



EPA's Enforcement Priorities

NACAA Meeting- July 14/15, 2009
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National Priorities

- CAA Air Toxics
- **CAA NSR**
- RCRA Financial Responsibility
- RCRA Mineral Processing
- CWA Combined Sewer Overflows
- CWA Sanitary Sewer Overflows
- CWA Storm Water
- CWA Combined Animal Feeding Operations
- Indian Country (drinking water, schools, dumps)



NSR Priority

- National NSR areas:
 - Coal-fired utilities
 - Acid manufacturing
 - Cement manufacturing
 - Glass manufacturing

Coal-Fired Utilities





Coal-Fired Utilities 114s

- In the last two years EPA has issued approximately two dozen information requests to utilities



Coal-Fired Utilities Litigation

- Alabama Power Company
- Cinergy (now Duke Energy Indiana and Duke Energy Ohio)
- Duke Energy Corporation
- Louisiana Generating – Big Cajun 2 (January 2009)
- Westar (January 2009)

Coal-Fired Utilities Results

- 16 Settlements
 - >1.9 million tpy of reductions (upon full implementation)
 - >\$11 billion – injunctive relief
 - >\$62 million – civil penalties
 - >\$175 million – environmental mitigation projects





Kentucky Utilities

- Lodged February 3, 2009
- E.W. Brown Unit 3 Generating Station
- Injunctive relief -- \$144 million
 - SCR (first to meet .070 lb/mmBTU)
 - Flue gas desulfurization unit (.100 lb/mmBTU or 97%)
- 30,000 tpy of emission reductions
- \$1.4 million (largest for single unit), \$3.0 million in mitigation (carbon capture and storage, clean school buses, and National Park Service)

United States v. Cinergy

- Jury trial on issues of liability
- Favorable United States verdict on 4 of 14 alleged “major modifications”
 - Wabash Units 2, 3 and 5
- Jury rejected Cinergy’s “routine maintenance, repair and replacement defense” (RMRR)
- Jury found that “reasonable power plant operator” would not have expected a net emissions increase



United States vs. Cinergy

- Remedy Trial had been scheduled for February 2, 2009 for Wabash
- On December 22, 2008 Judge ordered a new trial stating that Cinergy's witness had "perverted the truth" when he represented himself as a retiree rather than a paid consultant
- Remedy Trial for successful Wabash claims held in March 2009
- New liability trial for remaining claims held May 11, 2009
- Jury decision for EPA on 2 of 6 claims on liability on May 20, 2009
- Remedy trial – late 2009/early 2010



United States vs. Cinergy

Wabash River Remedy case

- May 29, 2009 – Judge McKinney handed down his decision.
- NSR remedy - requires Cinergy to shut down Wabash River Units 2, 3, and 5 by September 30, 2009, and surrender Acid Rain sulfur dioxide allowances.
- Remedy decision is precedent setting in large part due to court's ruling requiring mitigation.

Acid Manufacturing Sector





Acid Sector

- Sulfuric Acid:
 - Largest volume chemical produced in the US
 - Used to make fertilizer, gasoline, soaps, pigments and dyes
 - Produced both voluntarily and as a byproduct from metal smelters
- Nitric Acid:
 - Tenth largest volume chemical produced in US
 - Used to make fertilizer, explosives, and nitro-organic chemicals
- Environmental Stakes:
 - 120,000 tpy of SO₂
 - 20,000 tpy of NO_x
- Widespread Non-compliance:
 - NSPS—Many plants built after 1971 NSPS standards
 - NSR—Expansion “modifications” without permitting

Acid Sector Enforcement

- Information Requests (>40)

We have issued over 40 Information Requests to 35 of the 117 acid plants in the U.S.

- Notices of Violation (13)



Acid Sector - Results to Date

Case Results:

- Five Settlements covering 22 Acid Plants:
 - **Agrium/Royster Clark:** single facility nitric acid settlement (February 2007)
 - **Rhodia Inc.:** eight plant global sulfuric acid settlement (April 2007)
 - **DuPont:** four plant global sulfuric acid settlement (July 2007)
 - **Chemtrade/Marsulex:** eight plant global sulfuric acid settlement (January 2009)
 - **DuPont/Lucite:** single facility sulfuric acid settlement (April 2009)

Where: Nationwide – Settled Plants are located in 9 states:

- California, Indiana, Kentucky, Louisiana, Ohio, Oklahoma, Texas, Virginia, and Wyoming

Emissions reductions:

- Sulfur Dioxide (SO₂) by more than 36,740 tons per year
- NO_x, acid mist, VOC, CO and PM by more than 610 tons per year

