

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

## IMPLEMENTATION CONSIDERATIONS

### General Information

#### *What has the EPA announced and why is the EPA doing this?*

The EPA has finalized its [Oil and Natural Gas Exploration and Production Facilities New Owner Audit Program](#) (Oil and Gas New Owner Audit Program or Program) tailored for new owners of upstream oil and natural gas exploration and production facilities. This Program will ensure environmental protection, while providing certainty at upstream oil and natural gas exploration and production facilities based on the EPA's analysis of these facilities' unique operations. This is an opportunity to achieve timely and cost-effective public health and environmental protections and Clean Air Act compliance.

This 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) (New Owners) incentives specifically tailored to encourage them to make clean starts at recently-acquired facilities by finding, correcting, and disclosing Clean Air Act violations. This Program provides additional flexibilities and is designed to encourage self-disclosures of violations that will, once corrected, yield significant pollutant reductions and public health and environmental protections. New Owners satisfying the Program's conditions will receive penalty reductions beyond those provided in the EPA's [Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19,618 \(Apr. 11, 2000\) \(Audit Policy\)](#) and [Interim Approach to Applying the Audit Policy to New Owners, 73 Fed. Reg. 44,991 \(Aug. 1, 2008\) \(New Owner Audit Policy\)](#).

The EPA is initially offering this Program to New Owners because the EPA and states have seen significant excess emissions and Clean Air Act noncompliance from vapor control systems at these facilities. Offering additional flexibilities under this Program encourages New Owners with vapor control systems at these facilities to identify, correct, and self-disclose Clean Air Act violations, thereby providing additional public health and environmental protections.

#### *What incentives is the EPA offering to New Owners under this Program?*

This Program offers New Owners certainty with respect to their investments and operations through clearly defined civil penalty mitigation beyond what is offered by the EPA's [Audit Policy](#) and [New Owner Audit Policy](#). This [Program](#) will be implemented through the Final Agreement Template, which will reduce transaction costs and improve efficiencies for the EPA and New Owners. The EPA identified the need for these efficiencies through its past experiences working with new owners of upstream oil and natural gas exploration and production facilities. These past experiences led the EPA to conclude that developing this [Program](#) in a way that streamlines the process for reaching agreement on the audit terms and that sets clearer expectations up front for corrective actions and penalty mitigation would lead to efficiencies that result in enhanced compliance and environmental benefits sooner than might otherwise occur.

This Program is a *voluntary* program available to New Owners who have newly-acquired exploration and production facilities—i.e., well sites and associated tank systems and vapor control systems. This Program has been tailored to address concerns regarding excess emissions from tanks and vapor control

systems related to operation, maintenance, and/or design issues at newly-acquired oil and natural gas exploration and production facilities. The EPA will not impose civil penalties for violations that are discovered, corrected, and disclosed to the EPA by New Owners that enter into, and fulfill all obligations under, an Oil and Natural Gas Exploration and Production Facilities New Owner Audit Program Agreement (Agreement).

***Why does this Program focus on New Owners and why would New Owners want to participate in this Program?***

New Owners have a unique opportunity to focus on and invest in making a clean start at newly-acquired facilities by addressing Clean Air Act compliance issues. Under this Program, the EPA will be able to secure 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 the EPA and states have observed at vapor control systems at upstream oil and natural gas facilities may not always be identified during these assessment processes when there are transactional time constraints and a significant number of newly-acquired assets. This Program provides flexibilities and certainties that incentivize comprehensive Clean Air Act compliance assessments and corrective actions so that noncompliant facilities return to compliance and achieve public health and environmental protections sooner than might otherwise occur.

Based on the EPA's experience developing and implementing the 2008 New Owner Audit Policy, New Owners of these facilities 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. 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. In addition, New Owners may already be assessing newly-acquired facilities to manage risk and may have funding available to fix problems or have budget commitments that are still relatively flexible.

***The Oil and Gas New Owner Audit Program and its Relation to the EPA's Audit Policy and New Owner Audit Policy***

This Program is separate from, and does not change, the EPA's [Audit Policy](#) or [New Owner Audit Policy](#).

Furthermore, a New Owner may choose to enter into an agreement with the EPA under the Audit Policy or New Owner Audit Policy if the New Owner can satisfy the respective terms of those policies and believes one of those policies is better suited to the operational considerations of its newly-acquired facilities. However, a New Owner that enters into an agreement with the EPA under the Audit Policy or New Owner Audit Policy will be bound by those policies' respective guidelines for resolving any corrected and disclosed violations, including guidelines related to the collection of civil penalties.

