

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 right. Overlaid on his chest and the background are several circular digital icons connected by white lines. The icons include a bar chart with an umbrella, a handshake with a checkmark, a pie chart, and a gear. The background is a blurred cityscape with a bright light source in the upper left corner.

July 20, 2023
Session H

**Beyond Compliance: How to
Make Your Environmental Audits
More Impactful ... Best
Management Practices**

Your Moderator



JD Gibbs -
Associate Director



Your Panelists



Sloane Weber -
Environmental Attorney



Marcus Glasgow -
Supervising Attorney, Special Investigations Unit, Emergency Response, and Collections



Katy Schick -
Corporate Environmental, Health, and Safety Manager





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)

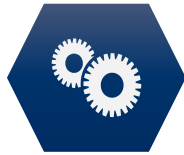


Question #2 – Why Do We Conduct Inspections AND/OR audits and how frequently should we?

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

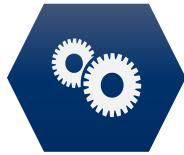


Internal cross-fertilization of experience and ideas

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?

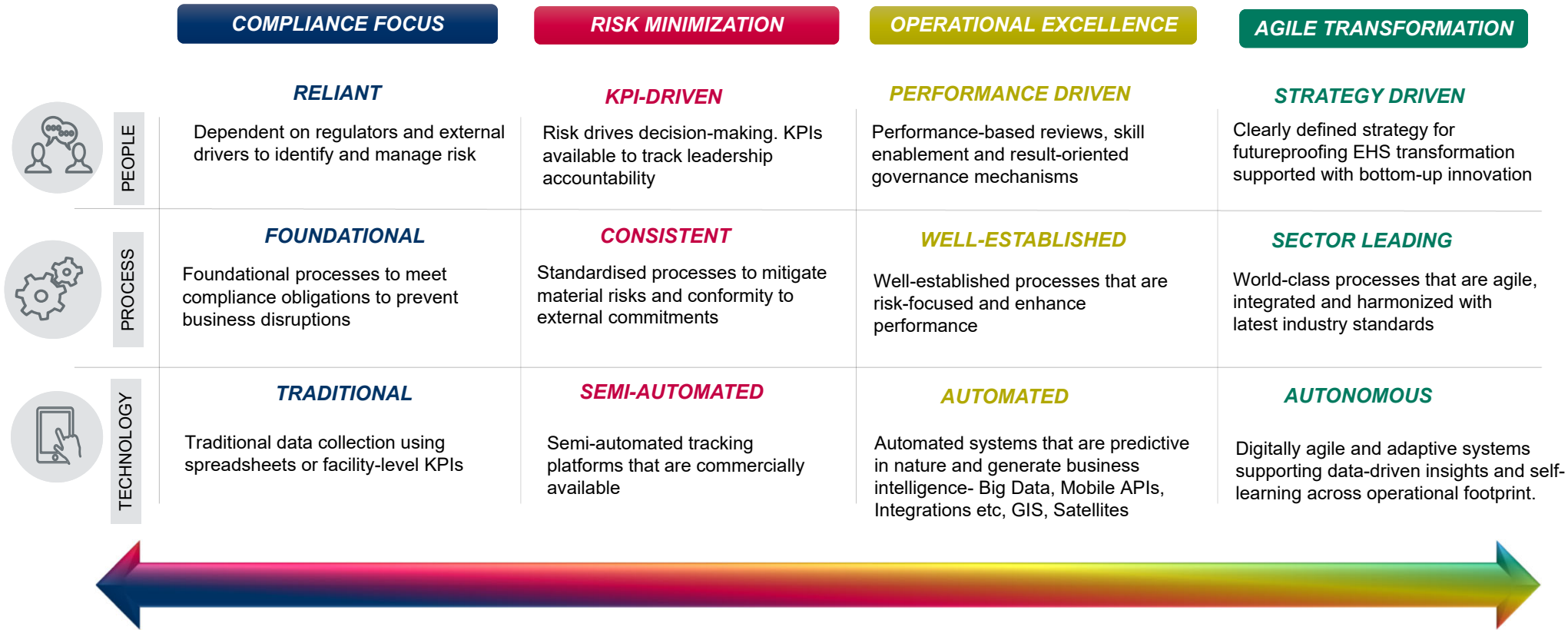
EHS staff
Maintenance
Dedicated internal auditors
Part-time internal auditors
Auditors from different division
Consultants
Regulators
Some combination of the above





