



Federal Enforcement Programs

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Who Are We?

- Office of Enforcement and Compliance Assurance (OECA)
- Office of Civil Enforcement (OCE)
- Air Enforcement Division (AED)
- Stationary Source Enforcement Branch (SSEB)
- 17-18 FTE
- Split of Attorney and Engineers/Scientists
- Unofficial Mission – Get emission reductions thru settlements (NSR/PSD, NESHAP/MACT, NSPS)



Federal Enforcement Overview?

- Cases/Settlements (participate in settlement negotiations, draft CDs, complaints, briefs)
- Provide national consistency for the enforcement program (e.g., 114s, NOVs, emission rate setting)
- Regulation review to ensure enforceability (e.g., Utility MACT, Tailoring Rule, GHG Reporting Rule)
- Policy Development (e.g., penalty policies)
- Consent Decree implementation/modification
- Section 113 Waivers/Opt-Outs
- Regional Liaisons
- Permitting Issues (e.g., Title V Petitions)
- FOIA/Congressionals



Enforcement Issues for Discussion

- 1) Tailoring Rule – Step 2
- 2) Stationary Source Civil Penalty Policy
- 3) LDAR Penalty Policy
- 4) Muni Penalty Policy
- 5) Promod Section 114s

1) Tailoring Rule – Step 2

Issue

What constitutes “begin[ning] actual construction” for minor sources prior to July 1, 2011 and therefore be exempt from the requirements to obtain a major source PSD permit under Step 2 of the Tailoring Rule?





1) Tailoring Rule – Step 2

Tailoring Rule

After the July 1, 2011 PSD permitting requirements will begin to apply to sources solely on the basis of their greenhouse gas (GHG) emissions -- **some sources that are currently minor sources for purposes of PSD will become major sources.**

Sources that begin construction under minor source permits in advance of July 1, 2011 will not need to revise their permits to account for their GHG emissions; however, **sources that have not begun construction will need to acquire major source permits (and meet related requirements, including Best Available Control Technology and a public comment period).**

Step 1 applied only to sources that “otherwise” triggered PSD due to emissions of criteria pollutants.



1) Tailoring Rule – Step 2

- **Enforcement Implications**

Sources are moving by July 1, 2011 to meet at least the minimum regulatory requirements of “**begin[ning] actual construction**” in order to avoid applicability of major source PSD.

If sources that would be major under Step 2 fail to meet the applicable standard for beginning construction prior to July 1, 2011 and begin construction after that date, they will be in violation of PSD.

While existing EPA guidance specifies that certain activities are expressly permitted and others are expressly prohibited prior to obtaining a PSD permit, it does not speak to all potential fact patterns. Thus, **determinations regarding the appropriateness of any non-delineated activities remain highly case-specific.**



2) Draft Stationary Source Civil Penalty Policy

- The October 25, 1991 -- nearly 25 years old
- Focusing on main penalty policy – not the appendices
- All Regions are represented on the workgroup
- DOJ not involved at this point
- Not a lot of new case law to require change
- Significant new issue - whether and how to incorporate environmental justice considerations into the penalty.
- EPA Managers have been briefed on the preliminary staff recommendations, but no approvals yet.



3) Draft LDAR Penalty Policy (Appendix VI)

- Applies to HAP and Non-HAP VOCs
- Penalties higher for HAPs and Non-HAPS in ozone nonattainment
- Does not include size of violator, economic benefit, or gravity adjustments
- Penalty ranges and in some instances include caps
- Penalties vary based on importance of recordkeeping requirement (quantity of missing data and type of missing data)



3) Draft LDAR Penalty Policy (Appendix VI)

- Failure to identify equipment
- Missing Monitoring
- Method 21 Calibration
- Failure to Tag Leakers
- Late or No Repairs
- Equipment Std Violations
- Pressure Testing Violations
- Using pipeline cases to compare to old policy – result in 50% reduction in penalty



4) Draft Muni Penalty Policy

- Applies to coal-fired utilities owned and operated by municipalities and cooperatives less than 200MW
- Must have non-for-profit status
- Violations must be outside SOL – older projects with higher litigation risk
- \$925 per MW (average of our existing settlements)
- Adjustments
 - Up to 10% - cooperation
 - Up to 25% - expedited settlement (3 months)



5) Draft Promod 114 Questions

- Circumvention of PSD using reasonable possibility provisions of the NSR Reforms
- Finding documents in discovery that shows that companies are intentionally holding down actual emissions for five years.
- During discovery, finding that companies often use production simulations (e.g., Promod) to determine impact of modification/project.
- Goal is to include requests for production simulations as a standard question in our 114s