

Ethier  
1100, 736 6<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3T7



# From Panic to Plan: What to Do When the Regulator Calls

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Summary Notes

Prepared By: Sohail Thaker  
*Partner*  
Ethier  
sthaker@ethier.ca

## Regulatory Audits

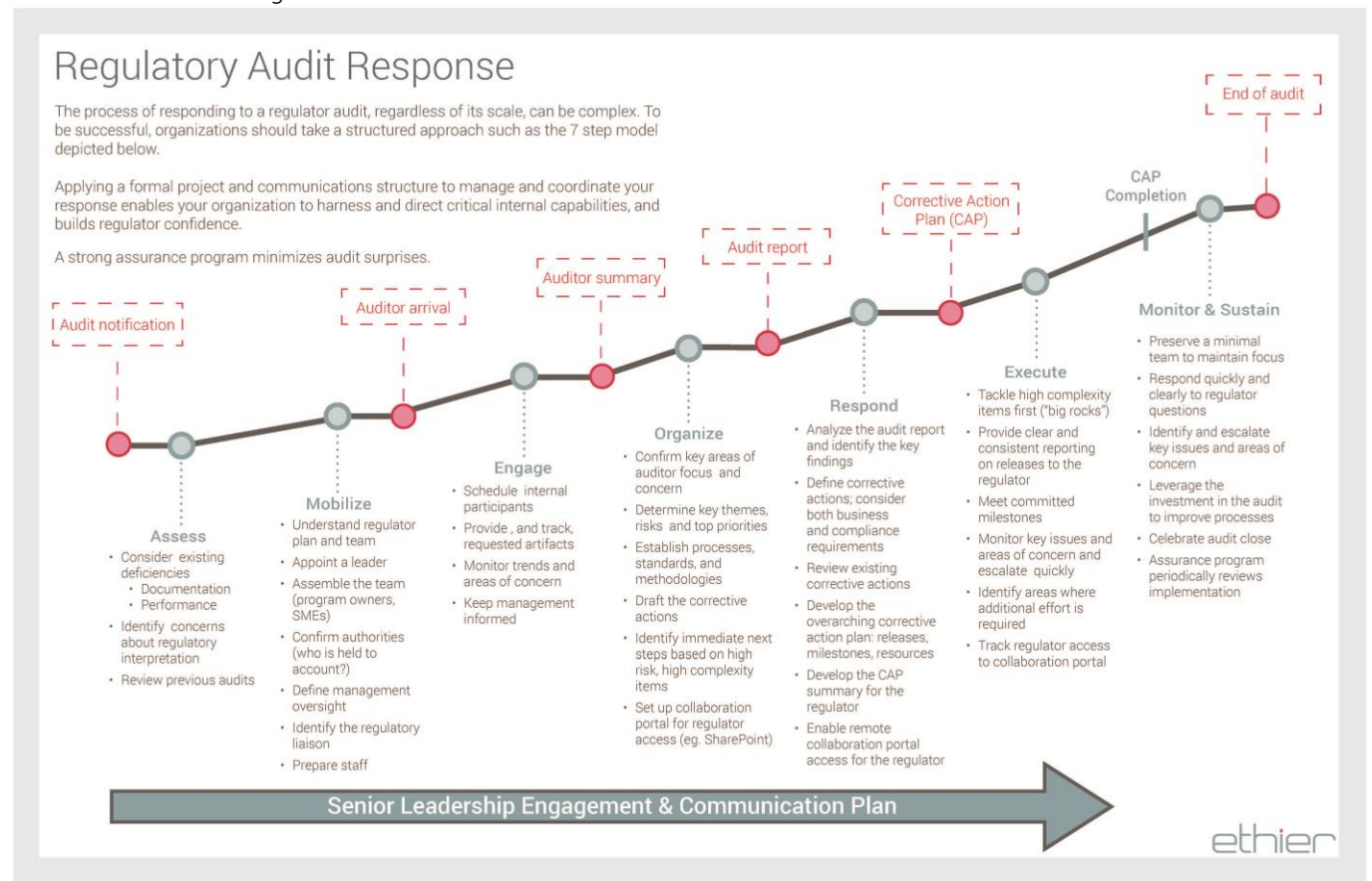
Maintaining and enhancing Regulator relations is a continuous focus in today's oil and gas environment. Whether your organization is regulated at the federal, provincial or multi-jurisdictional level, increasingly regulators are evaluating your business on the integration of your management processes, controls and evidence of compliance. A clear strategy and plan to respond to audits and assessments will prevent your organization from going into a "tail-spin".

