This is a compilation of three policy development documents related to the Oil and Natural Gas New Owner Audit Program. In any conflict between these policy development documents and the final documents, the final documents will control

- Q+A on Oil and Natural Gas New Owner Audit Program
- Draft Template: New Owner Audit Program Agreement for Oil and Natural Gas Exploration and Production Facilities
- Summary of stakeholder comments on Oil and Natural Gas New Owner Audit Program

New Owner Clean Air Act Audit Program for Upstream Oil and Natural Gas Exploration and Production Facilities

Questions and Answers

1. What has EPA announced; and why is EPA doing this?

- EPA is developing a New Owner Clean Air Act Audit Program tailored for the upstream oil and natural gas exploration and production sector (Program), and seeking stakeholder feedback on the Program's Draft Agreement. EPA expects that this Program will provide environmentally protective efficiencies and certainty in the upstream oil and natural gas sector based on EPA's analysis of the sector's unique operations. This is an opportunity to achieve timely and cost-effective public health and environmental protections, as well as Clean Air Act compliance.

- The Program offers new owners of upstream oil and natural gas exploration and production facilities – i.e., well sites, including associated storage tanks and pollution control equipment – incentives specifically tailored to encourage them to make clean starts at their recently acquired facilities by finding, promptly disclosing, and correcting Clean Air Act violations, and preventing the recurrence of those violations.

- The Program is designed to encourage self-disclosures of violations that will, once corrected, yield significant pollutant reductions and public health and environmental protections. New owners of upstream oil and natural gas facilities satisfying the Program's conditions will receive penalty reductions beyond those provided in EPA's *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, 65 Fed. Reg. 19618 (Apr. 11, 2000) (Audit Policy) and *Interim Approach to Applying the Audit Policy to New Owners*, 73 Fed. Reg. 44991 (Aug. 1, 2008) (New Owners Policy).

- EPA is initially offering the Program to new owners of upstream oil and natural gas exploration and production facilities where EPA and states have seen significant excess emissions and Clean Air Act noncompliance. Notable enforcement actions addressing excess emissions from condensate tanks include settlements with Noble Energy, Inc. (CO – 2015), Slawson Exploration Company, Inc. (ND and Ft. Berthold Indian Reservation – 2016), and PDC Energy, Inc. (CO – 2017).

- Offering flexibilities under this tailored Program should encourage new owners in the upstream oil and natural gas sector to self-disclose and correct violations, thereby providing additional public health and environmental protections.

- The Program is not a replacement for vigorous enforcement. The Program will result in more voluntary correction of non-compliance and will allow EPA to devote its enforcement resources to correcting non-compliance at facilities that elect not to return to compliance voluntarily.

- EPA is seeking feedback on all aspects of the Program and will consider all feedback received. After the feedback period closes, EPA will publish a summary of the comments received here. EPA may revise the Program, as appropriate, based on the feedback.

2. What incentives is EPA offering to new owners of upstream oil and natural gas exploration and production facilities under this Program?

- The Program offers upstream oil and natural gas companies certainty with respect to their investments and operations through clearly defined civil penalty mitigation beyond what is offered by EPA's Audit Policy and New Owners Policy.

- The Program will implemented through a standard template agreement which will reduce transaction costs and improve efficiencies.

3. Why focus on new owners; and why would new owners in the upstream oil and natural gas exploration and production sector want to participate in this Program?

- New owners have a unique opportunity to focus on and invest in making a clean start at recently acquired facilities by addressing Clean Air Act compliance issues. This Program provides flexibilities and certainties that incentivize comprehensive compliance assessments and corrective actions so that noncompliant facilities return to compliance and achieve public health and environmental protections sooner than might otherwise occur.

- Despite new owners' best efforts to reduce public health and environmental risks through pre-closing due diligence or post-closing assessments, some causes of excess emissions and Clean Air Act noncompliance that EPA and states have observed in the upstream oil and natural gas sector may not always be identified during these assessment processes when there are transactional time constraints and a significant number of newly acquired assets.

- Based on EPA's experience developing and implementing the New Owner Policy, new owners in the upstream oil and natural gas sector may already be well-situated and motivated to use the Program, because these new owners:

  - Were not responsible for violations that began prior to acquisition, and the EPA expects that most violations that might be discovered during a comprehensive, post-transaction Clean Air Act audit would likely have started with the prior owner;

  - May already be assessing newly acquired facilities to manage risk; and

  - May have funding available to fix problems, or have budget commitments which are still relatively flexible.

4. **Is EPA giving the upstream oil and gas exploration and production sector a pass on noncompliance?**

   - No. If a new owner in the upstream oil and natural gas exploration and production sector is willing to promptly find and fix violations, and makes changes to ensure its facilities comply with the Clean Air Act in the future, EPA believes those circumstances of new ownership warrant special consideration. For new owners that meet the Program's conditions, there are equitable and policy reasons for EPA exercising its enforcement discretion by deciding not to assess a civil penalty for Clean Air Act violations that the new owner has corrected.

   - EPA has designed a transparent and easily administrable approach to identifying and resolving Clean Air Act violations by new owners in the upstream oil and natural gas sector because we think this is an opportunity to efficiently secure significant public health and environmental protections and Clean Air Act compliance sooner than might otherwise occur.

   - EPA is seeking feedback on all aspects of the Program and will consider all feedback received. After the feedback period closes, EPA will publish a summary of the comments received here. EPA may revise the Program as appropriate based on the feedback.

5. **Is this Program part of the Audit Policy or New Owners Policy; is EPA changing the Audit Policy or New Owners Policy?**

   - While this tailored audit Program has elements that are similar to the Audit Policy and New Owners Policy, ***this Program is separate from those Policies and does not alter those Policies***.

   - The Oil and Natural Gas Audit Program does ***not*** change the Audit Policy and New Owners Policy. The Agency has renewed its emphasis on encouraging all regulated entities to voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of environmental violations, including opportunities to increase compliance through tailored audit programs. For more information on EPA's renewed emphasis on self-disclosing and correcting environmental violations, please see EPA's Self-Disclosure Refresh Statement.

6. **Companies that would qualify as a new owner under this Program are not the only ones that decide to address environmental issues, undertake operational improvements, and make a clean start; why isn't EPA offering any oil and natural gas exploration and production company thinking about auditing its upstream facilities' environmental compliance the same incentives?**

   - EPA's Audit Policy provides considerable benefits, including reductions in civil penalties, to any company that self-discloses and corrects environmental violations consistent with the Policy's requirements. In addition, if a disclosure would not qualify for penalty mitigation under the Audit Policy, it may still be eligible for penalty mitigation under the applicable Enforcement Response or Penalty Policy.

- If a new owner in the upstream oil and natural gas exploration and production sector is willing to promptly find, disclose, and fix violations, and makes changes to ensure its newly acquired facilities comply with the Clean Air Act in the future, EPA believes those circumstances of new ownership merit special consideration.

7. Why is the Program limited to Clean Air Act compliance at upstream oil and natural gas exploration and production facilities; and will EPA expand the Program to additional statutory programs or additional segments of the oil and natural gas industry?

- EPA is initially offering this Program to new owners of upstream oil and natural gas and production facilities – i.e., well sites, including associated storage tanks and pollution control equipment – because EPA and states have observed significant emissions and Clean Air Act noncompliance at these facilities. In September 2015, EPA issued a Compliance Alert about emissions from storage tanks at upstream oil and natural gas facilities. The Alert identified Clean Air Act compliance concerns and provided engineering and maintenance considerations that upstream oil and natural gas facility owners and operators should consider as they operate their facilities. This will be further discussed in Question #8.

- EPA has not yet decided whether it will expand the Program by either including additional statutory programs (e.g., the Clean Water Act) in the audit or offering new owners in other sectors of the oil and natural gas industry (e.g., the midstream sector, which includes facilities such as oil and natural gas gathering pipelines and natural gas processing plants) an opportunity to participate in this Program.

