



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

IN THE MATTER OF:

Earthrise Energy, PBC)
3033 Wilson Boulevard, Suite 700) Docket No. CAA-05-2023-0004
Arlington, VA 22201)
)

NOTICE OF DETERMINATION

1. Pursuant to the “Interim Approach to Applying the Audit Policy to New Owners”, 73 Fed. Reg. 44991 (Aug. 1, 2008) (New Owner Audit Policy), the U.S. Environmental Protection Agency (EPA or Agency) offers tailored incentives and additional penalty mitigation to new owners that want to make a “clean start” at newly acquired facilities by addressing noncompliance that began before the acquisition. The New Owner Audit Policy modifies certain conditions of EPA’s April 11, 2000 “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,” 65 Fed. Reg. 19618 (commonly known as the Audit Policy). The EPA hereby issues this Notice of Determination (NOD) regarding violations voluntarily disclosed to EPA by Earthrise Energy, PBC (Earthrise Energy) for the following facility located in:

Shelby County Energy Center
3575 E 400 North Rd
Neoga, Illinois 62447

Preliminary Statement

2. On December 31, 2021, Earthrise Energy acquired the Shelby County Energy Center (SCEC). Earthrise Energy identified violations through a voluntary post-closing compliance audit. As an incentive for regulated entities disclosing violations resulting from an environmental audit or a Compliance Management System, EPA may eliminate or substantially reduce the gravity-based component of civil penalties which could otherwise apply for violations that are voluntarily disclosed in compliance with the conditions specified in the Audit Policy. For new owners who meet the conditions of the New Owner Audit Policy, EPA may eliminate or substantially reduce the economic benefit component of civil penalties which could otherwise apply for self-disclosed violations. Earthrise Energy performed a voluntary environmental audit of its newly acquired facility in Neoga, Illinois and identified and disclosed to EPA a number of potential violations uncovered by the audit.

Findings of Fact

3. Earthrise Energy initially disclosed violations subject to this NOD to EPA on March 22, 2022.
4. Earthrise Energy disclosed that the facility under-reported nitrogen oxide (NO_x) emissions and therefore failed to hold sufficient Cross State Air Pollution Rule (CSAPR) allowances in accordance with, 42 U.S.C. § 7410, 40 C.F.R. Part 97.
5. In its correspondence to EPA, Earthrise Energy reported that the stated emissions under-reporting was caused by a discrepancy in the way the facility's data acquisition and handling system (DAHS) had historically estimated the facility's NO_x emissions and that the DAHS was not programmed in a manner that was consistent with EPA's September 2020 guidance. More specifically, Earthrise Energy stated that the prior owner and operator demonstrated compliance with CSAPR, by calculating emissions of NO_x via the optional emission calculation method authorized for low mass emitting units. However, in estimating NO_x emissions, the prior owner failed to apply the default NO_x emission factor referenced in 40 C.F.R. 75.19(c)(1)(iv)(H)(1) in accordance with guidance issued by EPA in September 2020. The prior owner programmed its DAHS to apply the hourly NO_x rate determined via performance testing for any hour in which the water injection emission control system operated at an hourly average water-to-fuel ratio within the acceptable range identified via testing, whereas the recent EPA guidance indicates the much higher default emission factor must apply for any hour in which the water-to-fuel ratio did not remain within the acceptable range for the entire hour. As a result, historical CSAPR allowance holdings were based on a calculation that relied on the site-specific performance test results for some hours in which EPA guidance indicated the higher default rate should apply.
6. Based on information provided by Earthrise Energy for the disclosures identified above, EPA has determined that Earthrise Energy has met each of the following conditions set forth in the New Owner Audit Policy:
 - a. Earthrise Energy has certified that the violations were discovered as part of an audit of the listed facility.
 - b. Earthrise Energy has certified that the violations were identified voluntarily, not through a monitoring, sampling or auditing procedure required by statute, regulation, permit, judicial order, administrative order, consent decree or consent agreement.
 - c. Earthrise Energy promptly disclosed and submitted the violations to EPA in writing.
 - d. Earthrise Energy has certified that the violations were identified and disclosed prior to the commencement of a federal, state, or local agency inspection,

investigation, or information request, notice of a citizen suit, legal complaint by a third party, or imminent discovery by a regulatory agency.