Regulatory Audits are not new, but the importance of meeting the requirements in an environment that is not always supportive of your operations has never been higher. Regulatory Auditors expect companies to have well integrated management systems and business processes that prove that you meet the various regulations.

The Regulator's job is to ensure industry is doing what is expected to minimize risk to personnel, the general public, the environment and corporate assets. Companies must be able to demonstrate, during an audit, that they are meeting the expected commitments.

## Regulatory Audit Response

For any company the process of responding to an audit, regardless of its scale, can be complex. To be successful, organizations must take a structured approach to meeting their regulatory commitments. Ethier has developed an audit response methodology that assists companies in a structured approach, as summarized in the diagram below.



Ethier's audit response key steps are as follows:

## Audit Notification

Depending on the regulator, you will receive some form of notification that an audit will be taking place. For example, the National Energy Board tends to give companies a few months' notice of an impending audit.

So after the moment of panic, it's time to get moving. Ethier's model recommends two steps when you receive an Audit Notification:

### 1) Assess

- Understand your current state and get a sense of your deficiencies
- Review previous audits, both your own and those that are in the public domain
- Reach out to other companies with which you have a relationship

### 2) Mobilize

- Understand who the regulator is, and the auditor's reputation/style
- Take a project management approach to the audit:
  - Assign a leader
  - Set up a team
  - Identify which staff members will need to talk to the regulator and prepare them on what to expect

## Auditor Arrival

Once your team is ready you wait in anticipation for the day the Regulator's Audit Team arrives. This brings us to the **3rd step: Engage**.

It is important for the team that interfaces with the auditor to take notes in every exchange:

- What topics are they interested in?
- What issues do they seem concerned about?
- Where is their line of questioning going, i.e. what are they trying to uncover?
- What artifacts do they want to see?

Take good notes and verify them, and your understanding, with the rest of the team after meetings. Keep track of where the auditor's focus intersects with your identified deficiencies, and keep leadership informed of the audit progress and areas of concern.

## Auditor Summary

Once the auditors' interviews are complete they will prepare an Auditor Summary:

- This draft report highlights what they consider the findings to be
- Often this is mostly "baked", but it does provide an opportunity to correct any significant misunderstandings
- Remember that first impressions have been made and it can be hard to change their point of view

The Auditor Summary brings us to the **4th step: Organize**:

- Confirm the key themes and areas of focus
- Determine the Corrective Actions required to address the findings

- Now that you have your scope, you can start setting up some of the key processes, standards and methodology to be followed in the audit response project; for example, documentation standards and tracking methods
- Start organizing the team to receive the final report

## Audit Report

Receipt of the final Audit Report triggers the **5th step: Respond**.

- Analyze the Audit Report and compare it to the Auditor Summary to identify any changes
- Document the findings and group them where possible (e.g. 600 pages of audit reports could be distilled down to less than 50 individual findings)
- Confirm the Corrective Actions required to address the findings
- Review other Corrective Action Plans (CAPs) in progress and look for opportunities for alignment

Key recommendations for developing your CAP include:

- Treat it as a project and define scope, resources, deliverables, milestones and timing as part of a detailed project plan
- Use a release approach to group project activities, and provide yourself with time to prepare internal deliverables for submission to the regulator
- Develop a summary version of the CAP for the regulator based on the identified releases
- Deliver the CAP to the regulator

Collaboration Portal

- Design and establish this early
- Use the portal to share documents with the regulator
- Prepare to track the regulator's use of the portal including what they are looking at, when, and who

## Corrective Action Plan

Once your CAP is submitted, you move to the **6th step: Execution**. This typically requires a lot of team work.

We recommend you get your team organized and start executing as soon as possible – don't wait for regulatory approval of the CAP – because in most cases the clock starts ticking based on the CAP submission date. This means that you may need to adjust your CAP, once it's in flight, to respond to specific regulator feedback.