- EPA plans to complete the feedback process and begin implementing the Program to initially assess effectiveness before considering and making any further decisions about the Program's statutory scope and availability to other sectors of the oil and natural gas industry.

- EPA's Audit Policy and New Owners Policy remain available to all oil and natural gas operators that want to use either of those Policies and can satisfy those Policies' conditions.

8. Why is EPA limiting this Program to new owners in the upstream oil and natural gas exploration and production sector; why not offer this Program or a similar program to new owners in other industrial sectors?

- EPA is initially offering this Program to new owners in the upstream oil and natural gas exploration and production sector given the interplay of several key factors listed below.

  - EPA and states have observed significant excess emissions and Clean Air Act noncompliance at upstream oil and natural gas exploration and production facilities.

  - The upstream oil and natural gas exploration and production sector's operations are unique and present compliance challenges. This sector is comprised of hundreds of

thousands of smaller, relatively similar types of facilities spread across the country, including significant numbers of facilities in relatively remote areas. The number of regulated facilities and their geographic locations present challenges for federal, state, local, and tribal governments to ensure compliance at all facilities, and to efficiently resolve noncompliance.

- Upstream oil and natural gas exploration and production facilities – i.e., well sites, including associated storage tanks and pollution control equipment – are often transferred from one owner or operator to another. These transfers typically involve all or a significant number of facilities located in a specific oil and natural gas field or geographic area.

- Excess emissions from the upstream oil and natural gas exploration and production sector can decrease air quality and contribute to areas' failures to meet air quality standards for ozone.

While these factors present unique compliance challenges, they also present unique opportunities to achieve efficient and cost-effective Clean Air Act compliance. Considering that these facilities frequently change ownership and have a relatively similar design, new owners have an opportunity to efficiently assess whether newly acquired facilities located in a specific oil and natural gas field are complying with the Clean Air Act.

- This Program presents an opportunity to achieve timely and cost-effective public health and environmental protections, and Clean Air Act compliance. It will provide environmentally protective efficiencies and certainty in the upstream oil and natural gas sector based on EPA's analysis of the sector's unique operations. This Program will also help EPA and states conserve limited government resources for addressing the most serious violations which, once corrected, will yield significant pollutant reductions and public health protections, and forcefully deter noncompliance.

9. What about the previous owners of the upstream oil and natural gas exploration and production facilities audited by new owners under this Program; will the seller receive credit for or be covered by the new owner's Agreement and any subsequent resolution; will EPA pursue the sellers for environmental problems that began while they controlled the facilities?

- EPA's overarching goal for this Program is to maximize Clean Air Act compliance and provide the greatest amount of public health and environmental protections. EPA wants to take enforcement actions to address violations which, once corrected, will yield significant pollutant reductions and public health and environmental protections, while also deterring noncompliance. EPA reserves its right to pursue sellers where the circumstances and equities warrant.

- A seller that did not discover, disclose, and correct violations when it operated a facility should not benefit from this Program because the facility's new owner decides to undertake such actions. EPA reserves its rights to pursue sellers where the

circumstances and equities warrant. However, compliance obligations rest with the current owner and operator.

10. **Won't EPA's decision not to collect a penalty from new owners under this Program create a windfall for these buyers – because they should already have accounted for the potential liabilities that come with the company or facilities they bought – when they decided what price to pay?**

    - EPA does not believe that this Program creates a windfall for new owners in the upstream oil and natural gas exploration and production sector. New owners participating in the Program will have to correct all disclosed Clean Air Act violations to receive the Program's benefits.

    - New owners participating in the Program must undertake a comprehensive engineering analysis of their newly acquired facilities to ensure that storage tank vapor control systems are adequately designed to control air emissions in compliance with applicable Clean Air Act requirements. Where this analysis indicates the newly acquired facilities are inadequately designed to appropriately control air emissions or where air emissions are observed during a required facility visit, the new owner must undertake corrective actions to ensure the facility is adequately designed to control emissions and is not emitting in violation of the Clean Air Act.

11. **Assessing penalties for economic benefit gained through noncompliance is necessary to maintain a level playing-field. If EPA does not collect any civil penalties from new owners participating in this Program, isn't the Agency undermining this cornerstone enforcement concept and the deterrent effect of those penalties?**

    - No. EPA's overarching goal for this Program is to maximize Clean Air Act compliance and provide the greatest amount of public health and environmental protections. EPA's intention is that resolutions under this Program, like all enforcement resolutions, considers all circumstances of the particular resolution. EPA uses its enforcement discretion to assess penalties that are consistent with its approach to sector-wide compliance and the circumstances of each resolution. For new owners participating in this Program and complying with all of its conditions, there are equitable and policy reasons for not assessing a civil penalty for self-disclosed and corrected violations.

12. **What if a new owner or buyer has an indemnification agreement that covers environmental liabilities, including penalties as well as capital costs or remediation; if EPA gives the new owner any sort of a reduction on penalties, isn't the Agency benefiting the prior owner or seller by reducing the amount they will end up paying (when the seller was responsible for the facility when the violations began)?**

    - We do not think so. Indemnification agreements are often complex and subject to interpretation and lengthy litigation. Reimbursement under an indemnification agreement may be a lengthy, labor-intensive and uncertain process. EPA's overarching goal for this Program is to improve public health and environmental protections, and ensure Clean Air Act compliance, and we want to encourage disclosures of violations

which, once corrected, will yield significant pollutant reductions and cleaner air. EPA wants to motivate new owners in the upstream oil and gas exploration and production sector to come forward and secure public health and environmental protections as expeditiously as possible. EPA reserves its rights to pursue sellers where the circumstances and equities warrant.

OIL AND NATURAL GAS EXPLORATION AND PRODUCTION FACILITIES
NEW OWNER AUDIT PROGRAM AGREEMENT

BETWEEN THE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AND

[COMPANY]

I. INTRODUCTION

1. Environmental auditing plays a critical role in protecting human health and the environment by identifying, correcting, and preventing violations of environmental laws and regulations.

2. The oil and natural gas exploration and production sector is a dynamic energy-producing industry where facilities are routinely transferred in asset sales and other business transactions. Auditing newly acquired oil and natural gas exploration and production facilities' compliance with environmental laws and regulations is a key way in which oil and natural gas exploration and production companies can help ensure responsible domestic energy production.

3. In recognition of [COMPANY'S] [DATE OF ACQUISITION] acquisition of oil and natural gas exploration and production facilities from [SELLER] in [DESCRIBE FACILITIES' GEOGRAPHIC LOCATION(S)] (Facilities) and listed in Appendix [X] (Newly Acquired Oil and Natural Gas Exploration and Production Facilities Subject to Agreement), [COMPANY] and the United States Environmental Protection Agency (EPA) hereby agree that [COMPANY] shall conduct a self-audit of its newly acquired Facilities for compliance with the Clean Air Act (Act), its implementing regulations, and federally-approved and -enforceable requirements of applicable State Implementation Plans (SIPs) as set forth below (Audit Program). This New Owner Audit Program Agreement (Agreement) shall govern the Audit Program. [***NOTE: A COMPANY MAY CHOOSE TO ENTER INTO A PARALLEL AUDIT AGREEMENT WITH A STATE THAT HAS A STATE AUDIT POLICY.***]

II. AUDIT PROGRAM ELIGIBILITY

4. [COMPANY] is considered a New Owner under this Agreement and eligible to enter into this Agreement with EPA because:

   A. [COMPANY] was not responsible for environmental compliance at the Facilities prior to [DATE OF ACQUISITION];

   B. Prior to the transaction in which [COMPANY] acquired the Facilities from [SELLER], neither [COMPANY] nor [SELLER] had the largest ownership share of the other entity, and they did not have a common corporate parent; and

C. [COMPANY] has notified EPA within six months of the Date of Acquisition of the Facilities or of the date EPA finalizes the Audit Program, whichever is later, but in no event can the Date of Acquisition of the newly acquired Facilities be earlier than 12 months before the date EPA finalizes the Audit Program. **[*NOTE: EPA'S 2008 NEW OWNER AUDIT POLICY PROVIDES THAT NEW OWNERS MUST DISCLOSE VIOLATIONS OR ENTER INTO AN AUDIT AGREEMENT WITH EPA WITHIN NINE MONTHS OF THE DATE OF ACQUISITION. SEE APPENDIX A FOR THE DEFINITION OF "DATE OF ACQUISITION."*]**

III. AUDIT PROGRAM AGREEMENT TERMS

Audit Program

5. After consultation with EPA, [COMPANY] shall conduct an Audit of its Facilities' compliance with agreed upon provisions of the Clean Air Act, its implementing regulations, and federally-approved and -enforceable requirements of applicable State Implementation Plans (SIPs) (including permit requirements and permits). At a minimum, [COMPANY] shall comply with Appendix B's requirements. The benefits of this Agreement shall only extend to those Facilities listed in Appendix [X] that [COMPANY] audits pursuant to this Agreement.