Injunctive Relief: “Set-the-Bar” on BACT rates

- Sulfuric acid: 1.5-2.5 lb/ton (from 3.5 lb/ton)
- Nitric acid: 0.6 lb/ton (down from 3.0 lb/ton)
- \$224 million in control technologies

Civil Penalties:

- \$9.575 million

Supplemental Environmental Projects:

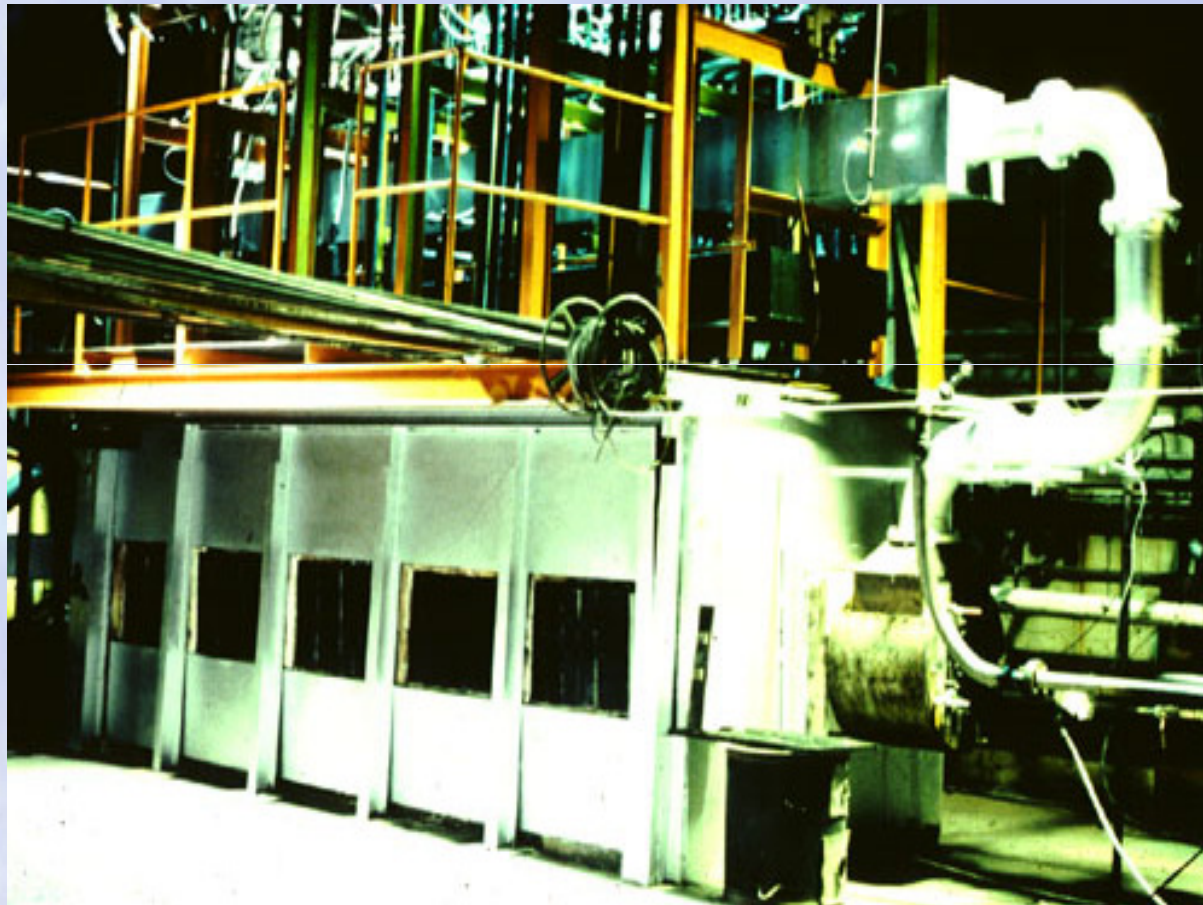
- \$48,000



Lucite/DuPont Belle, WV 4/20/09

- One sulfuric acid plant in Belle, West Virginia owned by Lucite and operated by DuPont
- Company elected to shut down facility
- 1469 TPY of emission reductions
- \$2 million penalty (shared)
- State of West Virginia

Glass Manufacturing Sector





Glass Sector

- Environmental Stakes:
 - 66,000 tpy of NO_x
 - 18,480 tpy of SO₂
 - 6,270 tpy of PM₁₀
- Widespread non-compliance:
 - Aged Plants
 - Modifications
 - Few NSR Permits
 - Rebricking (costs not part of NSPS “reconstruction” but not exempt from NSPS “modification”)



Glass Sector

- Information Requests
 - We have issued approximately 72 Information Requests to 58 of the 132 glass plants in the U.S.
- Notices of Violation (7)
- Federal Complaints (1)
 - Saint Gobain, Madera, CA (2005)



