

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 be 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.