Covered Facilities

6. The Audit Program shall cover the Facilities listed in Appendix [X]. Should [COMPANY] sell or otherwise Transfer ownership of a Facility or a subset of Facilities listed in Appendix [X] without completing all Audit Program requirements under this Agreement for the Transferred Facility (or Facilities), including the requirements of Section III and Appendix B, [COMPANY] shall notify EPA as set forth in Section VI and Appendix C.

7. Should [COMPANY] acquire additional oil and natural gas exploration and production facilities after the Effective Date that it wishes to include in the Audit Program, it may request so in writing. EPA will use its discretion in deciding whether to grant a request.

Schedule

8. The period for conducting the Audit Program's Audits, and discovering and correcting Violations shall end [SPECIFIED TIME PERIOD] from the Effective Date. **[*NOTE: THE PROPOSED SCHEDULE WILL BE PRIMARILY BASED ON THE NUMBER OF FACILITIES SUBJECT TO THE AGREEMENT AND THE SCOPE OF THE AUDIT.*]**

9. Detailed timeframes for specific Audit Program obligations are contained in Paragraphs 10, 11, 12, 13, and 20, and Appendices B (Vapor Control System Engineering and Design Analysis, Field Survey, and Corrective Action Guidelines) and C (Audit Program Reporting and Recordkeeping Requirements).

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Corrective Actions

10. *Violations Unrelated to Engineering and/or Design Issues*. [COMPANY] shall correct each Violation, and shall take steps necessary to prevent the recurrence of each Violation. [COMPANY] shall correct each Violation within 60 days of discovery. In those instances where [COMPANY] is unable to correct a Violation within this 60-day timeframe, it shall request an extension of time from EPA in writing before the expiration of the initial 60-day correction timeframe and provide a revised correction schedule for that Violation, accompanied by a justification for the revised correction schedule. Any extension of the 60-day correction timeframe shall be subject to EPA's approval, which shall not be unreasonably withheld.

11. *Violations Related to Engineering and/or Design Issues*: [COMPANY] shall complete the requirements of Appendix B and correct each Violation related to engineering and/or design issues identified through Appendix B requirements before the Audit Program ends.

12. *Immediate and Substantial Endangerment to Public Health or Welfare, or the Environment*. If [COMPANY] discovers or otherwise becomes aware of a condition(s) that may present an immediate and substantial endangerment to public health or welfare, or the environment, at a Facility (or Facilities), notwithstanding any other language in the Agreement to the contrary, [COMPANY] agrees to address these conditions at all facilities as expeditiously as possible and promptly take action as may be necessary to protect public health, welfare, and the environment. In addition to [COMPANY'S] existing reporting obligations related to any release of pollutants (*e.g.*, notice to the National Response Center, State Emergency Response Commission(s), and Local Emergency Planning Committee(s)), [COMPANY] shall notify EPA (initial notice may be oral) of the condition(s) within 24 hours of discovery or becoming aware of the condition(s), and shall notify EPA in writing within five business days of discovery of [COMPANY'S] proposed remedial action(s).

Reporting and Recordkeeping Requirements

13. [COMPANY] shall submit required reports and maintain records pursuant to Appendix C.

IV. GENERAL PROVISIONS

14. This Agreement and an appropriate final EPA determination (Final Determination) in this matter – *e.g.*, a Notice of Determination – issued after [COMPANY'S] completion of the Audit Program consistent with this Agreement shall be the complete resolution of all civil claims and causes of action alleged or which could have been alleged under the Clean Air Act (Act), its implementing regulations, and the federally-approved and -enforceable requirements of applicable State Implementation Plans (SIPs) for all of the disclosed and corrected Violations in [COMPANY'S] Final Report provided to EPA. However, compliance with this Agreement and a subsequently issued Final Determination shall not be a defense to any actions that EPA may subsequently commence pursuant to federal law, federal regulation, and federally-approved and -enforceable state requirements with respect to any

violations that are not found and disclosed to EPA, and corrected pursuant to this Agreement. Nothing in this Agreement and the Final Determination is intended, nor shall be construed, to operate in any way to resolve any criminal liability.

15. For purposes of this Agreement and any proceeding, without a trial, administrative hearing, or any adjudication of facts, [COMPANY] admits that EPA has jurisdiction over the subject matter of the terms of this Agreement and any materials submitted to EPA pursuant to this Agreement.

16. [COMPANY] waives its right to request a judicial or administrative hearing under Section 113(d) of the Act, 42 U.S.C. § 7413(d), on any issue of law or fact that has arisen or may arise regarding the application of the Act, its implementing regulations, and federally-approved and -enforceable requirements of applicable SIPs to any Violations which [COMPANY] discloses to EPA, corrects pursuant to this Agreement, and which are covered by a subsequently issued Final Determination in this matter.

17. [COMPANY'S] disclosure and correction of Violations pursuant to this Agreement shall not constitute an admission of any violation of the Clean Air Act, its implementing regulations, and federally-approved and -enforceable requirements of applicable SIPs for purposes of this Agreement, a subsequently issued Final Determination in this matter, or any other civil, criminal, or administrative proceeding. In consideration of the terms of this Agreement and to resolve any disclosed violations of the Clean Air Act, its implementing regulations, and federally-approved and -enforceable requirements of applicable SIPs [COMPANY] reports to EPA in a Final Report pursuant to Appendix C, Paragraph 3, [COMPANY] agrees to conduct the corrective actions in accordance with Section IV and Appendix B.

18. *Authority of Signatories*. The signatories to the Agreement represent that they have the authority to bind the Parties.

19. *Modification*. This Agreement may be modified only by a writing signed by all Parties to the Agreement.

20. *Transferability*. At least 30 days prior to (a) any proposed transfer of ownership or operation of a Facility or (b) any proposed transaction in which [COMPANY] would sell more than 50 percent of the equity interest in a business that owns or operates a Facility, [COMPANY] shall provide EPA with written notice of the prospective Transfer. After the submission to EPA of the foregoing notice, [COMPANY] and its transferee may jointly request in writing that EPA either: (a) transfer this Agreement in whole and without amendment or modification to the transferee and release [COMPANY] from any remaining obligations under this Agreement; or (b) transfer this Agreement in relevant part without amendment or modification to the transferee, and amend Appendix [X] to this Agreement to remove those Facilities that have been included in the transferee's Agreement. EPA's agreement to the joint request shall not be unreasonably withheld or denied.

21. *Costs*. The Parties shall bear their own costs of this Agreement, including attorneys' fees.

V. EFFECT OF AGREEMENT – RESOLUTION OF LIABILITY FOR DISCLOSED AND CORRECTED VIOLATIONS

22. After [COMPANY'S] submission of the Final Report, EPA will determine the specific Violations that occurred and assess which were satisfactorily corrected. Pursuant to this Audit Program and as an exercise of its enforcement discretion, EPA will then resolve [COMPANY'S] civil penalty liability for the disclosed Violations that are satisfactorily corrected consistent with this Agreement's requirements by not imposing a civil penalty for those disclosed and satisfactorily corrected Violations. EPA will memorialize the disclosed and satisfactorily corrected Violations that satisfy the terms of this Agreement in a Final Determination.