Glass Sector - Results to Date

Case Results:

- One settlement covering 1 plant:
 - Saint Gobain; single facility glass settlement (April 2005)

Where: Madera California:

Emissions reductions:

- Nitrogen Oxides (NOx) reduced by 226 tons per year
- Sulfur Dioxide (SO₂) reduced by 167 tons per year
- Particulate Matter (PM) reduced by 33 tons per year

Injunctive Relief: “Set-the-Bar” on BACT rates

- Replaced existing Furnace #2 with Oxyfuel Furnace to reduce NOx (1.3 lbs NOx/ton of glass pulled)
- Installed Scrubber with 85% removal efficiency
- Installed ESP (0.45 lbs PM/ton of glass pulled)
- \$6.6 million in control technologies

Civil Penalties:

- \$929,000

Supplemental Environmental Projects:

- \$1.2 million

Cement Manufacturing Sector





Cement Sector

- Environmental Stakes:
 - 90,000 TPY of SO₂
 - 90,000 TPY of NO_x
- Wide-spread non-compliance:
 - Large capacity increases
 - Little to no real time continuous monitoring
 - Few modern SO_x or NO_x controls
 - Few NSR Permits
 - Fuel changes (tires and pet coke)



Cement Sector

- Information Requests (>60)
 - We have issued over 60 Information Requests to 55 of the 110 cement plants in the U.S.
- Notices of Violation (9)
- Federal Complaints (2)
 - Cemex, Victorville, CA (2007)
 - Cemex, Lyons, CO (2009)

Cement Sector - Results to Date

Case Results:

- 2 Settlements covering 2 Cement Plants:
 - St Mary's Cement (Sept 08)
 - CEMEX Victorville California (Jan 09)

Where: Settled Plants are located in 2 states:

- Illinois and California

Emissions reductions:

- NOx reduced by more than 4,590 tons per year

Injunctive Relief:

- St Marys: SNCR operating at 75% reduction at 4 kilns, \$1.9 million in injunctive relief
- CEMEX: NOx limit of 1.95 lb/ton – the lowest current limit in the U.S., CEMEX chose SNCR to meet these limits

Civil Penalties:

- \$2.8 million

Supplemental Environmental Projects:

- None



Other PSD/NSR Activity

- Polystyrene Foam
- Landfills
- Industrial Boilers
- Iron and Steel
- Natural Gas Transmission
- Elevated Flares
- Aluminum
- Municipal Waste Combustors
- Carbon Black Production
- PVC Manufacturers
- Oil and Gas producers
- Ethanol producers
- Wood Products
- Pulp and Paper



Title V Issues

- Citizens are using the Title V petition process to secure compliance with NSR requirements and to ensure that negotiated terms of consent decrees are included in the permits.
- Title V affords any person the right to petition EPA to object to a proposed Title V permit.
- Petitioner bears the burden to demonstrate that the Title V permit is “not in compliance with the requirements of [the Clean Air Act].”



Title V Issues

CITGO Order

- On May 28, 2009, EPA granted in part and denied in part a Title V petition pertaining to consent decree requirements.
- Definition of “applicable requirement” on its face does not include the requirements of a consent decree. See 40 C.F.R. § 70.2.
- But “because CDs reflect the conclusion of a judicial or administrative process resulting from the enforcement of ‘applicable requirements’ under the Act, all CAA-related requirements in such CDs are appropriately treated as ‘applicable requirements’ and must be included in Title V permits.”
- This is the case regardless of whether the defendant has admitted liability.



Title V Issues

Wisconsin Electric Oak Creek Order issued on 6/12/09

- Petitioners alleged that the Title V permit failed to include PSD as an applicable requirement, relying upon (past and future) alleged PSD violations that had been resolved through a federal consent decree.
- EPA stated that the petition required it to “address the relationship between two distinct, but related parts of the CAA – the enforcement provisions of the Act and EPA’s obligation to respond to petitions to object to state permits issued under Title V.”
- “Once EPA has resolved a matter through enforcement resulting in a CD approved by a court, the Administrator will not determine that a demonstration of noncompliance with the Act has been made in the Title V context.”



Title V Issues

- We adopted this approach because:
 - (1) it avoids conflicts between settlements of enforcement cases and responses to title V petitions (including potentially competing court proceedings);
 - (2) it does not create disincentives for sources to agree to reasonable terms in settling enforcement matters;
 - (3) it does not require EPA to revisit complex applicability issues in the short 60 day timeframe for EPA to respond to title V petitions;
 - (4) it does not unfairly prejudice sources that settled enforcement actions in good faith; and
 - (5) EPA should not be forced to re-litigate issues where EPA and the source have settled;
 - (6) Further, the public *is* afforded an opportunity to comment on CDs.