

# The Enforcement Process Office of Civil Enforcement (OCE)

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Office of Civil Enforcement

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# Mission of the Office of Civil Enforcement

- ▶ Our mission is to **protect** human health and the environment through enforcement of the nation's environmental laws.
- ▶ 145 Employees (attorneys, engineers, scientists, analysts)

# What We Do

- ▶ Develop and prosecute environmental enforcement cases.
- ▶ Initiate and manage national, multi-regional and multi-media (air, water, waste, etc.) cases against large companies.
- ▶ Provide legal and technical support and direction to the regions and states on cases and investigations (e.g., develop strategy, assist in penalty and pollution reduction calculations, provide input on installation of pollution controls).

# What We Do (continued)

- ▶ Set and manage national enforcement priorities.
- ▶ Develop national enforcement policy and guidance.
- ▶ Participate in drafting environmental standards to ensure that they are enforceable.
  - ▶ Monitoring (CEMS, other direct monitoring)
  - ▶ Record Keeping
  - ▶ Reporting (electronic reporting)

# How We Accomplish Our Mission

- ▶ Take enforcement actions to address the nation's biggest environmental problems, leading to significant environmental benefits.
- ▶ Deterrence
- ▶ Enforcement Alerts
- ▶ EPA's enforcement actions over past 5 years:
  - ▶ Required companies to invest more than \$44 billion in pollution control equipment.
  - ▶ Obtained estimated pollution reduction commitments of 7.8 billion pounds.

# Office of Civil Enforcement: Challenges

- ▶ Ensuring effective enforcement against the most significant environmental problems in the face of limited resources.
- ▶ Maintaining a collaborative relationship with states and tribes while asserting an appropriate Federal role for enforcement.
- ▶ Effectively measuring and communicating to the public the benefits of strong enforcement.

# Several Clean Air Act Civil Enforcement Authorities

Sections 113, 114, 303 and 167 are the main tools in our tool box

# Sections 303 and 167 of the CAA

## ▶ CAA § 303

- ▶ Imminent and Substantial Endangerment authority
- ▶ U.S. may file suit in District Court to immediately stop the violation

## ▶ CAA § 167

- ▶ Stop Construction Authority

# Section 114

- ▶ Information Gathering and Inspection Authority
- ▶ Inspection and Entry Authority
- ▶ Testing Authority - (reasonable basis)
- ▶ Section 114 allows us to seek relevant information from anyone, even those who may not be sources of pollution, if they have information EPA needs.

# Notices of Violation (NOV) & Findings of Violation (FOV)

- ▶ One step in EPA's investigation/enforcement process
- ▶ Typically offer the opportunity to confer with us about the alleged violations, opportunity to present information on the specific findings, and the efforts taken to comply with the alleged violations.

# Clean Air Act Section 113 Administrative Authorities

- ▶ Administrative Penalty Order (APO) - issued after the conclusion of a formal administrative proceeding to resolve a penalty claim and requires payment within 30 days
- ▶ Administrative Compliance Order (ACO) - can be unilateral or on consent
  - ▶ Compliance must be achieved within one year
  - ▶ ACOs issued unilaterally by the EPA may be subject to pre-enforcement judicial review (i.e., the respondent may seek judicial review of the ACO prior to action by the EPA to enforce its terms).
- ▶ Consent Agreement and Final Order (CAFO) - settlement of a penalty claim negotiated on consent
- ▶ Orders not self-enforcing. If facility does not comply, DOJ must take action judicially.
- ▶ Does not require coordination with separate prosecutorial agency (DOJ)

# Advantages of Administrative Process

- ▶ Appropriate for routine, relatively simple violations requiring limited injunctive relief and/or shorter compliance schedules.
- ▶ Appropriate with smaller penalties.
  - ▶ CAA cap is \$200,000, but can be revised with DOJ consultation and consent.
  - ▶ Frequently used in the \$200K - \$1 Mill.
- ▶ Enables Agency to address broader range of violations and maintain greater field presence with limited resources.
- ▶ Less costly and time-consuming than judicial approach with violations resolved more quickly.

