



Enforcement Process

The potential cost of non-compliance



The Big Number

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 quick 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 (Department of Justice cases)
- Criminal Charges (handled by EPA's Criminal Investigation Division)

Green & Yellow: Non-penalty actions **Orange:** Penalty up to \$15,000

Red: Penalty up to \$44,539* per day for each violation

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



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 greater than \$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.

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Traditional Enforcement Penalty Calculation

$$\text{Penalty} = \text{Economic Benefit} + \text{Gravity}$$



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 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: Butterball, LLC Carthage, Missouri

- Initiating event: CAA 112(r) inspection
- Date: February 2, 2010





Case Study 1: Butterball, LLC Carthage, Missouri

- Failed to provide annual certification of operating procedures; at time of inspection were in process of revising all operating procedures
- Results: Finding of Violation (equivalent to NON) issued
 - Facility certified completion of SOP review
 - No penalty
- Open to Issuance: 2 months
- Open to Close: 9 months





Case Study 2: KAAPA Ethanol Minden, Nebraska

- Initiating event: CAA 112(r) inspection
- Date: July 8, 2010
- Results: ESA
 - Major issues: documentation of safe upper and lower limits, inadequate PHA follow-up, outdated SOPs, missed a compliance audit
 - Penalty \$3,780
- Open to close: 32 months





Case Study 3: Abilene Products Co., Inc. Abilene, Kansas

- Initiating events:
 - Citizen and community complaints
 - CAA 112(r) inspection in November 2011
- Unique factors:
 - Process initially filed as a Program 2
 - Interest in case by local, county, state government
 - Multiple Freedom Of Information Act (FOIA) requests received





Case Study 3: Abilene Products Co., Inc. Abilene, Kansas

- Results: Administrative Civil Complaint
 - Updated program and plan
 - Case penalty of approx. \$15,290
 - SEP - installed weather station and automated safety system at facility (estimated cost \$75,000)
 - Injunctive relief - reduced quantity of anhydrous ammonia at facility
- Open to Settlement: 22 months
- Open to Close: 29 months





Case Study 4: Dyno Nobel, Inc. Carthage and Louisiana, Missouri

- Initiating events:
 - 2 inspections
 - 4 chemical release reports
- Date: First inspection March 30, 2010





Case Study 4: Dyno Nobel, Inc. Carthage and Louisiana, Missouri

- Major program violations included
 - Process hazard analysis
 - Mechanical integrity program
 - Implementation of industry standards
 - Emergency response program
- Other violations included failure to make proper release notifications under CERCLA and EPCRA
- Results: Administrative Civil Complaint
 - Penalty: \$257,167
 - Updated program and plan
- Open to close: approx. 40 months





Case Study 5: ChemCentral Kansas City, Missouri

Initiating event: February 7, 2007 accident/fire and EPA accident investigation





Case Study 5: ChemCentral Kansas City, Missouri

- Results: Administrative Civil Complaint (DOJ waiver)
 - Submit current Tier II report
 - Meet general duty obligations
 - Penalty: \$225,000 plus repay \$150,713 of EPA's emergency response costs
- Open to close: approx. 13 months



Case Study 6: NCRA McPherson and Conway, Kansas

- Initiating Events

- 20+ day flare event (>640,000 lbs. SO₂ and 6,900 lbs. H₂S released) in December 2005
- Inspections at both facilities in May 2006
- Formal information request in 2007



Case Study 6: NCRA McPherson and Conway, Kansas

- Processes that should have been in the program were not
- Did not inspect large worst-case vessels in timeframes established by industry
- Had not submitted Tier II Reports for caverns
- Failed to timely report 3 other releases
- Data quality errors on Toxics Release Inventory reports





Case Study 6: NCRA McPherson and Conway, Kansas

- Results: DOJ referral, Judicial Civil Complaint
- Settlement
 - Cash Penalty: \$700,000
 - SEPs: Spent approximately \$746,000 on equipment and services for emergency response and emergency planning entities throughout McPherson city and county



Case Study 6: NCRA McPherson and Conway, Kansas

- Settlement (cont.)
 - Injunctive Relief
 - Risk management applicability study
 - Third party audit of Tier II and TRI information
 - Detailed tank inspection timelines and documentation
 - EPCRA/CERCLA release reporting compliance review and training
 - Documentation of resolution of PHA and compliance audit findings
- Open to settlement: 6 years
- Closure of case anticipated to be in 2017



