



Enforcement Process

The potential cost of non-compliance



EPA Guidance Document

Penalties can be as high as \$44,539* per violation per day

*As of inflation adjustment effective August 2016



Enforcement Process

- Inspection
- Case development
- Penalty calculation
- Negotiation process
- Settlement



Case Review Officer's Role

- Determine path of enforcement
- Discuss information with enforcement team, including attorneys
- Determine what tools to utilize to ensure prompt return to compliance



Case Review Officer Collecting Information and Evidence

- Background search
- Information from other Federal, State, Local agencies
- Compliance history – various EPA databases
- Inspection documentation
- Documents received from facility post-inspection
 - Informal information gathering
 - Formal written information requests



Potential Enforcement Outcomes

Compliance Letter or Compliance Assistance Letter

Closure of Case

Notice of Noncompliance (NON)

Administrative Order

Expedited Settlement Agreement (ESA)

Administrative Civil Complaint

Judicial Civil Complaint (DOJ cases)

Criminal Charges (handled by CID)



Expedited Settlement Agreements (ESAs)

- Easily correctible violation(s)
- No history of violation in past 5 years (corporate-wide)
- No accidents in past 5 years attributed to same or similar violation(s)
- Total penalty must be \leq \$15,000*

*As of August 2016, value may change due to inflation



Facility Receives

- Letter indicating the violations found
- Form to respond back to EPA discussing how violations have been corrected or how they will be corrected
- Notification of penalty to be paid

No negotiations occur



Traditional Enforcement

Administrative Civil Complaint

DOJ Referral



Administrative Case

- Does not qualify for an ESA
- Not serious enough to involve DOJ
- Penalties typically negotiated through the settlement process
- Relief limited to 1 year



Case Referred to DOJ if any of the following

- Penalty > \$320,000
- Facility will require more than 1 year to return to compliance
- Significant accident (fatality, multiple injuries, etc.)
- Nationally significant issue
- Multiple-statute case
 - CAA 112(r) or EPCRA AND Air, Water, RCRA, etc.

*As of August 2016, value may change due to inflation



Traditional Enforcement Penalty Calculation

Penalty = Economic Benefit + Gravity



Economic Benefit Component

Value of the money saved by the facility due to

- Delayed costs

- Expenditure not made when it should have been, but was made later
- Interest earned over the period of delay
- Examples: delayed tank inspection, failure to replace valves at frequency specified by RAGAGEP, failure to develop program elements

- Avoided costs

- Expenditure not made, and not possible to “delay”
- Capital plus interest earned over period of noncompliance
- Examples: failure to conduct annual training, failure to conduct routine maintenance



Gravity Component

- Seriousness of each violation
- Duration
 - Earliest date of non-compliance to date last violation was corrected
- Size of violator
- Other adjustment factors



Assessing Seriousness of Violation

- Determine **potential for harm** and **extent of deviation** for each violation

		POTENTIAL FOR HARM		
		Minor	Moderate	Major
EXTENT OF DEVIATION	Major	\$25,000 \$20,000	\$30,000 \$25,000	\$37,500 \$30,000
	Moderate	\$10,000 \$5,000	\$15,000 \$10,000	\$20,000 \$15,000
	Minor	\$1,000 \$500	\$3,000 \$1,000	\$5,000 \$3,000

*Values as found in June 2012 penalty policy. Values may change due to inflation.



Criteria

- Amount and toxicity of regulated chemicals
- Whether violation caused or could reasonably have caused an off-site exposure to the chemical
- Proximity of the surrounding population
- Extent of community evacuation required or potentially required



Criteria (cont.)

- Effect noncompliance has on community's ability to plan for chemical emergencies
- Potential or actual problems first responders and emergency managers encountered due to facility's violation
- Number of processes at which the same violation occurred
- Prevention program level



Adjustment and Mitigation Factors

- Degree of Culpability
 - Upward adjustment up to 25%
- History of Violation
 - Upward adjustment up to 50%
- Good Faith Reductions
 - Decrease penalty up to 15% for cooperation
 - Decrease penalty up to 15% for quick return to compliance



Adjustment and Mitigation Factors (cont.)

- Ability to pay
- Offsetting penalties paid to federal, state, tribal, and local governments or citizen groups for the same violations
- Special circumstances/extraordinary adjustments
- Supplemental Environmental Projects (SEPs)



Settlement Includes

- Return to compliance
- Injunctive relief
 - Improvements to facility not necessarily required by law
- Pay cash penalty
- Perform Supplemental Environmental Projects (SEP)
- File complaint and settlement documents with the court



Closing the Case

- Case information available publicly at <https://echo.epa.gov/>
- Press releases
- Case closure occurs when the following is completed
 - Penalty paid
 - SEP completed
 - Injunctive relief completed
 - Compliance achieved



Enforcement Trends

- Higher-dollar ESAs
 - More violations
 - ESA cap increased to \$15,000*
- Penalties have risen since June 1999 due to
 - Longer duration of violations
 - Inspecting larger/more complex facilities
- More DOJ involvement during the past few years

*As of August 2016. Value may change due to inflation.



