

**PROGRAM CHANGES TO ADDRESS THE CITIZENS ADVISORY COUNCIL  
REPORT AND THE EPA INSPECTOR GENERAL'S FINDINGS**

Pennsylvania Department of Environmental Protection

Bureau of Air Quality

January 13, 1998

**Introduction:**

The Pennsylvania Department of Environmental Protection (DEP) staff used information obtained during the Citizens Advisory Council (CAC) workgroup discussions, the subsequent CAC Report, the Inspector General's (IG) report and discussions with EPA Region III staff to develop the following proposal which addresses the issues raised. Both DEP Central Office and Regional staff were consulted and continue to be consulted on all proposed changes. Several meetings were held with various EPA staff along with telephone communications and the exchange of proposed language to discuss an equitable resolution to our differences.

The Department believes that all of the concerns raised in the CAC and IG reports have been addressed ~~and DEP is now in full compliance with the grant commitments relative to EPA's Timely and Appropriate Enforcement Policy (TAEP).~~ The proposed programmatic changes will strengthen the Air Program as well as fulfill the needs of EPA. ~~DEP will seek EPA's concurrence with the proposal while proceeding to implement the individual elements.~~

**Applicability:**

The following information and procedures apply only to facilities subject to the TAEP and have been developed with the cooperation of EPA Region III staff to assure the fulfillment of grant commitments and compliance with the TAEP.

**Grant Commitments:**

EPA followed the recommendations of EPA's Inspector General and the CAC by specifying in Pennsylvania's Grant that a total of \$411,600 would be "available for drawdown when EPA - Air Enforcement Section has received and verified reports containing complete, accurate and timely reporting of all pertinent information regarding significant violators...according to the following schedule:"

A. \$308,700 - submission of information starting July 31, 1997 on each significant violator detected from October 1996 through June 1997. After EPA acceptance of this report, the first drawdown may occur on or after Aug. 15, 1997.

B. \$102,900 - submission of information on each significant violator detected for the months of July, August and September 1997. After EPA acceptance of this report, the final drawdown may occur on or after Oct. 30, 1997.

On June 15, 1997 a significant violator (SV) compliance status report was submitted to EPA to comply with the first requirement which was used as the basis for individual case discussions at our face to face meeting on July 30, 1997. The meeting included the Operation Chiefs and other staff from the Regional Offices, Central Office staff from the Division of Compliance and Enforcement (C & E) and Air Enforcement Branch staff from EPA Region III. The requirements for our first drawdown have been met and \$308,700 has been released.

~~On October 24, 1997, the second SV compliance status report was submitted to EPA in preparation for our face to face meeting held on November 12, 1997. David McGuigan of EPA stated that he viewed the SV compliance discussions as very successful and the final drawdown has been approved the funds have been released.~~

#### Training and Guidance:

EPA and DEP staff will work together to develop and present Pennsylvania specific Level II inspection training for all appropriate staff. ~~This will be in addition to related training currently in our training plan. EPA is currently investigating the viability of having an outside provider (Rutgers or the California Air Resources Board) develop~~ training which could be utilized for Pennsylvania. In addition, each employee associated with this subject in the Central Office and Regional Offices will be given: (1) the latest version of the TAEP which contains the information relative to SVs including EPA's Clarification Package; (2) EPA Region III's draft Interim Air Guidance which is intended to update the TAEP; (3) any implementation agreement finalized between EPA and DEP which will formalize responsibilities and required actions of all parties. As a training aid, a checklist for Level II inspections has been developed and will be used to assure that inspections meet Level II criteria. The checklist will be utilized by all inspectors for a minimum of five (5) inspections. The future use of the checklist and additional training needs will be evaluated through the existing Air Quality peer review efforts. All new inspection staff will be required to utilize the checklist for a similar number of inspections or more if it is determined that its use is needed.

#### Notice of Violation:

A Notice of Violation (NOV) will be issued for any violation occurring at facilities covered under the TAEP. This includes all facilities classified as "major" due to their emission over a threshold value of at least one of the pollutants for which a NAAQS has been established, NSPS sources, NESHAP sources, MACT facilities classified as "major" according to the Clean Air Act and synthetic minor (SM) facilities.

An exception will be made for self-reported violations as a result of a comprehensive compliance self audit performed in accordance with the Department's Voluntary Environmental Audit Policy (Document Number 012-0840-001) which is in accordance with EPA policy. NOV's will not be issued where a company qualifies under the above policy; however, the compliance status will be changed to "out of compliance" in the AIMS Compliance Module which will be used to update EPA's AIRS database.

A copy of all NOV's will be forwarded to C & E and will have an AFS number or other tracking number determined at a later date. C & E will retain all NOV's in a "Potential SV" file and prepare a monthly report to EPA which will include copies of all appropriate NOV's. The monthly report to EPA can be discontinued with the agreement of both EPA and DEP. This will be dependent on EPA having direct access to AIMS which is available to EPA upon request. NOV's will be entered into the AIMS Compliance Module within 30 days of the NOV being sent to the affected facility.

