



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources


David K. Paylor
Director

(804) 698-4000
1-800-592-5482

MEMORANDUM

TO: Regional Directors;
Regional Air Compliance Managers;
Regional Air Permitting Managers;
Regional Enforcement Managers;
Central Office Air Managers;

CC: Jeffrey Steers, Deputy Director of Central Office Operations

FROM: Michael G. Dowd, Director, Air Division 

SUBJECT: ACG-005:
Guidance for the Interpretation of the Duration of Violations when Applying
Criteria 2, 3, and 4 of EPA's 2014 Policy for High Priority Violations

DATE: May 13, 2016

Purpose

The Virginia Department of Environmental Quality (DEQ) is providing this guidance to clarify the August 25, 2014 Revision of EPA's Enforcement Response Policy for High Priority Violations of the Clean Air Act (2014 HPV Policy)¹. Specifically, Criteria 2, 3, and 4 of the 2014 HPV Policy consider duration (i.e., "seven days" / "168 hours") when applying the criteria to an identified violation.

Applicability

This guidance is applicable to violations under consideration for Criteria 2, 3, or 4 that occur at the following stationary sources:

- A major source as defined in CAA § 501(2)², or,
- A minor stationary source that is subject to a Compliance Monitoring Strategy (CMS) plan.

¹ <https://www.epa.gov/enforcement/revise-timely-and-appropriate-t-and-enforcement-response-high-priority-violations-hpvs>

² <https://www.epa.gov/clean-air-act-overview/title-v-permits>

Background:

EPA's 2014 HPV Policy became effective on October 1, 2014, and eliminated the matrix criteria of the previous 1998 policy and reduced the number of general criteria to six. Criteria 2, 3, and 4 of the 2014 HPV Policy are generally identical categorically but vary primarily in applicability. Specifically:

- Criterion 2 applies to violations in Prevention of Significant Deterioration (PSD) areas or in Non-attainment areas.
- Criterion 3 applies to violations of 40 CFR Part 60 New Source Performance Standards (NSPS).
- Criterion 4 applies to violations of 40 CFR Part 61 National Emission Standards for Hazardous Air Pollutants (NESHAP) and 40 CFR Part 63 Maximum Achievable Control Technology (MACT) standards

Categorically, each criterion applies to the specified violations of any emission limitation, emission standard, or operating parameter that is a surrogate for emissions "...where such violation continued (or is expected to continue) for at least seven days..." including violations "...that, while not necessarily continuous for 168 hours, recur (or recurred) regularly or intermittently for at least seven days."³

EPA's language provides the opportunity for varying interpretations of each violation's duration. While this provides flexibility when applying Criteria 2, 3, or 4, DEQ believes it is appropriate to clarify our interpretation of the language to ensure consistent application of the 2014 HPV Policy.

Implementation

Based on the information provided above, DEQ will consider the duration and the frequency of violations identified when applying the HPV Policy as follows:

- DEQ *will* apply Criteria 2, 3, or 4 of the 2014 HPV policy to a violation of an emissions limit, emissions standard, or operating parameter that lasts for 168 hours or more (continuously or intermittently). Examples include, but are not limited to the following:
 - Operating following a failed stack test in the failed stack test mode
 - Violations identified via continuous monitoring (i.e., CEMS, COMS, or CPMS) of the same limitation or standard totaling 168 hours or more within a calendar quarter
- DEQ *may* apply Criteria 2, 3, or 4 of the 2014 HPV policy to a violation of an emissions limit, emissions standards, or operating parameter violation that occurs intermittently on 7 or more days (not necessarily for 24 hours) within a calendar quarter, or on 7 or more consecutive operating days (not necessarily 24 hours).

All violations being considered for HPV applicability should be discussed within the DEQ Regional Office before designating a criterion in accordance with EPA's 2014 HPV Policy. When a more specific case-by-case determination is necessary, the DEQ Regional Office should consult DEQ's Office of Air Compliance Coordination for discussion with EPA's Region 3 State Liaison Officer.

Questions regarding the 2014 HPV Policy or this guidance should be directed to DEQ's Office of Air Compliance Coordination.⁴

³ <http://www2.epa.gov/enforcement/revise-timely-and-appropriate-t-and-enforcement-response-high-priority-violations-hpvs>

⁴ <http://www.deq.virginia.gov/Programs/Air/PermittingCompliance/Compliance/OfficeofAirComplianceStaffContacts.aspx>