Now you really get into Project Execution mode:

- We recommend you attack the "big rocks", i.e. your most complex items, first
- Communicate progress for each release with the regulator and make it easy for them to see what you have achieved and how the results you are providing map to your plan
- Stay on top of issues – escalate them quickly and get extra help if you need it – so you can stay on track with your committed deliverables; you want to establish regulator confidence early
- Track what the regulator is reviewing via your collaboration portal
- A well run project approach will ensure that you successfully deliver what was promised in the CAP, which should mean little push-back from the regulator

## End of Audit

Congratulations – you can celebrate now that the CAP is complete. Our **7th and final step is Monitor & Sustain.**

The audit is not complete until the regulator is satisfied, so there may be some follow-up after the CAP has been executed. Before you disband the team, take time to celebrate all of their hard work. It is also a psychological win for the organization so share the good news! Keep some members of the team engaged to maintain continuity from the audit and CAP development and execution. This will enable you to meet any lingering commitments and respond quickly to regulator questions. Be aware that regulators can come back at any time to audit the work done in the CAP, so make sure that new processes are being followed and you are not repeating the mistakes of the past

Responding to an audit requires a huge investment in time from the organization so leverage the work you've done to improve your operations and use your assurance program to periodically check on how well the new processes are being followed.

## Key Discussion Points from the Panel

In the panel session, Ethier and the panel of industry experts shared lessons learned and proven strategies for responding to regulator audits. Below is a summary of the key points discussed:

### Understanding the Regulator's Mandate

- It is important to understand the mandate of the regulator you are dealing with
- Their role is to provide the public with a sense of confidence that companies/industry are meeting regulatory expectations
- They act on legislation, and must often report to government, plus "affected parties"/stakeholders in society
- Recognize that expectations have changed significantly, and will continue to evolve, Regulators move to the pulse of the current socio-political environment
- Keep all of this in mind when dealing with Regulators; recognize they have to demonstrate they are doing their jobs

### High level Approaches taken to Audits

- Review the roadmap Ethier put together – it contains the key elements to consider
- Work with your internal audit team, regulatory, legal, and operations groups to identify gaps
- Reach out to industry peer organizations to understand how they may have responded to a recent audit with the same regulator you are dealing with
- Use 3rd party consultants to analyze the findings and setup/manage the audit response
- Take time to carefully analyze the findings, identify themes, and structure the corrective actions to align with business objectives
- Recognize that you don't have to have a 1-to-1 relationship between findings and corrective actions, for example, 40-50 findings could be resolved with 20-30 corrective actions
- Audits are a "conversation", work with the auditors to gain an understanding of what they are trying to highlight, and determine how that impacts your business. Drive for clarity with the auditor
- It is very easy to get off-track if the analysis, findings, and corrective actions are unclear

### Audit Team Structure

- Take a project approach
- Assign a project manager/ audit leader to manage the full life-cycle of the audit
- Identify, for each Management System element, who is the responsible SME (element owner) and get them engaged throughout the audit – they need to engage and provide the responses to the auditors
- Hire/assign business analysts to support the Subject Matter Experts (SMEs), to do the detailed work required to analyze the findings, identify themes, remove duplication and redundancy
- The business analysts will work with the SMEs to get guidance on technical issues and to ensure internal accountability and participation
- Identify/assign specific ownership for corrective actions after the audit is complete, and identify who will be tracking and monitoring to ensure the deficiencies do not re-occur
- Assign ownership of corrective actions to the SMEs
- Use 3rd Party resources when internal resources are not available or internal resources do not have capacity to bring the right level of focus to address the audit

## Tracking Progress of the CAP and Keeping the Regulator Informed

- Focused coordination and leadership is important; it can be difficult to keep momentum when the auditors are not engaging or providing feedback in a timely manner
- Project Manager/Audit Leader tracked and reported on progress, status of deliverables and milestones, and maintained vision of what needed to be achieved to meet audit requirements
- Conduct regular team meetings (include SMEs, Project Manager, Business Analysts) to identify obstacles that need to be addressed
- Track the CAP using technology if possible (e.g. Logic Manager, spreadsheets, SharePoint)
- Store evidence of corrective action completion so that it is easy to share with auditors (including source of information, system of record)
- Recognize that SMEs can sometimes lose context and add requirements
- Submit regular feedback to auditor, show progress against commitments in the CAP
- Create a feedback loop with the auditor, this can help establish a trusted relationship that can be on-going past the audit
- Identify if there are other CAPs that are addressing similar deficiencies and determine if the effort can be combined/refined to meet the audit findings

