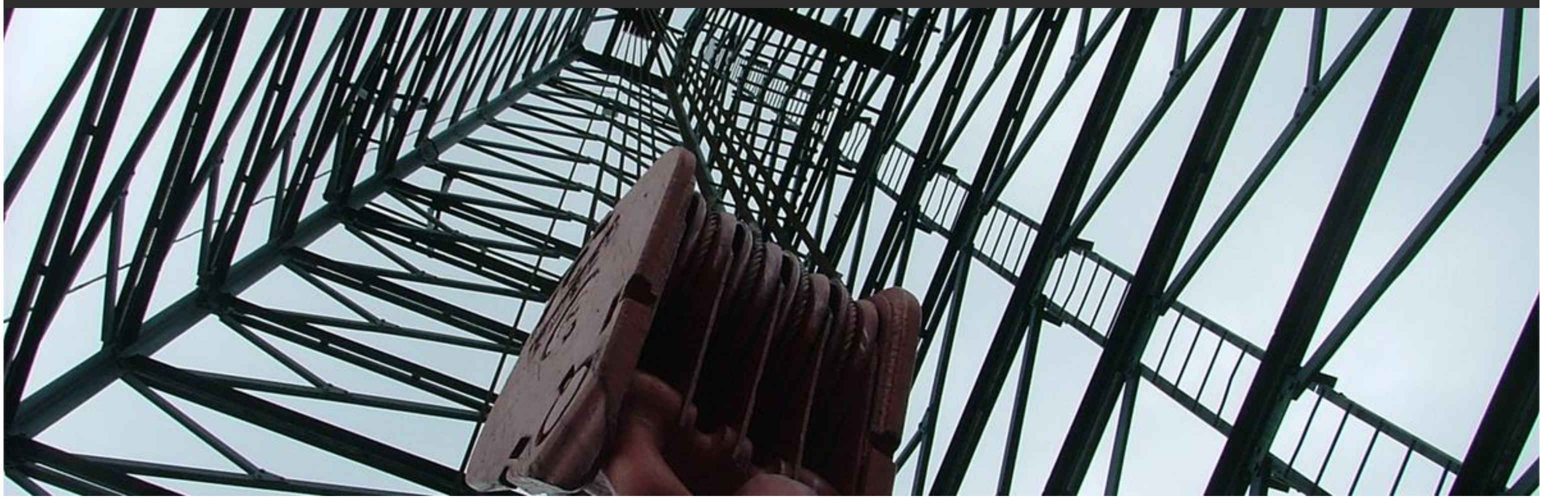
Alert | Environmental



April 2019

EPA Announces New Owner Audit Program Agreement for Oil & Natural Gas Exploration and Production Facilities

On March 29, 2019, the Environmental Protection Agency issued its final Oil & Natural Gas Exploration and Production Facilities New Owner Audit Program Agreement (Oil & Gas New Owner Audit Policy, or Policy). This voluntary program provides total civil penalty mitigation for qualified new owners of upstream oil and natural gas well sites (including associated storage tanks and air pollution control equipment) who agree to identify and correct Clean Air Act noncompliance at their newly acquired facilities.

The Policy marks a departure from the Obama-era EPA's reduced emphasis on auditing and self-disclosure. It also marks the first time that the agency has proposed complete penalty forgiveness – including mitigation of economic benefit penalties – for entities that disclose and correct violations in conformance with the guidelines.

The Oil & Gas New Owner Audit Policy focuses initially on excess air emissions from vapor control systems at these facilities. To qualify as a new owner under the Policy, companies must notify EPA within nine months of the date of acquisition. The benefits of the Policy are retroactively available to those who purchased such facilities up to a year prior to the finalization of the Policy. Facilities acquired after the start of an audit can be added, provided the new owner notifies EPA within three months of acquisition.

However, facilities with ongoing state or federal air enforcement actions may not take advantage of the Policy's protections.

EPA issued an audit agreement template to govern the audit process and to identify the Policy's basic requirements. The agency expects all audits to entail comprehensive evaluations of Clean Air Act compliance, including permitting and any relevant state implementation plan-approved requirements, at the facility, but new owners may submit more targeted audit requests. Corrective action must be taken within 60 days of discovery of any noncompliance.

In addition, pursuant to Appendix B of the audit agreement, new owners must complete an engineering and design assessment to ensure vapor control systems are adequately designed and sized to handle maximum and minimum system pressures and are operated to prevent excess emissions. Disclosers are allowed up to one year after entry of an audit agreement to propose an alternative protocol to Appendix B's engineering and design assessment.

If the assessment indicates that the systems are incorrectly sized or designed for facility operations, corrective action must be taken within 180 days. Within 60 days of the finalization of an agreement between a new owner and EPA, the new owner must submit proposed audit protocols and checklists, and a plan for its engineering and design assessment. Throughout the process, EPA requires semi-annual reports and a final report when the audit has been completed.

The Oil & Gas New Owner Audit Policy differs from EPA's pre-existing New Owner Audit and Audit Policies in three key ways. First, the Policy provides full civil penalty mitigation for all violations corrected and discovered through the audit, while the pre-existing policies still allow EPA to collect penalties for economic benefit. Additionally, the Policy's audit agreement template streamlines the audit process, reducing transaction costs and allowing for more efficient disclosure of noncompliance through semi-annual reports. Finally, once an agreement is finalized under the Policy, it is fully transferrable to any subsequent owner, which can help reduce financial risk in future transactions.

New upstream facility owners or those contemplating an acquisition should consider taking advantage of the Oil & Gas New Owner Audit Policy's protections. This new, streamlined process eliminates many of the inconveniences (lengthy negotiations and excess reporting requirements) associated with previous EPA audit policies. Given the availability of full civil penalty mitigation for a past owner's noncompliance, the expenditures associated with the Policy may be a worthwhile investment.

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