

INSIGHTS

Major Air Enforcement Action Against New Plant Owner Suggests the Value of EPA's "New Owner Audit Policy"

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A new \$1.3 million Clean Air Act penalty action by U.S. EPA and the Michigan Department of Environmental Quality against AK Steel Corporation has received significant public and media attention this week. The proposed consent decree, filed with the court and opened for public comment on May 19th, includes significant cash penalties and supplemental environmental project requirements, along with burdensome obligations to establish an environmental management system, perform third party audits, and install costly new pollution controls. Less often mentioned in this week's stories about the consent decree is the fact that AK Steel ***just acquired the facility in question last year***. While it likely would have been inapplicable in this particular instance for a variety of reasons, the fact that a facility's new owner is so quickly facing such large penalties and significant injunctive obligations serves as an important reminder that U.S. EPA has a strong policy "" the so-called "Interim Approach" or "New Owner Audit Policy" issued in August 2008 "" which provides relief from penalties for new owners of facilities and companies that "find, fix, and disclose" environmental issues at their new facilities. The Bracewell team was "present at the creation" of the new owner audit policy and has overseen new owner audits and disclosures on tens of billions of dollars of acquisitions in a number of industries. If you're thinking of an acquisition "" or if you have recently completed one "" please contact us to discuss whether EPA's new owner audit policy or various state audit laws or policies might help eliminate your exposure to potential penalties arising from environmental conditions or issues you might acquire.