## Common Challenges

- **Managing scope:** Specific audit findings might point to systemic issues, need to determine how to specifically satisfy audit requirements (not morph projects into something too big to execute)
- **Lack of audit protocols:** It can be difficult to meet regulatory requirements when the auditors are not following (or using) an audit protocol
- **Unclear regulator direction:** e.g. Interviews - sometimes the auditors are unclear about who they want to meet in the interview stage
- **Auditors/regulators with different opinions/interpretations:** Inconsistency in interpretations by individual auditors can be very challenging
- **Audit reports vary in findings:** There are cases where one external auditor audits an area and finds everything compliant and then a subsequent external audit disagrees and finds non-compliance – this creates confusion regarding the true state of compliance
- **SMEs going “off-script”:** Sometimes SMEs who are not well prepared to engage with the auditor will fail to focus on the documented processes and instead they emphasize “tribal knowledge”
- **Making a poor first impression:** Poor preparation for a meeting with the auditor can create a negative first impression which can show up in the audit report
- **Duration of audit/CAP is long:** Two main challenges on an extended duration CAP are: keeping momentum and managing the churn/transition/turnover of resources and changes in ownership
- **Not adequately resourcing the audit response team:** It is difficult to respond to audits and manage the complexity of coordinating cross-organization responses without having adequate resources

## Balancing Compliance Needs with Business Objectives

- Compliance is a choice, and should be a business objective
- Standards that are applied internally may exceed regulatory requirements, this is determined by your business objectives
- A comprehensive Management System and Assurance Program should inform strategy

## Value of Assurance Programs

- Take a proactive approach by establishing an Assurance Program that helps identify gaps through internal audits and self-assessments
- Develop an assurance program that aims to identify gaps (using internal assurance resources) before external auditors find them – this will minimize the surprises from external audits
- An assurance program will give the organization a good line of sight to the current deficiencies
- Think of an audit as an opportunity to improve, track progress and coach on the expected processes
- Encourage process owners to follow their processes, not just talk in terms of “tribal knowledge”
- An assurance program helps manage multiple/concurrent audits and multiple CAPS
- Recommend creating an integrated multi-year audit calendar – track planned and expected audits (both internal and external) and track history to help with forward planning
- Try to balance impacts to business units, decide where to focus and where to relax requirements in peak periods, look for themes that could be consolidated
- Stay ahead of external audits by conducting internal reviews

## Final Advice from the Panel

- Don't panic, don't fear, audits are an opportunity to improve, change culture and approach
- Look at resources, can you manage in-house or do you need help? (Can't be side of desk activity)
- Be wary of “scope creep” and stay focused
- Recognize that external regulator resources are “free” – use their input to improve your organization
- Plan-Do-Check-Act; drive continuous improvement
- Organizations have the flexibility in how they address audits, align your audit response with your business drivers and aim to create business value
- If you don't have an audit standard of care, consider developing one
- One day, audits will be looked at as a positive thing



## Closing Comments

For companies, the best defense is clearly a good offense. Companies need to have:

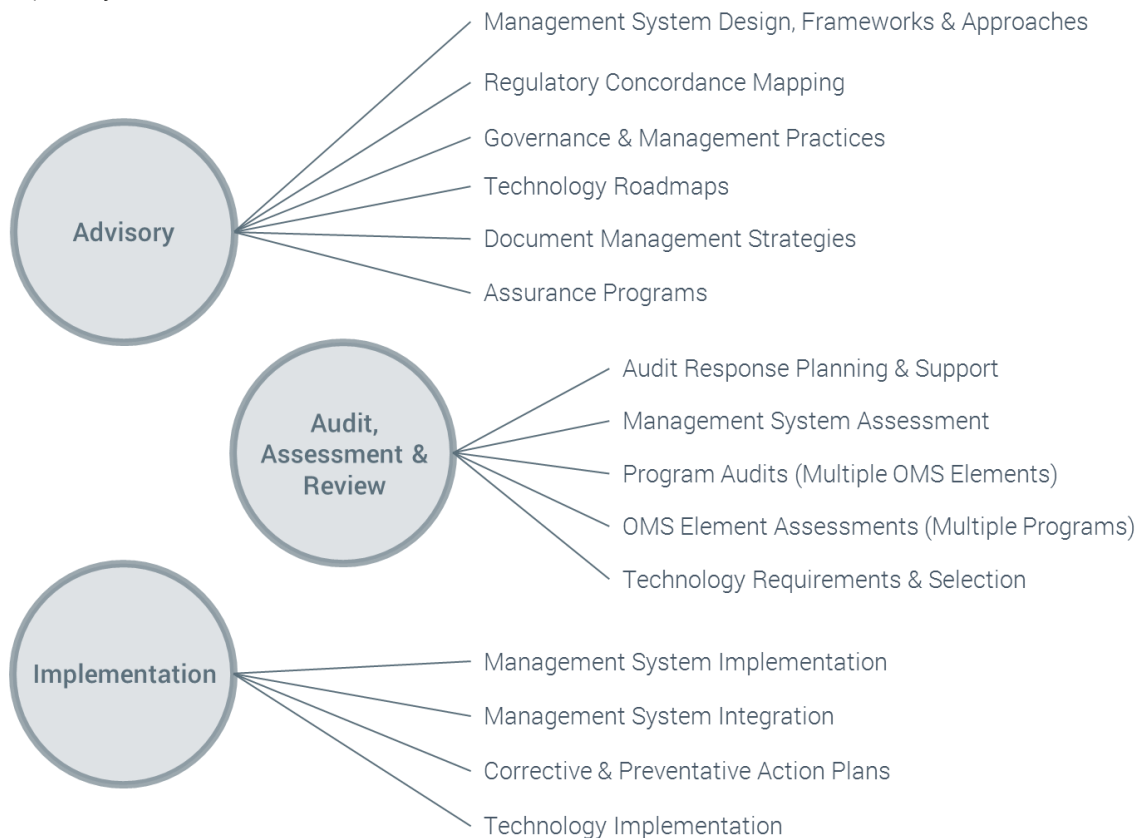
- A clear understanding of what the regulators expect
- Well documented processes that meet the requirements of the regulations
- Well trained people, and
- Evidence that the processes are being followed

