



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

August 25, 2014

MEMORANDUM

SUBJECT: Revision of U.S. Environmental Protection Agency's Enforcement Response Policy for High Priority Violations of the Clean Air Act: *Timely and Appropriate Enforcement Response to High Priority Violations- 2014*.

FROM: Phillip A. Brooks *PAB*
Director, Air Enforcement Division
Office of Civil Enforcement

TO: Regional Air Enforcement Division Directors, Regions 1-10
Regional Air Enforcement Branch Chiefs, Regions 1-10
Regional Counsels, Regions 1-10

CC: Environmental Council of States
National Association of Clean Air Agencies
Association of Air Pollution Control Agencies

Attached is the revision to the U.S. Environmental Protection Agency's (EPA) enforcement response policy for High Priority Violations of the Clean Air Act (CAA) - *Timely and Appropriate Enforcement Response to High Priority Violations- Revised 2014*. This revision supersedes *The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)* issued in 1998. This revision reflects what the EPA has learned and how enforcement decisions have changed over the past 15 years.

The EPA considers all violations important. HPVs, however, are a subset of violations of regulations authorized by the CAA that warrant additional scrutiny to ensure that state, local, territorial and tribal agencies (referred to collectively as enforcement agencies) respond to such violations in an appropriate manner and, if needed, have access to federal assistance.

This policy revision reflects two substantial changes from the 1998 policy that the EPA determined is appropriate after consultation and input from our enforcement partners. First and

foremost, we have refined the criteria of what constitutes an HPV to sharpen our focus on CAA violations that experience shows are the most likely to be significant for human health and the environment or for maintenance of strong CAA programs. The EPA has reduced the general categories of violations that are designated as HPVs from ten to six, and has eliminated the matrix criteria for emission limitation violations.

Second, this revision recognizes the simple fact that even though a violation falls within a category of HPVs, not every such violation warrants additional tracking and attention at a national level. Identification of potential violations as HPVs should not be restrained by concerns that every such identification imposes an inalterable duty to bring a formal enforcement action. If it is later determined that such a violation does not warrant additional tracking and attention, enforcement agencies should be able to re-prioritize their efforts. Thus, this policy revision provides explicit mechanisms to remove those qualifying matters from HPV oversight.

These two major changes are intended to align the EPA's expectations for enforcement agencies with the reality of enforcement decisions to construct an approach that (1) enhances the EPA's ability to meaningfully monitor progress in an important group of enforcement matters, and (2) fosters a cooperative approach to case management with a focus on protection of public health.

Successful implementation of this policy depends on the ongoing communication and cooperation between the enforcement agencies and the EPA Regions. This revision continues to require regular regional consultation, which should now occur on a quarterly basis, with our enforcement partners to discuss HPVs and the appropriate response. Regions are expected to keep specific records regarding these consultations. Enforcement agencies are also responsible for keeping records on HPVs they identify and for reporting specific information about the HPV as required by the current Information Collection Request (ICR) and any subsequent revisions.¹ The ICR contains the minimum requirements that enforcement agencies must report into the EPA's national compliance database. Enforcement agencies should regularly consult the *Clarification Regarding Federally-Reportable Violations for Clean Air Act Stationary Sources*, March 22, 2010, and any subsequent revisions,² regarding reporting requirements for violations at CAA stationary sources. Because HPVs are a subset of federally enforceable violations, enforcement agencies should be familiar with both policies to ensure that the policies are consistently implemented and that information shared with the public about pollution and violations that affect their communities is as accurate as possible.

In order to ease the transition to this revised policy and the revised Air Module in the EPA's Integrated Compliance Information System or ICIS- Air, EPA expects enforcement agencies to implement this revision beginning October 1, 2014, the beginning of EPA's fiscal year. ICIS-Air is expected to be available for data entry by the end of October. The EPA Regional offices are asked to ensure that this policy is promptly transmitted to all affected enforcement agencies in their regions.