For additional information on the Audit Policy, click [here](#).

For additional information on the New Owner Audit Policy, click [here](#).

## **Logistical Considerations**

### ***Timeframe to Complete the Audit and Audit Scope***

The schedule for completing the audits and corrective actions under the Program will be based primarily on the number of facilities subject to the Agreement and the scope of the audit. With respect to the audit's scope, the EPA strongly encourages New Owners of these facilities to conduct a comprehensive Clean Air Act audit of all applicable statutory and regulatory requirements, including permitting requirements. While the EPA is willing to entertain proposals for more targeted Clean Air Act compliance audits, the EPA reserves its right not to enter into an Agreement under this Program if the proposed audit appears insufficient to address the engineering and design, and operation and maintenance, issues related to storage tanks at upstream oil and natural gas exploration and production facilities that this Program seeks to address. We would expect the following process to be followed:

- Notify EPA within nine months following the date of acquisition regarding interest in participating in the Program.
- Consult with EPA to determine the scope of the audit and the number of facilities covered by the audit.
- Fulfill all obligations, including conducting the self-audit, violation disclosure, and performance of the corrective actions and reporting requirements pursuant to the Agreement.

### ***Existing Noncompliance at Newly-Acquired Facilities***

The EPA reserves the right not to enter into an Agreement under this Program if the EPA or a state has already discovered Clean Air Act noncompliance at newly-acquired facilities that a New Owner has proposed to audit under this Program (e.g., a notice of violation has been issued or there is an ongoing enforcement action for violations at the newly-acquired facilities).

### ***State Audit Programs***

A New Owner participating in this Program may choose to enter into a parallel audit agreement with a state that has an audit policy or equivalent self-disclosure program. However, a parallel agreement with a state (or states) with an equivalent audit policy or self-disclosure program is not required for participation in this Program. Further, a New Owner may choose to enter into an audit agreement with a state that has an audit policy or equivalent self-disclosure program in lieu of an agreement with the EPA, though the EPA may take enforcement action with respect to violations that were not disclosed or disclosed but not corrected.

## **Stakeholder Feedback and Changes to the Final Agreement Template**

Following stakeholder feedback, the EPA made several changes when finalizing the Final Agreement Template. Notable changes are highlighted below.

- The EPA is providing New Owners with nine months following the date of acquisition to contact the EPA about participating in this Program. The Draft Agreement Template initially required New Owners to contact the EPA about participating in this Program within six months following the date of acquisition. Please consult the Final Agreement Template for all details regarding the timeframes for eligibility as a New Owner and contacting the EPA to express interest in participating in this Program.

- The EPA revised the process by which a New Owner could include additional newly-acquired facilities in an existing audit that the New Owner is conducting under this Program.
- The new Paragraph 10 addresses violations discovered by completing Appendix B's requirements and provides a 180-day timeframe for a New Owner to correct a violation discovered through the Appendix B requirements. This paragraph also includes new details on how to request an extension of the 180-day timeframe to correct a violation discovered through Appendix B.
- The new Paragraph 11 provides New Owners with 60 days to correct violations that are discovered outside of the Appendix B requirements. This paragraph also includes new details on how to request an extension of the 60-day timeframe to correct violations discovered outside of the Appendix B requirements.
- The EPA has limited the certification statement requirements to the semi-annual and final reports submitted to the EPA pursuant to Appendix C.
- The EPA has added the following definitions to Appendix A: *Closed Loop Control System* and *Leak Point*.
- The EPA has added language specifying that a New Owner could choose to modify a vapor control system by installing a closed loop control system as means to control vapor control system pressures so that those pressures do not cause emissions that would constitute a violation.
- The EPA has clarified that the semi-annual report requirement terminates when the New Owner submits its final report to the EPA.

### **Why is the EPA Requiring Participating New Owners to Complete Appendix B?**

The EPA is requiring participating New Owners to complete Appendix B because its engineering and design considerations, and field evaluations, are designed to help participating New Owners ensure that their newly-acquired vapor control systems are:

1. designed to handle maximum and minimum system pressures based on production; and
2. operated and maintained in a manner that prevents excess emissions that could violate applicable air pollution control requirements, including permitting requirements.

In 2015, the EPA issued a [Compliance Alert](#) about excess emissions from controlled storage tanks due to engineering and design, and operation and maintenance, issues. Following the Compliance Alert and federal and state enforcement actions involving violations of the Clean Air Act and/or state air pollution control laws, the EPA and state inspectors continue to observe excess emissions from controlled storage tanks in violation of federal and state requirements (e.g., State Implementation Plan and federally enforceable state permitting requirements). The primary causes of these excess emissions are:

1. inadequate design and sizing of the vapor control system; and
2. inadequate vapor control system operation and maintenance practices.