23. EPA reserves its right to proceed against [COMPANY] for all violations outside the scope of this Agreement, and all Violations within the scope of this Agreement that are not satisfactorily – which includes timely – corrected consistent with this Agreement's requirements. Should EPA receive information that proves or demonstrates that the facts are other than as certified by [COMPANY] in its Final Report, the portion of this Agreement pertaining to the affected Facilities, including the Final Determination and resolution of [COMPANY'S] civil penalty liability, may be voided, or this entire Agreement may be declared null and void at EPA's election, and EPA may proceed with an enforcement action. In any enforcement action regarding Violations described above in this Paragraph, EPA may enforce applicable provisions of the Clean Air Act, its implementing regulations, federally-approved and -enforceable requirements of applicable SIPs, and any other applicable environmental laws, regulations, and permits for which EPA has authority to enforce.

24. Any violation that [COMPANY] could have identified and disclosed pursuant to this Agreement and did not do so shall not be considered a violation of this Agreement, but will be an actionable violation of the Act, its implementing regulations, and/or the federally-approved and -enforceable requirements of the applicable SIP for which EPA may bring a claim or cause of action in accordance with applicable laws and regulations.

25. *Compliance with Applicable Statutory, Regulatory, and Permitting Requirements*. Neither the existence of nor compliance with this Agreement relieves [COMPANY] of its obligation of continued compliance with the Act, its implementing regulations, the federally-approved and -enforceable requirements of applicable SIPs, and any federal and state permits covered by this Agreement, and all other federal, state, and local laws and regulations.

VI. NOTIFICATIONS

26. Except for required documents and information that are submitted to the appropriate regional EPA office or state environmental agency in connection with corrective actions taken pursuant to the Audit Program, any notice, report, certification, data presentation, or other document submitted by [COMPANY] which discusses, describes, demonstrates, or supports any statement or document submitted by [COMPANY] in connection with any matter under

this Agreement shall be certified by a responsible [COMPANY] corporate official. The responsible corporate official's certification statement shall be in the following form:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The responsible corporate official's statement shall also include the date, and the official's signature and title.

27. Except where otherwise provided in this Agreement, whenever this Agreement requires [COMPANY] to give notice or submit reports, information, certifications, or documents (collectively information), the information shall be submitted to the following:

    Christopher Williams
    Air Enforcement Division
    U.S. Environmental Protection Agency
    William Jefferson Clinton South Building – Room 1142C
    1200 Pennsylvania Avenue, NW (MC 2242A)
    Washington, D.C. 20460

    Email: williams.christopher@epa.gov
    Phone: 202.564.7889

    and

    Timothy Sullivan
    Air Enforcement Division
    U.S. Environmental Protection Agency – Room 2229
    1595 Wynkoop Street
    Denver, Colorado 80202

    Email: sullivan.tim@epa.gov
    Phone: 303.312.6196

28. Unless otherwise provided in this Agreement, whenever this Agreement requires EPA to provide [COMPANY] with information, the information shall be submitted to the following persons and addresses:

    [COMPANY TECHNICAL CONTACT]

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[LEGAL CONTACT]

29. *Notification to State Environmental Agencies*. EPA will notify appropriate state environmental agencies of Violations disclosed and corrected pursuant to this Agreement.

VII. INTEGRATION / HEADINGS

30. This Agreement and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the requirements embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the Agreement other than those expressly contained in this Agreement.

31. Headings to the sections, subsections, paragraphs, and subparagraphs of this Agreement are provided for convenience and do not affect the meaning or interpretation of the Agreement's provisions.

VIII. APPENDICES

32. The following Appendices are attached to, incorporated by reference, and considered part of this Agreement:

    A. Appendix A – Definitions

    B. Appendix B – Vapor Control System Engineering and Design Analysis, Field Survey, and Corrective Action Guidelines

    C. Appendix C – Audit Program Reporting and Recordkeeping Requirements

    D. Appendix D – Audit Program Reporting Template

    E. Appendix E – [Others (?)]

    F. Appendix [X] – [COMPANY] Newly Acquired Oil and Natural Gas Exploration and Production Facilities Subject to Agreement

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WE, THE UNDERSIGNED, HEREBY AGREE TO BE BOUND BY THIS AGREEMENT:

For [COMPANY]:

_____
[Name]
[Title]
[COMPANY]
[Street]
[City, State, Zip]

Date:_____

For the United States Environmental Protection Agency:

_____
[Name]
[Title]
[Division/Office]
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Date:_____

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APPENDIX A

DEFINITIONS

For purposes of this Agreement, every term expressly defined in this Appendix shall have the meaning given that term herein. Every other term used in this Agreement that is also defined in the Clean Air Act (Act), 42 U.S.C. §§ 7401-7671q, the Act's implementing regulations, or in the federally-approved and -enforceable provisions of the applicable SIPs, shall mean in this Agreement what the term means under the Act, the implementing regulations, or the federally-approved and -enforceable provisions of the applicable SIPs. In the case of a conflict between federal and state definitions, federal definitions shall control.

1. *Agreement* means the Oil and Natural Gas Exploration and Production Facilities New Owner Audit Program Agreement between the U.S. Environmental Protection Agency and [COMPANY].

2. *Audit* means a systematic, documented, and objective review by a regulated entity of facility operations and practices related to meeting environmental requirements.

3. *Compromised Equipment* means equipment associated with a Vapor Control System that is beginning to show signs of wear beyond normal wear, and that cannot be addressed by cleaning the equipment. Examples include, but are not limited to, cracks or grooves in gaskets, abnormally or heavily corroded equipment, beveling or other indications of inefficient connection of the thief hatch to the tank.

4. *Date of Acquisition* means [DATE], which is the date on which the transaction closed and [COMPANY] acquired ownership or control of the Facilities from [SELLER].

5. *Effective Date* means the date on which EPA signs this Agreement.

6. *Engineering Design Standard* means engineering design methods, equations, and information used to evaluate the capacity and performance of each vapor control system and control device, consistent with the control device's operational parameters (*e.g.*, manufacturer specifications) and the size and design of the vapor control system, including piping, pressure relief valves, and available tank headspace (*see* Appendix B, Paragraph 1).

7. *Facilities* means the oil and natural gas exploration and production assets or well sites, including Vapor Control Systems and Tank Systems, [COMPANY] acquired from [SELLER] on [DATE OF ACQUISITION] and that are subject to this Agreement.

8. *IR Camera Inspection* means an inspection of a Vapor Control System using an optical gas imaging infrared camera designed for and capable of detecting hydrocarbon and VOC emissions, conducted by trained personnel who maintain proficiency through regular use of the optical gas imaging infrared camera.

9. *Malfunction* means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

10. *Modeling Guideline* means the engineering model used to estimate the minimum and maximum vapor flow rates as specified in Appendix B, Paragraph 1. The guideline should consider pressurized hydrocarbon liquid and natural gas samples, equipment inventories, separation equipment operating conditions, and well production rates to model the process flow rates, while incorporating the volume, frequency, and duration of individual dump events or transfers to the atmospheric storage tanks.

11. *Normal Operations* means all periods of operation, excluding Malfunctions. For storage tanks at well production facilities, normal operations include, but are not limited to, liquid dumps from the Separator.

12. *Parties* means the U.S. Environmental Protection Agency (EPA) and [COMPANY].

13. *Potential Minimum Instantaneous Vapor Flow Rate* means the minimum instantaneous rate of vapors routed to a Vapor Control System during Normal Operations, including flashing, working, and standing losses, as determined using the Modeling Guideline developed pursuant to Appendix B, Paragraph 1.