¹ Source Compliance and State Action Reporting (Renewal), EPA ICR Number 0107.10, OMB Control Number 2060-0096, EPA-HQ-OECA-2010-0777. EPA has begun the process for renewing the ICR and expects the first Federal Register notice to be published in August 2014.

² EPA anticipates a revision to the policy regarding federally reportable violations in 2014.

Timely and Appropriate Enforcement Response to High Priority Violations- Revised 2014

I. INTRODUCTION

This policy is a significant revision of *The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)* issued in 1998 (1998 Policy). The 1998 Policy anticipated the need for revisions based upon experience implementing the policy. This revision reflects what the EPA has learned and how enforcement decisions have changed over the past 15 years. This policy supersedes the previous version issued in 1998. Nothing in this policy is intended to change the underlying applicable requirements or to imply that compliance must be achieved on a less than continuous basis. Furthermore, this policy cannot be used to establish new standards or limits, is not binding on any party and cannot be relied on to create any rights enforceable by any party. The EPA reserves the right to change this policy at any time without public notice.

The EPA designed this policy as a management tool for conducting oversight of the response to six specific categories of violations of certain federally enforceable regulations authorized by the Clean Air Act (CAA).¹ These specific six categories of violations are called High Priority Violations (HPVs). This policy applies only if an HPV occurs at either a major source² as defined in CAA § 501(2) or a minor stationary source (*i.e.*, a source that is not a major source) that is subject to a Compliance Monitoring Strategy³ plan for a specific enforcement agency. State, local, territorial and tribal agencies (referred to collectively as enforcement agencies) are responsible for reporting data about these violations into Air module of EPA's national database, Integrated Compliance Information System (ICIS-Air), in compliance with the current Information Collection Request (ICR) and any subsequent revisions.⁴

The EPA considers all CAA violations important. HPVs, however, warrant additional scrutiny to ensure that enforcement agencies respond to such violations in an appropriate manner and have access to federal assistance if need be.

¹ These include not only the regulations implementing the CAA (e.g., 40 C.F.R., Parts 52, 60, 61 and 63), but also state, local, tribal or territorial regulations approved by EPA to implement the requirements of the Clean Air Act. "CAA" is used in this policy to represent collectively the CAA and these federally enforceable regulations.

² A synthetic minor source, *i.e.*, a source that has taken a permit limit to remain a minor source of emissions, is subject to this policy as a major source if the source's violation results in the actual emissions exceeding the major source thresholds.

³ See <http://www.epa.gov/compliance/resources/policies/monitoring/caa/cmospolicy.pdf>

⁴ The ICR contains the minimum data requirements for (1) determining CAA stationary source compliance and (2) the data required to be reported to the national data system, including specifics about HPVs. Source Compliance and State Action Reporting (Renewal), EPA ICR Number 0107.10, OMB Control Number 2060-0096, EPA-HQ-OECA-2010-0777.

This revision reflects several substantial changes that the EPA determined are appropriate after consultation and input from enforcement agencies and in light of our experience under the 1998 Policy. First and foremost, this revision contains refined criteria of what constitutes an HPV to sharpen our focus on CAA violations that experience shows are the most likely to be significant for human health and the environment or for maintenance of important programs. The EPA considers an HPV a violation of a federally enforceable CAA requirement that is (1) likely to result in impacts that pose a significant risk to human health and/or the environment from direct or indirect release of air pollutants or (2) may harm the ability to implement CAA programs.

Second, this revision recognizes the simple fact that even though a violation falls within a category of HPVs, not every such violation warrants additional tracking and attention at a national level. Identification of potential violations should not be restrained by concerns that every such identification imposes an inalterable duty to bring a formal enforcement action. This policy seeks to encourage enforcement agencies to (1) quickly identify which violations are likely HPVs, (2) report them into ICIS-Air as soon as possible after the HPV designation is made, and (3) promptly engage sources thought to be in violation. The EPA considers prompt identification and communication to the source as key elements in resolving a violation. If it is later determined that a violation previously designated as an HPV does not warrant the additional tracking and attention outlined in this policy, enforcement agencies should be able to re-prioritize their efforts. Thus, this policy revision provides explicit mechanisms to remove those qualifying matters from HPV oversight.