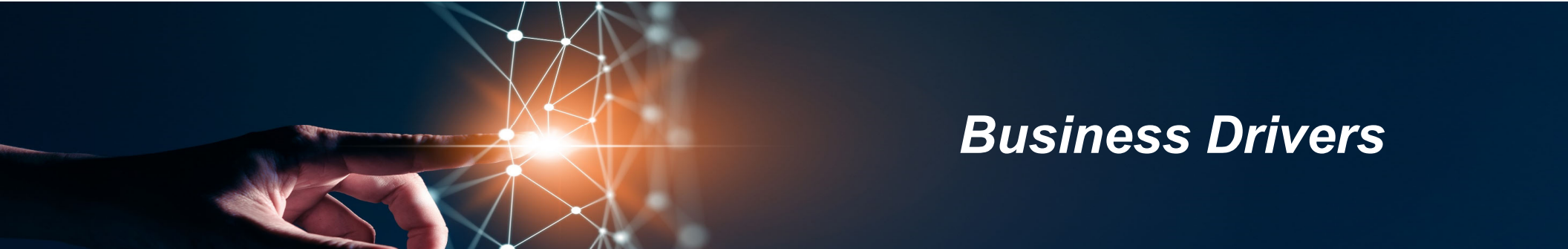
Question #5 - Where do you want to focus your audit?

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





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



Business Drivers



Agile compliance management



Cost-effectiveness



Technology-enabled operational excellence



Future-ready workforce



Risk-minimization focus



Stakeholders' expectations



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.



Question #13 – What should companies looking to use these programs be cautious of?

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 #14 – 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 #15 – 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 #16 – What are some of the most common violations noted?

Common Audit Findings – RCRA Top 5

- #1 - Failure to mark containers with the “Hazardous Waste” label.
- #2 - Having more than 55 gallons of hazardous waste at the Satellite Accumulation Area (SAA).
- #3 - Failure to mark the accumulation start date on the Hazardous Waste Label.
- #4 - Exceeding 90 or 180 Central Accumulation Area storage time limit.
- #5 - Failure to keep hazardous waste containers closed at all times.

Common Audit Findings – Air

- Construction without a Permit
- Not properly amending permit for facility modifications
- Failing to get boilers permitted with state agencies
- Not submitting periodic reports (e.g., monthly, quarterly, semiannual, and annual)
- Compliance demonstration
- Exceedance of emission limitations
- Not notifying the EPA of asbestos removal projects
- Improperly disposing asbestos debris

Common Audit Findings – SPCC

- Containment drain valves left open.
- Poor integrity of tanks.
- No or inoperative overfill device(s) and/or no inspection of the device(s).
- Failure to address facility tanker trucks/refuelers in the SPCC Plan.
- Improper secondary containment (Drums, totes and tanks)
- Improper maintenance and inspection of containment structures.
- Buried piping after August 16, 2002, that has not complied with cathodic projection requirements.
- Poor double-wall piping.

Common Audit Findings – Stormwater

Starting construction BEFORE permit

Exceeding permit limits

Missing stormwater samples

Missing quarterly visuals and inspections

Missing annual reports or inspections

Missing certifications (annual or initial – no non-stormwater discharges)

No SWPPP

Thank You



JD Gibbs -
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Environmental Attorney



Marcus Glasgow -
Supervising Attorney, Special
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Response, and Collections



Katy Schick -
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Biographical Information

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Mr. Gibbs has 31 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

The Ohio Manufacturers' Association
Ohio Chemistry Technology Council

Education

Mr. Gibbs is a graduate of Allegheny College with a B.S. in Geology.

Marc Glasgow, Supervising Attorney for Criminal Investigations
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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 as an Assistant Attorney General in the Environmental Enforcement Section of the Ohio Attorney General's Office. Before joining Ohio EPA, Mr. Glasgow also 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.

Biographical Information

Katy Schick, Corporate Environmental, Health, and Safety Manager
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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.

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Sloane focuses her practice on the energy and manufacturing industries in addition to using her previous industry experience to provide day-to-day regulatory compliance support to Frost Brown Todd clients in a wide range of regulatory areas.

Prior to joining Frost Brown Todd, Sloane began her career as an environmental engineer in the oil and gas industry. For over eight years, she was responsible for a broad range of regulatory compliance programs for petroleum refining and renewable fuels production facilities, including permitting and reporting under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, other federal, state, and local environmental regulatory programs, as well as OSHA's Process Safety Management program.

Education

Sloane received her B.S. from Rose-Hulman Institute of Technology, her M.S. from the University of Findlay and her J.D. from the Northern Kentucky University, Salmon P. Chase College of Law.