

FEDERALLY-REPORTABLE VIOLATIONS
Meeting Minutes
Prepared by EPA

FEDERALLY-REPORTABLE VIOLATIONS
Meeting Minutes
April 3, 2013

FRV Conference Call #1: Source Universe

Members of the EPA Office of Compliance (OC) staff, representatives from EPA regional offices, representatives from AAPCA, CENSARA, ECOS, LADCO, NACAA, NESCAUM, SESARM, WESTAR, and representatives from State and Local agencies met on April 3, 2013, for the first in a series of calls to discuss federally-reportable violations. The focus of this initial call was on the source universe subject to FRV reporting.

Introduction

* After roll call was conducted, Ed Messina (Division Director for the Monitoring, Assistance, and Media Programs Division) welcomed everyone and commenced the conference call. Ed thanked the participants for taking the time to be on the call and providing input as EPA revisits the FRV Policy. Given the number of discussions on other topics (e.g., AFS modernization; SRF metrics/Round 3; HPV Policy) that are also being held, the participants' time and assistance on this issue is appreciated.

* Amy Royden-Bloom of NACAA thanked EPA for organizing the FRV calls which were an outcome of the January 2013 FRV meeting. As a result of the January meeting, it became clear that further discussion was needed on various issues. Eddie Terrill and Richard Stedman of NACAA also thanked EPA for the call and stated that they looked forward to the dialogue and a productive meeting.

* Prior to having a detailed discussion on the FRV source universe, Ed Messina stated that he would like to provide the following background in order to set the stage and give some context for the call:

The current policy regarding FRVs is governed by the FRV Clarification Memorandum which the Agency issued in 2010. In issuing the 2010 FRV Memo, the main goals were to:

- Correct the misconception that only HPVs be reported
- Reaffirm the current minimum data requirements (MDRs) that the state/local agencies and the EPA Regions are to report violations of federally-enforceable requirements, even though they do not rise to the level of an HPV.
- Work to have more accurate, complete reporting of FRVs

But, taking into consideration current resource constraints and reporting burden, we introduced a “tiered” approach to reporting violations.

The focus for this call is on the source universe subject to FRV reporting and the federally-reportable universe is the following (consistent with OMB approved Information Collection Request (ICR)):

Majors

Synthetic Minors

Part 61 NESHAP Minor (Title V) sources

Sources included in a CMS Plan

Unresolved HPVs

Sources subject to a formal enforcement action

For the above universe, all are included in Tier 1 except for sources subject to a formal enforcement action which are included in Tier 2. With the Tier 2 sources, our intention was to capture those minor sources that would not be captured under Tier 1 by being included in a CMS plan, by being an HPV or by being a Part 61 NESHAP Minor.

With this tiered approach provided, EPA is asking agencies to prioritize efforts on the reporting of Tier 1 violations where resource constraints and ability to report all FRVs may be an issue.

- So, in prioritizing FRVs, we were looking to provide some burden relief/streamline reporting.
- However, as states/locals have commented, the current ICR and AFS Business Rules continue to require tracking of facilities with formal enforcement actions regardless of classification.

In developing the current 2010 FRV Clarification Memo, we did seek input from the states/locals with NACAA facilitating conference calls and obtaining comment. As a result, the current policy does reflect state/local input. Changes to the draft policy that were made prior to the 2010 issuance in order to address state/local concerns included the following:

- (1) Exempted reporting of asbestos D & R minors, nuisance and open burning.
- (2) Moved reporting of all minor sources subject to formal enforcement action to Tier II (except for those included in a CMS Plan, an HPV, or a Part 61 Minor).
- (3) Removed the penalty amount trigger regarding enforcement actions. Prior to finalization of the 2010 Memo, sources subject to formal enforcement were included in Tier 1 if the penalty was above \$1,000 and such sources were included in Tier 2 if the penalty was below \$1,000.
- (4) Moved Part 61 NESHAP Minors from Tier 2 to Tier 1.

Concerns regarding FRV reporting have been raised since the 2010 issuance, most specifically, during the last AFS ICR renewal process and during the ongoing AFS modernization effort. We have heard concerns such as:

- Unacceptable reporting burden and insufficient resources;
- Questioning the need to capture certain sources (minors) in the national data system;
- Confusion over EPA Policy and inconsistent EPA direction as to whether only HPVs need to be reported.

So, while violation reporting is important for the Agency to receive and to make available to the public, we understand that we may not have drawn the line correctly regarding how much information we should obtain, especially given current resource concerns.

States and locals have asked us to re-engage with them and to consider revisiting the current policy. However, while we attempt to address the state/local concerns and not create an undue, unrealistic burden, we also need to take into account our responsibility to obtain the requisite information for programmatic management, targeting, enforcement, and transparency purposes.

In January, we met with several state agencies and national/regional air associations and had a constructive conversation whereby the states/locals were able to provide in more detail their concerns with the current policy.

An agreed upon outcome of our January meeting was to have a series of conference calls to discuss proposals/ideas for addressing the state/local concerns with the first call being today:

- Source universe subject to FRV reporting – focus of this call
- Violations and associated reporting of most importance to EPA and a detailed discussion of the NESCAUM approaches for reporting violation data (**April 8 and April 15** – it was thought two calls may be needed)
- Timing for reporting violations to EPA (**April 29**)
- Linking FRV reporting to associated activities (e.g., evaluation linked to violation, pollutant of concern, enforcement action) (**May 13**)
- An additional call has been scheduled for **May 20** in case follow up discussion on any of the issues is needed

We have also met with the Regional offices since our January meeting with the state/local agencies to obtain further input from them.

With the invitation for this call, we did ask the states/locals to provide any input that you would like to give ahead of today's discussion and we did receive a few comments. As a reminder, a rule of thumb, we would like to hear all suggestions and we are open to hear all views.

NACAA collected and forwarded the comments for this call and also re-sent several comments that we had been provided when the policy was being reviewed back in 2009.

The comments NACAA forwarded to EPA are summarized as follows:

Two New Comments Provided for this Call

- The appropriate source universe should be limited to the current Tier 1 sources with one significant change: limit the SM universe to SM80s. We would no longer have Tier 2. (Washington Dep't of Ecology)

- The FRV policy should provide as much simplicity and clarity as possible. Therefore, the FRV universe should align with the CMS universe of Title V majors and SM80s. In providing such clarity, this would help make any comparisons of state data more meaningful. (Montana DEQ)

Previous Written Comments that were initially provided in 2009 and re-sent by NACAA

- One state did confirm that they exceed the MDR requirements by reporting all violations for all permitted facilities into AFS, including minor facilities. And they stated that providing such an array of information is the way to go as transparency to the public is crucial. They can also help explain to citizens any information that may ultimately appear in ECHO. (North Carolina)

- We had received comments stating that reporting on minor sources and reporting violations for sources not already in AFS would be very burdensome (not already having facility information in AFS on these sources and, as a result, having to input all this data) and would have a significant impact on resources. (CAPCOA, California Locals)

- Comments reiterating state and local agency concerns that there was a reliance on an understanding that only HPVs be reported. As a result, agencies designed their own data systems in such a way to only transfer this limited subset of violations. Also, the HPV policy only applies to Title V majors and synthetic minor sources. Before the HPV Policy, the 1986 FRV Guidance also only referenced A1 or A2 sources which were defined as sources with PTE greater than 100 TPY. Thus, the concept of FRV was never intended to apply to minor sources. (Montana, California Locals)

- Having different permitting thresholds with some states/locals permitting sources well below 100 TPY will result in unequal reporting requirements among the agencies and not nationally consistent data. (Montana, California Locals)

- To report violations of state or local/district rules that are only federally enforceable because they happen to be in a federally approved SIP would be excessively burdensome. (California Locals)

During our January meeting, the main points that were made with regard to source universe were as follows:

