SB 1003 – Oklahoma’s New Environmental Audit Law

Prepared by: Stephen Baldridge
Senior Counsel to the Oklahoma Secretary of Energy & Environment
Presentation Outline

• I. Basic FAQs

• II. Why Oklahoma needs an Environmental Audit Law

• III. Overview of the Law/What the Law Is

• IV. What the Law Is Not/Misconceptions

• V. Implementation of the Law

• VI. Questions
SB 1003 - FAQs

• SB 1003: “Oklahoma Environmental, Health and Safety Audit Privilege Act”

• Signed by Governor Stitt on April 29, 2019

• The Act becomes effective on November 1, 2019

• Law will be codified at 27A O.S. §§ 1-4-111-121

• Not blazing a trail!
Oklahoma’s Need

• Limited State resources for compliance inspections

• No self-policing measure existed in Oklahoma law for industry to use

• Because government resources are limited, maximum compliance cannot be achieved without active efforts by the regulated community to police themselves.
Overview of the Law

• **Audit Process**

  • A member of the regulated community provides a written Notification to a state agency that the entity will be beginning a voluntary environmental audit.

  • The regulated entity goes through the process of the audit to determine if violations or issues exist and a report is made.

  • The regulated entity corrects and remediates the violations (providing for immediate environmental improvement).
Overview of the Law

• **Audit Process cont.**

  • The regulated entity voluntarily discloses the violations to the regulatory agency. This voluntary disclosure qualifies the entity for immunity or reduced penalties depending on if they meet all of the requirements of the immunity provisions of the bill.

  • The documents and reports generated by the regulated entity as part of the audit qualify for a legal privilege and from disclosure to third-parties or governmental agencies except in certain limited circumstances.

• *Note:* The Audit Reports are subject to the privilege. The Notice of Audit and the Disclosure of Violation are subject to the Oklahoma Open Records Act.
Overview of the Law

• **To Qualify for the Immunity:**
  • The disclosure is required to be made promptly after the violation was discovered; the disclosure was made in writing by certified mail to the DEQ;
  • The violation was not independently detected, or an investigation of the violation was not initiated, before the disclosure was made;
  • The violation was noted and disclosed as the result of a voluntary environmental audit;
  • Appropriate efforts to correct the noncompliance are initiated, pursued, and completed within a reasonable amount of time;
  • The disclosing person cooperates in the investigation of the issues identified in the disclosure;
  • The violation did not cause injury or imminent and substantial risk of injury;
  • The disclosure is not required by an enforcement order or decree.
What the Law is Not/Misconceptions

• Does not allow industry to hide pollution from state regulators

• Law makes no change to any existing legal obligation the regulated community

• Law makes no change to any substantive environmental law

• Law does not limit a state agency in any way from conducting inspections or enforcement as it is deems relevant
Implementation

• Law becomes effective on November 1, 2019

• DEQ has had discussions with TCEQ on implementation of the law

• DEQ will be preparing guidance that will outline the process for the regulated community to undergo an audit and how to comply with the law
Win/Win/Win

• (1) All Oklahomans – improved environmental outcomes

• (2) Industry – ability to self-police

• (3) State Agencies – improved compliance w/ laws and regs
QUESTIONS?