

**OIL AND NATURAL GAS  
NEW OWNER AUDIT PROGRAM AGREEMENT  
BETWEEN THE  
NEW MEXICO ENVIRONMENT DEPARTMENT  
AND  
[COMPANY]**

**I. INTRODUCTION**

1. Concerning [COMPANY'S] [DATE OF ACQUISITION] acquisition of oil and natural gas facilities from [SELLER] in [DESCRIBE FACILITIES' GEOGRAPHIC LOCATION(S)] and listed in Appendix E (Newly Acquired Oil and Natural Gas Facilities Subject to Agreement, "Facilities"), [COMPANY] and the New Mexico Environment Department ("NMED" or "Department", collectively the "Parties") 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 State Rules (including permitting rules), and permit, as set forth below ("Audit Program"). This New Owner Audit Program Agreement ("Agreement") shall govern the Audit Program.

**II. AUDIT PROGRAM ELIGIBILITY**

2. [COMPANY] is considered a "New Owner" under the Audit Program and eligible to enter into this Agreement with NMED because:
  - [COMPANY] was not responsible for environmental compliance at the Facilities prior to [DATE OF ACQUISITION];
  - 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
  - [COMPANY] has notified NMED within 30 days of the Date of Acquisition of the Facilities.

**III. AUDIT PROGRAM AGREEMENT TERMS**

***Audit Program***

3. After consultation with NMED, [COMPANY] shall conduct an audit of its Facilities' compliance with agreed-upon provisions of the Clean Air Act, its implementing regulations, state rules and permit requirements. At a minimum, [COMPANY] shall complete the requirements in Appendix B, paragraphs 1 through 5. The benefits of this Agreement shall only extend to those Facilities listed in Appendix E that [COMPANY] audits pursuant to this Agreement and the requirements included in the agreement.

***Covered Facilities***

4. The Audit Program shall cover the Facilities listed in Appendix E. Should [COMPANY] sell or otherwise transfer ownership of a Facility or a subset of Facilities listed in Appendix E without completing all Audit Program requirements under this Agreement for the transferred Facility (or

Facilities), including the requirements of Section III and Appendices B and C, [COMPANY] shall notify NMED as set forth in Section VI and Appendix C.

5. Should [COMPANY] acquire additional oil and natural gas exploration and production facilities after the Effective Date that it wishes to include in an Audit Program, [COMPANY] must submit a separate agreement for those facilities. NMED reserves the right to deny the additional audit for good cause.

### ***Schedule***

6. The period for conducting the Audit Program's audits, and discovering and correcting violations, shall end [SPECIFIED TIME PERIOD] from the Effective Date.
7. Detailed timeframes for specific Audit Program obligations are contained in Paragraphs 8, 9, 10, 18, 19, and Appendices B (*Field Survey, Vapor Control System and Corrective Action Guidelines*) and C (*Audit Program Reporting and Recordkeeping Requirements*).

### ***Corrective Actions***

8. *Violations Discovered by Completing Appendix B Requirements.* [COMPANY] shall complete the requirements of Appendix B, correct each violation identified through the Appendix B requirements, and shall take steps necessary to prevent the recurrence of each violation identified through the Appendix B requirements within 180 calendar days of discovery. In those instances where [COMPANY] is unable to correct a violation within this 180-day timeframe, it shall request an extension of time from NMED in writing at least 7 calendar days before the expiration of the initial 180-day correction timeframe and provide a revised correction schedule for that violation, accompanied by a justification for the revised correction schedule. An extension request must be submitted by email to the NMED Technical and Legal Contacts listed in Paragraph 26. Any extension of the 180-day correction timeframe shall be subject to NMED approval, which shall not be unreasonably withheld.
9. *Violations Discovered Outside of Completing Appendix B Requirements.* [COMPANY] shall correct each violation and shall take steps necessary to prevent the recurrence of each violation within 60 calendar 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 NMED in writing at least 7 calendar days 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. An extension request must be submitted by email to the NMED Technical and Legal Contacts listed in Paragraph 26. Any extension of the 60-day correction timeframe shall be subject to NMED approval, which shall not be unreasonably withheld.
10. *Immediate and Substantial Endangerment to Public Health or Welfare, or the Environment.* If [COMPANY] discovers 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 those 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), Tribal Emergency Response Committees, Local Emergency Planning

Committee(s), and NMED excess emissions reporting application), [COMPANY] shall notify NMED (initial notice may be oral) of the condition(s) within 24 hours of discovery of the condition(s), and shall inform NMED in writing within five business days of discovery of proposed remedial action(s) [COMPANY] plans to take and a schedule for performing them. NMED reserves the right to initiate separate enforcement actions for such violations/conditions that are not promptly remedied upon discovery.

