

Vinson&Elkins

EPA'S NEW OWNER CLEAN AIR ACT AUDIT PROGRAM FOR THE OIL AND NATURAL GAS SECTOR

STATE AUDIT PRIVILEGE AND IMMUNITY LAWS & SELF-DISCLOSURE LAWS AND POLICIES

[HTTPS://WWW.EPA.GOV/COMPLIANCE/STATE-AUDIT-PRIVILEGE-AND-IMMUNITY-LAWS-SELF-DISCLOSURE-LAWS-AND-POLICIES](https://www.epa.gov/compliance/state-audit-privilege-and-immunity-laws-self-disclosure-laws-and-policies)

- [State Audit Privilege and Immunity Laws](#)
- [Voluntary Self-Disclosure Penalties](#)
- [State Self-Disclosure Policies](#)
- [State Attorney General Opinions and Memoranda of Understanding Concerning State Audit Privilege and/or Immunity Laws](#)

OVERVIEW OF EPA AUDIT POLICY

DEVELOPMENT OF THE AUDIT POLICY

- The EPA [Audit Policy](#), formally titled “Incentives for Self- Policing: Discovery, Disclosure, Correction and Prevention of Violations”
- Policy first issued in December 1995, revised April 2000
- Incentives for regulated entities to voluntarily discover and fix violations of federal environmental laws and regulations:
 - voluntarily discover
 - promptly disclose to EPA
 - expeditiously correct, and
 - prevent recurrence of future environmental violations.
- Small business compliance policy – June 1996, April 2000.
- New owner policy - August 2008.

OVERVIEW OF EPA AUDIT POLICY

RENEWED EMPHASIS ON SELF-DISCLOSED VIOLATION POLICIES

- In December 2015, EPA launched eDisclosure, [*Notice of eDisclosure Portal Launch: Modernizing Implementation of EPA's Self-Policing Incentive Policies.*](#)
- On May 15, 2018, EPA [announced](#) a renewed emphasis on encouraging audits, emphasizing
 - (a) its already implemented online "[eDisclosure](#)" program;
 - (b) the additional flexibility available to [new owners](#) who self-disclose violations; and
 - (c) opportunities to increase compliance through the use of existing self-disclosure policies **or tailored audit programs; specifically development of a New Owner Clean Air Act Audit Program for the Oil and Gas Sector.**

NEW OWNER CLEAN AIR ACT AUDIT PROGRAM FOR OIL AND NATURAL GAS EXPLORATION AND PRODUCTION FACILITIES - 03/29/2019

- This audit program is available to new owners of upstream oil and natural gas exploration and production facilities (i.e., well sites, including associated storage tanks and pollution control equipment).
- it provides regulatory certainty and clearly defined civil penalty mitigation beyond what is offered by the EPA's existing self-disclosure policies.
- New owners will in most cases have **nine months** from the date of acquisition to notify the EPA of their interest in participating in the program. **New owners include owners who acquired facilities in the 12 months preceding the launch of this program. Deadline for these facilities 12/29/19.**
- The EPA can reject applications to this program if the EPA or a state have already discovered violations at the facility.
- Focused on, at a minimum, tank battery vapor control systems, designed to help new owners to achieve prompt and cost-effective return to compliance.

**NEW OWNER CLEAN AIR ACT AUDIT PROGRAM FOR OIL AND NATURAL GAS EXPLORATION
AND PRODUCTION FACILITIES - 03/29/2019**
MAJOR ASPECTS OF THE PROGRAM

- Standardized “form” agreement.
- Limited in scope - upstream oil and gas facilities, Clean Air Act compliance.
new owners only
- Requirements for audit program and corrective action specified in the agreement.
- Complete release of civil penalty liability.

NEW OWNER CLEAN AIR ACT AUDIT PROGRAM FOR OIL AND NATURAL GAS EXPLORATION AND PRODUCTION FACILITIES - 03/29/2019

**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)] and listed in Appendix E (Newly Acquired Oil and Natural Gas Exploration and Production Facilities Subject to Agreement or Facilities), [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), including permit requirements and permits, as set forth below (Audit Program). This New Owner Audit Program Agreement (Agreement) shall govern the Audit Program.

II. AUDIT PROGRAM ELIGIBILITY

4. [COMPANY] is considered a New Owner under the Audit Program 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

NEW OWNER CLEAN AIR ACT AUDIT PROGRAM FOR OIL AND NATURAL GAS EXPLORATION AND PRODUCTION FACILITIES - 03/29/2019

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).
2. *Engineering Design Standards.* [COMPANY] shall complete one or more Engineering Design Standards 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. Tank System from all associated Well Production Operations. 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

NEW OWNER CLEAN AIR ACT AUDIT PROGRAM FOR OIL AND NATURAL GAS EXPLORATION AND PRODUCTION FACILITIES - 03/29/2019

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 (i.e., outline of planned Audit and planned schedule) and Audit checklists (i.e., lists of actions that [COMPANY] will perform to assess compliance with statutory, regulatory, and permitting requirements), the Modeling Guideline (see Appendix B, Paragraph 1), and the Field Survey SOP (see Appendix B, Paragraph 3) (collectively 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. If [COMPANY] amends any of its Audit Instruments based on EPA comments, [COMPANY] shall submit the amended Audit Instrument(s) within 30 days of receiving EPA's comments.
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 during the Audit Program. 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.This Semi-Annual Reporting requirement terminates once [COMPANY] has submitted its Final Report.
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 form¹:
 - 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:

¹ See Attachment D (Audit Program Reporting Template).

QUESTIONS?



SPEAKER BIOGRAPHY



Austin



+1.512.542.8511



cbrooke-davidson@velaw.com

Carrick has practiced environmental law since 1985, when he received his law degree from The University of Texas School of Law. His practice has included all facets of environmental law: he has experience with all the significant federal environmental laws and their Texas counterparts; his practice has involved litigation, arbitration, enforcement, permitting, transactions, and counseling; he has worked with various industries including chemicals, energy, agriculture, manufacturing, and real estate; and he has practiced in government as well as in private firms.

Education

The University of Texas School of Law, J.D. *with honors*, 1985

Massachusetts Institute of Technology, Masters of Science in Technology and Policy, 1980

Massachusetts Institute of Technology, Bachelors of Science in Aeronautics and Astronautics, 1978

Professional Background

U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 1985-1996

Environmental Engineer, Trinity Consultants, Inc., 1980-1982



THANK YOU

Austin
T +1.512.542.8400

Beijing
T +86.10.6414.5500

Dallas
T +1.214.220.7700

Dubai
T +971.4.330.1800

Hong Kong
T +852.3658.6400

Houston
T +1.713.758.2222

London
T +44.20.7065.6000

Moscow
T +7.495.544.5800

New York
T +1.212.237.0000

Richmond
T +1.804.327.6300

Riyadh
T +966.11.250.0800

San Francisco
T +1.415.979.6900

Taipei
T +886.2.2176.5388

Tokyo
T +81.3.3282.0450

Washington
T +1.202.639.6500

