



Timothy Bagshaw

Associate
801.799.5718
Salt Lake City
tmbagshaw@hollandhart.com

Time to Clean House? EPA's Renewed Emphasis on Self Audits and Disclosures

Publication — 06/22/2018

The Environmental Protection Agency (EPA) has recently taken several steps to encourage self-disclosure of violations of environmental laws through participation in its existing [audit policy programs](#), with a particular emphasis on newly acquired oil and gas assets. Not long ago, it was questionable whether EPA would even continue its audit policy. But with the Agency's renewed commitment, now is a good time for companies—particularly those with newly acquired assets—to consider a voluntary self-audit to review and potentially disclose issues related to federal environmental compliance.

EPA aims to "enhance and promote" its self-disclosure policies by reminding regulated entities of the following potential advantages:

- waiver of 100 percent of the gravity-based civil penalty;
- waiver of the economic-benefit civil penalty where EPA deems economic gains from noncompliance insignificant;
- declining to impose time limits on audit completion; and
- declining to require an affirmative admission of violation.

New Owner Audit Policy

EPA is placing particular emphasis on its existing New Owner Audit Policy, which provides additional flexibility and benefits to new owners of regulated facilities. In disclosing noncompliance that began before acquisition, new owners can take advantage of the following incentives:

- the opportunity to enter into audit agreements that incorporate disclosure reporting tailored to a new owner's unique situation;
- waiver of the economic-benefit civil penalties that might otherwise apply to delayed expenditures; and
- EPA's more generous treatment of violations discovered through already required monitoring, sampling, or reporting (such as pursuant to a Title V permit), and that would ordinarily not be eligible for audit policy consideration.

New Owner Clean Air Act Audit Program

Finally, specific to the oil and gas industry, EPA is developing a New Owner Clean Air Act (CAA) Audit Program in recognition of the unique operations and the frequent asset turnover in the sector. The program will focus on air quality compliance with a specific emphasis on engineering and facility design issues to address storage tank emissions through adequately engineered vapor control systems. EPA recently developed a [draft standard audit agreement](#) template (the "Draft Agreement") to govern

the new program.

The Draft Agreement provides initial applicability to audits of upstream exploration and production facilities and aims to ensure compliance with federal CAA requirements, but notes that companies may choose to enter a parallel audit agreement with certain state agencies as well. Companies will have six months from the date of acquisition to notify EPA of an intention to participate in the program. The Draft Agreement provides that the owner and EPA will agree on the scope of the audit, both in terms of facilities covered and provisions of the CAA being audited, which could include compliance with New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and federally enforceable State Implementation Plan requirements. The Draft Agreement also allows for rolling audits, which could be helpful for companies with numerous facilities or particularly complicated issues. **EPA is accepting comments on the Draft Agreement until Monday, July 2, 2018.**

Please feel free to reach out to any of the authors of this client alert or other attorneys in our Environment Energy and Natural Resources group for assistance with drafting and submitting comments on the New Owner CAA Audit Program or with general questions regarding audit obligations and opportunities.