



**EPA Office of Compliance
Enforcement Targeting and Data Division**

AFS National Workshop

San Francisco, CA

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NACAA Enforcement & Compliance Committee Activities—2006-2007

Mary Stewart Douglas
AFS Workshop
San Francisco
August 7, 2007

New Name...

from...

STAPPA and ALAPCO

to...

the National Association
of Clean Air Agencies--

NACAA

...But Same Activities

- ◆ Represent 54 states/territories and 165 localities
- ◆ Committee Structure
- ◆ Maintain 3 web sites
- ◆ Organize about 10 conferences/workshops every year
- ◆ Organize monthly, bimonthly calls
- ◆ Presidents and executive director testify before Congress
- ◆ File Amicus Briefs
- ◆ *Washington Update*

2007 Process Changes: Stepped Up Collaboration with OECA

- ◆ Enforcement & Compliance Committee Co-Chairs will participate in biannual EPA Air Enforcement Managers Meetings
- ◆ Addressing Special Needs Together—Permitting/Enforcement Workshop led by Sesarm/Metro 4
- ◆ Strategic planning on Enforcement Priorities—Gap to Fill in H/Q/Regions/State and Local Agencies Planning Together

OECA's 2008-2010 Enforcement Priorities

- ◆ NACAA supports NSR sector enforcement, air toxics priorities.
- ◆ What if broader collaboration had occurred in identifying priorities: Refinery consent decree compliance? SSM emissions? Air Toxics hotspots?
- ◆ Inclusive strategic planning leads to increased "buy in" and commitment

NACAA and Utility NSR

- ◆ Duke Energy 9-0 Supreme Court decision: “modification” is a change plus increases in actual, annual emissions—4th Circuit decision vacated. Separate purpose and intent of NSR as enacted in 1977 affirmed by Justice Stevens.
- ◆ NACAA amicus brief filed on behalf of states and localities last July
- ◆ NACAA position: no utility NSR means ever smaller sources/businesses must be controlled; CAIR, BART etc. do not compensate; 1999 enforcement cases undercut; contrary to intent of Congress that “grandfathering” be unlimited.

...And the Beat Goes On

- ◆ Despite Unanimous Supreme Court ruling, EPA proposed "EGU Supplemental." Nothing in *Duke* to prevent prospective change. EPA says hourly rule would enhance EGU safety, reliability and that other programs would compensate for no utility NSR
- ◆ NACAA opposed at hearing in RTP June 29
- ◆ NACAA filed written comments opposing

NSR Sector Cases

- ◆ Acid, cement and glass cases have state participants, e.g. recent Dupont sulfuric acid plant settlement was joined by Ohio, Louisiana, and Virginia; also, Rhodia acid plant settlement in April involved 8 production plants in 4 states.
- ◆ At AEM meeting, Co-Chairs offered our calls to EPA regions as vehicle for communications on global settlement issues

NACAA Positions on Programmatic NSR Changes

- ◆ Emission Calculations: Debottlenecking, Aggregation and Project Netting — NACAA opposed variations on calculations that reduce NSR applicability
- ◆ Reasonable Possibility in Recordkeeping: Remanded to EPA by D.C. Circuit—proposed rule leaves applicability calculation and subsequent emissions tracking within discretion of sources with no oversight. NACAA opposed.
- ◆ NSR in Indian Lands—NACAA supported LAER for new and modifying sources, but encouraged EPA to add attainment plans, emissions offsets requirements.

Air Toxics Priority

NACAA *amicus* briefs filed in both the Boilers and Plywood MACT cases. Both briefs opposed the risk-based exemptions in the two rules:

- ◆ Low-risk exemption subcategory in both boilers and plywood is unlawful. Congress intended that EPA set technology standards first, following which risk would be considered by EPA in requiring further reductions if there remains residual risk.
- ◆ EPA ignored the substantial burdens imposed on states and localities that must implement the exemptions.

D.C. Circuit Vacated Three MACTS in Large Part

- ◆ Brick and Clay --standards must reflect top performing 12 per cent of industry category that has been achieved (not what might be considered **achievable**)
- ◆ Industrial Boiler –vacated because MACT regulation conflicted with Definition in statute of Industrial Waste Incinerator
- ◆ Plywood—low risk exemption and compliance deadlines vacated; some MACT standards remain (affecting about half of industry categories)

MACT Hammer Means that States Must Issue Permits with MACTs

- ◆ §112(j) provides that if EPA has not issued emission standards for a source category 18 months after they are due, each individual source in that category must apply for and obtain a special permit from its permitting authority to continue operating. Permit writers must establish emission limitations on a case-by-case basis
- ◆ Operation of a new or reconstructed major source is prohibited under §112(g)(2)(B) unless source has received a permit containing limitations equivalent to the maximum achievable control technology for new sources in that category.

NACAA View of EPA's MACT LDAR Priority

- ◆ Agree with EPA: improvement in compliance with leak detection and repair would result in significant emissions reductions

- ◆ NACAA Comments on LDAR Proposals
 1. Use of Optical Scanning Camera for Leak Detection;
 2. New LDAR Standards for Refineries and SOCOMI can be met by existing units, not just new (based on refinery settlements)

Future NACAA Enforcement Committee Activities

- ◆ Refinery NSPS Comments pending
- ◆ Keep Working on Case Coordination Among EPA Regions/HQ/States/Localities and DOJ—Workshops and Calls
- ◆ Permitting/Enforcement Coordination—No undercutting enforcement actions (and enforceable compliance schedules in permits)
- ◆ SSM: Committee Communications on Enforcement of malfunctions; accurate emissions data

Summary

NACAA Enforcement/Compliance Committee

- ◆ Communications on Calls
- ◆ Training (Workshop)
- ◆ Coordinate with OECA
- ◆ Comments geared toward stronger programs...and improved enforceability

For further information

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