To strengthen each of these, a strong Assurance Program that incorporates tools such as self-assessments, investigations and internal audits is key to the identification and correction of any gaps. Following these techniques will reduce the stress related to a call from the regulator because you will already be aware of any material deficiencies and have CAPS in place to address them.

Ethier has a number of services that can help your organization improve your audit readiness and we would be happy to meet with you and discuss how we can help.

## Ethier Services:

Ethier combines and applies a blend of leading practices in project delivery, managing change and process excellence with expertise in Operations Management Systems design, development, implementation, risk management and regulatory compliance to support improved business performance and compliance capability.



## Regulatory Audit Response Breakfast Panel Member Bios

### Adam Shelley

Adam serves as Director of Operations Management at Plains Midstream Canada (Plains). Plains is an industry leading operator of midstream energy assets where Adam is responsible for providing strategic direction and oversight for the Operations Management System and Process Safety Management corporately and across the operating footprint. Adam brings over 13 years of energy industry experience and has been with Plains since 2009 serving in various operational capacities including construction, engineering, project management, regulatory and government affairs. Adam also brings a multi-disciplinary background in facilities construction with his experience at Can West Projects, a leading energy construction firm. When he's not working Adam enjoys traveling the world with his wife Stacey and spending time fly fishing in the Alberta back country.

### Alain Parisé

Alain is the Director, Corridor Management at Alliance Pipeline which covers land, right-of-way, stakeholder and Aboriginal relations as well as Emergency Management. He has over 20 years of pipeline and energy infrastructure experience working on projects and in operations across North America under the auspices of many provincial, state and federal regulators. Prior to joining Alliance, Alain was most recently the director of Land, Community and Aboriginal Relations for the TransCanada Energy East project, responsible for satisfying provincial and regulatory requirements for the project application. He has significant experience with regulatory applications and hearings, and helped Alliance with its corrective action plan following the 2015 National Energy Board audit. When outside of work, Alain enjoys traveling and languages, various forms of exercise, as well as entertaining.

### Ryan Sporns

Ryan is a Manager with Enbridge in their Regulatory Affairs department. He has over 16 years' experience in the pipeline industry focused in areas such as integrity, operations, investigations and internal/external audits. Over this time, Ryan has led or been directly involved in numerous regulatory audits, inspections and investigations, including the largest and most comprehensive audit ever conducted by the National Energy Board in 2014. Ryan enjoys his free time playing hockey, skiing and trying to keep up with his two children.

### Sohail Thaker – Moderator

Sohail is a Partner at Ethier, a Calgary based consulting firm that drives business excellence. He has over 30 years of international consulting experience and recently celebrated his 19th year at Ethier. Sohail has advised and helped his clients implement pragmatic business solutions in the Oil and Gas, Telecommunications, Healthcare, Software, and Logistics industries. His expertise includes leading business transformations, project management, business analysis, business process innovation, change management, and facilitation. Sohail leads Ethier's Management Systems and Regulatory Compliance Services Practice, and in his free time enjoys running, martial arts, and cosplaying.