

December 15, 2010

Ms. Cynthia Giles, Assistant Administrator  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Mail Code: 2201A  
Washington, DC 20460

*Re: EPA's High Priority Violator Policy*

Dear Ms. Giles:

On behalf of the Northeast States for Coordinated Air Use Management (NESCAUM),<sup>1</sup> we voice our strong support for the U.S. Environmental Protection Agency's (EPA's) efforts to update and simplify its High Priority Violator (HPV) Policy. Last month, at NESCAUM's Enforcement Committee meeting, Terri Dykes, from EPA's Office of Enforcement and Compliance Assurance, presented a set of proposed revisions to the HPV Policy. The NESCAUM states greatly appreciated the opportunity to learn about the proposed changes and provide feedback.

We strongly support the recommendations that simplify and appropriately prioritize high priority violations. We especially appreciate EPA's approach in analyzing the current set of HPV data to understand what the current policy has yielded and what has not been effective, as this analysis has helped states and EPA focus on determining which HPVs present issues of true concern that could pose a significant risk to public health or the environment.

The proposed revisions represent a common sense approach to identifying those violations that rise to a level of concern requiring engagement of enforcement staff at the state, regional and federal levels. The proposed policy recommendations would result in a redirection of effort, such that resources would be appropriately directed to those violations that warrant wide attention. We would like to highlight four areas that are of most interest and garnered the greatest support from our states: (1) the concept that the HPV Policy should capture only the most serious violations that result in significant harm to the environment; (2) the understanding that states should be allowed broader discretion to identify, or not identify, as HPVs violations that currently are automatically identified as HPVs (e.g., failure to apply for a Title V permit or modification); (3) the simplification of HPV criteria that will result in a policy that is easier to understand and use than the current policy; and (4) the need to provide opportunities for representatives from state compliance and enforcement programs to participate in the development of implementation guidance for the revised HPV Policy.

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<sup>1</sup> NESCAUM is the regional association of state air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

Additionally, NESCAUM would support a similar effort to investigate and revise the appropriate schedules for HPV identification, processing, addressing and resolving. The HPV Evaluation Workgroup based its recommendations for condensing the number of criteria used for HPV identification on data collected from the EPA's AIRS Facility System (AFS). The data from AFS should also be analyzed and evaluated to determine if the HPV processing timelines are appropriate and attainable. Several states' Enforcement Response Policies (ERP) do not run parallel to the federal HPV Policy, therefore two timelines need to be tracked simultaneously for federal HPVs. NESCAUM recommends that EPA along with state representatives investigate existing state enforcement response policies and devise a universal timeline that meets the needs of the states. Enforcement agencies have found that most complex cases, which typically are federal HPVs, require approximately twelve months to resolve.

While we support the general principles outlined in the recommendations, we must underscore that the specific implementation details will be critical to the successful deployment of a revised policy in order for it to be truly useful. It is imperative that EPA work with state program staff when developing the detailed implementation guidance. NESCAUM staff and state members of NESCAUM's Enforcement Committee will gladly work with EPA in fostering that dialogue.

In sum, we commend EPA's efforts to provide an improved framework for identifying and reporting HPVs. The proposed revisions address a number of concerns raised by state compliance and enforcement staff. The NESCAUM states reaffirm our commitment to work with EPA in implementing a new HPV Policy as part of the state-federal partnership towards achieving our shared public health and environmental goals under the Clean Air Act.

If you or your staff has any questions on our comments, or want to explore opportunities for future discussions concerning the forthcoming guidance, please contact Lisa Rector at NESCAUM (802-899-5306).

Sincerely,



Arthur N. Marin, NESCAUM  
Executive Director



Robert Scott, Air Director NH DES  
NESCAUM Enforcement Committee Liaison

cc: NESCAUM Directors  
Terri Dykes, EPA/OECA  
Ken Eng, EPA/Region 2  
Karl Mangels, EPA/Region 2  
Steven Rapp, EPA/Region 1  
Christine Sansevero, EPA/Region 1