CASE STUDY: RANGE RESOURCES NEW OWNER POLICY SELF DISCLOSURE[1]

I. Acquisition

In September 2016, Range completed acquisition of new assets in the Terryville Field of Louisiana, adding more than 220,000 acres to Range's portfolio.

II. Initial Assessment of Acquired Facilities

a. Following Range's acquisition of the assets in northern Louisiana, the Environmental Compliance department began assessing compliance with all environmental laws and regulations at the facilities.
b. Range brought in outside counsel—Pillsbury Winthrop Shaw Pittman LLP—to help assess compliance and develop a strategy for addressing any noncompliance.
c. Evaluated the key regulations potentially applicable:
    i. Which sites are subject to 40 C.F.R. Part 60, Subpart OOOO or OOOOa?
    ii. Which facilities, if any, are major source/Title V sources?
d. Identified highest producing sites, developed emissions factors, performed modeling.
e. Compiled an accurate well site and equipment inventory, including dates of well drilling and equipment installation for over 390 individual facilities.

III. Addressing Noncompliance

a. Based on initial calculations, Range believed that noncompliance at its newly-acquired facilities was fairly widespread, and set out to identify specific noncompliance using more accurate information based on actual sampling and modeling (the inherited data and regulatory determinations were believed to be unreliable)
b. Range had to decide how to best correct the noncompliance taking into account enforcement exposure and operational needs to continue production.

IV. Weighing Whether to Self-Disclose

a. Range had to decide whether to disclose the violations to the state and/or EPA, or whether to try and correct the violations before disclosing them. Range concluded that it would be better to disclose the violations before corrective action at all 390 facilities could be completed, since corrective action itself, without appropriate approval may constitute a violation (e.g. installation of a control device requires an ATC)
b. Range decided that the best course was to voluntarily self-disclose the potential noncompliance to the state, given that the state did not have its own new owner policy or audit policy~~, and EPA's track record of over filing when it was not involved~~. Accordingly, Range committed to conducting an audit of all of the newly-acquired facilities under EPA's New Owner Audit Policy.
c. The New Owner Audit Policy provided flexibility for a company such as Range that acquired facilities to reach an agreement with EPA within nine months from the date of the transaction. It offered substantial penalty mitigation in exchange for any self-disclosed violations and planned corrective action.
d. The primary considerations – (1) maintaining control over operations and process while correcting violations and (2) reducing penalty and enforcement exposure.

Commented [CA1]: EPA does not routinely over file state actions. We are not aware that this has ever happened in the audit context.

[1] This case study summary is provided only for discussion purposes by Matthew Morrison of Pillsbury Winthrop Shaw Pittman, counsel to Range Resources Corporation. The views and statements herein should not be attributed to Range Resources. Any questions or comments can be directed to Mr. Morrison at matthew.morrison@pillsburylaw.com.

V. Examples of Challenges and Issues with the Audit Policy

a. Uncertain Application – Application of the New Owner Policy is not automatic just because you bought new facilities; EPA has full discretion whether to apply the Policy. ~~Prior to asking for New Owner Policy coverage, we first had to describe the nature of the violations we were seeing~~. This made us nervous and vulnerable to penalties and enforcement action if EPA rejected our request.

b. Default to a Short Corrective Action Window – The default corrective action period is 60 days from the discovery of the violation unless EPA grants you an extension. Although extensions are not generally given up front; you can submit a proposed corrective action schedule and hope that it is accepted. Again, if not accepted, you remain potentially subject to enforcement. EPA has a track record of providing reasonable extensions, but there are no guarantees. Range was given three years to complete six phases of its audit for all 390 acquired facilities.

c. No Model Agreement – EPA had no model New Owner Audit Agreement, and virtually no precedent for this situation, therefore, a new agreement had to be developed. Moreover, we did it by an exchange of letters, rather than a signed document, which raised some question on whether there was a true agreement just by the exchange of different terms.

~~d. Audit Agreement Questionnaire – EPA insisted on a form questionnaire that had been developed internally for Audit Policy cases that didn't involve new owners, and really didn't fit our New Owner situation or the provisions of that policy (e.g., the training and education of its numerous consultants, engineers, and regulatory specialists.~~

Commented [CA2]: This may have been Range's experience with this agreement, however, XPS would like me to point out that this is not the way it is supposed to work. To enter into an audit agreement, you only need to provide the scope of the audit (e.g., CAA compliance). The ultimate decision of what to disclose is completely voluntary. EPA only provides relief for what is disclosed.

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Commented [CA3]: I have been asked to point out that the Questionnaire is tailored to the New Owner Policy (there is a separate questionnaire that applies to the Audit policy). They mirror each other.

VI. Facility Auditing and Corrective Action

a. Range contracted a third-party environmental consultant to assist with ensuring that each well site was properly permitted and that control equipment was installed, designed, and sized appropriately where necessary. The consultants are also conducting regulatory applicability determinations for all of the potentially applicable regulations to oil and gas production.

b. Range is auditing and completing corrective action at hundreds of sites and is taking various parts of each audit separately. After completing each segment/component of the audit, Range submits a report to EPA and the state summarizing the audit activities, violations discovered, and corrective action completed to EPA.

c. Range has to also produce semi-annual status updates to EPA, which are also provided to the state.

d. This process requires careful coordination with the state (the permitting authority), so flexibility for state agency terms should be built into the audit agreement.

VII. Conclusion: Wise Choice with Overall Satisfaction

a. Range is still conducting its comprehensive audit, but it has already proven a very wise choice. It has established our relationship with state and federal regulators in a very positive way, and we have successfully managed the compliance and enforcement risks we faced in acquiring the NLA assets.

b. Under the New Owner Policy, any violations originating with the previous owner and discovered and corrected by Range, will typically receive 100% penalty mitigation. This has allowed us to put what would have otherwise been penalty funds into productive investments in emission controls in the field.

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