

## SAN DIEGO APCD EPA REPORTING SUGGESTIONS FOR VIOLATIONS

A series of EPA webinars and conference calls have occurred over the last several months with state/local air quality agencies (“agencies”) and associations. The discussions have centered on reporting requirements for inspections, FRV/HPV violations, electronic submittal of reports and data, a new EPA ICIS database, web-based dashboards, and minimum data requirements. During these webinars, it has become clear that reporting information to EPA is not consistently applied across the nation. Reasons for the inconsistency are many, including uncertainty on what data is required; when to report data; lack of resources; and computer software limitations. The main focus of this document is on what type of violations to report to EPA, when to report them, and what data to report.

EPA has explained why the data is needed, including the ability to respond to Congress info requests, responding to public / researcher requests, and better transparency. In years past, EPA has attempted to provide clarification through memos to explain reporting requirements for FRV and HPV violations.

Agencies have expressed concern about the amount of information that is required to be reported currently and about possible future requirements. Agencies have commented that reporting requirements are burdensome; resources are lacking; and EPAs requirements lack authority and/or clarity.

This document is intended to provide suggestions on how to best proceed in the future. It is our contention that reporting requirements need to be simplified and, and to this end, report only those violations that are significant. EPA’s HPV matrix does define significant violations but is overly complex. FRV violations, which cover non-HPV violations, increase the reporting burden. While violations identified in the FRV Clarification Memo require state and local attention, they do not rise to the level that they should be reported to EPA.

Agencies shall only be required to report significant violations at major and SM-80 sources. SM-80 sources shall be based on actual emissions, not their potential to emit. HPVs are categorized as significant procedural or significant emission violations. Further, HPVs shall continue to be reported for those pollutants that result in a major source/SM-80 classification. The agency shall report these violations to EPA within 60 days of determination. Due to its familiarity and for continuity, **these significant violations will continue to be classified as high priority violations (HPVs)**. The agency will report the date of the violation, date of return to compliance, method of

determining compliance, and the enforcement action taken. Recent discussions with other agencies revealed it may be difficult to determine significant emissions violations based on poundage. The criteria(s) for HPV need further discussion to address agencies limitations, but the ultimate goal should be simplification.

EPA should be agreeable to not require reporting of violations at minor sources and only require it at major/SM-80 sources. It is the major/SM-80 sources that have the highest facility-wide emissions and the greatest concern. These emissions are generally in a localized area where impact to the nearby public is heightened. Emissions from minor sources are spread out regionally and have much less impact on the localized area where they are located.

There will be no requirement to link the violation to an inspection or any other event. As stated during webinars and phone calls, inspections are often handled by one part of an agency, and the processing of a violation occurs by a separate group. Sometimes an outside agency (e.g. district attorney, state attorney general, county counsel) handles the case. What is pertinent to report is the fact a HPV occurred; that the violation was corrected; and an action was taken to prevent its recurrence. Other data such as inspection dates is often entered by other sections of an agency, and as long as such data is provided, EPA can query the information or develop reports through its own computer program to link information.

HPVs covered by an agency remedy will not be reported. Administrative remedies include but not limited to, equipment breakdowns/malfunctions referenced in a state or local regulation, variances referenced in a state or local regulation, or startup / shutdown provisions that preclude an enforcement action by the agency.

Significant procedural violations shall include operating without a valid permit, modifying an existing permit without prior approval, failure to apply for a Title V permit, failure to submit Title V reports (ACC, RRM), failure to conduct a required source test, failure to submit CEMS reports, and failure to keep any required records. Minor procedural violations include but not limited to, missing a few records or turning in all required records but being a few days late with the submittal. In order to be a minor procedural violation, the missing data is unlikely to prevent a Title V threshold determination or trigger additional pollution control requirements. Often these minor procedural violations are handled by a notice to comply or other warning that does not rise to the level of a violation that result in an enforcement action.

Significant emission violations are any single event where over one ton of a criteria pollutant is released; 500 lbs of a hazardous air pollutant; or an emissions violation that

last for more than seven consecutive days where over 1 ton of criteria pollutant or 500 lbs of hazardous air pollutant is possible but not proven by source test, CEMS, or an agency-approved alternative calculation method. The violation may be as a result of an agency inspection, Title V deviation report, or records submitted by a facility.

Credible evidence may be utilized to determine if the excess emission thresholds described were exceeded. One example of credible evidence is where an agency utilizes a portable combustion analyzer on Day 1 and determines a boiler is operating at 50 ppmv NO<sub>x</sub> and the rule limit is 9 ppmv. The agency determines the boiler is operating at 50 ppmv on Day 10. The boiler ran for 10 consecutive days until it was shut down for repairs. The fuel gas type is known and an estimate on the firing rate can be determined. The estimated excess emissions are determined to be over one ton of NO<sub>x</sub>. The violation would be reported as a HPV.

Each major and SM-80 facility will be entered into the system that is not already entered. Unless there are changes to a facility's status, this is a one-time entry. The minimum data requirements shall be name of facility, facility address, facility number, affected programs (Local NSR, Agency Rule, Federal NSR, PSD, NSPS, NESHAPs, MACT), and list pollutants that exceed agency's major/SM-80 thresholds. An agency has the option to enter affected federal program subparts or enter minor source information.

When a HPV results in an enforcement action, the agency shall report it to EPA within 60 days. An enforcement action typically includes a written warning, monetary fine, alternative settlement, SEP, or jail/prison time served. The agency shall report the date when a violation occurred or was discovered or when an enforcement action commenced; date compliance achieved/signed agreement; method for determining compliance; and final disposition. If an agency and facility enter into an agreement, consent decree, or other plans, including a payment plan, a SEP with milestones, or upgrades to the plant that will take time, the signing of such an agreement shall be the date that the case is considered closed for reporting purposes.

By defining significant violations as described above it provides for a better mechanism for EPA to compare agencies. The current method can result in data that is misinterpreted. For example, a turbine in one agency may be subject to a 42 ppmv NO<sub>x</sub> limit, and the same turbine in another agency may have a 2 ppmv NO<sub>x</sub> limit. If the turbine with a 2 ppmv NO<sub>x</sub> limit had three exceedances at 15 ppmv NO<sub>x</sub> and the 42 ppmv NO<sub>x</sub> limit had no exceedances, one agency would be reporting three violations and the other none. If you were to compare the two agencies, one may have a perceived problem.

In conclusion, these reporting parameters for HPV violations provide EPA with updates on significant violations. Along with the reporting FCEs, EPA has pertinent information for transparency, data for researchers, info for Congressional inquiries, and for oversight activities. The data provides EPA notification when inspections are performed and provides assurances inspections are timely and proper enforcement actions are taken. This approach limits the burden on agencies and allows the flexibility for agencies to report more info such as minor source information and PCE's (both optional).