These two major changes are intended to align the EPA's expectations for enforcement staff with the reality of enforcement decisions. The essence of enforcement decisions is the element of judgement applied to a particular set of laws and facts, in light of competing demands for enforcement resources. This policy recognizes this basic truth and seeks to construct an approach to oversight that (1) enhances the EPA's ability to meaningfully monitor progress in an important group of enforcement matters and (2) fosters a cooperative approach to case management decisions that focuses more energy on protection of public health.

The EPA expects enforcement agencies responsible for enforcing the CAA to address all violations of air pollution requirements regardless of whether they are designated as an HPV. The EPA further expects enforcement agencies to address HPVs consistent with this policy in order to resolve the violations and collect the appropriate penalties. This revision outlines expected responses to HPVs and, where appropriate, timelines for such responses. Enforcement agencies should design their activities with these expectations in mind. Although this policy outlines how agencies should respond to HPVs, the EPA recognizes that some agencies may need assistance from time to time. The HPV policy provides a process to identify those violations that may require assistance from the EPA so that HPVs can be promptly and properly identified and addressed as expeditiously as possible.

As a final matter, the EPA recognizes that the rapid pace of development of real-time monitoring capabilities and a growing use of electronic reporting of compliance-related data by facilities is likely to have a significant impact on enforcement practices in the coming years. This data flow holds the potential for improvement of enforcement targeting practices, public transparency and assessment of compliance trends and issues. The EPA expects that this policy may likely be revised in future years to reflect experiences and evolution of CAA enforcement, including accounting for new real-time monitoring capacities.

II. HIGH PRIORITY VIOLATION CRITERIA

When an enforcement agency detects a violation of the CAA, it should compare the violation's characteristics with the following criteria to determine if the violation is an HPV.⁵ The criteria below apply only to a violation that occurs at (1) a major source as defined in CAA Sec. 501(2) (Title V Major Source) or (2) a non-Title V Major Source, otherwise known as a minor or area source, with a CMS plan. It is not appropriate to apply the criteria to violations that the EPA is not authorized to enforce, *i.e.*, violations of requirements that are not federally enforceable.

Criterion 1 – Failure to obtain a New Source Review (NSR) permit (for either attainment or non-attainment areas) and/or install Best Available Control Technology (BACT) or Lowest Available Emission Reductions (LAER) (and/or obtain offsets) for any new major stationary source or major modification at a major stationary source. This criterion includes a violation by a synthetic minor stationary source of an emission limit or permit condition such that the source's actual annual emissions exceed (or are expected to exceed) the major stationary source threshold as defined in the applicable NSR regulations.

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, 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. This criterion includes violations that, while not necessarily continuous for 168 hours, recur (or recurred) regularly or intermittently for at least seven days. EPA presumes 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.

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

⁵ If, after additional investigation or analysis, the enforcement agency determines that the set of facts that presented a violation, which had previously been designated an HPV, does not meet any of the HPV criteria – the enforcement agency should correct the classification in the national database, ICIS-Air, thereby removing the violation from its list of HPVs, and notify the Region.

authorities and the 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. This criterion includes violations that, while not necessarily continuous for 168 hours, recur (or recurred) regularly or intermittently for at least seven days. The EPA presumes 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.

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 63) 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. This criterion includes violations that, while not necessarily continuous for 168 hours, recur (or recurred) regularly or intermittently for at least seven days. The EPA presumes 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.

Criterion 5 – A violation that involves federally enforceable work practices, testing requirements, monitoring requirements, recordkeeping or reporting that substantially interferes with enforcement of a requirement or a determination of the source's compliance. The determination of what is substantial shall be part of a case-by-case analysis/discussion between the EPA Region and the enforcement agency.