- A request that the source universe be limited to the CMS universe. (NESCAUM)
- The concern regarding the major source universe and inconsistency among state/local agencies because of non-attainment status. For example, those with extreme non-attainment will capture many more sources as “major” because the threshold is much lower than 100 TPY and goes down to as low as 10 TPY. Not only will this result in additional reporting burden but since there are such strict rules/standards in these areas, there will be the false impression that there are many more violations than in other areas. (South Coast)
- Only sources that should be subject to violation reporting are those with an unresolved HPV. (Westar)

In summary, the proposals regarding FRV reporting and source universe that have been received to date are as follows:

Report all FRVs (Tier 1 and Tier 2)

Report on the current Tier 1 FRVs only

Report on the current Tier I FRVs only but revise Tier I to only include SM80s and not all SMs

Report on the CMS universe of Title V majors and SM80s

Report on the CMS universe of Title V majors, SM80s and any other sources (including minors) that are in an alternative CMS Plan

Somehow take into account issues concerning SIP/nonattainment/different major source thresholds when determining source universe

Report only sources with an active HPV

* After providing the above background, Ed stated that while it cannot be promised that all outstanding issues will be resolved on this call or the remaining calls, it would be helpful to determine if, in the interest of moving the ball along, we can find some areas of consensus.

* Amy Royden-Bloom expressed appreciation for Ed setting the stage for the call but wanted to make sure that we address the concern over rules that become federally-enforceable because they are included in an approved SIP. Ed confirmed that this concern will be an issue for discussion.

CMS Universe

* The discussion of source universe commenced with some participants expressing support for having the CMS universe (Title V majors and SM80s) be subject to FRV reporting. However, with CMS plans subject to change, participants noted the need to take into account changing universes.

Extreme Nonattainment

* South Coast expressed concern that for an area with extreme ozone nonattainment, reporting all violations at all Title V sources would be very resource intensive/burdensome and the number of TV sources may grow as a result of GHG. The South Coast majors are much smaller than others. Alternative ideas put forward by South Coast for consideration: Instead of every TV source, have an “apple to apple” comparison and choose a 100 TPY threshold and/or identify particular industry sectors subject to FRV reporting. Or another suggestion would be to choose a standard for what should be reported – for sources with 100 TPY, report a certain level of information and report a different level of information for sources with 50 TPY or 10 TPY. For smaller sources, there is not a need for so much information. A level playing field is needed. Also, South Coast and other participants stated that it is unclear why a national data system is needed when all such information is readily available on local websites.

Reporting Burden/Workload: Needs to be Taken Into Account

* Participants stated that when discussing how to address issues concerning the source universe, the discussion needs to also address the amount of work associated with data entry. Currently, agencies only report “in violation” status. Moving to more detailed reporting (e.g., violation type, actions) would

increase the workload. Thus, if more information is requested to be reported, the state/local agencies believe the reportable source universe should be narrowed. In order to decide upon the FRV source universe, agencies need to know what data is to be reported.

* San Diego added to the South Coast comment by stating that what should be reported is what is “significant.” In California, there are a lot of major sources but not every violation at a major source should be considered significant. It would be very burdensome to report any emissions violation. Agencies should only report significant procedural and emissions violations. Currently, it is possible that a minor source could have a significant excess emission violation (e.g., vapor recovery system fails) but the violation is not reported because it comes from a minor source.

* Thus, San Diego concluded that if FRV includes only emissions violations that are “significant”, the term significant needs to be defined.

* However, other participants stated that the focus should remain on the source universe as only certain sources are required to be entered into AFS. It is much less burdensome to tack on new data requirements for sources already in the system. Several participants stated that to enter into AFS entire new sources for a one time FRV would be incredibly burdensome. It is difficult to set up a whole new source in AFS.

* The California locals also stated that Region 9 had directed them to archive all minor facilities. So, if they were required to report on minors, they would have to de-archive them. Thus, Tier II FRV reporting would be very problematic.

* Generally, participants seemed to support reporting on majors (although, nonattainment issue would need to be addressed); no one advocated that we should not capture majors.

* With minors, several participants stated that we should not capture them. Only reporting on minors because of an FRV and entering minors as new facilities in AFS would be too much of a burden and the states/locals could not handle the workload.

* Participants provided differing responses on the reporting of synthetic minors. Some agencies report on all SMs while some only report on the subset of SM80s. Some agencies separate out the SM80s and only report on them; some report on all SMs; some include all within CMS Plans and simply refer to all SMs as SM80s; some report all SMs as SM80s due to their general permitting program.

* Participants were uncertain as to whether a modernized AFS would reduce the burden for reporting to EPA and improve how the EPA data system communicates with the various state/local systems.

EPA Need for Violation Data

* Participants reiterated the need for EPA to provide a justification for any requested data. There is concern that the modernized AFS will seemingly have many more fields to populate and underlying policies are being driven by the modernized effort.

* In response to why EPA needs data reported into a national system, Ed Messina stated that we (both EPA and states/locals) need data, in part, to demonstrate protection of air quality. It is important for the public to have access to data on a national level and not just data provided by individual agencies. We can, however, discuss where to draw the line to determine what data is needed to show the public and to confirm for them that we are doing the work that is required of us. We have gravitated toward reporting on major sources since they have the greatest impact on human health. Yet, we also know small sources can have a significant impact. Thus, we do grapple with this issue.

* Richard Stedman (Monterey Bay and NACAA C & E Co-Chair) stated that the EPA explanation was helpful and the agencies would like to give EPA all the data that is wanted. However, EPA needs to manage the need and prioritize the data that is requested to be reported. Tier II FRVs is too resource intensive. Reporting all data would be great but EPA needs to manage and sort what data is to be provided and, therefore, EPA has to continue to define the need for the data.

Reporting Actions

* Massachusetts indicated that we might have some consensus with reporting on Majors by reporting the actions (e.g., NOV). With the current MDRs, we have a fixed universe upon which to report actions. It is too burdensome to create an entire new facility record in AFS just to report an FRV. The information that is provided under the current violation codes (compliance status in AFS) is not informative and inaccurate (e.g., flags are never updated).

* Michigan is reporting all NOVs for majors and SM80s.

One Policy (FRV & HPV)

* Participants varied on whether there should be only one policy. Some participants felt that there should just be the HPV Policy and it should be changed if needed, for example, to include minors. Other participants disagreed and expressed concern for expanding the HPV policy beyond just HPVs as it would result in having time lines for all violations.

FEDERALLY-REPORTABLE VIOLATIONS

Meeting Minutes

April 8, 2013

FRV Conference Call #2

Violations and associated reporting of most importance to EPA; NESCAUM Approaches (Part 1)

Members of the EPA Office of Compliance (OC) staff, representatives from EPA regional offices, representatives from NACAA, NESCAUM, WESTAR, and representatives from State and Local agencies met on April 8, 2013, for the second in a series of calls to discuss federally-reportable violations (FRVs).

The focus of this call is on violation types and to have a detailed discussion on the NESCAUM proposal as well as any other suggested approaches that the state/local agencies would like to bring forward. These calls are listening sessions for EPA to hear state concerns and ideas about FRVs

Introduction

* After roll call was conducted, Ed Messina (Division Director for the Monitoring, Assistance, and Media Programs Division) welcomed everyone and commenced the conference call. For this call, Ed stated that he was hoping to hear in more detail the NESCAUM proposal but also suggested alternative approaches from other states/locals (“out of the box” ideas).