- e. Earthrise Energy has certified that it has taken the appropriate steps to correct and remedy violations of the CSAPR, 42 U.S.C. § 7410, 40 C.F.R. Part 97, including the acquisition and surrendering of additional CSAPR NO_x allowances to cover the historical allowance shortfall, plus the penalty allowances required under the CSAPR program (at a 2:1 ratio).
 - f. Earthrise Energy has certified to EPA that it has taken steps to prevent a recurrence of the violations. Earthrise Energy confirmed that it had completed an audit of its DAHS and has already re-programmed the DAHS to estimate emissions in a manner consistent with EPA's September 2020 guidance which, it stated, will prevent any recurrence of this discrepancy.
 - g. Earthrise Energy has certified that the violations at issue or closely related violations have not occurred previously within the past three years at the same facilities and are not part of a pattern of violations on the part of Earthrise Energy within the past five years.
 - h. Earthrise Energy has certified that the violations at issue have not resulted in serious actual harm to human health or the environment, and that the violations have not presented an imminent and substantial endangerment to public health or the environment. Furthermore, Earthrise Energy has certified that the violations at issue do not violate the specific terms of any judicial order, administrative order, consent decree or consent agreement.
 - i. Earthrise Energy has cooperated with EPA and provided the information necessary for the Agency to determine the applicability of the New Owner Audit Policy to its disclosure.
7. Earthrise Energy confirmed that it meets the definition of a "New Owner," for purposes of receiving the penalty mitigation incentives provided by the New Owner Audit Policy. Specifically,
- a. Prior to the transaction, Earthrise Energy was not responsible for environmental compliance at the facility that is the subject of the disclosure, did not cause the violation being disclosed, and could not have prevented its occurrence;
 - b. The violation that is the subject of the disclosure originated with the prior owner; and
 - c. Prior to the transaction, neither Earthrise Energy nor the prior owner of the facility had the largest ownership share of the other entity, and they did not have a common corporate parent.

Determination

8. Based on review of the information and documentation received and in reliance on the Earthrise Energy certifications, above, EPA has determined that:
 - a. Earthrise Energy has met all of the conditions of the New Owner Audit Policy and is eligible for a waiver of the total gravity-based civil penalty for the disclosed violations;
 - b. Earthrise Energy accrued no significant economic benefit of noncompliance as a result of the violations described herein; and
 - c. That this NOD resolves Earthrise Energy's civil penalty liability for the violations described herein with no assessment of a civil penalty.

Reservation of Rights

9. If, and to the extent that, any information or statement provided by Earthrise Energy upon which this NOD is based was materially false or inaccurate at the time such information or statement was provided to EPA, EPA reserves the right to revoke this NOD and, thereby, render such NOD null and void. Such revocation shall be in writing and shall become effective upon receipt by Earthrise Energy.
10. This NOD applies only to EPA's mitigation of the civil monetary penalties for the violations disclosed. If, and to the extent that, any information or statement provided by Earthrise Energy, upon which any civil penalty mitigation granted herein for such violations was based, was materially false or inaccurate, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Such assessment and collection or the exercise of this reservation shall be in writing and shall become effective upon receipt by Earthrise Energy.
11. Nothing herein shall be construed to limit the authority of EPA and/or the United States to undertake action against any person, including Earthrise Energy, in response to any condition which EPA or the United States determines may be necessary to protect public health, welfare or the environment. Furthermore, issuance of this NOD does not constitute a waiver by EPA and/or the United States of its right to bring an enforcement action, either civil or criminal, against Earthrise Energy for any other violation of any federal or state statute, regulation or permit.

12. In issuing this NOD, EPA seeks to promote self-auditing and full compliance by Earthrise Energy with all environmental requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

Sincerely,

Michael D. Harris
Director, Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5