Case Study 7: Beef Products, Inc. Waterloo, Iowa and South Sioux City, Nebraska

Initiating events

- Accident in July 2007 at Waterloo facility
 - Multiple injuries and 1 fatality
- Additional EPCRA/CERCLA reportable releases
- CAA 112(r) inspection at Waterloo facility in April 2008
- 4 information requests



Case Study 7: Beef Products Inc. Waterloo, Iowa and South Sioux City, Nebraska

- Major deficiencies included
 - Management of change and pre start-up safety review
 - Lockout-tag out
 - Standard operating procedures
- Results: DOJ referral, Judicial Civil Complaint
- Settlement
 - Penalty: \$450,000
 - Injunctive Relief: Third-party program audit of all aspects of Risk Management Program
- Open to Settlement: approx. 6 years
- Case closed in 2016



Case Study 8: Tyson Multiple Facilities in Region 7

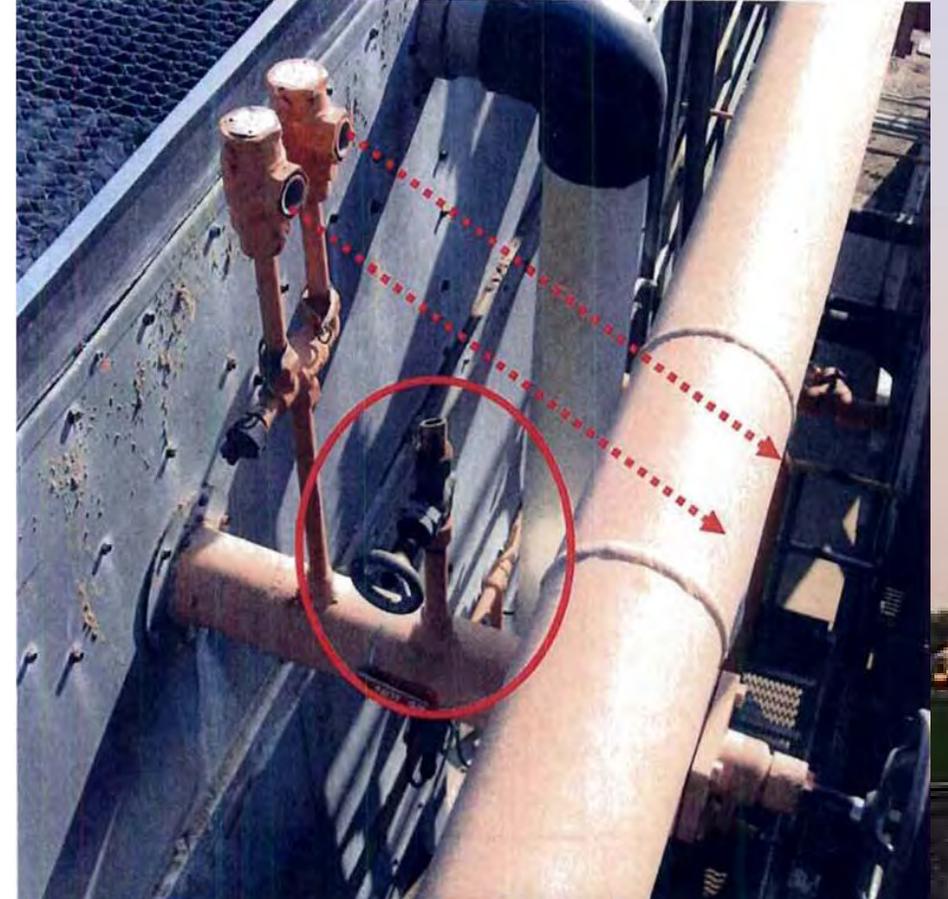
Initiating events

- 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 8: Tyson Multiple Facilities in Region 7

- 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 8: Tyson Multiple Facilities in Region 7

- Results: DOJ referral and Judicial Civil Complaint
 - Penalty: \$3.95 million cash
 - SEPs: \$300,000 in emergency response equipment to fire departments in 8 environmental justice areas with Tyson facilities
 - Injunctive Relief: conduct pipe testing on small-diameter piping and conduct third-party program audits at all 23 facilities located in Region 7
- Open to settlement: approx. 5 years
- Closure of case is 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

Refrigeration Manual

<https://www.epa.gov/rmp/accident-prevention-and-response-manual-anhydrous-ammonia-refrigeration-system-operators>

Websites active as of November 2016