* Before getting into a discussion of alternative approaches, Ed Messina understood that the agencies wanted to hear more from EPA on why we need data submitted into the national data system and how we use such data. Ed provided the following:

- We are all in agreement that some level of data is needed to ensure that we have effective programs and are protecting the air. The question is what is the appropriate required amount – the “sweet spot” – to have a clear picture of what is happening without resulting in excessive reporting burden.
- There is a lot of value in the information collected by EPA. The public has a “growing thirst” for data as a result of the public becoming accustomed with obtaining information on demand. Thus, there is pressure on all levels of government to provide increased transparency. Also, with the various applications that can be put on mobile devices (e.g., i-phones), the public can be armed with as much information as the government collects and, therefore, they want readily available answers.
- Asking the public to search 50-100 websites in order to compile information for analyses/research is not feasible. Government should streamline the process and make data easily accessible.
- Our oversight function requires data be submitted to EPA. For example, we have congressional inquiries regarding the effectiveness of our programs. OMB is repeatedly asking how we know that our programs are working and whether we are using our money effectively.
- NGOs/researchers are constantly asking for data. To have ECHO effectively serve the public as an integrated data system, we need such data.
- The current ICR/MDRs highlight some of the reasons why the data (the minimum data requirements) is needed and Ed provided a review of the ICR Summary Statement and, in particular, the stated uses.
- We all understand the state/local and federal government roles with the states/locals being the primary enforcers. On the federal level, we must ensure a consistent/level playing field across the country and therefore we need a complete understanding of state enforcement/penalties/timing of enforcement actions. Facilities need to know that when making siting determinations, they are no worse off for choosing one state/one locality over another.

NESCAUM Proposal

Lisa Rector summarized the NESCAUM proposal as follows:

*The NESCAUM Compliance and Enforcement Committee developed the proposal in response to the concern that AFS Modernization was being designed to have flagging, linking of violations to the specific air program/pollutant level. Such direct linkage would be very difficult and so NESCAUM developed this alternative approach (a “middle ground”) with two “prime options”:

Full Document Approach – Option A (The preferred approach)

* PDF the enforcement document and make it available to the public. Such an approach is simple and transparent making information readily available to the public. However, there would be a problem with mining the document for data without doing the necessary and expensive tagging.

Core Violation Data Approach – Option B (The alternative approach)

* Bin violations into core categories (buckets) as outlined in the straw proposal and from which EPA could provide data to the public. The proposal would have the action reported (e.g., AO, NOV) with the air program violated (e.g., NSPS, NESHAP, MACT, NSR/PSD, SIP). At the time the action is reported, the agencies would use the “buckets” to report on the various violation types (e.g., excess emission, recordkeeping, failure to monitor or operate in accordance with permit). The NESCAUM States thought such an approach would give EPA “good, quality data” that was needed and be within the capacity of the States to provide.

* Participants questioned the viability of Option A. Significant concerns were raised over the inability to mine the data and the need to be compliant with §508 and have documents that are accessible. A lot of time/resources are needed to make documents accessible (e.g., one example of taking 2.5 days to make a 16 page document accessible – “monumental burden”). Just scanning will not be sufficient. Also, it is unclear if States or EPA would be responsible for the posted documents sent by the States.

- Data that is provided only on enforcement actions taken would not be enough to do adequate oversight. Such limited data would provide no context for whether the number taken is appropriate.
- Large data warehouse may be needed at the Federal level which would be very problematic.
- One state indicated that enforcement documents are already publicly available and sending to EPA would be burdensome.
- NACAA also reminded the participants that some states send all data directly to AFS and do not want to separate out and send an enforcement document – simply want to do a “data dump.”

* Participants seemed more receptive to Option B, wanting to further explore the option, and indicating that it could possibly help to provide meaningful data to EPA. Currently, a perceived problem with reporting violation status is the flagging – such flagging requires multiple “touching” (put in the violation and then remove the flag). Such reporting and upkeep of the flags are not happening. It was commented that providing the public data on enforcement actions is more informative than simply providing a compliance status/violation status which is often wrong or misleading. Thus, it would be useful to stop flagging (having “in violation” status) and, instead, report actions.

- As explained by Lisa Rector, with Option B, the violation status (which is often inaccurate) would no longer be needed. Instead, report the enforcement actions (e.g., NOVs, AOs, CDs) at the facility level and, at the same time, report the violation types in “buckets” (e.g., excess emissions, recordkeeping). This reporting would all be done at once and the information could be left there for categorization and later analysis.
- Ventura County stated that such reporting is similar to what they are currently reporting – the action along with the air program and a violation type code. This would work in place of compliance status which is hard to update.
- However, another California local (San Diego) expressed concern. While NESCAUM is attempting to streamline the reporting and improve on the current violation reporting which is too complex, the NESCAUM “violation type” approach (Option B) may encompass too many “trivial” violations that EPA/public would not care about. The approach should discuss how to define a “significant” violation.” Possibly, a significant violation would be defined as when an enforcement action (e.g., NOV) is taken.

* The participants, especially the California locals (e.g., Ventura) identified a potential problem with Option B: In reporting the air program, agencies will need to have SIP as a reporting option. Therefore, with SIP as a reporting option, if agencies do not know the federal air program (e.g., NSPS, MACT, NESHAP), they may simply rely on using the default option of SIP for reporting on the air program.

- Also, many of the state/local participants mentioned that some State programs in a SIP will not have a federal counterpart. In such instances, the agency would report SIP.
- With concern that SIP may often be used when reporting on the air program and because the public may not even care if the violation is, for example, an NSPS or MACT violation (when an agency can actually report on the federal program), Ed Messina raised, as a creative, thought provoking, pushing the envelope idea, the proposal that instead of reporting on air program, simply report CAA violation and the pollutant.
 - Some participants thought this was a good idea as we should be reporting to the public what they want to know – what pollutants are being violated. They do not understand NSPS, NESHAP, MACT, etc.
 - Other participants expressed concern because we need air program information for program management, reporting to Congress on efficacy of programs.

* For state/local consideration, EPA put forward the potential reporting approach of having violations reported at the air program level with subparts reported at the facility level. So, with NESCAUM’s Option B, agencies would not have to select, for example, an individual MACT or NSPS when reporting the violation but the individual subpart would still exist at the facility level.

- A potential problem with this approach that was identified and discussed by the participants: With all subparts reported at the facility level and only air program (e.g., MACT) identified when reporting violation, the public may assume that all the subparts are associated with the violation because they have all been associated with the facility. However, it would be feasible to report the subpart on the violation in modernized AFS.

Option B and FRV Linking

* With Option B, Ed Messina, to promote discussion, raised the idea of linking FCEs (and possibly PCEs) with the enforcement action (e.g., NOV, complaint). This idea may need to balance the source universe subject to FRV reporting with the amount of detailed information. If the source universe is narrowed, may be possible to have more detailed information.

- Sacrifice a broader universe in order to have a narrow universe with more detail.
- Need to address whether national consistent reporting is achievable. Currently, we do obtain from some States all their data as it is easier for them to send everything (“data dump”). Such full reporting is great for transparency. However, when conducting comparisons/analyzes, differences in reporting can make it more difficult to determine how various programs are doing. To narrow the universe and have consistent reporting would help with analysis but would hurt with transparency.

* Participants expressed concern that expanding HPV linking to FRVs would be problematic. Currently, the requirement for linking is only with HPVs and doing such HPV linking has been difficult with some states/locals not even being able to do that limited linking. With the linking of HPVs being found to be a burdensome experience, states are “gun shy” to link to smaller sources. Also, making any changes to state data systems to comply with new EPA reporting requirements will be very difficult – expensive and may also impact other state departments where there are enterprise systems.

- However, Ed Messina confirmed that current HPV linking is useful to EPA to conduct various analyses (e.g., Congressional responses, Watch List issues, SRF reviews, HPV policy revisions).

* Ed Messina indicated that while a proposal to also have FRV linking may be met with some concern and be viewed by some states as controversial, the new modernized AFS may result in reduced reporting burden. Also, if EPA were to eliminate the current MDR #19 (Compliance Status”) and rely on MDR #20 (“Actions”), Ed mentioned that it may then be appropriate to have linking with FRVs. To move toward actions without linking and not having the actions mean anything together is problematic. Currently, we have the compliance status (violation codes) to help tell a story although we recognize the issues associated with the current use of the compliance status MDR.