#### **Case Resolution and Penalty Documentation:**

A case will not be considered closed until all required actions are completed by DEP and the company and documentation is provided in the case file in the form of a memo. The memo should include reasons for closure, the actions taken by the company to come into compliance, the date compliance was confirmed (via on-site inspection or the receipt of necessary documents), a summary of the actions taken by DEP and penalties paid or actions taken in lieu of penalties.

All penalties or actions in lieu of penalties must be documented by way of a memo through the Operations Chief or, if appropriate, the Engineering Services Chief, to the case file (or permit file if there is no case file). The memo should contain the penalty calculation using the factors contained in Section 9.1 of the Air Pollution Control Act and document the basis for all calculations completed (Civil Penalty Assessment Policy, EPA's Economic Benefit Model, etc.). DEP will not retain in the case or permit file documentation of negotiations for penalties and material covered under attorney client privilege.

#### **Continuous Emission Monitor Violations:**

There will be no significant changes in the administrative handling of CEM violations; however, it will be necessary in some cases to handle violations more expeditiously and to track all violations more closely to assure that cases are resolved in a timely manner. DEP's Compliance and Enforcement Division in the Bureau of Air Quality has addressed this issue by implementing a notification system for Regional staff. Cases that are included in this report should be given top priority. The selection criteria will be modified as required by DEP to reflect our needs or a change in EPA action thresholds.

### Compliance with the TAEP, Grant Commitments and DEP/EPA Administrative Agreement:

Due to the broad definitions in the TAEP, the number of facilities that would qualify as SVs and the time associated with discussing each violation would not represent an efficient use of resources. Therefore, there is a need to agree upon criteria and administrative procedures which would satisfy EPA's needs and focus attention on the most important violations. Since the release of the CAC report there have been three meetings relative to SV issues between EPA and DEP staff in addition to several telephone calls. The discussions have been amicable and productive. It is the intention of both DEP and EPA to discuss an implementation agreement which will define the actions DEP must take to fulfill EPA's expectations relative to the TAEP and DEP's associated Grant commitments. The following represents the areas discussed and a final proposal.

#### AIMS Compliance Module:

The cornerstone of DEP's proposal is the accelerated development and implementation of the Pennsylvania AIMS Compliance Module by July 1, 1997. Until the on-line activation of the AIMS Compliance Module, DEP staff updated AIRS. As of July 1, 1997, inspection/compliance data has been entered into AIMS only. As soon as possible, DEP and EPA will determine how AIRS can be updated on a monthly basis by downloading information from AIMS. DEP will supply all of the AIRS compliance information (A, B and SM facilities) to EPA and the agency agreed to discuss the need for monthly compliance reports after evaluation of the information received. In order for this to succeed, it is necessary that the DEP Regional staff give priority to maintaining current and accurate AIMS data. In addition, the DEP Regional and Central Office staff will have to enhance quality control procedures to assure data integrity. The AIMS Compliance Module will also be used to track inspection and compliance information for facilities not covered by the TAEP. All of the data in the Compliance Module will be used to update DEP's Interim Compliance Reporting System.

#### Significant Violator Reporting:

Through the AIMS Compliance Module, all violations will be reported to EPA by downloading AIMS data to AIRS as "Violations Potentially Subject to the TAEP". It will be EPA's decision, based on information received from DEP through reports, telephone conversations and face to face meetings, whether a facility will be identified as an SV on the national database. Until EPA can accept a download of AIMS the procedure outlined for handling Notices of Violation will be used.

Communications Between EPA and DEP:

To improve communications between EPA and DEP regarding enforcement actions, DEP has centralized the coordination of the compliance discussions held with EPA. While EPA will still be free to contact the DEP Regional staff directly if they have company specific questions between scheduled discussions, the responsibility for generating reports, organizing meetings and conference calls and dispute resolution will reside with C & E.

Although the CAC report recommended monthly meetings, EPA felt that quarterly meetings would be sufficient to meet their needs.

Face to face discussions on enforcement actions will be held on a quarterly basis. These meetings will initially be held in conjunction with the Operation Chief's staff meeting; however, another venue may be used if it is determined to be more effective. During these meetings EPA will be updated on compliance progress, decisions on the lead agency will be made (as a general rule, DEP will take the lead in accordance with the TAEP), facilities EPA will list as SVs will be discussed and decisions will be made on actions to be taken for new violations reported. Since these meetings will require detailed company specific information, each DEP Region will be required to have a knowledgeable staff member in attendance (Operations Chief or designee). Appropriate Central Office staff will also attend. In addition, quarterly conference calls will be scheduled between the face to face meetings to assure that all parties will be kept current with case status information.

DEP Regional legal staff will be invited to the face to face discussions. They may elect to attend en masse or send a representative who can pass along pertinent information to the other attorneys. The attendance of the legal staff will allow for enhanced anticipation of legal needs of DEP, as well as provide assistance in responding to EPA questions.