Appendix B provides a systematic process for estimating vapor control system pressures and vapor flow rates to control devices. New Owner can then use the data generated from the Appendix B analyses to evaluate the following technical and operational considerations:

1. compare vapor control system pressures to pressure relief valve and thief hatch set points;
2. compare vapor control system pressures and vapor flow rates to control device specifications;
3. evaluate the sizing of the vapor control systems and control devices; and
4. relate emissions to production and estimate short- and long-term emission rates.

New Owners can also use the data generated from the Appendix B requirements to assess the following Clean Air Act compliance considerations:

1. evaluate permit emissions limitations, including the underlying assumptions and representations in permit applications (e.g., vapor capture efficiency, and control device destruction and removal efficiency);
2. estimate actual emissions for applicability determinations and verify that the correct permits and compliance requirements are being applied;
3. compare vapor control system pressures, vapor flow rates, and emission estimates to authorization representations and applicable emission limitations and standards; and
4. evaluate compliance with applicable requirements, including requirements for covering well-site tanks, and capturing and controlling their emissions.

As part of its federally-enforceable state or federal implementation plan, each state has several potentially applicable requirements for well site equipment that should be evaluated as part of the New Owner Program. These requirements may include minor source permitting, well site equipment-specific regulations (e.g., tank rules, and combustor or flare requirements) and oil and natural gas sector-specific permits and/or regulations. State minor source permitting programs typically have requirements for estimating worst-case emissions as part of the application process to ensure that the appropriate permit type is issued and enforceable emissions limits can be set.

The engineering and design considerations and field evaluations in Appendix B are used to evaluate compliance with the applicable emissions limits, including underlying assumptions and application representations, and to ensure that the appropriate permit type has been issued. The resulting federally-enforceable emissions limits and the underlying application assumptions and representations should be evaluated, in part, because these limits may impact applicability for other regulations (e.g., the limits may be used to avoid NSPS OOOO/OOOOa applicability). Accordingly, failure to design a vapor control system to adequately handle system pressures generated by production or consistent with control device manufacturer specifications can lead to excess emissions that would be inconsistent with the permit application representations and applicable permit limits and conditions, and would be actionable violations. In addition, failure to properly operate and maintain vapor control systems can also lead to excess emissions that violate permit limits and conditions, as well as other federally-approved and enforceable air pollution control requirements.

Appendix B outlines a practical approach for completing comprehensive Clean Air Act compliance audits at multiple facilities and provides a framework that will help participating New Owners consistently evaluate compliance with regulatory and permitting requirements at their newly-acquired oil and natural gas exploration and production facilities. The engineering, emission, and operational analyses required by Appendix B will help New Owners ensure that they have appropriately

characterized their emissions and designed their vapor control systems to control those emissions. The correct characterization of emissions and design of vapor control systems will help New Owners assess whether:

1. emissions are staying below levels specified on federally enforceable permit applications and permits; and
2. system operations are consistent with control device manufacturer specifications.

Finally, because this is a voluntary self-audit program, it is the participating New Owners' responsibility to:

1. assess compliance with applicable requirements at their newly-acquired vapor control systems, and determine what, if any, violations may have occurred or be occurring;
2. undertake actions to correct the discovered violations consistent with the Agreement; and
3. disclose the discovered and corrected violations to the EPA.

Participating New Owners who discover, correct, and disclose violations pursuant to the Agreement, will not be assessed a civil penalty for those violations.

### **The EPA is Providing Additional Operational Flexibility for Completing Appendix B**

For up to one year following the Agreement's effective date, any person may propose that equivalent engineering, design, and/or operational measures be used in lieu of those specified in Appendix B. The proposed measures shall demonstrate that:

1. vapor control system pressures will not exceed the applicable leak points during normal operations;
2. vapor control systems achieve stated control efficiencies during normal operations; and
3. compromised equipment is detected and repaired or replaced.

### **EPA Points of Contact for the Oil and Gas New Owner Program**

New Owners interested in participating in this Program or with questions about the Program should contact Apple Chapman at [chapman.apple@epa.gov](mailto:chapman.apple@epa.gov) or (202) 564-5666 or Tim Sullivan at [sullivan.tim@epa.gov](mailto:sullivan.tim@epa.gov) or (303) 312-6196.