Possible Staging of FRV Revisions

* Ed Messina asked the agencies to consider the idea of staging revisions. For example, when the modernized AFS is ready, we begin reporting FRVs for majors. We would provide time to evaluate how the modernized system is working, how well agencies are able to report on FRVs and determine if the reporting of SM80s can begin followed by all SMs.

* Ventura County asked for a demonstration of ICIS to see how it works and how reporters are able to navigate through the system in order to have some advance understanding of how ICIS/AFS will work.

FEDERALLY-REPORTABLE VIOLATIONS

Meeting Minutes

April 15, 2013

FRV Conference Call #3

Violations and associated reporting of most importance to EPA; NESCAUM Approaches (Part 2)

Members of the EPA Office of Compliance (OC) staff, representatives from EPA regional offices, representatives from NACAA, NESCAUM, CENSARA, and SESARM and representatives from State and Local agencies met on April 15, 2013, for the third in a series of calls to discuss federally-reportable violations (FRVs). The focus of this call is on violation types and to continue discussion on the NESCAUM proposal as well as any other suggested approaches that the state/local agencies would like to bring forward. These calls are listening sessions for EPA to hear state concerns and ideas for FRVs.

Introduction

* After roll call was conducted, Ed Messina (Division Director for the Monitoring, Assistance, and Media Programs Division) welcomed everyone and commenced the conference call. Prior to continuing the discussion on the NESCAUM proposal that was initiated on the previous call, Ed provided a brief review of the first two calls and summarized the feedback received to date. Ed reiterated that while EPA very much appreciates the views expressed by NESCAUM and the proposal the NESCAUM states have put forward, obtaining additional input and alternative approaches from other state/local agencies would be welcomed and appreciated.

* Also, before getting started, Ed wanted to point out that the Minimum Data Requirements (MDRs) were provided to the call participants. While not meaning to forecast possible revisions to the FRV policy, Ed clarified two issues concerning the current MDRs that may possibly be a source of confusion:

- The MDRs continue to include the reporting of compliance status in AFS. After previous discussions with the state/local agencies, the Agency did decide to remove compliance status from public display on ECHO. However, compliance status, as an MDR, continues to be required reporting into the underlying database – AFS.
- The current federally reportable universe includes all synthetic minor sources and is not limited to the subset of SM80s.

NESCAUM Proposal – Continued Discussion

* NESCAUM (Lisa Rector, Laurel Carlson) confirmed that the straw proposal was meant to initiate dialogue and possibly take the place of compliance status since the current MDR is considered by many state/local agencies to be “unworkable, inaccurate, and misleading.” Also, with the bucket approach, NESCAUM thought we could avoid any attempt to create a crosswalk of federal/state regulations/citations which would not be achievable. While NESCAUM believes their approach would

actually result in increased reporting workload, it would also lead to increased accuracy of data reported and therefore result in better analyses and improved public transparency.

* In response to questions concerning the NESCAUM proposal and action linking, NESCAUM clarified that any linking would be focused on the actions – e.g., enter an action (NOV, Order) and indicate that the action was for an excess emission.

- NESCAUM indicated they understand that if the reporting of the violation is only done when the enforcement action is reported with no further linking, there may be a resulting gap and significant amount of time between the compliance evaluation and the identified non-compliance reported. Thus, there could be a lot of time with the public having no knowledge of what is happening at the facility. Also, in some circumstances, the public may never have access to such information if the state/local agency were to use enforcement discretion and take no enforcement action.

- However, by law, states such as Massachusetts cannot publicly release violation data until the enforcement action is taken anyway. (Other states with legal concerns similar to Massachusetts include California, Texas and Colorado).

* Texas and South Coast reiterated the concern with reporting on minor sources. If they were to carry out such reporting, Texas would go from reporting on ~1,200 Tier 1 facilities only to ~97,000 Tier 1 and Tier 2 facilities combined. South Coast reporting would increase to ~27,000 facilities.

San Diego Proposal (Provided to NACAA who forwarded to EPA at commencement of call)

* San Diego reviewed the NESCAUM proposal and agreed with the suggested required reporting universe of major sources and SM80s (with minor sources being optional reporting). The proposed universe is “workable.”

- San Diego suggests that there be no distinction in what is reported for majors and SM80s – same amount provided. Such reporting would provide simplicity and still give enough information to meet the needs of EPA (e.g., reporting to Congress).

- San Diego also stated that there should be no linking between inspection and results. However, in looking at the date of the inspection and the date of the NOV, for example, there would be some ability to do the linking without actually requiring linkage.

- Mecklenburg County agrees with limiting universe to majors and SM80s. It would be too much to include minor sources and pull in facilities such as gas stations (including Area Source NESHAPs would be a significant concern).

* With regard to reporting on facility information, inspection data, program specifics and violation types, San Diego put forward an alternative approach. John Adams provided a brief summary and the San Diego written proposal is being provided to the call participants for review.

Issuance of on-site NOV/NOC/NOEs and what is reported to AFS

*Ventura/San Diego: Inspectors do issue Notices of Violations (NOVs) and Notices to Comply (NOCs) on site. Upon return to office, there will be a determination by the supervisor/case investigator as to whether the violation is major. Only major violations are reported to AFS. California law provides for NOCs to be issued for minor violations with no penalties.

- So, participants pointed out that there could be minor violations at major sources that are not reported to AFS because there was no enforcement action.

* Texas: Similar to California. If a case does not result in enforcement action, the violation is not reported. Texas only reports HPVs – have an enforcement action and is classified as “Category A”.

- In addition to NOVs, Texas issues Notice of Enforcement (NOE). The Texas participants stated that an NOE is for a violation for which a facility is given a number of days to fix and for which will not result in formal enforcement. Violations resulting in an NOE are reported into their own system but not reported to AFS. (However, Texas will report all FCEs to AFS).

[The Texas Enforcement Initiation Criteria (EIC) and the Texas Enforcement Guidance indicate that the NOE is actually a written notification to the respondent that alleged violations warrant the initiation of formal enforcement action. An “Area of Concern” (AOC) is more akin to a “fix it ticket.” An AOC may be issued if the violation is not designated as a high priority violation (Category C); does not involve a potential harm/impact; is corrected within 14 calendar days from the investigation date; and was not documented at the same regulated entity in the prior 12 months. Each AOC is entered as a violation in the Consolidated Compliance and Enforcement Database System (CCEDS) but is not reported to AFS. However, the AOC designation in CCEDS prevents AOCs from counting toward compliance history.]

- In response to the question as to what could be an “achievable” FRV policy for Texas to implement, the Texas participants stated that such a question would be best answered by senior management; however, any policy requiring “monumental” resources would not be achievable.

* Participants raised the concern that using different references to various documents such as NOVs, NOCs, and NOEs highlight the need to have common terminology. For example, the Texas NOE or AOC which directs a facility to “fix” a problem is what EPA would consider to be an AO.

Texas Air Emission Event Report (AEER) Database/Electronic Reporting/Publicly Available Data

* The participants discussed this database which allows the public to review reports sent to TCEQ about air emission events. The participants generally indicated that the database is a good model of how to make more data available to the public as we move forward into the electronic age. Such databases and increased inter-connectivity between modernized data systems (such as the modernized AFS) may in the future help to reduce reporting burden and allow violation data to be reported more easily. (e.g., increased data access, increased public transparency). However, some participants expressed doubt as to whether a modernized AFS system would result in states/locals being able to more easily send data from their systems to EPA – probably varying results among the state/local agencies. Even if EPA does

build a modernized system, some agencies indicated that they may be forced to continue with their own old systems due to resource constraints and will not be able to modify in order to “better communicate” with the new AFS.

