, the Office of Emergency Response and organizes and manages the collections program for Ohio EPA. He is also the Ethics Officer for Ohio EPA. Prior to his current appointment, Mr. Glasgow worked an Assistant Attorney General in the Environmental Enforcement Section of the Ohio Attorney General's Office. Before joining Ohio EPA, Mr. Glasgow worked as in-house counsel for Franklin County Children's Services and as an Assistant County Prosecutor for Licking County Ohio.

**Education** - Mr. Glasgow received his B.A. from Ohio Wesleyan University, and his J.D. from the Capitol University Law School.

---

**Katy Schick, Corporate Environmental, Health, and Safety Manager**  
Scotts Miracle-Gro Company, Marysville, OH  
[Katy.Schick@scotts.com](mailto:Katy.Schick@scotts.com) 937 361 7041

Katy started her career at the Scotts Miracle-Gro Company in June 2015. Over the years, she has had a variety of EHS responsibilities including creating and maintaining corporate standards, policies, and initiatives, implementing corporate safety training and new learning management systems, and overseeing third party EHS audits. Katy has worked on integrating several companies through mergers and acquisitions into Scotts EHS programs. Katy also oversees daily EHS compliance for Scotts' research facilities and distribution centers. Additionally, Katy is a certified CPR instructor for the American Heart Association and dedicates her time to training individuals in CPR and First Aid.

**Education** - Katy is a graduate of Purdue University with a B.S. in Occupational Health and a B.S in Environmental Health. She is currently pursuing an MBA and MBAn at Ohio University.

## Biographical Information

**JD Gibbs, Associate Director, BSI**  
**200 E Campus View Blvd, Suite 200, Columbus, OH 43215**  
**614 218 3891**      [JD.Gibbs@bsigroup.com](mailto:JD.Gibbs@bsigroup.com)

Mr. Gibbs has 30 years of diverse consulting and client advocacy providing strategic environmental consultation and project management. He has in-depth knowledge of compliance auditing programs and regulatory air permitting programs, including FESOP, Title V and PSD. He has managed and conducted hundreds of environmental due diligence and environmental, health and safety compliance audits for numerous industries. He has managed and executed compliance assurance projects involving federal and state regulations for media including air, water, waste, health and safety, security and transportation. He has led global, multi-disciplinary due diligence teams in support of acquisitions and divestitures, giving ability to provide a real-time integrated, forward-looking assessment of potential environmental liabilities resulting from the historical operation of a facility.

**Professional Associations** -- Ohio Manufacturing Association – Energy and Environmental Subcommittees  
Ohio Chamber of Commerce – Environmental and Energy Subcommittee

**Education** -- 1992    B.S., Geology, Allegheny College

### Publications/Presentations

- "A Report from the Trenches...Lessons Learnt in Industrial Environmental Management and Compliance", 27th Business & Industry Environmental, Health & Safety Symposium, March 2018.
- "Automotive manufacturing and parts industries...effective solutions to today's environmental challenges", 25th Business & Industry Environmental, Health & Safety Symposium, March 2016.
- "Challenges you face with Waste Vendor Due Diligence", The 43<sup>rd</sup> Annual Food and Beverage Environmental Conference (FBEC) in Maryland, April 2013.
- "Practical Tips for the Plant Environmental Manager", 21<sup>st</sup> Business & Industry Environmental, Health & Safety Symposium, March 2012.
- "Sustainable Practices", Honda of America Mfg., Inc. Environmental & Safety/Ergonomics Supplier Symposium, November 2011.
- "Obtaining Timely Permits... Best Practice at Making the Air & Water Permitting Process", 20<sup>th</sup> Annual Conference on Air & Water Permits: Environmental Permitting in Ohio, July 2011.
- "Practical Tips on Integrating Compliance with Sustainability", 19th Annual Conference on Air & Water Permits: Environmental Permitting in Ohio, July 2010.
- "Priceless Tips for the Busy EHS Manager", 19th Annual Business & Industry Environmental, Health & Safety Symposium, March 2010.
- "Compliance with USEPA's New Greenhouse Gas (GHG) Reporting Rule", Ohio Manufacturer's Association (OMA), December 2009.
- "MACT and GACT Standards", 18th Annual Business & Industry Environmental, Health & Safety Symposium, March 2009.

- “Minor Source Air Permits Compliance on a Limited Budget and Overcoming Challenges”, 18th Annual Conference on Air & Water Permits: Environmental Permitting in Ohio, July 2009.
- “MACT Updates”, HONDA Supplier Annual Conference, November 2008.
- “Maintaining Environmental Compliance”, 17th Annual Business & Industry Environmental, Health & Safety Symposium, March 2008.
- “Practical Tips...Air Permitting and Compliance in Ohio”, 16th Annual Conference on Air & Water Permits: Environmental Permitting in Ohio, July 2007.
- “Guarding the Promise of Nanotechnology”, 29th Annual Ohio Chemistry Technology Counsel Conference, March 2007.
- “Dealing with the Ever Changing MRR Requirements in Air Permits”, 16<sup>th</sup> Annual Business & Industry Environmental, Health & Safety Symposium, March 2007.
- “Industry Perspective on Permits and Enforcement”, A&WMA Southwest and Northern Ohio Chapters, May 2006.
- “Practical Tips for the Plant Level Environmental Engineer”, 15<sup>th</sup> Annual Business & Industry Environmental, Health & Safety Symposium, March 2006.
- “Air Permit Requirements, More Expansive Recordkeeping and Reporting”, 14<sup>th</sup> Annual Conference on Air & Water Permits: Environmental Permitting in Ohio, July 2005.
- “Ohio Environmental Considerations Related to Production Increases”, 14<sup>th</sup> Annual Business & Industry Environmental, Health & Safety Symposium, March 2005.
- “Monitoring, Recordkeeping and Reporting”, 13<sup>th</sup> Annual Conference on Air & Water Permits: Environmental Permitting in Ohio, July 2004.
- “Ohio Air Updates”, Columbus Bar Association, April 2004.
- “Ohio Title V”, 13<sup>th</sup> Annual Business & Industry Environmental, Health & Safety Symposium, March 2004.
- “Permitting Air Sources”, 12<sup>th</sup> Annual Conference on Air & Water Permits: Environmental Permitting in Ohio, July 2003.
- “PTI Applications”, 11<sup>th</sup> Annual Business & Industry Environmental, Health & Safety Symposium, March 2002.
- “One Person EHS Departments”, 11<sup>th</sup> Annual Conference on Air & Water Permits: Environmental Permitting in Ohio, July 2001
- “One Person EHS Departments”, 10<sup>th</sup> Annual Business & Industry Environmental, Health & Safety Symposium, March 2001.