Timely and Appropriate Enforcement Response to High Priority Violations – How Can a Minor or Area Source Have an HPV?

Terri Dykes
Air Enforcement Division, OECA
dykes.teresa@epa.gov
Universe of Sources Subject to the HPV Policy

Applies to only two categories of sources:

- Major source defined in CAA Sec. 501(2), often called a Title V Major Source.
- Any other stationary source (i.e., that doesn’t meet the CAA Sec. 501(2) definition for major source) that is part of a State’s Compliance Monitoring Strategy (CMS) plan.

- Area Sources for Hazardous Air Pollutants
- Minor Sources for New Source Review
How Do Violations at NSR Minor or NESHAP Area Sources Trigger Become Subject to the HPV Policy?

- **NSR Minor Sources** (whether or not in a state’s CMS Plan) are subject to this policy as a Criterion 1 HPV if the source’s violation results in the actual emissions from the source exceeding major source thresholds.

- **NESHAP Area sources** (whether or not in a state’s CMS Plan) are subject to this policy as a Criterion 4 HPV if it is determined that the source did not have an enforceable limit prior to the applicability date or if it is determined that the source so regularly violates its area source limit such that the limit could be seen as a sham.

- Minor or Area Sources that are on a state’s CMS Plan are subject to this policy if the source violates an NSPS such that the violation meets Criterion 3.
HPV Criteria

- **Criterion 1**- Failure to obtain a New Source Review permit (for either attainment or non-attainment areas) and/or install BACT or LAER (including obtaining offsets) for any new major stationary source or major modification at a major stationary source.
  - This includes a violation at a minor source of an emission limit or permit condition such that the source’s actual emission exceed (or are expected to exceed) the major stationary source threshold as defined in the applicable NSR regulations.
  - A year’s worth of data is not necessary to determine that the “actual” emissions are expected to exceed the major source thresholds.
HPV Criteria

- **Criterion 2**- A violation of any *federally enforceable* emission limitation, emission standard, or operating parameter, which is a surrogate for emissions, that was issued pursuant to Title I, Part C or D major source requirements* of the CAA and the implementing regulations, or the equivalent provision(s) in an EPA-approved implementation plan (state, local, territorial or tribal) where such violation continued (or is expected to continue) for at least seven days.
  - Includes violations that, while not necessarily continuous for 168 hours, reoccur (or reoccurred) regularly or intermittently for at least seven days.
  - There is a presumption that the violation is continuing unless the enforcement agency can document sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur.
  - CEMS or COMs downtime should be included as periods of violations as long as the unit continues to operate.

*Emission limits, standards or operating parameters issued pursuant to Part C or D major source requirements do not include minor source limits given to avoid major source New Source Review Requirements of Title I, Parts C and D.
HPV Criteria

- **Criterion 3** - A violation of any emission limitation, emission standard or operating parameter, which is a surrogate for emissions, in an applicable Standards of Performance for New Sources (NSPS) (Part 60) or in an analogous regulation adopted by state, local, tribal or territorial authorities and EPA has granted delegation to enforce such regulations in lieu of the NSPS where such violation continued (or is expected to continue) for at least seven days.
  - Includes violations that, while not necessarily continuous for 168 hours, reoccur (or reoccurred) regularly or intermittently for at least seven days.
  - There is a presumption that the violation is continuing unless the enforcement agency can document sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur.
  - CEMS or COMs downtime should be included as periods of violations as long as the unit continues to operate.
**HPV Criteria**

- **Criterion 4-** A violation of any emission limitation, standard or surrogate parameter (emission or operating) of an applicable National Emission Standards for Hazardous Air Pollutants (NESHAP) (Parts 61 and Parts 63) *for major sources* or in an analogous regulation adopted by state, local, tribal or territorial authorities and EPA has granted delegation to enforce such regulations in lieu of the NESHAP where such violation continued (or is expected to continue) for at least seven days.
  - Includes violations that, while not necessarily continuous for 168 hours, reoccur (or reoccurred) regularly or intermittently for at least seven days.
  - There is a presumption that the violation is continuing unless the enforcement agency can document sufficient evidence to conclude that the violation is no longer ongoing and is unlikely to recur.

* Major sources of HAPs- not included to cover area source NESHAPs.
Criterion 5- A violation that involves federally enforceable work practices, or testing, monitoring, recordkeeping or reporting requirements that substantially interferes with enforcement of an NSR, NSPS, or NESHAP* requirement or a determination of the source’s compliance with any of those CAA programs.

- As in the previous HPV policy, a determination of what is substantial shall be part of a case-by-case analysis/discussion between the EPA Region and the enforcement agency.
- This criterion should not be used for violations of emissions or violations of parameters that are surrogate for emissions.
HPV Criteria

- **Criterion 6**- Any other violations specifically identified and communicated to enforcement agencies from time to time by the Director, Air Enforcement Division, U.S. EPA (general applicability) or as mutually agreed upon between the enforcement agency and corresponding EPA Region (case-by-case).

  - This criterion is also flexible enough to include any change in national enforcement priorities if needed in the future.
  - This criterion can include a violation at a minor or area source so long as both agencies agree that the violation warrants the oversight designated for HPVs.