Criterion 6 – Any other violations specifically identified and communicated to enforcement agencies from time to time by the Director, Air Enforcement Division (AED), U.S. EPA (general applicability) or as mutually agreed upon between the enforcement agency and corresponding EPA Region (case-by-case). For example, an enforcement agency believes an emission violation warrants designation as an HPV even though the violation lasted (or will last) for less than seven days.

III. INITIAL HPV IDENTIFICATION- DAY ZERO

Once an enforcement agency identifies a potential violation of a federal requirement, prompt determination whether the violation meets the HPV criteria is critical to achieving the goals of this policy. When an enforcement agency first receives information that indicates a potential violation (*e.g.*, through a compliance evaluation, stack test results, continuous emission monitoring system report, etc.), the agency is to determine whether the potential violation meets any of the HPV criteria. The enforcement agency should take prompt steps to gather any additional information needed to determine whether the violation is an HPV.

HPV identification should occur as soon as possible after the enforcement agency receives information sufficient to determine whether a potential violation meets the HPV criteria. The date of the initial identification of a violation as an HPV is called Day Zero for purposes of

evaluating timeliness of actions in accordance with this policy. Day Zero will be deemed to have occurred on the earlier of either (1) the date the agency has sufficient information to determine that a violation occurred that appears to meet at least one HPV criterion or (2) 90 days after the compliance monitoring activity that first provides information reasonably indicating a violation of a federally enforceable requirement. Stated differently, the EPA expects that the enforcement agency will act expeditiously to determine whether information in its possession indicates a violation is an HPV as defined in this policy. Timeliness of the enforcement response is measured from the Day Zero.

In accordance with the ICR, the enforcement agency must record all HPVs for a source into ICIS-Air, including which of the six criterion each violation meets. In addition to designating the HPV criterion in the database, the enforcement agency must also record the Day Zero, the pollutant, where appropriate, and the applicable CAA program for each HPV. The enforcement agency must also indicate in ICIS-Air which compliance monitoring activity (or activities) relate to the HPV, which is referred to as the Discovery Action.

The enforcement agency should discuss newly identified HPVs with the Region in regular consultations and resolve any issues concerning the HPV designation during the consultation. Such questions may include whether the violation meets the HPV criterion, which agency will lead the enforcement efforts, or if there are any viable defenses to the violation such that pursuing the violation is not warranted (*e.g.*, exceedance of an NSPS limit that resulted from a malfunction).

The EPA recognizes that after additional investigation, the enforcement agency may determine that even though a violation meets an HPV criterion, it may not warrant the additional oversight envisioned for HPVs. If the enforcement agency makes such a determination, even after reporting the HPV into ICIS-Air, it may confer with the Region about removing the violation from its list of HPVs. Reasons for removing an HPV from an enforcement agency's list are:

- A. Further development of the evidence leads to a conclusion that even with additional efforts, it is unlikely that enough evidence can be developed to support or prevail on the claim that would constitute an HPV; or
- B. The HPV does not involve (1) on-going violations or an identifiable threat to the public and (2) expenditure of resources on oversight of the enforcement agency's handling of the violation is not in the public interest.

A case-specific consultation must occur between the enforcement agency and the EPA, and both agencies (*e.g.*, the State and the Region) must agree that it is appropriate to no longer pursue the violation in accordance with this policy. The Region must record this decision in a document that is preserved as an agency record. At a minimum, this record must (1) identify the source, (2) list the violation that had been identified as an HPV, (3) contain a statement that identifies one of the above reasons for changing the designation, and (4) identify the persons that concurred in the

decision. A violation may be removed from an enforcement agency’s list of HPVs at any time (e.g., even after the violation has been addressed) so long as the consultation and concurrence process described above has occurred. The enforcement agency records the removal of violation from its list of HPVs by entering the HPV Designation Removal Basis and the Removal Basis Date under the Air Violations link in the ICIS-Air Case File module.

