



AIR/COMPLIANCE NEWS UPDATE

OVERVIEW OF EPA'S SELF-POLICING AUDIT POLICY Sheri L. Guerrieri

Voluntary disclosure of a violation is a decision many company managers face. The EPA's audit policy is very clear on self-policing and voluntary disclosure. Companies have a 21 day window to report the violation in writing to the EPA. This window is from the time of discovery to the time of written disclosure to the EPA. The written notice shall identify the means of discovery, type of violation and facility location. This audit policy can be of enormous value to new owners of facilities in which violations were discovered during acquisition due diligence.

The Nine Conditions to be met are:

- ◆ Systematic discovery through environmental audits or compliance management programs
- ◆ Voluntary discovery not through required monitoring
- ◆ Prompt disclosure within 21 days of discovery
- ◆ Independent discovery and disclosure
- ◆ Certain types of violations are ineligible
- ◆ Prevent reoccurrence
- ◆ Correction and remediation within 60 days of discovery
- ◆ Repeat violations are ineligible if occurring within 3 years
- ◆ Cooperation with EPA

In order to be eligible for a civil penalty waiver, a company must be in compliance with all nine conditions of the audit policy. Penalties for violations are based on the gravity of the violation and the compliance with the audit policy conditions above. Self disclosure and fast action to remedy the situation are encouraged by the EPA and can result in lower penalties and possibly avoiding criminal prosecution. For more information about the EPA's policy log on to www.epa.gov/compliance/resources/policies/incentives/auditing/auditpolicy.pdf



Individual states may have their own policies for self-policing violations. A side by side comparison is available from the EPA Region 5, Office of Regional Counsel, [Table X, Environmental Audit Immunity Laws and Self-Disclosure Policies: A State-By-State Comparison](#) by John A. Lee and Bertram C. Frey ** and can be found at <http://www.epa.gov/reg5oorc/articles/audit-article/table-x.htm>.

MANDATORY GREENHOUSE GAS REPORTING RULE PROPOSED Kimberly D. Coy



On April 10, 2009, the EPA published the proposed rule that requires mandatory reporting of greenhouse gas (GHG) emissions from large sources in all sectors of the economy (74FR16447). The rule was developed in response to the FY2008 Consolidated Appropriations Act (H.R. 2764; Public Law 110-161). The purpose of the rule is to collect data for future policy decisions. GHG emission reporting, as proposed, will be applicable to large sources of GHG emissions, including suppliers of fossil fuels or industrial greenhouse gases, manufacturers of vehicles and engines, and facilities that emit 25,000 metric tons or more per year of GHG emissions. These sources would be required to submit annual reports to EPA. The first annual report would be submitted to EPA in 2011 for calendar year 2010, except vehicle and engine manufacturers, which would begin reporting for model year 2011. The gases covered by this rule are carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), sulfur hexafluoride (SF₆), and other fluorinated gases including nitrogen trifluoride (NF₃) and hydrofluorinated ethers (HFE).

Comments are due on June 9, 2009. For more information, log on to <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

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New Jersey Electronic Submittal of Title V Reports

Any Title V facility in New Jersey can now submit Annual Certification and Semi-Annual Compliance Deviation Reports through MyNJ DEP Online Portal. To obtain access to DEP Online, go to <http://www.state.nj.us/dep/online>. To see the specific rule, go to <http://www.state.nj.us/dep/aqm/Sub22.pdf>.

PROPOSED AMENDMENTS TO 40 CFR PART 51, METHODS 201A AND 202

Sheri L. Guerrieri

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COMMENT PERIOD: Ends May 26, 2009



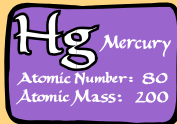
ACTION: Proposes amendments to Test Methods 201A and 202 and solicitation of comments for ending NSR CPM transition period early.

The proposed action provides the capability of measuring PM_{2.5} using Method 201A by adding a particle sizing cyclone to the sampling train. This action also provides for the more accurate measurement of the filterable and condensable components of fine PM and coarse PM when using Method 202 by revising the sample collection and recovery procedures to reduce the formation of reaction artifacts. In addition, the proposed amendment to Method 202 would eliminate most of the hardware and analytical options in the existing method in order to increase the precision of and improve the consistency of the measurements obtained using this method.

Finally, this action is asking for comments on the idea of ending the transition period for the condensable particulate matter (CPM) in the New Source Review program earlier than January 1, 2011.