Case Studies

What others have experienced



Case Study 1: NCCA – Vliets

Vliets, Kansas

- Initiating activity
 - CAA 112(r) inspection
 - October 23, 2013
- A citizen complaint prompted this inspection





Case Study 1: NCCA – Vliets Vliets, Kansas

- Result: Case closure letter
 - Facility returned to compliance prior to completion of inspection report
- Issues identified: saddles less than 1/3 circumference
- Open to close: 6 weeks





Case Study 2: United Western Coop Mondamin, Iowa

- Initiating activity
 - CAA 112(r) inspection
 - February 26, 2014





Case Study 2: United Western Coop Mondamin, Iowa

- Results: Finding of Violation (equivalent to NON) issued
- Issues identified: industry standards, compliance audit, RMP submittal
- Open to close: approx. 3 months



Case Study 3: Kanza Coop – Zenith Branch Zenith, Kansas

- Initiating activity
 - CAA 112(r) inspection
 - August 7, 2013



Case Study 3: Kanza Coop – Zenith Branch Zenith, Kansas

- Results: ESA issued
 - \$7,300 cash penalty
- Issues identified: emergency contact, industry standards, maintenance procedures, compliance audit, incident investigation
- Open to close: approx. 8 months



Case Study 4: New Century FS Traer, Iowa

- Initiating activities
 - EPCRA/CERCLA reportable release
 - November 20, 2009
 - CAA 112(r) inspection
 - October 26, 2010





Case Study 4: New Century FS Traer, Iowa

- Results: ESA
 - \$2,500 cash penalty
- Issues identified: industry standards, emergency contact
- Open to close: approx. 1 year



Case Study 5: Independence Water Treatment Plant, Independence, Kansas

- Initiating activity
 - CAA 112(r) inspection
 - May 3, 2011





Case Study 5: Independence Water Treatment Plant, Independence, Kansas

- Results: Administrative Civil Complaint issued
 - \$4,129 cash penalty
 - SEP costing \$16,495 to install video surveillance system
- Issues identified: management system, OCA, safety information, operating procedures, incident investigation
- Open to close: approx. 24 months



Case Study 6: Heiman Agri Services, Inc. Butler, Missouri

- Initiating activity
 - CAA 112(r) inspection
 - December 9, 2011





Case Study 6: Heiman Agri Services, Inc. Butler, Missouri

- Results: Administrative Civil Complaint issued
 - \$51,451 cash penalty (including \$19,278 economic benefit)
- Issues identified: OCA, industry standards, operating procedures, training, compliance audit, late RMP
- Open to close: approx. 27 months



Case Study 7: Green Plains Atkinson, LLC Atkinson, Nebraska

- Initiating activity
 - CAA 112(r) inspection
 - July 2, 2010



Case Study 7: Green Plains Atkinson, LLC Atkinson, Nebraska

- Results: Administrative Civil Complaint issued
 - \$3,600 cash penalty
 - SEP costing \$17,900 to provide enhanced equipment for fire service and install ammonia leak and combustion sensors at facility
 - Injunctive relief, plus plan and program updates
- Issues identified: major issues were industry standards and hazard review; other issues were present
- Open to close: approx. 20 months



Case Study 8: Frontier Coop Mead, Nebraska

- Initiating event
 - CAA 112(r) inspection
 - June 27, 2007





Case Study 8: Frontier Coop Mead, Nebraska

- Results: Administrative Civil Complaint issued
 - \$6,000 cash penalty
 - SEP costing \$82,500 to relocate bulk tank and nurse tanks further from populated area
 - Injunctive relief, plus updates to program and plan
- Issues identified: unreported release of ammonia that sent neighbor to hospital, incident investigation incomplete, major issues with maintenance and compliance audits
- Open to close: 41 months (penalty paid approx. 15 months post-inspection)



Case Study 9: Wymore Fertilizer Wymore, Nebraska

- Initiating activity
 - CAA 112(r) inspection
 - January 24, 2008





Case Study 9: Wymore Fertilizer Wymore, Nebraska

- Results: Civil Judicial Waiver granted & Administrative Civil Complaint issued
- Issues identified: OCA, hazard review, CA, RMP, maintenance
- Penalty: \$6,000 cash penalty*
- Open to close: approx. 18 months

*During settlement penalty was reduced based on the facility's ability to pay.