14. *Potential Peak Instantaneous Vapor Flow Rate* means the maximum instantaneous rate of vapors routed to a Vapor Control System during Normal Operations, including flashing, working, and standing losses, as determined using the Modeling Guideline developed pursuant to Appendix B, Paragraph 1.

15. *Separator* means a pressurized vessel used for separating a well stream into gaseous and liquid components.

16. *Tank System* means one or more atmospheric tanks that store hydrocarbon liquids and any other interconnected tank (*e.g.*, produced water tank), that share a common Vapor Control System.

17. *Transfer (Transferred)* means the assignment of ownership, control, or operational responsibility of a Facility or subset of Facilities from [COMPANY] to an entity that is not a party to this Agreement.

18. *Vapor Control System* means the system used to contain, convey, and control vapors from one or more storage tank(s), including flashing, working, and standing losses, as well as any emissions routed to the tank Vapor Control System. A Vapor Control System includes a Tank System, piping to convey vapors from a Tank System to a combustion device and/or vapor recovery unit, fittings, connectors, liquid knockout vessels, openings on tanks (*e.g.*, pressure relief valves and thief hatches), and emission control devices.

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19. *Violation* means noncompliance with an applicable requirement under the Clean Air Act, its implementing regulations, and federally-approved and -enforceable requirements of applicable State Implementation Plans (SIPs), including federal and state permits and permitting requirements.

20. *Well Production Operations* means surface operations to produce hydrocarbon liquids and/or natural gas from a well, but shall not include well maintenance activities (*e.g.*, swabbing).

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APPENDIX B

VAPOR CONTROL SYSTEM ENGINEERING AND DESIGN ANALYSIS, FIELD SURVEY, AND CORRECTIVE ACTION GUIDELINES

1. *Development of a Modeling Guideline*. [COMPANY] shall develop a written Modeling Guideline. The Modeling Guideline's purpose is to determine the Potential Minimum Instantaneous Vapor Flow Rate and the Potential Peak Instantaneous Vapor Flow Rate for designing and adequately sizing Vapor Control Systems and to provide procedures for achieving this objective. The Modeling Guideline shall address all vapor sources (*e.g.*, atmospheric storage tanks and transfer and loading systems) tied or to be tied into the Vapor Control System.

    A. [COMPANY] shall submit a draft Modeling Guideline to EPA for its review and comment no later than 60 days after the Effective Date. Within 45 days of [COMPANY'S] submission of the draft Modeling Guideline, EPA shall inform [COMPANY] of any questions, concerns, or omissions perceived by EPA, and [COMPANY] shall amend the draft Modeling Guideline as appropriate.

    B. [COMPANY] may periodically update the Modeling Guideline as appropriate. Should the Modeling Guideline be updated, the use of the version current at the time of the Engineering Evaluation is acceptable. Updates to the Modeling Guideline do not in and of themselves require [COMPANY] to redo Engineering Evaluations (*see* Paragraph 4 of this Appendix below).

2. *Engineering Design Standards*. [COMPANY] shall complete one or more Engineering Design Standard(s) to assess whether Vapor Control Systems are adequately sized and properly functioning considering the Potential Minimum Instantaneous Vapor Flow Rate and the Potential Peak Instantaneous Vapor Flow Rate. The Engineering Design Standard(s) may apply to Vapor Control Systems at individual Tank Systems or to groupings of Tank Systems as [COMPANY] may determine appropriate.

3. *Vapor Control System Field Survey Standard Operating Procedure (SOP)*. [COMPANY] shall prepare a written SOP establishing how it will conduct its Vapor Control System Field Surveys under this Agreement. The SOP must be submitted to EPA for review and comment 60 days after the Effective Date and shall include:

    A. Procedures for verifying the equipment associated with the Vapor Control System (Associated Equipment) installed and that the Associated Equipment is properly operating.

    B. Procedures for conducting an IR Camera Inspection of the Vapor Control System during Normal Operations, including while and immediately after hydrocarbon liquids are being sent to the Tank System from all associated Well Production Operations.

C. Procedures for evaluating all Vapor Control System components, including all pressure relief valves, thief hatches, mountings, and gaskets at each tank in the Tank System, and the possibility of upgrading this equipment to reduce the likelihood of VOC emissions.

Within 45 days of [COMPANY'S] submission of the SOP, EPA shall inform [COMPANY] of any questions, concerns, or omissions perceived by EPA, and [COMPANY] shall amend the SOP as appropriate.

4. *Vapor Control System Field Survey and Engineering Evaluation*. For each Vapor Control System, [COMPANY] shall conduct a Field Survey and an Engineering Evaluation to ensure that each Vapor Control System at each Tank System is:

   A. Adequately designed and sized to handle the Potential Minimum Instantaneous Flow Rate and the Potential Peak Instantaneous Vapor Flow Rate that were calculated through the application of the Modeling Guideline (*see* Paragraph 1 of this Appendix above); and

   B. Is not emitting VOCs detected with an IR Camera while and immediately after hydrocarbon liquids are being sent to the Tank System from all associated Well Production Operations.

5. *Vapor Control System Modifications and Verification*.

   A. *Vapor Control System Modifications*. For those Vapor Control Systems that are not adequately designed and sized based on the Engineering Evaluation (*see* Paragraph 4 of this Appendix above) and/or emitting VOCs detected with an IR Camera while and immediately after hydrocarbon liquids are being sent to the Tank System from all associated Well Production Operations, [COMPANY] shall:

      i. Make all necessary modifications to reduce the Potential Peak Instantaneous Vapor Flow Rate (as recalculated using the Modeling Guideline) and/or increase the capacity of the Vapor Control System in accordance with the applicable Engineering Design Standard;

      ii. Make all necessary modifications to ensure that the control device(s) operates within manufacturer specifications for the device's size and design, considering the Potential Minimum Instantaneous Vapor Flow Rate and the Potential Peak Instantaneous Vapor Flow Rate (as recalculated using the Modeling Guideline); and/or

      iii. Fix and/or replace Compromised Equipment associated with the Vapor Control System that may be causing VOC emissions.

   B. *Verification*. [COMPANY] shall verify and ensure that each Vapor Control System that has been modified pursuant to Paragraph 5.A. of this Appendix is adequately

designed and sized to handle the Potential Minimum Instantaneous Vapor Flow Rate and the Potential Peak Instantaneous Vapor Flow Rate, as determined through application of an Engineering Design Standard (*see* Paragraph 2 of this Appendix above), and that equipment associated with the Vapor Control System is not causing VOC emissions. [COMPANY] shall conduct a verifying IR Camera Inspection – consistent with the specifications for the initial IR Camera Inspection detailed above in Subparagraph 3.B of this Appendix – demonstrating that after completion of the modifications pursuant to Paragraph 5.A. of this Appendix, the Vapor Control System is adequately designed and that equipment associated with the Vapor Control System is not causing VOC emissions detected with an IR Camera while and immediately after hydrocarbon liquids are being sent to the Tank System from all associated Well Production Operations.

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APPENDIX C

AUDIT PROGRAM REPORTING AND RECORDKEEPING REQUIREMENTS

Reporting Requirements

1. *Audit Instruments*. Within 60 days of the Effective Date, [COMPANY] shall submit to EPA the [COMPANY]-tailored Audit protocols and Audit checklists (Audit Instruments) for the Audits. Within 45 days of [COMPANY'S] submission of the Audit Instruments, EPA shall inform [COMPANY] of any questions, concerns, or omissions perceived by EPA, and [COMPANY] shall amend the Audit Instruments or otherwise reach agreement with EPA on the Audit Instruments which EPA and [COMPANY] will deem to satisfy the scope of the Audits as set forth in Section IV.