NJDEP SUBMITS FINAL PM_{2.5} SIP PLAN

The NJDEP submitted its State Implementation Plan (SIP) revision on March 26, 2009 for meeting the PM_{2.5} National Ambient Air Quality Standards (NAAQS). The purpose of the SIP revision is to demonstrate NJDEP's plan to meet the 1997 PM_{2.5} annual NAAQS for its two associated multi-state nonattainment areas by the attainment date of April 5, 2010. The SIP revision also addresses the other mandatory SIP elements associated with the 1997 PM_{2.5} NAAQS, including regional haze and global warming. The full SIP can be viewed at <http://www.nj.gov/dep/baqp/sip/siprevs.htm>.



Pennsylvania's Mercury Rule Invalidated

On January 30, 2009, the Pennsylvania Commonwealth Court declared the Pennsylvania Mercury Rule unlawful, invalid, and unenforceable and further prohibited PADEP from continued implementation and enforcement of the rule. The ruling was in conjunction to a filed complaint against the rule from several Pennsylvania utilities challenging that the rule violates the Pennsylvania Air Pollution Control Act. The Court agreed with the petitioners and found that the Pennsylvania's Air Pollution Control Act prohibits the Commonwealth from regulating mercury emissions from EGUs because they are listed as source categories under Section 112 of the Clean Air Act (CAA). PADEP has filed an appeal with the Pennsylvania Supreme Court seeking to overturn the opinion.

The PA Mercury Rule, which regulates mercury emissions from coal-fired electric generating units (EGU's), became effective on February 17, 2007, and Phase I requirements were to begin on January 1, 2010. The rule was developed after Pennsylvania elected not to participate in the "cap-and-trade" program established under the federal Clean Air Mercury Rule (CAMR).

TRI BURDEN REDUCTION RULE ELIMINATED

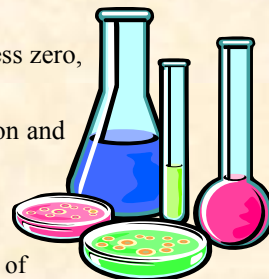
Kimberly D. Coy

Included in the Omnibus Appropriations Act signed by President Obama on March 11, 2009 is a measure to eliminate EPA's 2006 Toxic Release Inventory Burden Reduction Final Rule and restore it to the rules that existed before that change. The pre-2006 rule is effective until EPA takes further action.

The 2006 final rule was published to reduce the reporting burden on those entities subject to TRI reporting. Under the 2006 final rule, reporting using a generic Form A Report, which does not require numeric reporting, was permitted if the quantity of the chemical produced, processed or otherwise used was less than 1,000,000 lbs/yr, and the following criterion was met:

- ◆ For persistent, bio-accumulative toxic (PBT) chemicals, total releases, both on and off site, were less zero, and total recycling, treatment and energy recovery were 500 pounds per year (lbs/yr) or less.
- ◆ For non-PBT chemicals, total waste management was 5,000 lbs/yr or less and total releases, both on and off-site, were 2,000 lbs/yr or less.

TRI reporting is required by Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) and the Pollution Prevention Act of 1990. Reports are due to EPCRA on or before July 1 of each year. The purpose of the TRI reporting program is to provide the public with information on the releases and other waste management activities of the applicable TRI chemicals and to provide the United States Environmental Protection Agency (USEPA) with this information to assist in determining future regulations.



In 2007, thirteen states filed a lawsuit to invalidate the 2006 final rule, alleging that EPA violated EPCRA by eliminating a substantial majority of the toxic chemical information, by arbitrarily reversing a previous policy on collecting data for PBT chemicals, and for improperly attempting to limit the public disclosure of information.

USEPA TO REVIEW THE DECEMBER 2008 MEMO ON POLLUTANTS COVERED BY PSD Kimberly D. Coy

The saga on whether carbon dioxide (CO₂) will require Best Available Control Technology (BACT) continues. On February 17, 2009, USEPA, headed by Lisa Jackson, partially granted a petition from the Sierra Club for reconsideration of the controversial December 2008 interpretive memo, *EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program*, authored by then Administrator Stephen L. Johnson. Ms. Jackson stated that permitting authorities should not assume the December 2008 memo is the final word on the interpretation of requirements, but she did not issue a stay, so the memorandum remains in effect.

In the December 2008 memo, EPA interpreted the definition of *regulated NSR pollutant* in 40 CFR 52.21(b)(50) to 1) exclude those pollutants for which EPA regulations only require monitoring or reporting, and 2) include only air pollutants already subject to actual control of emissions under the Clean Air Act (CAA). The memo concluded that major sources of CO₂ emissions are not required to undergo a BACT evaluation under the PSD program.