#### ***Reporting and Recordkeeping Requirements***

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

#### **IV. GENERAL PROVISIONS**

12. This Agreement and a final NMED determination (“Final Determination”) in this matter—e.g., a Notice of Determination—issued after [COMPANY’S] completion of the Audit Program and submission of its final audit report (“Final Report”) shall be the complete resolution of all civil penalty claims for violations of the Clean Air Act (Act), its implementing regulations, state rules and permit requirements that are timely corrected and disclosed in [COMPANY’S] Final Report to NMED. However, compliance with this Agreement and a subsequently issued Final Determination shall not be a defense to any actions that NMED may subsequently commence pursuant to federal law, federal regulation, and state requirements or authorized program requirements with respect to any violations that are not timely corrected and disclosed to NMED pursuant to this Agreement. This Agreement and a subsequently issued Final Determination does not resolve any criminal liability.
13. For purposes of this Agreement, without a trial, administrative hearing, or any adjudication of facts, [COMPANY] admits that NMED has jurisdiction over the subject matter of the terms of this Agreement and any materials submitted to NMED pursuant to this Agreement.
14. [COMPANY] waives any right to contest the Final Determination in a judicial or administrative hearing.
15. [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, state rules or permit requirements 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, state rules and permit requirements that [COMPANY] reports to NMED in a Final Report pursuant to Appendix C, Paragraph 3, [COMPANY] agrees to conduct the corrective actions in accordance with Section III and Appendix B.
16. *Authority of Signatories.* The signatories to the Agreement represent that they have the authority to bind the Parties.
17. This Agreement may be modified only by a written agreement, signed by all Parties to the Agreement.
18. *Transferability.* At least 30 calendar 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

NMED with written notice of the prospective Transfer. After the submission to NMED of the foregoing notice, [COMPANY] and its transferee may jointly request in writing that NMED 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 E to this Agreement to remove those Facilities that have been included in the transferee's Agreement. NMED's agreement to the joint request shall not be unreasonably withheld or denied.

19. *Costs.* [COMPANY] shall bear its own costs of this Agreement, including attorneys' fees. AQB reserves the right to collect administrative compliance costs from [COMPANY] up to \$10,000 per month the Agreement is in effect. The end of such effective period shall be no later than 30 days following the submission of the final audit report.

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

20. After [COMPANY'S] submission of the Final Report, NMED 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, NMED 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. NMED will memorialize the disclosed and satisfactorily corrected violations that satisfy the terms of this Agreement in a Final Determination.
21. NMED reserves its right to proceed against [COMPANY] for all violations outside the scope of this Agreement. NMED reserves its right to proceed against [COMPANY] for all violations within the scope of this Agreement that are not satisfactorily (which includes timely) corrected and disclosed consistent with this Agreement's requirements. Should NMED 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 NMED's election, and NMED may proceed with an enforcement action. In any enforcement action regarding violations described above in this paragraph, NMED may enforce applicable provisions of the Clean Air Act, its implementing regulations, state rules and permit requirements, and any other applicable environmental laws, regulations, and permits for which NMED has authority to enforce.
22. 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, state rules or permit requirements, for which NMED may bring a claim or cause of action in accordance with applicable laws and regulations.
23. *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, state rules and permit requirements covered by this Agreement, and all other federal, state, tribal, and local laws and regulations.

## **VI. NOTIFICATIONS**

24. [COMPANY'S] Monthly and Final Reports required by Appendix C of 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.*

25. The responsible corporate official's statement shall also include the date, the official's name, signature, and title.
26. Except where otherwise provided in this Agreement, whenever this Agreement requires [COMPANY] to give notice or submit reports, information, certifications, or documents, the information shall be submitted to the following:

Air Quality Bureau, Enforcement Specialist [add name and email address];  
Air Quality Bureau, Enforcement Manager [add name and email address];  
Air Quality Bureau, Compliance & Enforcement Section Chief [add name and email address];  
and  
New Mexico Environment Department, Office of General Counsel [add name and email address].

27. Unless otherwise provided in this Agreement, whenever this Agreement requires NMED to provide [COMPANY] with information, the information shall be submitted to the following contact(s). [LIST ALL NAMES, TITLES AND EMAIL ADDRESSES BELOW.]
28. *Notification to United States Environmental Protection Agency.* NMED will notify, as required, the U.S. EPA of all federally reportable violations disclosed and corrected pursuant to this Agreement.

