

## Texas Expands Environmental Audit Privilege to Prospective Purchasers

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On May 24, 2012, Texas Governor Rick Perry signed into law [S.B. 1300](#), a bill that amends the Texas Environmental, Health and Safety Audit Privilege Act to allow new owners of a facility that had performed pre-closing environmental or health and safety (EHS) due diligence to obtain immunity from administrative or civil penalties for a voluntary disclosure of EHS violations.

The bill expands the definition of an “environmental or health and safety audit” to include a systematic voluntary evaluation, review, or assessment of EHS compliance conducted by a potential purchaser of a facility. Violations identified in EHS audits conducted by a prospective purchaser prior to the closing date must be disclosed no later than 45 days after the closing date. The bill also allows an EHS audit begun prior to the acquisition closing date to be continued for up to six months after the closing date, provided notice of the intent to continue the audit is provided to the government within 45 days after the closing date. To obtain immunity from penalties, the new owner must certify that prior to the closing date they were not responsible for EHS compliance, did not have the largest ownership share of the seller (and the seller did not have the largest ownership share of the buyer), and did not share a common corporate parent or majority owner with the seller. The bill also includes the period of ownership of the facility as a mitigating factor in any penalty imposed for intentional, knowing, or reckless violations, or those that resulted in a substantial economic benefit.

The amendments to the Texas Environmental, Health and Safety Audit Privilege Act become effective on September 1, 2013.

**Tip: Ensure any EHS compliance review is conducted under attorney-client privilege, and also consistent with any applicable state audit privilege or audit policy.**

*This tip has been created for information and planning purposes. It is not intended to be, nor should it be, substituted for legal advice, which turns on specific facts.*

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