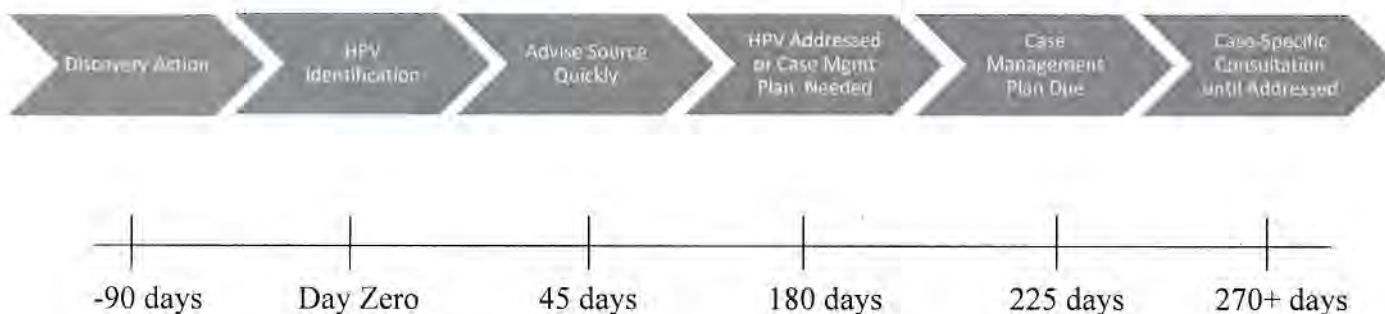
Removing a violation from an agency’s list of HPVs only means that federal and non-federal enforcement agencies have concluded that the matter should no longer be subject to additional oversight under this policy. The EPA still expects the violation to be addressed, as appropriate.

IV. INTER-AGENCY COMMUNICATION REGARDING HPVS

Unless specifically agreed to by the Director, AED, Regions are expected to have regular consultations with the enforcement agencies to discuss HPVs. These consultations are to occur at least quarterly.⁶ EPA Regions are also expected to maintain records of dates of the regular consultations for at least five years. These regular consultations are intended to facilitate:

- Maintenance of a common, agreed upon list of HPVs for each enforcement agency;
- Monitoring of actions designed to address HPVs consistent with Section V. *Appropriate Enforcement Response for HPVs*; and
- Accuracy of records indicating compliance with the policy (e.g., identifying, addressing and resolving HPVs).

V. APPROPRIATE ENFORCEMENT RESPONSE FOR HPVS



1. Not more than 45 days after Day Zero, the enforcement agency must advise⁷ the source that the violation has been identified. The enforcement agency must document the form and date of this initial communication in its enforcement records. This initial communication includes issuance of any notice of violation required under Section 113 of the CAA or corresponding state

⁶ EPA is aware that some of the Regions may need a different schedule due to large numbers of state, local, territorial, or tribal enforcement agencies. Regions desiring an alternative schedule should request a written concurrence from the Director, AED.

⁷ This notification is not intended to address what is required by statute for jurisdictional purposes. Agencies should make their own determinations as to what is sufficient to meet the statutory jurisdictional requirements.

or tribal implementation plan as well as other written notices, meetings, teleconferences and electronic correspondence. This requirement is intended to ensure that the enforcement agency informs the source as soon as possible of the agency's findings so that the source is on notice of the need to promptly correct conditions giving rise to the violation(s) or potential violation(s). A source's return to compliance does not relieve a source from liability for violations, or automatically remove the need for further enforcement response. Prompt action, however, is necessary for public protection.