## VII. INTEGRATION / HEADINGS

29. 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.
30. 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

31. The following Appendices are attached to, incorporated by reference, and considered part of this Agreement:
- A. Definitions;
  - B. Field Survey, Vapor Control System and Corrective Action Guidelines;

- C. Audit Program Reporting and Recordkeeping Requirements;
- D. Audit Program Reporting Template; and
- E. **[COMPANY]** Newly Acquired Oil and Natural Gas Exploration and Production Facilities Subject to Agreement.

## IX. AGREEMENT SIGNATURES

32. We, the undersigned, hereby agree to be bound by this Agreement.

**For **[COMPANY]**:**

\_\_\_\_\_  
[Name]  
[Title]  
[COMPANY]  
[Street]  
[City, State, Zip]

Date: \_\_\_\_\_

**For the New Mexico Environment Department:**

\_\_\_\_\_  
[Name]  
Compliance & Enforcement Section Chief  
Air Quality Bureau  
New Mexico Environment Department  
525 Camino de los Marquez  
Santa Fe, New Mexico 87505

Date: \_\_\_\_\_

## 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, in state rules or permits shall follow the definitions in those documents. In the case of a conflict between federal and state definitions, state definitions shall control.

1. *Agreement* means the Oil and Natural Gas Exploration and Production Facilities New Owner Audit Program Agreement between the New Mexico Environment Department and [COMPANY].
2. *Audit* means a systematic, documented, and objective review by a regulated entity or an objective third party of facility operations and practices related to meeting environmental requirements.
3. *Closed Loop Vapor Control System* means a Vapor Control System equipped with feedback control loops that continuously measure, control, and record pressure in the Tank System or tanks within the Tank System by controlling the production equipment upstream of the Tank System. A Closed Loop Control System automatically regulates hydrocarbon flow to the Tank System, thereby controlling the vapor flow rate, duration, and frequency to maintain Vapor Control System pressure below the Leak Point of the Vapor Control System pressure relief device(s).
4. *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, and beveling or other indications of inefficient connection of the thief hatch to the tank.
5. *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].
6. *Day* means a calendar day.
7. *Effective Date* means the date on which NMED signs this Agreement.
8. *Facility or 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 and listed in Appendix E.
9. *IR Camera* means an optical gas imaging infrared camera designed for, and capable of, detecting hydrocarbon and VOC emissions.
10. *IR Camera Inspection* means an inspection of a Vapor Control System using an IR Camera that is conducted by trained personnel who maintain proficiency through regular use of an IR Camera.
11. *Leak Point* means the lowest pressure at which emissions are released from any pressure relief devices, including thief hatches, on a Vapor Control System. The Leak Point may be determined by measurement of the Vapor Control System pressure during pressurization of the Vapor Control System, noting the lowest pressure at which emissions are observed from any Vapor Control System pressure relief device during the field survey. For purposes of establishing the Leak Point for a Closed Loop Control System, the value of the Leak Point must not exceed the lowest rated pressure at which any Vapor Control System pressure relief device is designed to open or relieve pressure.
12. *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.



13. *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.
14. *Open Loop Vapor Control System* means a Vapor Control System that is not a Closed Loop Vapor Control System.
15. *Parties* means the New Mexico Environment Department and [COMPANY].
16. *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 Open Loop Modeling Guideline developed pursuant to Appendix B, Paragraph 1.
17. *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 Open Loop Modeling Guideline developed pursuant to Appendix B, Paragraph 1.
18. *Separator* means a pressurized vessel used for separating a well stream into gaseous and liquid components.
19. *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 or is/are required by regulation or permit to have a Vapor Control System.
20. *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.
21. *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 control device or vapor recovery unit, fittings, connectors, liquid knockout vessels, openings on tanks (e.g., pressure relief valves and thief hatches), and emission control devices.
22. *Violation* means noncompliance with an applicable requirement under the Clean Air Act, its implementing regulations, and federally-approved and -enforceable requirements of applicable SIPs, FIPs, or TIPs, including federal and state permits, permitting requirements and State rules.
23. *VOC or VOCs* shall mean volatile organic compounds.
24. *Well Production Operations* means surface operations to produce hydrocarbon liquids or natural gas from a well, but shall not include well maintenance activities (e.g., swabbing).