Case Study 10: ChemCentral Kansas City, Missouri

- Initiating event
 - Accident/fire
 - EPA R7 accident investigation
 - February 7, 2007





Case Study 10: ChemCentral Kansas City, Missouri

- Results: Administrative Civil Complaint issued
 - \$225,000 cash penalty
 - Repay \$150,713 of EPA's emergency response costs
 - Submit current Tier II report
 - Meet general duty obligations
- Open to close: approx. 13 months



Case Study 11: Tyson Multiple Locations

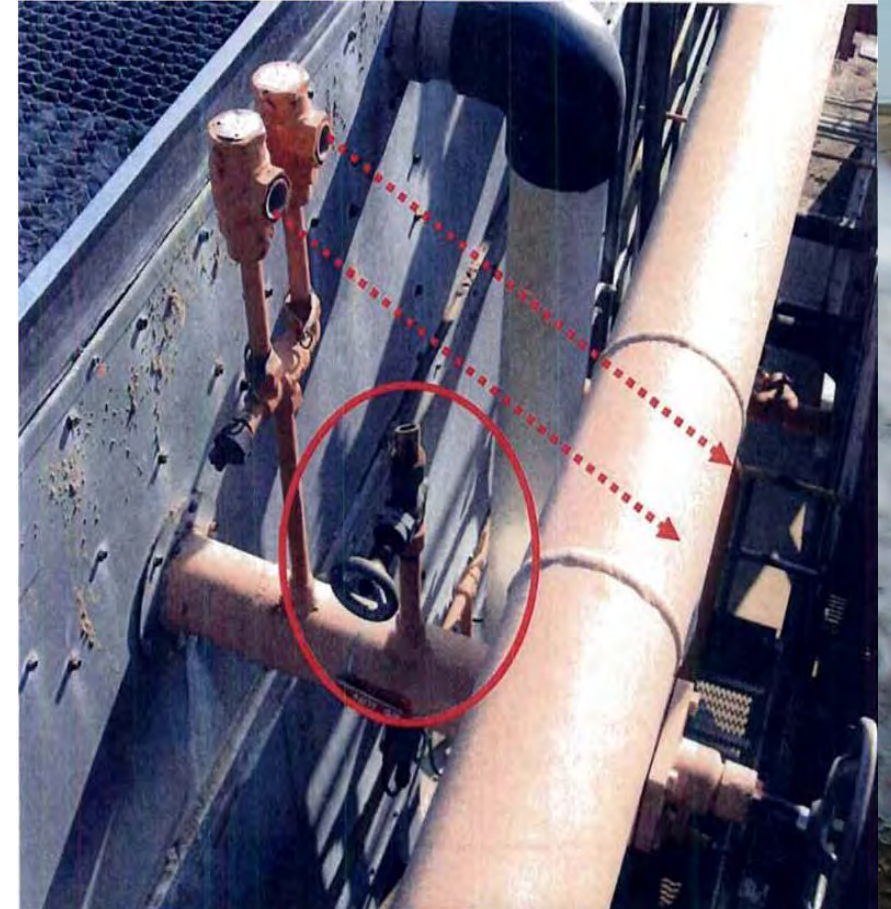
Initiating events

- 8 separate releases of anhydrous ammonia between 2006 and 2010
 - Multiple injuries and 1 fatality
- Inspections at 6 facilities from 2008 to 2009
 - First inspection in March 2008
- 3 information requests
- Federal and state OSHA inspections



Case Study 11: Tyson Multiple Locations

- Major finding: failure to follow industry standards
 - Co-location of boiler & refrigeration machinery
 - Replacing safety relief valves
 - Schedule 40 piping < 2" diameter
 - Ammonia sensors in machine room
- Numerous prevention program and RMP violations





Case Study 11: Tyson Multiple Locations

- Results: Referral to DOJ & Judicial Civil Complaint issued
 - \$3.95M cash penalty
 - \$300,000 in SEPs to provide enhanced emergency response equipment to fire departments in 8 environmental justice areas with Tyson facilities
 - Injunctive relief – conduct pipe testing and third party risk management program audits at all 23 facilities in region
- Open to settlement: approx. 5 years
- Closure of case anticipated to be in 2017



Resources

A little more help



Websites

Information about EPA's Risk Management Program www.epa.gov/rmp

ASMARK myRMP <https://www.asmark.org/myRMP/>

Ethanol Manual

https://archive.epa.gov/ncea/biofuels/web/pdf/ethanol_plants_manual.pdf

Ten Tips to Prepare for EPA Risk Management Program Inspections

<https://www.epa.gov/ks/ten-tips-prepare-epa-risk-management-program-inspections>

Websites active as of October 2016