2. The enforcement agency should attempt to address an HPV within 180 days of Day Zero. The enforcement agency can "address" an HPV using one of the following actions: (1) issuing a legally enforceable order that requires immediate action to come into compliance with the requirement violated; (2) issuing a legally enforceable order that imposes penalties, where the source has demonstrated that it is currently complying with the requirement violated; (3) issuing a legally enforceable order that imposes a schedule on the source to comply with the requirement violated and penalties for the violation; or (4) transferring the matter to an organization with authority to initiate a civil or criminal judicial action (also known as a referral). Examples of appropriate addressing actions are:⁸

- Filing a complaint and/or lodging a judicial consent decree;
- Consent Agreement and/or Final Order approved by a judicial officer;
- Referral to the Attorney General (or equivalent) for a state, territorial or tribal enforcement action;
- Order issued pursuant to state, local, territorial or tribal legal authority;
- Proposed SIP or FIP provision;⁹
- EPA referral for civil action to the Department of Justice (DOJ);
- EPA referral for criminal action to DOJ;
- CAA Sec. 113(a) order;
- CAA Sec. 167 order; or
- CAA Sec. 113(d) order.

3. If an HPV is not addressed within 180 days from Day Zero, the enforcement response to the violation will be deemed untimely unless the enforcement agency demonstrates during the next quarterly consultation with the Region that it has a case-specific development and resolution timeline. The purpose of the timeline is to allow the enforcement agency to develop significant milestones towards addressing the violation. The EPA recognizes that this timeline is an initial plan and may need revision as new information comes to light. Never-the-less, the very idea of "timely and appropriate enforcement" requires some benchmarks for evaluation. In this policy,

⁸ For the purpose of this policy, Addressing Action no longer includes "Source Returned to Compliance by EPA or the State." The enforcement agency should choose another action, if appropriate, or use the mechanism for removing the HPV designation in the national database as discussed in this policy.

⁹ A proposed SIP or FIP also resolves a violation.

the EPA acknowledges the legitimate observation that a single target of 180 days from Day Zero is not the only way to evaluate an enforcement agency's response to a violation. This policy, therefore, includes the option for enforcement agencies to provide their own assessment of appropriate benchmarks for addressing and resolving individual HPVs that are not addressed within 180 days so long as the plan is shared with the Regions.¹⁰ The EPA would expect that under normal circumstances, a case development and resolution timeline should be in place within 225 days from Day Zero (an additional 45 days from the 180 day period discussed above).

Case development and resolution timelines need to include: (1) the pollutant(s) at issue; (2) an estimate of the type and amount of any on-going or recurring emissions in excess of the applicable standard; and (3) specific milestones for case resolution. Specific milestones for an enforcement agency's timeline should include, but are not limited to:

- A proposed date for the start of settlement negotiations and a proposed timeline for such negotiations;
- A proposed date for commencing an enforcement action (administrative or judicial); and
- Other steps the enforcement agency chooses that are important for case resolution.

Also, where applicable, the plan should also identify activities where the EPA can assist in the development or prosecution of the case, or otherwise help address the violation. The enforcement agency should have this plan finalized before the initial case-specific consultation with the Region occurs (see next step); however, the enforcement agency is not required to submit a written plan to the EPA.

4. For an HPV that is not or will not be addressed within 180 days of Day Zero, the Region is expected to have an initial case-specific consultation with the enforcement agency no later than the next quarterly consultation (*i.e.*, within 270 days of Day Zero). The Region and the enforcement agency should discuss the case development and resolution timeline in the case-specific consultations. The case-specific consultation can occur during the regular consultations required in Section IV or in a separate meeting, so long as the first one occurs within the 270 days of Day Zero. The Region should record the Consultation Date of the case-specific consultation under the Air Violations link in the Case File.

5. Case-specific consultations should occur at least every three months after the initial case-specific consultation until the HPV is addressed. Subsequent case-specific consultations can

¹⁰ While the EPA understands and appreciates that the complexity of specific multimedia enforcement actions can make it difficult to address violations in a timely manner, going several years without an addressing action is not acceptable. In these cases, the EPA may suggest that the enforcement agency address the CAA violations of these cases separately. This would be especially true when dealing with larger facilities and municipalities, and where overall compliance has not yet been achieved.

occur during the regular quarterly consultations or in a separate meeting. Regions should document the dates of subsequent case-specific consultations. At these consultations, the enforcement agency is expected to discuss (1) case status and development expectations for at least the upcoming three months and (2) whether additional actions are necessary to address the HPV and the additional time required to do so. The enforcement agency will continue to be the lead agency for the enforcement efforts, with the EPA providing assistance as necessary, so long as it is appropriate to do so, taking into consideration the protection of public health and the environment. In limited cases it may be appropriate for the EPA to take the lead for enforcing certain violations.