## APPENDIX B

### FIELD SURVEY, VAPOR CONTROL SYSTEM AND CORRECTIVE ACTION GUIDELINES

1. *Field Surveys* - For each Facility in Appendix E, a field survey shall be conducted to determine whether permit representations of the facility are correct, whether required controls are operating properly and whether vapor control systems are adequately controlling vapors.
  - a. Field surveys shall include inspection of all regulated equipment, including but not limited to serial numbers, date of construction, capacity and contents.
  - b. Field surveys shall verify whether or not control equipment is installed and operating properly. Verification may include, but is not limited to:
    - i. Optical gas imaging (OGI) inspection (or Method 21 inspection) of all possible leak points at the Facility;
    - ii. Method 9 observations of flares, thermal oxidizers, and enclosed combustion devices;
    - iii. Visual verification of control devices, including required monitoring devices (e.g., thermocouples, non-resettable hour meters, etc.); and
    - iv. Review of operating records to verify controls and vapor recovery device efficiencies are represented correctly in permit applications.
  - c. Field surveys shall verify that all documentation required to be kept onsite or at the nearest office is present and available as required by permit.
2. *Development of Emissions Determination* - [COMPANY] shall develop a written emissions determination for each tank subject to this Agreement.
  - a. An emissions determination shall be calculated using a generally accepted model or calculation methodology to evaluate the applicable regulatory or permitting control requirements for each tank subject to this Agreement. The emissions determination shall consider pressurized hydrocarbon liquid and natural gas samples to determine if a Vapor Control System is required. If a Vapor Control System is required for any tank subject to this Agreement, then [Company] shall assess the current or potential design to assure adequate sizing of the system to allow control of all vapors tied or to be tied into the Vapor Control System.
  - b. Adequate sizing shall be determined on a site-specific basis and either:
    - i. Account for the potential minimum instantaneous vapor flow rate and the potential peak instantaneous vapor flow rate (“open loop” designs); or
    - ii. Demonstrate sufficient capacity to handle peak vapor flow rate from the tank system at leak point pressure, using tank pressure monitoring and control of liquid and vapor flow to the tanks (“closed loop” designs). These systems must be operated above their minimum inlet pressures at all times.
  - c. [COMPANY] shall submit a draft emissions determination for each tank subject to this Agreement, and documentation that vapors will be adequately controlled through either an open loop or closed loop design to NMED for its review and comment no later than 60 Days after the Effective Date. Within 45 calendar days of [COMPANY’S] submissions, NMED shall inform [COMPANY] of any questions, concerns, or omissions perceived by NMED, and [COMPANY] shall respond to NMED’s questions or concerns within 30 calendar days.

3. *Vapor Control System Modifications* - For those Vapor Control Systems that are not adequately designed or sized based on the above determination or are found to be 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:
  - a. Make all necessary modifications to:
    - i. Increase the capacity of the Vapor Control System to handle the Potential Peak Instantaneous Vapor Flow Rate;
    - ii. Reduce the Potential Peak Instantaneous Vapor Flow Rate (as calculated, accounting for modifications); or
    - iii. Ensure Tank System pressures do not exceed the Leak Point.
  - b. Make all necessary modifications to ensure that the control device(s) and vapor recovery unit(s) operate within manufacturer specifications for the device's size and design.
4. *Compromised Equipment* - [COMPANY] shall repair or replace Compromised Equipment associated with the Vapor Control System that may be causing VOC emissions within calendar 30 days of discovery. For good cause [COMPANY] may request via email an extension of up to calendar 60 days. NMED retains discretion regarding the granting or denial of such requests. The burden of proof is on [COMPANY].
5. *Verification* - [COMPANY] shall verify and ensure that each Vapor Control System that has been modified pursuant to Paragraph 3 of this Appendix is adequately designed and sized and that equipment associated with the Vapor Control System is not causing VOC emissions. [COMPANY] shall conduct a verifying IR Camera Inspection demonstrating that after completion of the modifications, 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.
6. *Additional Audit Scope* – [COMPANY] shall, in addition to the above requirements, complete an audit of compliance with the following requirements (check all that apply):
  - ☐ Verify that all permit requirements are met and that a system is in place to assure requirements will be met in the future.
  - ☐ Verify that all applicable State rule requirements have been met and that a system is in place to assure requirements will be met in the future. [Please check all that apply and delete those that are not applicable.]
    - ☐ 20.2.7 NMAC *Excess Emissions*
    - ☐ 20.2.33 NMAC *Gas Burning Equipment – Nitrogen Dioxide*
    - ☐ 20.2.34 NMAC *Oil Burning Equipment – Nitrogen Dioxide*
    - ☐ 20.2.35 NMAC *Natural Gas Processing Plant – Sulfur*
    - ☐ 20.2.39 NMAC *Sulfur Recovery Plant – Sulfur*
    - ☐ 20.2.43 NMAC *Gasification Plants*
    - ☐ 20.2.50 NMAC *Oil and Gas Section – Ozone Precursor Pollutants*
    - ☐ 20.2.61 NMAC *Smoke and Visible Emissions*
    - ☐ 20.2.70 NMAC *Operating Permits*
    - ☐ 20.2.72 NMAC *Construction Permits*
    - ☐ 20.2.73 NMAC *Notice of Intent and Emissions Inventory Requirements*