2. *Semi-Annual Reports*. [COMPANY] shall disclose all Violations discovered during the Audits in written disclosure reports to be submitted to EPA on a semi-annual basis. Each Semi-Annual Report shall be submitted on the 15th day of the month (or the first business day thereafter) after the conclusion of each six-month period following the Effective Date, and shall contain the following information:

    A. A list of the Facilities audited during the previous six-month period;

    B. A summary of the Violations discovered;

    C. A summary of actions taken to correct the discovered Violations (corrective actions); and

    D. A list of any changes to the list of Facilities covered under this Agreement.

3. *Final Report*. The Final Report shall be submitted no later than 60 days following the completion of the Audit Program and all corrective actions. The Final Report shall provide, in a cumulative fashion, the following summary information regarding the disclosed and corrected Violations in tabular form[1]:

    A. *Facility Compliance*: Provide the following information for each disclosed Violation, if applicable, so that EPA has complete information on the violations that may have occurred and on each facility's compliance record:

        i. Facility Name;

        ii. Facility address (street, city, state, and zip code (if appropriate);

        iii. Facility GPS coordinates;

        iv. Facility API well number;

[1] *See* Attachment D (Audit Program Reporting Template).

v. Facility permitting status and applicable permit number(s);

vi. Violation;

vii. Statutory citation;

viii. Federal regulatory citation;

ix. State statutory and regulatory citations (if applicable);

x. Date noncompliance began (if known);

xi. Date of return to compliance;

xii. All corrective actions taken to return the Facility to compliance; and

xiii. Indicate whether any corrective actions taken to return the Facility to compliance resulted from the requirements of Appendix B, Paragraph 5.A.

B. *Summary Compliance Information*. Provide the following information in summary form for the disclosed Violations:

i. Explain all measures taken – and that will be taken in the future – to ensure the disclosed Violations will not be repeated; and

ii. Cost of returning to compliance (*e.g.*, internal staff or outside consultants' time to become familiar with the regulations, preparing forms and/or permits, submitting forms and/or forms to appropriate agencies, fees collected by the state or other regulatory agencies, and start-up costs for plan implementation or tank monitoring); and

iii. [COMPANY]-estimated amount of pollutants reduced by all corrective actions (specified by pollutant).

Recordkeeping Requirements

4. Until at least two years after resolution of this Agreement with a Final Determination, [COMPANY] shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) (hereinafter referred to as "Records") in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that directly relate to [COMPANY'S] performance of its obligations under this Agreement. This information-retention requirement applies regardless of any contrary [COMPANY] policies or procedures. At any time during this information-

retention period, upon request by EPA, [COMPANY] shall provide copies of any Records required to be maintained under this Agreement.

5. *Privileged and Business Confidential Documents*. [COMPANY] may assert a business confidentiality claim covering part or all of the Records required to be provided under this Appendix to the extent permitted by and in accordance with 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of business confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified [COMPANY] that the Records are not confidential under 40 C.F.R. Part 2, Subpart B, the public may be given access to the Records without further notice to [COMPANY]. Note: "Emissions Data," as defined at 40 C.F.R. § 2.301(a)(2), is not entitled to treatment as Confidential Business Information.

6. This Agreement in no way limits or affects any right of entry and inspection, or any right to obtain information, held by EPA or the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of [COMPANY] to maintain documents, records, or other information imposed by applicable federal, state, and local laws, regulations, or permits.

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APPENDIX D

AUDIT PROGRAM REPORTING TEMPLATE

[Statement]

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APPENDIX [X]

[COMPANY] NEWLY ACQUIRED OIL AND NATURAL GAS EXPLORATION AND PRODUCTION FACILITIES SUBJECT TO AGREEMENT

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New Owner Clean Air Act Audit Program for Oil and Natural Gas Exploration and Production Facilities – Summary of Stakeholder Comments Received

Comments about the Oil and Gas New Owner Audit Program and Draft Standard Agreement Template

Programmatic Considerations

- Multiple commenters suggested that the Oil and Gas New Owner Audit Program (Program) should require an independent auditor instead of a self-audit.
- If the EPA denies a company's request to include additional purchases after the Program is complete, the EPA should allow the company to begin a new audit.
- The Draft Agreement (or Agreement) saddles new owners with entirely new and onerous requirements in order to use the Audit Policy.
- Multiple commenters suggested that the scope of the audit should be determined by the regulated entity. A policy dictating the scope of the audit serves as a disincentive given the voluntary nature of the self-audits.
- Flexibility in performing additional audits and incorporating additional facilities into the audit is needed: operators should be able to choose to enter into a new audit Agreement for newly acquired facilities; and, if there are a small number of facilities acquired after entering into the Agreement, the operator should be allowed to include those into the existing Agreement.
- A participating operator should be able to terminate an audit whenever it wants.
- The "date of acquisition" part is unnecessary if the EPA does not limit the Agreement to new owners only.
- Use of "immediate and substantial endangerment to public health or welfare of the environment" is not appropriate in a voluntary self-audit because it comes from consent decrees.
- The EPA should consider expanding the Program beyond new acquisitions to routine audits. Expanding the Program beyond new acquisitions would have a larger impact as new owner disclosures represent a much smaller subset of voluntary disclosures.
- Multiple commenters appreciated the added clarity to the Draft Agreement Template as opposed to the 2008 New Owner Audit Policy.
- Multiple commenters stated that the Agreement should specifically state to what extent the Audit Policy of 2000 or the New Owner Policy of 2008 can be used to provide context and meaning of the Draft Agreement.

Clarifications Sought

- Multiple commenters noted that Paragraph 5 of the Agreement states that Facilities must follow the agreed upon provisions of the Clean Air Act. However, there is no indication which provisions of the Act are referenced and clarification is needed. The Draft Agreement should include the process by which the new owner is supposed to obtain approval from the EPA of the specific statutory, regulatory and permit provisions.
- Clarify the definition of "eligible facilities."

- Elaborate on the types of violations that can be resolved under the Program and a flexible schedule for compliance.
- Clarify that a source without an API Well ID can still be included in the program – GPS coordinates for each site are enough if there is no API Well ID.
- Multiple commenters sought clarification on whether the protections from penalties will continue for the new owner if the stake in the facility is sold.
- Multiple commenters stated that the Draft Agreement should define what "discovery" of violations constitutes. For single facilities, the EPA should clarify that "discovery" of a violation takes place no earlier than when the new owner has knowledge of a violation. For multiple facilities, the EPA should provide that "discovery" occurs when the new owner completes its audit of the facilities and submits a report to the EPA summarizing the company's findings for given regulatory programs.
- Multiple commenters sought clarification as to what constitutes "corrective actions" in the context of permitting obligations. These commenters believe it should mean that a timely submitted permit application suffices as corrective actions for a facility. They also believe that companies should be able to take into consideration emissions controls that they will install in the future when submitting permits rather than submitting a permit modification once the controls are installed. These commenters would also like to know if the Agency will coordinate with state permitting authorities in evaluating whether a corrective action is acceptable.
- Multiple commenters suggested that the EPA should clarify whether penalty forgiveness is complete. The Agreement should include a statement that companies will not be responsible for economic benefit post-acquisition if the companies identify violations within the timeframes and complete corrective actions.
- Multiple commenters suggested that the Draft Agreement clarify that new owners do not have to discover violations through a periodic review of their facilities.
- Multiple commenters stated that the EPA should clarify that new owners make applicability determinations based on post-acquisition data they gather. The Agency should also provide companies with sufficient time in which to make such determinations.
- Multiple commenters stated that the EPA needs to clarify whether its audit obligations should include monitoring and reporting obligations that would exist independent of any audit agreement. The EPA also needs to clarify whether violations discovered based on other Clean Air Act monitoring and reporting programs should qualify for Audit Policy protection or whether these violations cannot be considered voluntarily discovered.
- Multiple commenters want new owners to be able to provide basic facility information up front, rather than resubmitting all the information every time a new violation is discovered. They would like clarity regarding the requirement to include in the final reports a discussion of the corrective actions related to Appendix B(5)(A): are those corrective actions are subject to the negotiated timeline for engineering and design issues?
- Clarify the interplay between federal and state audit program participation.