6. All efforts should be made to resolve the enforcement action addressing the violations as soon as possible; however, there are no timelines for resolving a matter. “Enforcement Action Resolved” means that: (A) in a filed judicial action (state or federal), a court of competent jurisdiction has entered an order adjudicating the case and the order is final (such order may include a compliance schedule or other injunctive relief to be performed after the order becomes final); (B) for violations addressed administratively or through any non-judicial process, all penalties have been collected, all SEPs are completed, and the source is confirmed to be in compliance with respect to all HPVs included in the administrative order or non-judicial agreement¹¹; or (C) an enforcement agency has proposed revision to its implementation plan (e.g., state implementation plan or tribal implementation plan) regarding the violation. In some cases, violations can be addressed and resolved with the same action or at the same time.

7. If an HPV has not been addressed within 24 months from Day Zero, the Region shall notify the Director, AED, of the source and the violation, and provide an assessment of whether direct federal action is warranted. AED will review any HPV identified under this paragraph with the respective Region on no less than a semi-annual basis until it is addressed.

VI. PENALTIES

All civil penalties for HPVs should be sufficient to achieve effective deterrence for the source subject to enforcement and for the regulated community as a whole. The EPA expects all enforcement agencies resolving an HPV to assess penalties that recover economic benefit and contain a component reflecting the gravity (seriousness) of the violation.¹²

¹¹ “Non-judicial process” and “non-judicial agreements” include consensual agreements between the enforcement agency and the source that are not authorized by any legal authority. While these agreements are not addressing actions as defined in this policy, completion of the agreements (*i.e.*, all penalties have been collected, all SEPs are completed, and the source is confirmed to be in compliance with respect to all HPVs included in the agreement), address and resolve the HPVs simultaneously.

¹² For additional discussion of calculating appropriate penalties for CAA violations, see *The Clean Air Act Stationary Source Penalty Policy*.

All penalty calculations must be documented in the enforcement agency's file.¹³ In matters where no penalty is assessed or where a difference exists between the assessed and collected penalty, the enforcement agency should provide an explanation in its file.

VII. REPORTING HPVs INTO ICIS-AIR

Enforcement agencies are required to report all HPVs and the resulting enforcement response into the EPA's national database, ICIS-Air. The EPA considers timely and accurate reporting into ICIS-Air critical to the EPA's oversight role regarding CAA violations. The following discusses how enforcement agencies should report information about HPVs into ICIS-Air.¹⁴

1. Initial HPV Identification

Enforcement agencies will report the initial HPV identification into the Case File module in ICIS-Air. The EPA designed the Case File module to capture data that an enforcement agency normally reports regarding violations of the CAA at a specific source. An enforcement agency will need to add and save a Case File in ICIS-Air when it suspects or knows of a violation or violations at a specific source. A Case File can contain information about more than one violation at a source. The enforcement agency must report the following information concerning each HPV into an ICIS-Air Case File:

- Violation Type - When a violation meets one of the six HPV criterion, the enforcement agency should designate the violation as an HPV by reporting one of the six criterion from the Violation Type dropdown menu or reference table;
- Pollutant - A pollutant must be reported on Criteria 1-5. A pollutant is optional for Criterion 6;
- Program - The enforcement agency must designate the applicable CAA program violated (*e.g.*, NSPS, SIP, NESHAP); and
- HPV Day Zero Date - Each HPV must have a Day Zero. This date is the earliest date that the enforcement agency makes the initial identification of a violation as an HPV (*see* Section III for additional discussion).

