

# Q&A from the Audit Act and Find It and Fix It Workshop

Below are the questions and answers from part three of our three-part series of oil and gas workshops. If you have any specific questions regarding the workshops, please send them to [PermianEE@tceq.texas.gov](mailto:PermianEE@tceq.texas.gov).

## Audit Act: General

1. Under what circumstances can an audit be initiated after TCEQ Regional Office has completed an inspection and found potential violations?
  - An audit can be initiated and conducted after a TCEQ Regional Office completed an inspection and found potential violations; however, the violations that were discovered or detected by the TCEQ Regional Office are not eligible for penalty immunity.
2. What is considered "prompt"? (referring to the following statement found in the presentation: "The Audit Privilege Act provided incentives for persons to conduct voluntary audits to determine compliance with environmental health and safety regulations and to implement prompt corrective action.")
  - The Audit Privilege Act does not define "prompt"; however, one of the requirements for a voluntary disclosure is that the disclosure is made promptly after knowledge of the information disclosed is obtained by the person making the disclosure. Whether a disclosure is prompt depends upon the circumstances surrounding the audit and the particular violation. A determination about whether a disclosure of violation was prompt will be made on a case-by-case basis. Therefore, it is acceptable to submit multiple disclosures rather than one disclosure at the end of the audit in order to ensure that the disclosure is made using certified mail before an investigation of the violation is not initiated or the violation is not independently detected by an agency with enforcement jurisdiction. Also, another requirement for a voluntary disclosure is that the person making the disclosure initiates an appropriate effort to achieve compliance, pursues that effort with due diligence, and corrects the noncompliance within a reasonable time.
3. Does TCEQ allow extensions of corrective action completion under audit privilege due to delays related to COVID-19?
  - The TCEQ grants extensions based on reasonable grounds for the completion of corrective actions.
4. For a Title V Site, can you explain how an audit level of review compares to the reasonable inquiry level of review required by the Title V Permits Program?
  - For a reasonable inquiry level of review at a Title V Site, the site personnel are expected to review all applicable state and federal air rules, regulations, and permits and report all instances of deviations and for an audit level of review, a third-party consultant or law firm is conducting a more thorough review of applicable state and federal rules, regulations, and permits to determine if there is a violation.
5. What is considered a 'reasonable amount of time' when correcting disclosed violations in terms of the Audit Act?

- Generally, TCEQ considers violations corrected within six months of disclosure as corrected within a reasonable time. However, some violations such as unauthorized discharges or unauthorized emissions should not take six months before the unauthorized discharge or unauthorized emissions is stopped. There are also mechanisms in place for corrective actions that take longer than six months such as permitting actions.

## **Audit Act, Notice of Audit**

6. Since the scope of an audit is determined by the operator why would someone use an NOA to notify on multiple separate audits?
  - Depending on the complexity of the audit and the operator's resources, it may be beneficial to conduct multiple audits in order to complete the audit within six months, unless an extension is granted based on reasonable grounds.
7. On NOA graph, are you listing the NOA letter or RNs for which NOA was submitted? What I mean is if the graph counts 1 if one letter was submitted for 100 RNs for 100 are counted in the graph?
  - The NOA graph counts the number of notices of intent to conduct an environmental audit at a site. Therefore, one letter submitted for 100 RNs is counted as 100 in the graph.
8. For new owner audit, can the buyer submit NOA within 45 days of closing OR is that timeline for DOV?
  - If the new owner wishes to continue the audit, the NOA must be submitted within 45 days of the acquisition closing date. If the new owner discovered any violations during the pre-acquisition audit, the new owner must disclose those violations within 45 days of the acquisition closing date in order to be conditionally granted immunity under the Audit Privilege Act.
9. Will you receive communication from TCEQ indicating that your NOA has been received/approved?
  - If there are any issues or concerns with the NOA, the TCEQ will contact the person initiating the audit and inform them of the issues and concerns that were identified. In most instances, we allow the NOA to be corrected unless the NOA was mailed after commencing the environmental audit.

## **Find It and Fix It Program**

10. Can you be part of this program (*referring to FIFI*) if you are not in the Permian?
  - Thank you for your question--the Audit Act is available statewide, but the Find It and Fix It program is only available to facilities located in the 61 Permian Basin counties at this time.
11. Is the Find it Fix it program only for flare events?
  - Although many of the reported events are related to flaring, the Find It and Fix It program can be used for emissions from any oil and gas sources in the Permian Basin, including tanks and vents.
12. How does FIFI determine events are extremely harmful to human and environment to determine threshold for use in applying discretion?
  - This will be determined on a case-by-case determination, but one way is emission quantities can be modeled or compared to standards such as NAAQS in order to

anticipate potential harm. Other issues that might be reviewed could include but are not limited to was someone injured or was the public directly affected.