NEWS FROM THE EPA



EPA has a court ordered date to finalize the chemical manufacturing GACT rule by May 15th this year!

40 CFR Parts 60, 61, and 63 Alternative Test Method Approval Summary

Sheri L. Guerrieri

Under a notice published February, 26, 2009, in the Federal Register (74FR8791), is a summary of the alternate test method and test method modification approval documents added to EPA's technology transfer network from January 1, 2008-December 31, 2008. Sources are not required to employ the alternative test methods but may choose to do so in appropriate cases.

- ◆ evaluate actions that may be needed to reduce levels of pollutants of concern, and
- ◆ take action as needed to ensure that nearby industries are in compliance with clean air regulations.

This \$2.25 million project will be funded by the competitive Community Scale Air Toxics Monitoring Grants program to purchase monitoring equipment and pay for laboratory analysis of the air quality samples from each school. Through this partnership, the EPA will be able to maximize its monitoring and analytical capabilities and develop a clearer picture of potential risks to children from toxic air pollution. Once the air toxics data for a school are quality-assured and analyzed, the EPA will make projections of the potential long-term health concerns related to cancer and other chronic health effects. If potential health concerns are high, EPA will take steps to mitigate the pollution causing the problems. If EPA cannot estimate potential effects based on the initial phase of monitoring, EPA may continue monitoring to obtain additional data.

Results of this assessment and a list of the 62 schools are available to the public at: <http://www.epa.gov/schoolair>.

OUTDOOR AIR ASSESSMENT NEAR SCHOOLS

Sheri L. Guerrieri

On March 31, 2009, the EPA announced a priority list of 62 schools across the country that will be included in the new air toxics monitoring initiative assessing outdoor air quality near schools. As part of this initiative, the EPA will partner with state and local air pollution control agencies to:

- ◆ collect samples of outdoor air near selected schools over 60 days,
- ◆ analyze those samples for air toxics of potential concern,
- ◆ report on levels of air toxics found and their potential for long-term health impacts,



Accelerated Phasing Out of Ozone-Depleting Chemicals by EPA, 40 CFR PART 82

In an effort to decrease both HCFC production and usage, on December 23, 2008, the EPA led the way to phase out HCFCs by issuing two proposed rules (73FR78680 and 78705). The first, the 2010 Allocation Rule, would adjust the allowance system for control of consumption and production of HCFCs in the US by allocating allowances for the years 2010-2014. This proposal reduces allowable amounts of HCFC-22 and HCFC-142b and sets first time allowances for other HCFCs. The second, the Pre-charged Appliance Rule, would ban the sale and distribution of air-conditioning and refrigeration products that have been "pre-charged" and contain either HCFC-22 or HCFC-142b, or blends containing one or both of these substances. These actions amend provisions for developing countries' basic domestic needs and clarify a ban on the sale and distribution of HCFCs through interstate commerce under the CAA. The effective date for both the proposal and the ban is January 1, 2010.

EPA TO FURTHER CONSIDER NEW SOURCE REVIEW FINAL RULE

On February 10, 2009, EPA announced that a January 15 New Source Review final rule specifically regarding the air permitting program's "aggregation" policy will not take effect before May 18, 2009, to allow time for further review. EPA is staying the effective date for 90 days to reconsider the rule in response to the current Office of Management and Budget memorandum regarding regulatory review, and also in response to a Natural Resources Defense Council petition for reconsideration.

New Source Review is a pre-construction permitting program to ensure air quality is maintained when factories, industrial boilers and power plants are built or modified. "Aggregation" refers to the grouping of multiple, related physical or operational changes into a single project for evaluating requirements under the New Source Review program.

More information: <http://www.epa.gov/nsr/actions.html>.



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- ◆ Air Quality Impact Assessments
- ◆ Major PSD/NSR and Minor Permits
- ◆ Title V Operating Permits
- ◆ Dispersion Modeling
- ◆ Part 75 and State Monitoring Plans
- ◆ QA Plans (Appendix F and Part 75)
- ◆ Quarterly Emissions Reporting (Parts 60 & 75)
- ◆ Multimedia Compliance Auditing
- ◆ Tier I/Tier II Reporting
- ◆ Control Equipment Evaluation and Troubleshooting
- ◆ BACT/MACT/RACT and LAER Analysis
- ◆ SARA Form R and Storm Water Management Plans
- ◆ Soil and Water Sampling
- ◆ Risk Management Plan Development
- ◆ Emission Control and Monitoring Assistance
- ◆ NESHAP Planning (SSM Plans)
- ◆ Spill Prevention (SPCC) Plans
- ◆ ERC Registration