☐ Verify that all applicable federal regulation requirements have been met and that a system is in place to assure requirements will be met in the future. All of the following federal regulations will be included in the Audit Program. [Please list Part and Subpart of each federal regulation to which Audit Program Facilities are subject. For example, Part 60 (NSPS), Subpart OOOOa. Check those that will be included with the Audit Program; leave check boxes blank if not included in the Audit Program. Delete extra boxes as appropriate.]

## APPENDIX C

### AUDIT PROGRAM REPORTING AND RECORDKEEPING REQUIREMENTS

#### *Reporting Requirements*

1. *Audit Instruments.* Within 60 Days of the Effective Date, [COMPANY] shall submit to NMED the 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), and any SOPs developed to comply with Appendix B (collectively, Audit Instruments) for the Audit Program. Within 45 Days of [COMPANY'S] submission of the Audit Instruments, NMED shall inform [COMPANY] of any questions, concerns, or omissions perceived by NMED, and [COMPANY] shall amend the Audit Instruments or otherwise reach agreement with NMED on the Audit Instruments which NMED 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 NMED comments, [COMPANY] shall submit the amended Audit Instrument(s) within 30 Days of receiving NMED's comments.
2. *Monthly Reports.* [COMPANY] shall disclose all Violations discovered during the Audits by emailing disclosure reports to the technical contacts listed in paragraph 26 on a monthly basis during the Audit Program. Each Monthly Report shall be submitted on the 15<sup>th</sup> Day of the month (or the first business day thereafter) after the conclusion of each calendar month or portion thereof following the Effective Date, and shall contain the following information in the specified format:
  - A. List of the Facilities audited during the previous 1-month period (PDF);
  - B. Summary of the Violations discovered or verified during the previous 1-month period added to the previous report's summary and highlighted (editable Excel spreadsheet and PDF);
  - C. Summary of actions taken to correct the discovered Violations (editable Excel spreadsheet and PDF); and
  - D. List of any changes to the list of Facilities covered under this Agreement (PDF).

This Monthly 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:
  - A. *Facility Compliance:* Provide the following information in editable Excel spreadsheet and PDF for each disclosed violation, if applicable, so that NMED has complete information on the violations that may have occurred, and on each Facility's compliance record:
    - a. Facility name;

- b. Facility address (street number (if possible) and name, (nearest) city/town, state, and zip code);
  - c. Facility GPS coordinates;
  - d. Facility US Well Number(s) (formerly known as API Well Number);
  - e. Facility permitting status and applicable permit number(s);
  - f. Summary of requirement potentially violated;
  - g. Federal regulatory citation (if applicable);
  - h. State regulatory citation (if applicable);
  - i. Permit condition citation (if applicable);
  - j. Date noncompliance began (if known); and
  - k. Date of Facility's return to compliance.
- B. *Summary Compliance Information.* Provide the following summary information in narrative form (PDF) for the entire Audit Program:
- a. Explain all measures taken—and that will be taken in the future—to ensure the disclosed violations will not be repeated; and
  - b. Estimated 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 permits to appropriate agencies, fees collected by the state or other regulatory agencies, and start-up costs for plan implementation or tank monitoring); and
  - c. [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 nonidentical copies of all documents, records, or other information (including documents, records, or other information in electronic form) ("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 NMED, [COMPANY] shall provide copies of any Records required to be maintained under this Agreement.
- 5. *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 NMED 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 NMED, or if NMED 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 NMED, EPA or the United States pursuant to applicable State or 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, tribal, and local laws, regulations, or permits.

## **APPENDIX D**

### **AUDIT PROGRAM REPORTING REQUIREMENTS**

Provide the following information in editable Excel format (with PDF copy) in monthly reports and in the final report for each disclosed violation as applicable. Highlight all changes, including new entries and revised actions, dates or other reported data.

- Facility name
- Facility address (street, city, state, zip code)
- Facility GPS coordinates (decimal latitude, decimal longitude)
- Violation (one violation per line)
- Regulatory or permit citation
- Date violation discovered or reported to [COMPANY]
- Date noncompliance began (if known)
- Date of return to compliance
- All corrective actions taken to return facility to compliance with the cited requirements
- Corrective actions remaining to return facility to compliance
- Target date for any remaining corrective actions



## Appendix E

**Facilities covered under this Agreement:**

[illegible]