Conference calls will include appropriate staff from EPA, DEP Central Office and each separate DEP Regional Office will be conducted between the quarterly face to face meetings. They will be scheduled sufficiently in advance so that the Regional and Central Office staff will have a knowledgeable person available to participate. Calls can be canceled by mutual agreement when it is determined that there is no need for the call. These calls will be used to update EPA on the progress of important cases and discuss other related matters as necessary. It is anticipated that these calls will be one hour or less.

Since the face to face meetings as well as the conference calls are the key mechanisms for EPA to gather information, understand problems and make decisions, it is incumbent upon EPA to maintain the agreed upon schedule and have the appropriate staff available.

*Organized / recorded*

### SV Universe and Administrative Procedures:

From past enforcement activities DEP anticipates in excess of 200 NOV's at facilities covered by the TAEP and neither EPA nor DEP feels that detailed discussions on every violation would be a productive use of time. Therefore, attention and discussions will focus on those violations which represent the most important environmental impact and those violations which are of special importance to EPA. In order to address this concern, the following procedure will be followed:

- DEP will report all violations to EPA which may be subject to the TAEP. Such violations will be designated by DEP as "Violations Potentially Subject to the TAEP" and EPA will decide whether a facility will be designated in AIRS as an SV.
- DEP, for the purpose of discussion at the quarterly face to face meetings, will generate a report which will separate the most important violations from those of lesser interest to EPA. The separation into categories will be based upon criteria agreed upon by both EPA and DEP.
- DEP and EPA will discuss case specific information and can decide to change a violation designation.
- The selection criteria for deciding a violation's appropriate category will be discussed and evaluated at DEP/EPA quarterly meetings after one year and will be modified as necessary.
- EPA is responsible for both listing and delisting SVs in AIRS and should do so in a timely manner and shall inform DEP within five (5) working days of a listing change.
- Discussions relative to changing the TAEP are currently taking place between state/local agencies and EPA. If changes to the policy are finalized, modifications to the SV universe and selection criteria will be implemented to reflect the new requirements.

### Discussion Categories and Selection Criteria:

The following categories are not related to any previous EPA or DEP defined category and have been developed only to serve as criteria to focus available resources on the most significant cases during DEP/EPA face to face quarterly discussions. All violations at facilities covered by the TAEP will be reported to EPA as "Sources Potentially Subject to the TAEP." Facilities can change categories based upon DEP/EPA discussions.

**EXCEPTIONS:** violations of DEP's open burning and odor regulations will not be listed as SVs.

**CATEGORY 1:** Facilities significant enough to be listed by EPA on the National SV Registry and which merit discussion at DEP/EPA quarterly meetings or conference calls. A "yes" response to any one of the following criteria is sufficient to place the violation in question into Category 1.

1. Is there a NSR or PSD plan approval violation?
2. Is the violation "willful" and/or repeated within 2 years?
3. Is the violation for a SIP emission within a non-attainment area for that pollutant?
4. Is the violation from an air emission of any NESHAP, MACT or NSPS (except for stone crushing NSPS facilities) source?
5. Does the violation cover a Synthetic Minor emission violation resulting in the source potentially exceeding the major source threshold?
6. Would environmental concerns would be best addressed by EPA action?
7. Is this a violation of any Commonwealth order or decree?
8. Is it likely that the facility will require more than six months to come into compliance or complete the installation of required equipment?
9. Does this violation involve fraudulent Title V reporting?
10. Is this a violation of the Title V testing/certification process?
11. When economic benefit has been determined, is it in excess of \$10,000?
12. Is this a violation of any known federal consent decree or APO (EPA designated)?
13. Is the violation for CEM emission greater than 10% in any quarter or two quarters with violations greater than 5% in any four consecutive quarters (determined from Central Office)?
14. Is the violation for CEM data availability greater than 20% in any quarter or two quarters with violations greater than 10% in any four consecutive quarters (determined from Central Office)?

**CATEGORY 2:** Facilities which are subject to the TAEP and can be listed by EPA on the National SV Registry, but have less environmental significance than sources in Category 1. These facilities will be reported to EPA and will be tracked by DEP. EPA will be advised when a case is resolved and removed from the list. There will be no or very limited discussion with EPA on these cases. If a facility remains in Category 2 for more than 150 days, DEP/EPA will discuss the circumstances and decide if the facts merit movement to Category 1. If there is no "yes" response to any of the criteria in Category 1 (causing the violation to be listed in that category) then a "yes" response to any of the following criteria is sufficient to place the violation into Category 2.

1. Is the violation for construction without a valid permit (other than Part C or D) and no operation or emissions?
2. Does the violation involve construction to "Best Available Technology" (BAT) standards without a valid permit?
3. Is this a violation at a Major, NSPS, NESHAP or SM facility with no previous violations or no violation within two years?
4. Is this a fugitive emission violation at a stone crushing facility covered by NSPS?
5. Is this an NSPS source that failed to complete testing within the mandated time frame?
6. Is this an emission violation at a facility subject to the TAEP in an attainment area for that pollutant?

7. Is this an unrelated repeat violation (unless the source was previously listed as an SV)?
8. Is this violation for late Title V reporting with no similar violation within 2 years?
9. Are corrections expected within 30 days?
10. Has the action been rescinded?