2. Discovery Action(s)

After the Case File is added and saved, the enforcement agency must link the Case File to the corresponding Discovery Action or Actions. Generally, the enforcement agency has already entered the Discovery Action into ICIS-Air as a Compliance Monitoring Activity. If not, the

¹³ States that are required by statute to maintain the detailed information on the calculations, assessment and negotiation of final penalties in a different form or file have the discretion to do so. However, such calculations should be made available to EPA on request.

¹⁴ Additional information regarding reporting into ICIS-Air can be found in the ICIS-Air Help Files and Compendium of Business Rules.

enforcement agency will need to enter the compliance monitoring activity into ICIS-Air and then link it to the Case File as the Discovery Action.

3. Date that the Enforcement Agency Advised the Source of HPV Identification

The enforcement agency must record that it advised the source of the violation by entering the Method of Advisement and Date the communication took place in the Air Violations link on the Case File module. If an enforcement agency uses a formal notice of violation, as defined in the policy on federally-reportable CAA violations,¹⁵ the agency should enter the informal enforcement action in the Enforcement Action module.

4. Formal Enforcement Responses to HPVs

Enforcement agencies must report subsequent formal enforcement action(s) taken to address and resolve an HPV in the Enforcement Action module of ICIS-Air. There are two options for reporting enforcement actions into the module: Administrative Formal or Judicial. The enforcement agency will need to choose one of these options depending on the forum for its enforcement action and add an Enforcement Action into ICIS-Air. In order to add an Enforcement Action, the enforcement agency must report the following information in the Enforcement Action module under Basic Info:

- Linked Facility – The enforcement Agency must link the Enforcement Action, either Administrative Formal or Judicial, to a Case File;
- Enforcement Action Type – The specific enforcement tool must be identified (*e.g.*, Administrative Order for an Administrative Formal Enforcement Action); and
- Program Violated (*e.g.*, MACT, NSR).

In ICIS-Air, some information about enforcement responses is recorded under the Milestones link under the Administrative Formal or Judicial Enforcement Action. The enforcement agency must report the following Milestones in an Enforcement Action for an HPV:

- Administrative Formal – Actual Date of the Complaint Filed/Proposed Order; or
- Judicial – Actual Date Referred to a State Attorney General.

The enforcement agency must also report the following information under the Final Order link in an Enforcement Action for an HPV:

- Administrative Formal – The Final Order Issued Date and the date the enforcement response is resolved, *i.e.*, Air Resolved date; or

¹⁵ EPA anticipates a revision to the *Clarification Regarding Federally-Reportable Violations for Clean Air Act Stationary Sources*, March 2010.

- Judicial – The Final Order is Entered Date.

5. Removing a Violation from an Agency's list of HPVs

Enforcement agencies may need to remove a violation from its list of HPVs because it does not intend to or cannot address and/or resolve the violation through an enforcement response, *i.e.*, an action that is not authorized by any statute or regulation. *See supra* Section III. Once it is agreed that the violation should no longer be tracked as an HPV, the enforcement agency should enter the HPV Removal Designation Basis and Removal Basis Date for the Air Violation in the Case File Module.

6. Penalty Assessed

The enforcement agency must report the Penalty Assessed to be Paid in the Penalty section under the Final Order link in an Enforcement Action for an HPV. If multiple agencies are involved in the enforcement action, the enforcement agency must report the penalty amount that each agency is to receive.

7. Lead Change

A lead change may apply to a Case File or to an individual HPV. If the lead change applies to the Case File, the originating agency shall report the lead change on the Case File Pathway Activity under resolving action. The agency taking lead of all the violations in a Case File will need to open a new Case File and add the violations. If an agency takes lead of an individual HPV, the originating agency will indicate a Lead Change as the Addressing Action in the Other field on the Case File's Add/Edit Air Violations page and select Mark for Deletion on the row corresponding to the HPV for which the lead was assumed by another agency. The agency taking lead of an individual HPV will need to either open a new Case File and add the HPV or add the HPV to an existing Case File.