

Compliance and Enforcement

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Air Enforcement and Compliance Assurance Branch

Who We Are

- 25-30 Environmental Scientists and Engineers
- Sections
 - IL/IN
 - MI/WI
 - MN/OH
- What is the purpose of air enforcement?
 - To promote compliance with the Clean Air Act
 - To provide an effective deterrent to non-compliance
 - To ensure a level playing field for environmentally compliant companies

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What We Do

Enforcement

- Only civil enforcement, not criminal
- Civil liability arises simply through the existence of a violation; no requirement for prior knowledge or intent
- Criminal enforcement is reserved for the most egregious violations that are willful or knowingly committed, and may lead to fines imposed by a judge, as well as incarceration
- General Compliance Assistance

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What We Enforce

- SIPs
- National Emissions Standard for Hazardous Air Pollutants (NESHAP or MACT)
- New Source Performance Standards (NSPS)
 - Impose NO_x, SO₂, and PM controls on emissions from new and reconstructed facilities
- New Source Review and Prevention of Significant Deterioration
- 40 CFR Part 82 - Protection of Stratospheric Ozone
- Mobile Source Rules

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How We Do It

- **Targeting**
 - Specialized expertise and equipment
 - Sources that are part of a larger investigation or multi-media inspections
 - Impacted communities or citizen complaints
- **Inspections**
 - Typically unannounced
 - Typically partial compliance evaluations
- **Information Requests**
 - Emissions and operations data, records, and reports
 - Emissions testing and monitoring
 - Information on construction projects

Air Enforcement and Compliance Assurance Branch Enforcement Actions

- **Notice/Finding of Violation**
 - NOV for rules in SIP, FOV for other Clean Air Act violations
 - Invite recipient to tell their “side of the story”
- **Compliance Assurance Letter**
- **Warning Letter**
- **State Assist (referral)**

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Paths to Resolution

- **Administrative Settlement**
 - Administrative Compliance Order (ACO)
 - Consent Agreement and Final orders (CAFO)
- **Judicial Settlement**
 - Consent Decree
- **Enforcement in Administrative vs Judicial Venue**
 - Based on size of penalty and compliance timeline
- **Litigate if cannot settle**

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How We Resolve Violations

- **Injunctive relief:**
 - Source must come into compliance (additional emission controls, lower emission rate)
 - Mitigate environmental harm from violations
- **Penalty:**
 - Recover economic benefit
 - Compensate for the seriousness of the violation and deter non-compliance
- **Supplemental Environmental Project (SEP):**
 - Cash penalty reduced by performing an environmental project
 - At the facility or in the community

Suggestions for Rule Writing

- Put yourselves in our shoes
 - How would a violation of a rule be determined?
 - Go on inspections/shadow enforcement staff
- Avoid assumptions, be thorough and explicit
 - Example: Ensure applicability to both continuous and batch processes
- Minimize ambiguity
 - Example: NESHAP for non-ferrous foundries applies only to complex castings; the term complex castings is not in definition section of the rule
- Be Consistent
 - Example: Process weight rate limit for PM vs SO₂

Suggestions for Rule Writing Cont.

- Avoid long reference chains if possible, or otherwise include descriptors as well as IDs, when referencing rules:

“For each capture system subject to an operating limit in § 63.7690(b)(1)”

VS

“For the purpose of determining compliance with paragraphs (B)(1), (B)(3), (B)(7)(a)(i), (B)(7)(b), (B)(7)(c), and (B)(8)(a) to (B)(8)(d) of rule 3745-17-07...”

- Study other state SIPs