





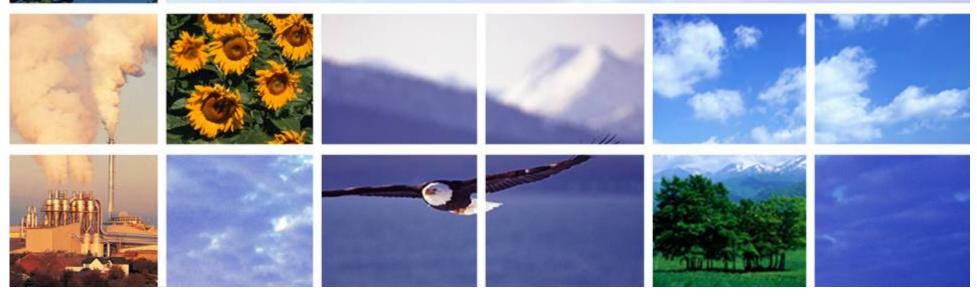








NSR Enforcement Lessons Learned Workshop NACAA Meeting- July 14/15, 2009 Pamela J. Mazakas







- 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.







- 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.





- Region 4, Atlanta, GA, September 17and 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







- 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.







- 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.







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













 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 "standalone."
- 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. <u>Therefore, [the facility] requests that an approved</u> <u>permit not list the specific equipment noted herein</u>." (emphasis added)





Emission Units (cont'd) Permit Example

Table 1: Emission Unit Description











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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.
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- Where?
 - In the permit's "terms and conditions" section.
 - <u>Note</u>: 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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