13. Did she say you have 90 days to opt in / submit notice of intent to participate starting on November 1?
  - Thank you for that question, yes that is correct.
14. With COVID, how would operator confirm that they were one of 98 RNs that were contacted by email? Is there a list that I can check if my company was emailed?
  - Please send an email to [permianEE@tceq.texas.gov](mailto:permianEE@tceq.texas.gov) and we can check for you today.
15. Is there an extension that can be granted for the December 1, 2020 deadline to determine whether it was an emissions event or routine? You're asking for a lot of work to be reviewed and done by December 1.
  - Yes, it is not necessary to provide information by the December 1, 2020, in the emails sent for specific emissions event. However, the last day to opt into the Find It and Fix It program is January 31, 2021. Beginning February 1, 2021, investigations will continue into these events and, depending on the results of the investigation, may result in enforcement if the company is not participating in the Find It and Fix It program.
16. Is there any guidance available to help operators determine what is "potentially routine"?
  - There is a decision tree that can be used for distinguishing between emissions events and routine events. For MSS, it may be helpful to refer to the list of activities in the oil and gas PBR ([Air PBR 106.359: Planned Maintenance, Startup, and Shutdown at Oil and Gas Handling and Production Facilities - Texas Commission on Environmental Quality - www.tceq.texas.gov](#)) or standard permit (pg. 14 - [Handling and Production Facilities \(texas.gov\)](#))
17. Do you only have coverage if the emissions event was reported (exceeded an RQ)?
  - No. Participation in the Find It and Fix It program and the associated enforcement discretion are not limited to emission events previously reported. Companies may develop compliance plans for potential and future events in order to prevent unauthorized routine events.
18. What are some of the penalties/repercussions for not completing the FIFI program deadlines in a timely manner?
  - There are no penalties or repercussions for not participating in the Find It and Fix It program; however, failure to meet the program deadlines may result in removal from the program. Companies who are not participating in the Find It and Fix It program may be subject to enforcement for unauthorized routine events.
19. Are there circumstances under which areas of concern are identified under the Find It and Fix It Program and where the site meets all requirements of that program but for which penalties may nevertheless be assessed?
  - Yes, but it is relatively unlikely. The purpose of the FIFI program is to incentivize compliance with air quality rules and regulations at oil and gas operations in the 61 counties comprising the Permian Basin. TCEQ retains enforcement authority and will consider enforcement if violations are particularly egregious or negatively impact human health or the environment.

20. Does the compliance plan need to include detailed plans for corrective action?
- The level of detail in the compliance plan should be adequate to identify the emissions point and the proposed action (change in operations, physical change, authorization change, etc.) as well as demonstrate when the proposed actions are complete.
21. Is the main goal of FIFI to get routine emissions into permit authorization and accomplish reduction of emissions through better control or operating practices and move forward?
- Yes. The goal of Find It and Fix It is to ensure that routine and predictable emissions are authorized. This may be accomplished by including these emissions in authorizations, if they are currently not authorized, and/or making changes to ensure emissions are within authorization limits.

## **Audit Act vs Find It and Fix It**

22. What is the incentive to do the find it and fix it program over doing a traditional audit act audit?
- Events that triggered an invitation to participate in FIFI and were already reported in STEERS are not eligible for the audit act because the potential violations are already identified.
23. For an O&G company that is undergoing acquisition, what is better option for the buyer company - TCEQ new owner audit OR Find it Fix it?
- It depends on the issues at the site. FIFI is focused on unauthorized air emissions and the audit act can have a broader scope.
24. Does the find and fix it program provide any immunity similar to the audit act?
- TCEQ may exercise enforcement discretion under the FIFI program, which is different from immunity.
25. Does the find and fix program existence eliminate the audit option in the Permian?
- No, the audit act continues to be available statewide.
26. If a site is already performing an audit under the Audit Act and subsequently identifies a potential FIFI event, what is the recommendation for handling this?
- If the potential FIFI event was discovered during the environmental audit under the Audit Privilege Act, the violation should be disclosed under the Audit Privilege Act.
27. If a site is under audit and then receives an email from TCEQ about the find it fix it program and links to steers events for sites that are already under audit, how is that handled?
- If the STEERS events were not voluntarily disclosed through the audit, those specific STEERS events cannot be granted immunity under the Audit Privilege Act but may be handled under FIFI.
28. If I didn't receive an email related to STEERS emissions do, I have any incentive to use find it fix it? It seems like the immunity bar is lower for find fix it and less of a privilege protection, so I'm not sure what the incentive would be.
- STEERS reports that are related to events that are routine and should be authorized will not be eligible for affirmative defense and may be referred for

enforcement actions. The FIFI program allows time for facilities in the Permian Basin to identify potential events and ensure that they are properly authorized.

## **Q&A Posting, EE Decision Tree and Presentation Postings**

29. Are the Q&As going to be available?

- They will be available on our website along with the recorded presentations and the slide presentations.

30. Will we be receiving these slides?

- The slide presentations will be published on our website in a few days following the workshop, along with a recording of the presentations and a copy of all questions and answers. Please be sure to fill out the attendance information link, you'll be receiving follow up materials.

31. Will these workshops be available online?

- Thank you for your question--yes, the presentation slides, recording of the presentations, and the Q&A will be available on our website a few days following the workshop today. Please fill out the attendance form and we will email you when the resources are available.

32. Can you walk through the decision tree?

- Please send an email to [permianee@tceq.texas.gov](mailto:permianee@tceq.texas.gov)

## **Contacts for Additional Information**

Kristi Mills-Jurach, P.E.

Deputy Director, Program Support & Environmental Assistance Division

[Kristi.Mills-Jurach@tceq.texas.gov](mailto:Kristi.Mills-Jurach@tceq.texas.gov)

512.239.1261

Michael De La Cruz

Section Manager, Air Enforcement Section

[Michael.Delacruz@tceq.texas.gov](mailto:Michael.Delacruz@tceq.texas.gov)

512.239.0259

Keith Sheedy, P.E.

Technical Specialist, Program Support Section

[Keith.sheedy@tceq.texas.gov](mailto:Keith.sheedy@tceq.texas.gov)

512.239.1556