- Texas stated that their AEER Database does not currently link to CCEDS. The two systems are separate and information is pulled from the AEER only if there is an exceedance beyond the limit (a violation).
- Not all excess emissions result in a finding of violation. Call participants (Texas, Colorado, Massachusetts) indicated that in the majority of cases, the excess emission does not result in a violation with follow-up enforcement. Many such events are “explainable” and within range of what is “allowed” by regulation. As a result, Massachusetts does not make excess emission reports electronically available on-line because many, if not most, are ok. Massachusetts stated that having such reports publicly available may cause the public to be misled to think these events are violations and lead to many questions being asked that would require the agency to respond.
- EPA indicated that the Agency is working to have more electronic data reported, including having such data come directly from regulated sources. However, rulemaking is necessary and it will take time (e.g., water program – NPDES Rule; air program – “Electronic Reporting & Recordkeeping Requirements for NSPS”).
- Participants expressed concern regarding the oversight and review of data electronically submitted to ensure accuracy. For example, how to ensure data concerning a state specific regulation is correctly “crosswalked” to the appropriate federal counterpart?

Follow-up

* Ed Messina stated that the next call, scheduled for April 29, will start with a discussion of the San Diego proposal. The proposal is being forwarded to the call participants and they have been asked to review and be prepared to discuss. If time permits, the next call will also discuss the issue of when to report violations into the data system.

FEDERALLY-REPORTABLE VIOLATIONS

Meeting Minutes

April 29, 2013

FRV Conference Call #4

Members of the EPA Office of Compliance (OC) staff, representatives from EPA regional offices, representatives from NACAA, CENSARA, MARAMA, SESARM, and WESTAR and representatives from State and Local agencies met on April 29, 2013, for the fourth in a series of calls to discuss federally-reportable violations. The focus of this call was to (1) review and comment on the FRV reporting proposal put forward for consideration by the San Diego Air Pollution Control District; (2) provide an opportunity, at the request of Pennsylvania Department of Environment staff, to review the historical

development of the 2010 FRV Clarification Memo and the Memo's relationship to proceeding policies; (3) discuss the timing for reporting FRVs. Due to the length of time in discussing the first two topics, the discussion on the timing for reporting FRVs was held over to the call scheduled for May 13. However, on this call, the participants were also able to discuss the linking of HPVs which was a topic initially planned to be discussed on the May 13 call.

Introduction

* After roll call was conducted, Ed Messina (Division Director for the Monitoring, Assistance, and Media Programs Division) welcomed everyone and commenced the conference call. Following a brief review of the previous call, Jon Adams of the San Diego Air Pollution Control District summarized in greater detail the San Diego suggested approach now that the written proposal had been forwarded to most participants.

San Diego Proposal

* In characterizing the San Diego proposal as an attempt at consensus building, Jon Adams emphasized the following while providing a summary:

- Need to have a process that includes both required and optional reporting since for many agencies with a large universe of sources (and experiencing continued decline in resources/staffing), having required reporting extended to minor sources and to include any procedural or emissions violation would be too burdensome and not achievable.

- EPA should only be concerned with both "significant" procedural and emissions violations as listed in the proposal. Requiring reporting beyond the proposal's list of significant violations would be "superfluous" and would not lead to improvement in air quality.

- Currently, the data is inaccurate and an approach that minimizes and simplifies violation reporting will result in improved data accuracy.

- Therefore, the current FRV/HPV framework should be eliminated and the focus for reporting should be on simplified HPVs.

- Any state by state comparison should be comparing "apples to apples". Therefore, the 100 ton threshold should be used. If comparing one agency with 100 ton threshold with another agency with a 10 ton threshold (e.g., due to nonattainment status), the evaluation/data will be skewed. If more violations are identified in the latter agency, there may be the false assumption that there are problems where there are not.

* John Hornback (SESARM) expressed his appreciation for EPA considering alternative proposals and taking the time to engage with the state and local agencies. John also stated that the San Diego proposal seemed to be going "in the right direction" by having data reporting simplified and being less resource intensive. However, John also acknowledged the EPA need for data reporting in order to meet the Agency's responsibilities.

* Amy Royden-Bloom (NACAA) requested clarification regarding the time frames (7 consecutive days/15 cumulative days) included in the San Diego proposal for when an excess emissions violations would be considered “significant.” Jon Adams response:

- There are situations whereby excess emissions can be quantified (e.g., CEMs, stack test) and for such situations, the threshold should be one ton for criteria and 500 lbs for HAP. However, when such excess emissions cannot be quantified and it cannot be confirmed that the excess emissions are trivial (e.g., exceedance is only one ppm and below instrument error leeway), use a certain number of days (i.e., 7/15 days) as a default.

* Terri Dykes (OECA/AED) informed those participants not aware of the ongoing HPV Workgroup discussions that the consensus of the regional/state/local workgroup was to have as a default any excess emissions that lasted for a certain number of days rather than attempting to establish a level over which an exceedance would be deemed an HPV. However, while any exceedance would be pulled into the HPV realm because it meets the HPV criteria, the violation could be pulled out of the HPV classification after regional/state discussion and further understanding of the situation (e.g. the exceedance was trivial and should not be considered an HPV).

* 100 ton threshold: In response to a question regarding how the 100 ton threshold is determined, Jon Adams stated that San Diego uses the Emissions Inventory (actual emissions).

* 60 day timeframe for reporting: Jon Adams stated that San Diego “has no problems” with continuing to meet the 60 day timeframe.

* Excess emissions and breakdowns: Jon Adams confirmed that such breakdowns would not be reported to EPA. The Agency would issue an NOV directing the facility to fix the problem within a certain period of time (e.g., 24 hours). If fixed, no enforcement taken and no reporting to EPA.

FRVs and Linkage

* The San Diego proposal includes the suggestion that the “linking of violation to inspection” not be required. (This suggestion could be interpreted as not only advocating against extending linking to FRVs but also eliminating the current linking with HPVs). In responding to a request for clarification as to why such linkage should not occur, Jon Adams stated:

- A violation may be identified at times other than when an agency conducts a full compliance evaluation (FCE). However, only FCEs are required reporting. PCEs, such as an evaluation of a particular area of facility in response to a complaint, are not required reporting. So, if a violation was identified during a PCE, there may be nothing with which to link the violation since the PCE does not have to be reported. (Colorado agreed with this concern.)
- Also, could not link down to the subpart and federal regulations – could only relate to the SIP (Pennsylvania agreed.)
- Another problem is that computer systems are often linked with other state agencies/departments. Any proposed changes to the data system would impact other

agencies/departments and many approvals would need to be obtained before a system change could occur.

- * Chris Cote (Ventura) provided additional reasons for not requiring linkage associated with FRVs:
 - Agency structure: Agencies may be divided, for example, with separate legal teams and inspector groups that do not communicate regularly with each other and which often use different data bases that also do not communicate with each other.
 - Increased difficulty with ICIS-AFS: While EPA may envision that linkage will be easier in the modernized system, the reality may prove the opposite. Currently in AFS, a reporter may input all actions (e.g., violation date/addressing and resolving actions) on one screen. In ICIS, the reporter has to go to different screens and click on multiple tabs – increased navigation and, therefore, increased reporting burden.

* Michigan also spoke for batch reporters stating that action linkage would be difficult for those agencies that do batch upload to ICIS.

* Region 1 stated that their experience in completing HPV linkage for their states highlights the batch upload difficulties and UI problems. Also, there is the concern that requiring linking and more “touching” of the data increases the chances for inaccurate data. Having a simplified process will improve data accuracy.