- Multiple commenters sought clarification about the reference in Appendix C to "audit instruments" and how it related to audit protocols and audit checklists, and details should be provided on what an audit checklist is.

Compliance Considerations

- This is an overly stringent compliance paradigm – e.g., requiring facilities to determine and design for potential peak and minimum instantaneous vapor flow rate. This will cause properly operating systems to become ineffective during standard operations.
- Infrared (IR) camera inspections with no emissions should suffice in place of engineering and design evaluations.
- Appendix B is similar to 2015 and 2016 settlements that have never been subject to public comment, scrutiny, or scientific peer review.
- Engineering design standards are too uniform and prescriptive, not based on science, and unreasonably burdensome.
- Appendix B presupposes that any violations will be with the vapor control system and requires compliance, regardless of the type of violation. Compliance terms should be negotiated.
- Participating companies seeking penalty mitigation may be required to conduct analyses and corrective actions that do not appear to be based on any federal statutory or regulatory requirements, and may be more stringent than is required under federal statutes or regulations.
- Why did the EPA decide against basing the model audit elements on existing federal regulatory requirements?
- Why does the EPA believe that the analyses and corrective actions outlined in Appendix B should be required to demonstrate compliance and receive penalty mitigation?
- With what regulation or requirement is the EPA attempting to measure compliance?
- Is Appendix B intended to help protect companies from future enforcement under the General Duty Clause?
- The Draft Agreement creates an entirely new standard of compliance unconnected to any federal statutory or regulatory requirement applicable to oil and gas.
- Some participants will be unable to negotiate away default EPA requirements.
- Do not finalize Appendix B. If the EPA wants to finalize Appendix B, it should be based exclusively on federal Clean Air Act regulations promulgated for those sources – refer to the EPA's proposed amendments to the Federal Implementation Plan for Indian Country.
- The Draft Agreement seems to mirror the Colorado Air Pollution Control Division's Storage Tank and Vapor Control System Guidelines, which are voluntary, but would be mandatory in the Draft Agreement.
- The Program is too prescriptive and starts from a punitive point – this will discourage companies from using it. The Program will increase enforcement uncertainty. Companies should have greater leeway to set what they audit and disclose.
- Both a facility control design analysis and optical gas imagining camera verification are required in both the New Source Performance Standards (NSPS) and the Program. How

will these requirements impact an operator who joins the Program; would completion of one under the NSPS suffice for the Program?

- Any item requiring EPA approval should be considered approved after providing the EPA with the required timeframe to review the provided information if the EPA has not given any further comments.
- The EPA should be cautious using an agreement that draws requirements from recent consent decrees (essentially the Colorado consent decrees). The Draft Agreement will discourage operators from using the Program.
- Appendix B transforms the Program into a process to create "new regulation," and it includes so many requirements it will take at least two years to complete.
- Broad discretion to assess sufficiency of the audit conducted discourages use of the Program.
- Multiple commenters stated that making compliance with Appendix B mandatory creates a disincentive for use of the Program. Appendix B requirements are not an express requirement in many gas and oil jurisdictions and are extracted from Colorado settlement agreements.
- New methodologies for assessing vapor control systems will not be available for facilities under the Program and Agreement.
- In most jurisdictions there is no federal or state regulatory requirement that could be cited for the requirement to provide a specific citation that supports a potential engineering and design violation.
- All references to a discrete methodology should be removed.
- Field survey and IR camera verification requirements to confirm engineering and design analysis should be removed: field survey is extraneous; certification that VCS is adequately sized and functioning is sufficient to show corrective action was completed.
- Multiple commenters suggested that the Vapor Control System Verification requirement in Appendix B, Paragraph 5 is unnecessary.
- Multiple commenters suggested that the Program should only be used to correct violations – the failure to conduct engineering and design analysis when required.
- Multiple commenters suggested that the requirement to replace compromised equipment is beyond the scope of an audit.
- Multiple commenters suggested including language prohibiting the EPA from using audit results to pursue enforcement actions against the prior owner and operator.
- The Draft Agreement should not specify the methodology used to correct the violation.
- The vapor control system Field Survey standard operating procedure is unnecessary and extraneous.
- Use of word "conditions" in Paragraph 12 is too broad.
- Appendix B's structure will result in limited interest and undermine compliance efforts. Appendix B seems to combine elements of state regulations and EPA consent decrees. Both exceed the requirements of current federal regulation requirements.
- Multiple commenters suggested that where a significant number of facilities are involved and numerous violations are likely, parties should be able to propose a schedule for addressing certain types of corrective action before each violation is

discovered. The NSPS at 40 C.F.R. Part 60, Subparts OOOO and OOOOa requires actual and potential-to-emit data shortly after a unit commences operation. The EPA should allow sources to determine the throughput and/or potential-to-emit during the post-acquisition Audit Program. This would allow for more reliable data than the data they received from the seller.

- The program should cover issues discovered during the pre-acquisition due diligence period.

General Comments

- Several commenters expressed general support for the Program.

Recordkeeping and Reporting

- The facility should provide all paperwork to the state, including semi-annual reports and the final report when the Program is complete.
- Participating new owners should provide the EPA with the cost of returning to compliance.
- Participating new owners' obligation under Appendix C recordkeeping requirements should be met after showing that it had informed contractors and agents of obligations to maintain documents/records.
- Notice of transfer of a facility should not be required to be sent prior to the transfer of ownership/operation. The EPA does not have authority to prevent the transfer.
- For providing notice of a transfer of more than 50% equity interest in a facility included in the Agreement: the EPA only needs to know if a particular facility is no longer included in the Audit Agreement.
- Recordkeeping requirements in Appendix C are too prescriptive and extensive: they will create a disincentive to participate because it is so burdensome.
- Proposed certification requirements in Paragraph 26 will have a chilling effect on use of the Program – it is too burdensome and complex.
- Multiple commenters suggested that the EPA should not need to approve transferring the Draft Agreement to a new owner – notification is enough.
- Entering into the Draft Agreement and complying with reporting requirements should not waive the attorney-client privilege.
- Paragraph 26 certification requirement is too broad.
- Multiple commenters suggested that the Appendix C requirement to track the costs incurred of returning to compliance is unnecessary. If the EPA continues to require this information, then the EPA should only ask for an estimate and the costs should not be broken down into categories.

Suggested Changes

- "Tank System" should be redefined in the appendix to include tanks that do not have a vapor control system.
- Multiple commenters suggested that all definitions associated with Appendix B and engineering and design issues should be eliminated.

- Multiple commenters suggested the following regarding Appendix C: eliminate Paragraph 1, the requirements are unnecessary; revise Paragraph 3 to clarify that an operator does not need to submit semi-annual reports after the final report has been submitted; identifying costs of returning to compliance is unnecessary; and identifying pollutant reductions is not relevant or necessary, and it will have a chilling effect.
- Multiple commenters suggested that Paragraph 14 be changed to indicate that the submission of the Final Report required by Appendix C will constitute the completion of the Audit Program. These commenters would also like the EPA to issue its Final Determination within a fixed period of approving the new owner's Final Report. They also believe that the provisions of Paragraph 14 would better placed in Section 5 and merged into Paragraph 22.
- Appendix B, Paragraph 4.A., "Potential Minimum Instantaneous Flow Rate," is a typo and should be, "Potential Minimum Instantaneous Vapor Flow Rate."
- The Audit Instruments requirement by Appendix C, No. 1 is similar to the Field Survey SOP required by Appendix B, No. 3. References should be inserted in each of these sections so that companies aren't developing multiple documents.
- One commenter developed an alternative set of guidelines that would incentivize new operator compliance with the Clean Air Act that is more flexible and common sense.
- Multiple commenters suggested that the EPA remove Appendix B.
- Multiple commenters suggested eliminating the prohibition on the appeals process found in Section IV, Number 16.
- Include a venue provision regarding jurisdiction.
- The Appendix A definitions should include technological advancements.
- The EPA should work with stakeholders to develop a clear, but sufficiently flexible, definition of "engineering and/or design issues."
- Add a provision to allow adding facilities into the audit program if they are discovered during the audit process – it is not uncommon to discover additional assets during the audit that were previously believed to be abandoned or not in use.
- Amend Paragraph 12 to show that operators can still receive Draft Agreement benefits for disclosed violations that present an immediate and substantial endangerment.
- State in Paragraph 22 that the Draft Agreement terminates upon operator's receipt of the EPA's Notice of Determination.
- Multiple commenters suggested that the EPA should not require companies to use the Audit Agreement Template, and, instead, allow companies to develop a custom audit agreement to provide additional flexibility.
- The requirement of parties to address conditions "*that may present"* an imminent and substantial endangerment to the public is overly broad. This paragraph should mimic the Clean Air Act which only requires sources to address imminent and substantial endangerments *that are present.*
- In Paragraph 17, the correct citation in the last sentence should read, "in accordance with Section 3 and Appendix B," rather than "in accordance with Section 4 Appendix B."
- Paragraph 22 is confusing because it purports to resolve a company's civil penalty liability by not imposing a civil penalty. The commenter suggests revising the sentence

