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# Revising the HPV Oversight Process

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Working Draft

Oct. 2010

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# Current HPV Policy Milestones

- Day Zero (maximum 90 days after discovery)
- Notice (within 60 days)
- Addressing Action (270 days/300 days)
- Resolving Action (no time requirements)

\*\* Construction without a valid PSD or NNSR Permit is not required to meet these deadlines  
- See Section IV

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# Day Zero for Tracking HPVs

- The 'timeliness' of HPV milestones keys off of the Day Zero
  - Day Zero is 45 days from initial discovery of violation (?)- but can be up to 90 days from initial discovery if additional monitoring or analysis is need to determine or confirm the violation.
  - If violation is found via reports- then the Day Zero is no more than 30 days
  - Data tracking doesn't accommodate for multiple regulation violations or multiple pollutant violations
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# Notice

- Notice is a CAA statutory requirement; its date is used for calculating penalty; determining dates for SOL
  - IG's report indicated that source's were not receiving notice in a timely manner
  - A review of one region's HPV cases indicated that notice was being given prior to identifying the day zero
  - Notice can be interpreted broadly to mean any document that identifies the violation to the source
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# Addressing Actions

- Addressing Action must be a legally enforceable administrative or judicial order, or a referral to AG or DOJ
- On average 36% of HPVs are not addressed within the 270/300 day timeline\*\*
  - Federal Lead cases – 251 days average
  - State Lead Cases – 310 days average
- “In some complex cases, more time may be required”- but there is no limit in the policy

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\*\* This has not been adjusted to remove the GC1

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# Resolving Actions

- “Resolved shall mean that “the source is returned to compliance”
    - All administrative/judicial action is complete and the “source had been confirmed to be complying with the CAA”
  - “No formal timelines are established for this stage of the enforcement process”
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# Enforcement Lead Transfer

- Additional 30 days to address is provided if there is a lead change
  - Assumption that this is enough time because EPA would be able to use the State's NOV/FOV
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# Issues with Day Zero

- The difference between discovery of a violation and identification of the violation- i.e., its Day Zero- creates confusion; is it really necessary?
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# Day Zero/NOVs

Region	Total HPVs	Total NOVs	Avg. Days from Day Zero to NOV	Median Days from Day Zero to NOV
1	771	593	-16	-32
2	3282	2020	-21	-1
3	1192	1053	-6	0
4	4532	1527	36	0
5	4556	3677	-107	-46
6	3859	3147	5	0
7	789	679	-31	0
8	1086	735	-15	0
9	6235	7150	-13	0
10	970	387	-246	-65
			-41	0

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## Issues with Notice

- States/Local Agencies are often giving notice of the violation that would meet legal standards- but not considering it “NOV”
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# Issues with Addressing an HPV

- Process does not account for the source's return to compliance with the violation prior to an addressing action
  - Timeline doesn't consider that several states do not have independent administrative enforcement authority-enforceable vehicles must come from AG's office
  - Process does not recognized collaborative efforts with the source without enforceable vehicles
  - Discovery of additional violations often delay the "addressing" of the initial violation
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## Issues with Addressing an HPV (con't)

- Does not accommodate for expedited treatment of violations that could be harmful to health, environment or program



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# Issues with Resolving

- Must wait until a CD is completely resolved to consider a violation “addressed”



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# Enforcement “Steps”

- ❑ Violation Occurs
  - ❑ Investigation/Identification of Violation
    - Inspection, 114 response, Records Review, Periodic Reports
  - ❑ State/EPA Consultation
  - ❑ Decision to take enforcement action
  - ❑ Notice of the Violation (s)
    - Conferring with the violator
  - ❑ Administrative Order Issued
    - Order Appealed
  - ❑ Referral
    - To DOJ or State AG office
    - To “enforcement” side of the program office
  - ❑ Negotiation
  - ❑ AOC, CD, Judicial Complaint, or No Further Action
  - ❑ Enforcement Lead transfer
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