* Steve McDaniel of Knox County, Tennessee, asked for the rationale for having action linkage and what would be the downside for not having it. EPA response:

- Both EPA and the public, for transparency purposes, want to know the outcome of inspections and whether there are non-compliance issues: from where did the violation originate/be identified (e.g., inspection, excess emission report).
- In overseeing state/local programs, managerial responsibility to know whether violations are being identified, timely addressed and appropriately resolved – timeliness and appropriateness of the action.

Separate FRV/HPV Policies

* Ed Messina reiterated that FRV reporting is necessary in order to provide the context on HPV reporting – are all HPVs being accurately and timely identified and reported? The FRV reporting goes to effectiveness of evaluations, capabilities of state inspectors, and provides the granularity on HPVs and enforcement responses.

2010 FRV Clarification Memorandum and Previous Policies

* Pennsylvania Department of Environment staff (Ron Gray, Karen Gee) requested to have a discussion on the history behind the 2010 FRV Policy. The stated position of the Pennsylvania DEP staff:

Since the 1992 SV Policy includes a statement that the 1986 FRV Policy has been superseded, the latter policy was not in effect at the time of the issuance of the 1998 HPV policy. Also, since it was superseded in 1992, the 1986 Policy could not be “clarified” in 2010. Thus, the only policy

currently in effect is the 1998 HPV Policy and there is no basis for the 2010 FRV Memorandum. If establishing a new policy is the desired result, EPA should write a new policy.

* Ed Messina acknowledged the ambiguity resulting from statements included in both the 1992 SV and 1998 HPV policies:

- However, based upon the entire texts of all the policies and the intent of EPA, different positions could be held as to whether the 1986 FRV Policy had been superseded completely or only to the extent of the SV aspect of the policy. The 1992 and 1998 policies were focused on the reporting of significant violations and were not addressing the array of all federally reportable violations.
- EPA, with state/local input and coordination, did issue the 2010 FRV Clarification Memorandum clearly stating the EPA position: "The obligation for states, local entities and EPA regions to report other violations of federally-enforceable requirements, even though they do not rise to the level of HPVs [applies] today." With the Memorandum, the Agency attempted to provide reporting burden relief by introducing the two tiered approach.
- In addition to the 2010 FRV Memorandum, the current OMB approved ICR/MDRs include the reporting of FRVs.
- While it may be informative to discuss the history behind the FRV Memo and the ambiguities resulting from the past policy statements, EPA is currently engaged in a dialogue with our state and local partners about the policy itself. Thus, we are presently having this series of national conference calls and reaching out to the states and locals in an attempt to find common ground.

* Richard Stedman (Monterey Bay and NACAA C & E Co-Chair) also acknowledged that looking back and reviewing history can be useful. He was involved in the development of the 2010 FRV Memorandum and the two reporting tiers. However, Richard placed importance on the need for moving forward and working to develop a suitable reporting schema. He indicated that Jon Adams was providing the participants with a good presentation on a potential workable approach and it would be helpful to continue that discussion.

* Since policies and guidance are not binding, South Coast raised the possibility of promulgating a Rule. EPA confirmed that guidance documents, rather than containing binding requirements, reflect EPA's recommendations for a well run/managed program. A regulatory approach is one option worthy of consideration. However, EPA currently has the OMB approved ICR/MDRs which are binding with no disclaimer stating that they are optional.

Violation Reporting – Comparison to Other Media

* EPA provided the following brief comparison to CAA reporting:

- RCRA: Two tiers of reporting. Any violation is reported, regardless of size. However, if a significant violation, it is flagged (SV → SNC).
- Water: Effluent and single event violations can rise to the level of significant violation (SEV → SNC). However, the key difference with CAA is that in water, there can be a significant violation

that does not require an enforcement action (need two consecutive quarters without fixing before an enforcement action is required).

- SDWA: Violations can build up points and once a threshold is met, the state has a specific amount of time to take action. Thus, we start with a set of lower violations and once they are repeated and reach a certain point, they become serious violations.

Next Call

EPA noted the following:

* The next call is scheduled for May 13 (skipping a week to avoid conflict with the NACAA Spring Meeting). For the May 13 call, we will continue the discussion of the San Diego proposal to ensure all call participants have an opportunity to comment and to provide any additional alternative reporting approaches.

* Since we ran out of time on this call, we will also reserve a portion of our May 13 call to discuss the issue concerning the timing for reporting FRVs.

* EPA will also forward to the participants, as requested, the relevant guidance documents (1986 FRV Policy, 1992 SV Policy, 1998 HPV Policy, and 2010 FRV Memo).

FEDERALLY-REPORTABLE VIOLATIONS

Meeting Minutes

May 13, 2013

FRV Conference Call #5

Members of the EPA Office of Compliance (OC) staff, representatives from EPA regional offices, representatives from NACAA, CENSARA, NESCAUM, SESARM, and WESTAR and representatives from State and Local agencies met on May 13, 2013, for the fifth in a series of calls to discuss federally-reportable violations. The focus of this call was to (1) continue discussion on the FRV reporting proposal put forward for consideration by the San Diego Air Pollution Control District (The SDAPCD revised proposal was provided to participants prior to the call); (2) discuss the timing for reporting FRVs. Due to the length of time in completing discussion of the San Diego proposal, the discussion on the timing for reporting FRVs was held over to the call scheduled for May 20.

Introduction

* After roll call was conducted, Ed Messina (Division Director for the Monitoring, Assistance, and Media Programs Division) welcomed everyone and commenced the conference call with a brief review of the previous call. Amy Royden-Bloom of NACAA mentioned that at the recent NACAA spring meeting, Ed's FRV presentation was well received and "peaked a lot of interest."

San Diego Proposal

* Source Universe: Jon Adams indicated that he had spoken with other California locals and they were in agreement that the source universe for reporting violations should be majors and SM80s with the SM80s based on actual emissions (sources closest to the major source threshold). The majors and the SM80s would have the most significant impact on the environment with emissions likely being localized. Emissions associated with minor sources do not have such a significant impact on communities as these emissions are more of a regional problem.

- While CA locals and Colorado use actual emissions, several participants expressed concern with having an SM80 universe based on actuals: (1) many do not have such information and, therefore, need to establish the SM80 universe based on PTE; (2) using actuals would cause sources to frequently change classification and it would be difficult to keep up to date; (3) actual emissions based on old data (2 year lag); (4) some agencies simply track all SMs and include all within their “CMS SM80 universe” (thus, NESCAUM proposed relying on the CMS universe of majors and SM80s for FRV reporting).

- Given the above concerns expressed by the participants, Ed Messina suggested a proposal for consideration: As a default, have SM80s based on PTE with the option to use actuals. Participants responded favorably to this suggestion. While such a proposal could lead to inconsistent data, Michigan stated that inconsistent data is already now being reported with some agencies reporting on all SMs and some agencies limiting their reporting to SM80s. To reduce possible inconsistency, Ed also suggested using the default of PTE and limit the exception of using actuals to those agencies for which it would be necessary – e.g., CA locals.

* Limit reporting to HPVs: San Diego stated that its proposal limits reporting to those significant violations defined as HPVs (no longer have HPVs considered a subset of FRVs). Therefore, only one policy is necessary – the HPV Policy. However, given the discussion on the calls and the questions raised concerning what should be reported as an HPV and which excess emissions should be considered significant, San Diego suggested that additional discussion is needed. It is acknowledged that attempting to quantify which excess emissions are “significant” is difficult.

- Hillborough County (FL) also expressed concern regarding how the proposal was identifying excess emissions as significant – there could be excess emissions below the 100 ton/500lb threshold that should be considered significant, reported and upon which action is taken. For example, a source test failure for mercury that does not meet the 500lbs threshold should still likely be considered significant.

- Also, if there is only one policy, participants expressed concern regarding the reporting obligations for the various sources. There should be different reporting for a major HPV v. an SM80 with an FRV that does not rise to HPV level.