to read, “Pursuant to this Audit Program and as an exercise of enforcement discretion, EPA will then resolve [COMPANY’S] civil penalty liability for the disclosed Violations that are satisfactorily corrected consistent with this Agreement’s requirements.”

Timeframes

- The amount of time to correct engineering design issues in Paragraph 11 is too long and should be specified as an exact number of days.
- Multiple commenters suggested that the six-month period should be extended to nine months when referencing Section II, Number 4.
- Establish a finalization date for the Program.
- Multiple commenters suggested that the EPA extend the corrective action period beyond 60 days. Sixty days for completing all corrective actions is not enough.
- Additional time flexibility should be built into the schedule to complete the audit due factors such as location, season and accessibility.
- New owners need certainty that they can negotiate workable deadlines with the EPA. Establish minimum default deadlines for new owners.
- Give new owners time to assess the site after acquisition to determine an appropriate period to evaluate compliance status.
- Timeframe for audit completion should not be dictated.
- Eliminate the 60-day corrective action deadline for violations unrelated to engineering or design issues: just agree from the beginning on a number of days.
- The EPA should have a discrete time to issue the Notice of Determination.
- The EPA should provide an extension for corrective actions involving engineering/design issues. Paragraph 10 for non-engineering/design issues under the Corrective Actions section of the policy allows an extension to be submitted, however Paragraph 11 for engineering/design issues does not.
- The EPA should add an Agency response timeline to extension requests. In instances where a company submits an extension request, a requirement for the EPA to respond in a timely manner should be added because this would provide certainty for the company requesting the extension – the timeframe should be 10-Agency-working-days.
- Multiple commenters suggested that the Draft Agreements requires companies to notify EPA within six months of acquisition, however the notice requirement is not clear. Clarification on what the notice should provide is needed, as well as whether the notice requirement would be triggered upon determination that a violation may have occurred. Additional clarification is needed as to what occurs after notice is provided.
- Multiple commenters suggested that that even though the Draft Agreement allows for extensions of the 60-day deadline for corrective action, it should also allow for extensions in other deadlines in the Agreement.
- Multiple commenters suggested that Facilities should have nine months to enter into an Audit Agreement rather than six months.

Comments about Delegated Authority and State Authority Considerations

- The Draft Agreement should include a disclaimer that the EPA will not second guess state audit policy procedure/outcomes and will not impose penalties different from those agreed to by the state.
- One commenter supported this voluntary Program incentivizing Clean Air Act compliance, but opposed it as an EPA-led effort. It should be left to the states. Texas has a model self-disclosure program: the Environmental, Health and Safety Audit Privilege Act.
- One commenter sought to ensure the EPA is not waiving states' authority or rights to citizens suits by resolving all claims or causes of actions that can be brought under Clean Air Act.
- The EPA should inform the state when the facility enters into and complies with this Program.
- The EPA's proposal states that "a company may choose to enter into a parallel audit agreement with a state that has a state audit policy." The commenter stated that while this statement seemingly reflects the EPA's commitment to cooperative federalism, we are concerned that it may not sufficiently avoid the imposition of a duplicative federal program in states with their own audit programs.
- Why is the EPA proposing to prescribe any model requirements in a state with delegated Clean Air Act authority and an audit program? Could this aspect of the EPA's proposal be simplified and made more consistent with the Agency's approach to cooperative federalism by simply deferring to state audit programs?
- Multiple commenters were concerned that the EPA is imposing its own Audit Policy on top of state audit programs. The Draft Agreement should include express language saying that if the company is proceeding under a state audit program, the EPA will not require the company to do the EPA's program.
- The Draft Agreement will unnecessarily intrude into state regulatory programs and state audit programs.
- Multiple commenters suggested that the EPA should view compliance with state audit programs as compliance with EPA audit requirements. The EPA should decline to impose penalties and offer the same assurance against future enforcement as it would under its own program.
- The EPA should defer to state audit programs. Texas audit program is an example of a good program; this Program follows the punitive Colorado model.
- Consider the EPA Region 8 Regional Administrator's state immunity and privilege efforts.
- If a state already has its own self-audit program then the oil and natural gas producer should only have to work with the state. If the producer develops an audit-based compliance agreement, that agreement should protect it from EPA enforcement actions if the producer complies with the commitments. The EPA should only monitor a self-audit program if the state does not have a self-audit program.
- Multiple commenters stated that the EPA should clarify whether and to what extent a company has to enter into audit agreements with both federal and state regulators, and the extent to which one agency would recognize an agreement with the other.

- The EPA should delegate the audit policy program to state agencies for day-to-day compliance monitoring otherwise there will duplication between the EPA and state regulators.
- Appendix B is an amalgamation of varying elements of regulation form different states and EPA's consent decree relating to Subpart OOOOa. Custom and individualized regulations from state to state are needed.
- The EPA should consider small and medium sized companies because these companies have small staffs and a convoluted or labor-intensive process does not meet the goal of usefulness to operators.
- The EPA should look to the Texas self-audit program as a model.

Comments about Policy Considerations

- This Program contradicts Executive Order 13783 and could impose severe unintended consequences and burdens on participants and non-participants.
- Withdraw the Program in current form.
- The EPA should produce a guidance document or a policy memorandum regarding the Program.
- The EPA should implement a broader program that would require periodic environmental audits by operators as opposed to just when the property is newly purchased.
- Multiple commenters suggested that the EPA expand the Program to cover other industry segments, specifically midstream and transmission segments of the oil and natural gas industry, and other environmental media.
- The Audit Policy is an important tool in furtherance of environmental compliance and the commenter appreciates the EPA's interest in adopting a more flexible approach to eligibility and administration.
- The Clean Air Act has an inherently complex multijurisdictional approach to regulation and adopting the most aggressive requirements is not an appropriate way to mitigate this complexity.
- The EPA should not limit the audit to the Clean Air Act only: allow for application to the Safe Drinking Water Act, the Clean Water Act, etc.
- One commenter supported EPA efforts to streamline the audit program.
- This Program is an important tool in furtherance of environmental compliance.
- A voluntary program is not a substitute for mandatory compliance and it is not a mechanism for enforcement. The EPA cannot meet its objectives by shifting away from holding polluters accountable.
- Auditors should look for all emissions, not just volatile organic compounds (VOCs) including methane, other hydrocarbons from open hatches, leaking seals, careless operation, poor maintenance, start up and shut down operations, and during Normal Operations. Because methane and other hydrocarbons are not being monitored, it may difficult for auditors to distinguish between VOCs and methane.

Comments about Changes to the Comment Period

- The comment period should be extended to July 5th.
- The comment period extended past July 2nd.