# Civil Judicial Enforcement

- ▶ Who may file civil judicial environmental enforcement actions in U.S.?
  - ▶ Federal Government
  - ▶ State Governments
  - ▶ Citizens
  - ▶ Indian Tribes, directly or through citizen suit provisions.

# Civil Judicial Enforcement by U.S.

- ▶ Who Brings the Action?
  - ▶ Department of Justice Environment and Natural Resources Division (ENRD).
- ▶ On Behalf of Whom?
  - ▶ Client Agencies—EPA, Coast Guard, Fish and Wildlife Service, Forest Service, other agencies.

# Civil Enforcement Process

- ▶ ENRD's Environmental Enforcement Section handles most civil enforcement
- ▶ Organized into litigating groups handling cases from specific EPA Regions
- ▶ Most attorneys in Washington, DC, but handle cases across the U.S.

# Civil Enforcement - Referral Process

- ▶ Referrals primarily from EPA/agency regional offices.
- ▶ Referral “litigation report” includes:
  - ▶ Proposed defendant
  - ▶ Violation and the basis for the claim
  - ▶ Evidence supporting claim
  - ▶ Anticipated defenses
  - ▶ Relief sought by agency.

# DOJ Action Pre-filing

- ▶ Prior to filing complaint, DOJ must give prospective defendant notice of claim and opportunity to settle.
- ▶ Many statutes require pre-filing notice to state agency.
- ▶ State may file own complaint and litigate jointly with U.S.

# Civil Complaint

- ▶ Complaint filed in federal district court where company located or where violation occurred.
- ▶ Complaint includes:
  - ▶ On whose behalf complaint filed
  - ▶ Short statement of nature of action
  - ▶ Basis for court's jurisdiction and venue.

# Civil Complaint

- ▶ Complaint includes, cont.
  - ▶ Summary of statutory, regulatory, and factual background
  - ▶ Claims for relief
  - ▶ Prayer for relief, including:
    - ▶ Injunction to stop illegal action, require defendant to correct damage, or come into compliance
    - ▶ Civil penalty

# Penalty Demand

- ▶ Environmental laws set maximum penalty amounts and specify factors for courts to consider.
  - ▶ CAA § 113(e) factors include: the size of the business, the economic impact of the penalty, the compliance history and good faith efforts to comply, during of the violation, penalties previously assessed for the same violation, other factors as justice may require.
  - ▶ Penalty may be assessed for each day of violation.
- ▶ Recovering economic benefit of noncompliance essential.
- ▶ Civil penalties are paid to U.S. Treasury.

# Trial or Settlement in Civil Enforcement

- ▶ Trial

- ▶ Settlement

- ▶ Majority of cases still settle before trial.
- ▶ Settlement embodied in consent decree.
- ▶ Settlements “lodged” with court and made available for public comment.
- ▶ U.S. carefully reviews comments, moves to enter only if appropriate.

# Trends in Civil Enforcement

- ▶ More multi-facility settlements.
- ▶ Industry-wide enforcement efforts.
- ▶ Enforcement actions to change company practices.
- ▶ Multi-media settlements

# Incentive Programs

# Incentive Programs

- ▶ Programs available for both civil and administrative enforcement.
- ▶ Self Disclosure Policy.
  - ▶ Must meet specified criteria: systematic, voluntary, independent discovery; independent, prompt disclosure; prompt correction; cooperation; prevent recurrence.
  - ▶ Reduced gravity component of penalties.
  - ▶ Agreement to not prosecute criminally.
- ▶ Small Business Policy.
  - ▶ Applies Self Disclosure Policy to businesses with 100 or fewer employees.

# Incentive Programs cont.

- ▶ Expedited Enforcement Settlement Offers (Administrative only)
  - ▶ Offer very small penalty to first time violators if they come into compliance quickly (usually within 30 days).
  - ▶ Facility required to submit documentation to demonstrate that in compliance.
- ▶ Supplemental Environmental Projects (SEPS)
  - ▶ Facility voluntarily agrees to undertake environmentally beneficial project related to the violation in exchange for mitigation of penalty.
  - ▶ Does not include activities that violator must take to return to compliance.