* Linkage with HPV reporting not required: Jon Adams stated there would be no linking of HPVs to inspections or source tests. Within agencies, there are different divisions with different responsibilities and therefore, having linkage would be too difficult. However, reporting the date of the inspections and when the violation occurs is sufficient for transparency.

* Breakdowns/variances: Jon Adams stated such incidents would not be reported as they are covered by an administrative remedy. For example, when a facility is able as directed by the agency to “fix” a problem and remedy the situation within 24 hours, no enforcement action will be taken. This will not be reported to EPA.

- San Diego recommends that “trivial” violations at majors and SM80s not be reported. Thus, only violations for which an enforcement action is taken should be reported (provide the date for return to compliance and the action taken (e.g., warning, penalty).
- San Diego differentiated a Notice of Violation (when an enforcement action is taken) v. a Notice to Comply (e.g., facility has 24 hours to fix a problem).

* The San Diego proposal and the HPV workgroup efforts: State participants who are also on the HPV workgroup questioned how the proposal aligned with the HPV workgroup discussions as the proposal is suggesting a different source universe and criteria. Participants expressed uncertainty regarding how the two efforts (FRV discussions/HPV workgroup) can move forward separately.

- Terri Dykes (OECA/OCE) confirmed that the HPV workgroup has developed revised HPV criteria (different from the San Diego proposal) that is now going through EPA senior management review. While working to have a revised HPV policy by September, we can continue to have discussion on the policy.
- Terri stated that the HPV workgroup agreed to an HPV policy focused on the source universe of majors. Minors would be included if they exceeded a limit and, as a result, went beyond the major source threshold – actual emissions kicked them into being major. (This is different from the San Diego proposal since SM80s are not included).
- Ed Messina indicated that there is the potential need for both an HPV policy and a policy for violations that do not rise to the HPV level in order to give context for the HPVs. Also, an HPV policy can provide for the higher resolution data that is needed for the HPVs (e.g., linking) while an FRV policy can provide for lesser data reported.

EPA Feedback

San Diego expressed interest in hearing EPA’s response to its proposal and obtaining an EPA proposal upon which the states/locals can comment.

- Ed Messina reiterated that while EPA is committed to revising the FRV policy, the purpose of these calls is to receive state/local input and to more fully hear and understand the issues/concerns regarding FRV reporting. EPA is intentionally holding back from providing a response to allow all state/locals an opportunity to comment. Once the scheduled conference calls are completed, it is envisioned that EPA will reconvene (likely via a conference call due to travel constraints) with the air associations and agencies that participated in the January 2013 FRV meeting held in Washington, DC. Thereafter, taking into consideration all feedback received, EPA will “take pen to paper” and develop an FRV proposed policy.

“Universal Database”

During the discussion of the San Diego proposal, one agency highlighted the variability among the state/local programs and the difficulty for the various agencies to report to the EPA data system. Thus,

a suggested solution would be for EPA to develop one system that is shared and used by all the state/local agencies.

- The states/locals who responded to this suggestion expressed concern: (1) for their own workload/purposes, they would still need to have their own data system. Thus, they would be required to spend resources maintaining two systems –their own and the EPA shared system; (2) since there is such variability among state/local programs, having one data system that would be sufficient for every agency's needs would be impossible.

Linking

Prior to ending the call, Ed Messina confirmed the state/local input received from previous calls that there is a lack of stated support for linking associated with FRV reporting. However, North Carolina stated that linking the inspection to the action would not be problematic.

- Even if linking were to be optional, concern was expressed by several participants that what is initially optional could eventually become required reporting.

Next Call

EPA stated that the timing for reporting FRVs will be discussed on the May 20 call.

FEDERALLY-REPORTABLE VIOLATIONS

Meeting Minutes

May 20, 2013

FRV Conference Call #6

Timing for Reporting FRVs

Members of the EPA Office of Compliance (OC) staff, representatives from EPA regional offices, representatives from ECOS, NACAA, MARAMA, NESCAUM, and WESTAR and representatives from State and Local agencies met on May 20, 2013, for the sixth in a series of calls to discuss federally-reportable violations. The focus of this call was to discuss the timing for reporting FRVs.

Introduction

* After roll call was conducted, Ed Messina (Division Director for the Monitoring, Assistance, and Media Programs Division) welcomed everyone and commenced the conference call with a brief review of previous calls.

* As this is the last scheduled conference call, Ed provided participants information on potential next steps:

- Brief the OC Office Director on the discussions that have been held to date.

- Reconvene a meeting of the air associations and state/local agencies that initially met in January 2013 to provide an update, review the call discussions, and possibly consider a straw proposal. Due to travel constraints, this meeting will likely be held via conference call.
- Thereafter, EPA will draft an FRV policy for review.

* Before discussing the timing for reporting FRVs, Ed asked participants if they had any final comments on the San Diego proposal. While no one offered any additional comments, Ed informed the participants that he had a separate call with Jon Adams of the San Diego APCD. Ed stated that he had a good conversation and the call provided an opportunity to more fully understand the San Diego position. Since Jon had not yet joined this conference call, Ed summarized the separate conversation and the clarification that Jon wanted to make:

- San Diego is most concerned with the reporting of minor sources because such an expansive universe would result in an untenable reporting burden. If FRV universe is limited to majors (does not include minors), San Diego could report both FRVs and HPVs. As to whether FRV reporting could be expanded to the synthetic minor universe, Jon was unsure – the larger source universe could pose a potential problem, at least for the larger California districts.

Timing of FRV Reporting

To frame the discussion, Ed Messina provided the following overview:

* EPA understands as a result of previous discussions and comments received (e.g., the AFS modernization efforts, ICR renewal processes, HPV work group discussions, SRF reviews), a number of agencies have concerns with regard to the timing for reporting information related to violations or “alleged” violations and when such violation information is made publicly available. Thus, some agencies have indicated their hesitancy to report violation data to AFS believing that such information would be made available to the public.

* Certain agencies need to complete required processes, including agency review, before determination and public identification of a violation. To highlight a few examples of which EPA is aware:

- Massachusetts: The Agency is reporting all enforcement documents issued (e.g., ACOs, NONs) for HPV and non-HPV sources. However, Massachusetts does not track violations separately from the enforcement actions. The state legal processes require “a four-step process of review be completed and notice to the facility be provided” before a violation label can be used. Thus, compliance status in AFS is currently changed to “In violation” only after the enforcement document has been executed.

- Minnesota: The Minnesota Data Practices Act (Data Privacy statute)/Minnesota Civil Investigation Data Policy: Prohibits Minnesota from reporting violations and related actions until after corrective actions are completed, penalties paid and case concluded.

- California Locals: Enforcement data is not to be released to the public until cases are settled. However, if NOVs are not considered Enforcement Sensitive and ICIS-AFS is updated to ECHO on a nightly basis, the NOVs would immediately be released to the public. The locals would need to wait to report NOVs until they are resolved.

- Indiana: The Department of Environmental Management (IDEM) does not currently put sources that are in violation addressed by informal actions (such as warning or violation letters) into a violation status in AFS.

- Texas: “Areas of Concern” (AOC) are violations not requiring formal enforcement and will not be reported to AFS. An AOC would be reported into the Texas database (CCEDS) as a violation but would not count toward compliance history. Texas NOVs would only require formal enforcement under certain circumstances and Notices of Enforcement (NOEs) are used when a violation warrants formal enforcement.

* As the timing of FRV reporting is discussed, Ed also asked participants to consider and comment on the current ECHO Caveat concerning the term “violation”:

Violation, noncompliance, significant noncompliance, high priority violation, and serious violator are all terms used by the ECHO site to describe the facility status in regard to compliance with the law. In many cases, these terms reflect determinations made by EPA or states when conducting inspections or reviewing facility self-reports. These determinations assist the government in tracking resolution of violations through the enforcement process and do not necessarily represent a final adjudication by a judicial or administrative body. In such cases, these characterizations should be considered alleged violations.

