



# NSR Enforcement Lessons Learned Workshop

NACAA Meeting- July 14/15, 2009  
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# Training (Origins)

- Based upon a number of discussions with NACAA, we agreed to explore an “NSR Lessons Learned” workshop.
- We worked with NACAA to develop the overall structure of the workshop.
- For each presentation, we work with the hosting Region (both in the permits and enforcement programs), regional organization (e.g., MARAMA), State, and local presenters.



# Training (Purposes)

- Discuss opportunities for better coordination between enforcement and permitting.
- Highlight “best practices” to ensure effective coordination.
- Share information on priorities, recent cases (NSR focus), regulations, and policies.
- Highlight areas where improvements can be made in permits and consent decrees.





# Training (Dates)

- Region 4, Atlanta, GA, September 17 and 18, 2008
- Region 6, Dallas, TX, February 18 and 19, 2009
- Region 3, Phila., PA, June 9, 10, and 11, 2009
- Region 10, Seattle, WA, July 7 and 8, 2009
- Region 7 – October 20, 21, and 22, 2009
- Region 5 – November 2009
- Region 2 – January 2010
- Region 9 – March 2010
- Region 8 – May 2010
- Region 1 – September 2010



# Training (Reviews)

- “Best training I have ever taken.”
- “Lots of very valuable information.”
- “Wish I had had this type of training earlier in my career.”



# Training (Legal Developments)

- The most active period of legal interpretation of the Clean Air Act in its history
  
- Two main sources of legal interpretation:
  - New Source Review Reform
    - Rule development
    - Court interpretation of the Clean Air Act and the rules
  
  - Enforcement Cases
    - Court interpretation of United States' claims and source defenses



# Training (Commingling)

- EPA has dual role –
  - Addressing non-compliance and
  - Issuing permits
- Permit actions are adjudicatory in nature
  - Implicates due process
- Enforcement can not unduly influence permitting decisions (fact specific).
- Enforcement officials may provide information to independent permit decision makers.





# Training (Commingling)

- 1999 Policy on Commingling recommends:
  - Document significant interactions between enforcement and permit staff.
  - Avoid having the same staff person be substantially involved in both enforcement and permit decisions. (Different for management.)
  - Avoid actions that could be perceived as unfairly biasing another office's decision making authority.





# Training (Areas for Coordination)

- NSR permits
- Title V operating permits
- Applicability determinations
- Priorities
- SIP review and approval
- Rulemaking
- Citizen suits/Environmental Justice issues



# Training (Permits)

- Permits are inextricably linked with enforcement . . .
- Permits
  - Not just a license to operate;
  - Establish legal obligations of the source;
  - Assures compliance;
  - Notify the public of a source's obligations;
  - The operations/environmental performance must be transparent.



# Training (Permits)

- Permit requirements must “stand-alone.”
- Courts will look first to “four corners of the permit” to understand legal obligations.
  - Courts evaluate extra-permit information only if permit terms and conditions are ambiguous.
- Permit language is strictly construed.
- Permittees are strictly liable for compliance with all permit “terms and conditions.”



# Training (Permits Elements)

- Does the Title V or NSR permit (major or otherwise) plainly identify:
  - Emissions units;
  - All emissions limitations, standards and other requirements;
  - Control technology and requirements;
  - Averaging period(s);
  - Monitoring requirements;
  - Method(s) for determining compliance, including use of credible evidence;
  - Excess emissions/deviation reporting; and
  - Reporting and recordkeeping requirements.





# Training (Examples)

- Example from a Title V permit application for foam manufacturing facility:
  - Facility wanted to make equipment changes and additions without triggering permit review requirements.
  - Applicant stated:
    - “Equipment installations must often occur very quickly to ensure a competitive response to customer demand. Therefore, [the facility] requests that an approved permit not list the specific equipment noted herein.” (emphasis added)

# Emission Units (cont'd)

## Permit Example

**Table 1: Emission Unit Description**

Emission Unit	Emission Unit Description	Size Rating / Design Capacity	Control Unit Description	Permit, Order, or Registration #
EU-1	3 Pre-Expansion Units	Variable	None	P/X 10-009
EU-2	60 Pre-puff Storage Bags	Variable	None	P/X 10-009
EU-3	15 Molding Presses	Variable	None	P/X 10-009
EU-4	Finished Goods Storage	Variable	None	P/X 10-009
EU-5	Curing Room	Variable	None	P/X 10-009
EU-6	Drying Tunnel	Variable	None	P/X 10-009

It is not intended to incorporate by reference these NSR Permits into this Title V permit (emphasis added)



# Training (Permits)

- Permit should plainly identify all applicable emissions limitations, standards and other operational limits.
- Where?
  - In the permit’s “terms and conditions” section.
  - Note: In one instance, a source requested that an operating limit on heat input be transferred to the “description section” and later we were unable to enforce that limit.
- Important: Incorporation by reference of an emission limitation (either by reference to permit application or underlying regulation) creates legal ambiguity.
- Title V: All applicable SIP, NSPS, NESHAP, NSR requirements should be plainly set forth within the permit.



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