* Also, Ed acknowledged the various tensions at play (e.g., program management, oversight, public access, enforcement sensitive information) in developing a process to track and report violations. Is there sufficient alignment with the inspection process and are violations reported in a timely fashion? When should the public become aware of the violation (or deficiency) – when the inspector writes the inspection report, when the supervisor completes a review of the report, when a letter is issued, when the AG office files a complaint, when the case is settled?

* Washington stated that we need to differentiate two “sides” of reporting – public notification v. reporting to EPA. What problems are created if data is not reported to EPA within a 60-90 day period?

- Ed responded that having timely reporting allows EPA to engage in better oversight and allows us to know how long it may take for state/locals to address an issue. Also, timely reporting allows for better public access - the public to be informed of problems within their community (information in real time).

- Washington indicated that for HPVs, regular communication is happening with the regional office and thus EPA is kept up to date even if AFS does not contain the most recent information. And not all violations represent “worse case scenarios” (e.g., many violations are only very small emission exceedances.)

- Ed: If scope of FRV reporting is limited (e.g., narrower FRV universe and sources already reported into the system), it may be reasonable to have more detailed information on the limited universe of FRVs reported to the data system. Having information only communicated during regional conference calls and not reported to AFS limits the ability in providing information on a national level.

* Lisa Rector (NESCAUM) noted that regarding the timing for reporting violations, certain states may require legislative changes in order to report in accordance with EPA desired time frame. Thus, a possible focus should be on the common denominator – all agencies can report after the case is completed.

- Ed noted that SRF findings may indicate that a legislative fix is needed and such a finding can be of assistance to the agency to obtain such a fix. Having agencies report only after case completion severely limits transparency.

* Laurel Carlson (MA): A facility receives notification when the agency issues an addressing action (e.g., consent order issued, complaint filed) and the facility receives the document. We do not have a problem with alerting the public to a violation prior to the case being resolved but we do need to wait until the facility has been notified.

* Jon Adams (San Diego) outlined his agency's process: (1) Source is provided notification of violation at time of inspection or shortly thereafter; (2) Inspector will verify compliance within two weeks; (3) Inspection report is submitted for review to determine if penalty is required; (4) When NOV is initially issued, it is released to the public.

* South Coast: Inspector can issue an NOV and submits report to prosecutor within 90 days. Settlement process ensues and if no settlement, addressed judicially. NOVs posted on a monthly basis.

* Missouri: NOVs are publicly available as well as final agreement/resolution. Everything in between is not shared.

* Mississippi: It makes sense to report the violation when the NOV is sent.

- San Diego agrees. Date of NOV is close to discovery – time differential is not significant.

* Massachusetts: Expressed concern with reporting to AFS and having information publicly released before facility notified because information to AFS goes to ECHO which is updated monthly.

* New York: Focus should be on EPA carrying out its responsibility to conduct oversight and developing appropriate regulations. New York has its own data system for reporting and providing the public information. The state should not have to maintain both its own system and the EPA system.

- North Carolina: Agree. The regional AFS managers should enter the data since it supports EPA oversight.

- Nevada: Also agrees.

* Maine: For small agencies such as Maine, there is no easy way to get information to the public and they rely on using AFS and ECHO.

* Washington: It would be difficult to provide information to the public when the violation is occurring as majority of violations are not “real-time” (have already been corrected) or emissions related.

* Region 1: Important to draw a distinction between an FRV and HPV as agencies are concerned with the level of reporting across the board - rigor of reporting could be greater for very serious violations. We do not want to overwhelm the system or the public.

* Wisconsin: Data has two purposes: (1) EPA oversight/program management for which SRF is sufficient; (2) Identifying real ongoing violations with public impact (as opposed to a case just not being wrapped up and still looking like a violation to the public).

* Massachusetts: No objection to the term “violation.” However, the current reporting process is designed for reporting performed actions and not violations. Massachusetts reports the issuance of the document and not the violations. Thus, the NESCAUM approach would create violation types and when we submit an action, we can also submit a violation type.

- Pennsylvania: Such an approach would be problematic since we would have to redesign our own system. We report on state regulations, not Federal. However, if just required to report SIP, this approach would be acceptable.

* Terri Dykes indicated that the HPV criteria seemed to be acceptable and the current effort is attempting to make the criteria focused more on emissions related violations and imminent endangerment. While there is a category for recordkeeping violations, majority of criteria is emissions focused.

- New York: Public has a right to know about emissions violations but recordkeeping violations are not sufficiently important to show the public. Agencies should not be reporting information just to placate EPA. Focus should be on core activities. Public is interested in emissions. Reporting to EPA takes away resources from other activities. Also, any major computer changes will be hard to do since we have limited resources and we will not be getting more funds from the legislature.

* District of Columbia: There is overlap between the FRV and HPV policies with the HPV policy intending to get to those very important problems. While the HPV policy is being reviewed to further get to the really important problems, there are important procedural violations (e.g., an expired permit). An issue to be addressed is the possibility of combining the FRV and HPV policies.

* Mississippi: For timing, the issuance of an NOV should start the 60 day clock for reporting. For MS, the NOV is a public record and there is no obstacle to report to EPA. Also, the NOV is not inherently informal or formal. A definition for an NOV is needed.

- San Diego agrees. Issuance of an NOV should start the clock for reporting and 60 days is reasonable.
- Alabama, South Coast, and Michigan also agree.

* Region 1: Are agencies able to report to AFS enforcement actions once they have been issued?

- South Coast: Inspectors in the field may issue a “traffic ticket” with the problem corrected on-site rather than issuing an NOV. While the traffic ticket is reported to the agency’s own system, it will not be reported to EPA. Also, at a refinery, for example, may have 10 violations combined into one enforcement action. Also, there is confusion over terminology/acronyms that needs to be resolved.

* Ed Messina: Questions whether all notifications to the facility should be made public. A phone call? Any letter sent to the facility? If we were to limit the FRV source universe and violation types to provide reduced burden, it may be reasonable to request higher resolution of the data. So, when an agency is notifying the source of a violation/deficiency, EPA should be notified. Yet, we could leave it up to the state/local to determine if the action reported to EPA should be kept enforcement sensitive.

- Region 1 expressed concern with the possibility of keeping such information enforcement sensitive – may create additional complexity when we are attempting to simplify reporting.
- While simplicity is better, Ed indicated that there is the need for flexibility because some agencies have legal restrictions with regard to informing the public of an enforcement action that is happening. Thus, if able to keep the information internal, such agencies can provide the information to EPA. While we do not have time for a full FOIA discussion, there are exceptions to releasing information under FOIA and one exception is for enforcement sensitive information. However, there may be certain states with Sunshine laws that would require information be publicly released if sent to EPA.

* New York: Questioned the EPA need for the data and how EPA would use the data. New York is concerned that EPA does not listen to the comments provided.

- Pennsylvania shares the New York concern and wants to know why EPA needs the data.
- Ed Messina provided reassurance that EPA is listening – the purpose of the six conference calls was to provide an opportunity for the state/local agencies to share their concerns/provide input and for EPA to obtain such feedback and have a better understanding of the state/local positions. On previous calls, we did discuss the needs/uses of the data and, most recently, provided a presentation at the NACAA Spring Meeting that included a discussion of such needs and uses. The presentation is posted on the NACAA website and we will also distribute to the call participants.

* Mississippi: Thanked EPA for opening the policy for discussion and committing the time to speak with the agencies. Mississippi implemented the TEMPO database in 2000 in an effort to obtain high resolution data. However, with resources/programs running thin, we have to differentiate between needs and wants.

- * Amy Royden-Bloom: Inquired into the possibility of combining the FRV and HPV policies.
 - Terri Dykes indicated that having one combined policy at this time would not be possible if EPA is to meet the IG September deadline for a new HPV policy.