ATTACHMENT 1

UNITED STATES ENVIRONMENTAL PRC
WASHINGTON, D.C. 2046

OFFICE OF ENFORCEMENT

MAY 11 1981

MEMORANDUM

SUBJECT: The Major Source Enforcement Effort

FROM: Richard D. Wilson
Acting Assistant Administrator For Enforcement

TO: Regional Administrators
Regional Enforcement Division Directors

Introduction

As you know, the Major Source Enforcement Effort (MSEE) was launched in the fall of 1977 and for three years has been an Office of Enforcement top priority. The goal of the effort has been to identify and take enforcement action against major sources that have never achieved initial compliance with applicable regulations under the Clean Air and Clean Water Acts. Within this group of non-complying sources are some of the largest contributors to the nation's air and water pollution problems. These sources have in many instances been in violation for several years.

As outlined in some detail in this memorandum, we believe the effort has achieved much of its initial aim. While we must continue to direct efforts towards resolving those cases not yet resolved and tracking consent decrees resulting from previous efforts to assure compliance, we must also give greater recognition to the other challenges facing the air and water programs. As such, we are concluding the MSEE as a separate effort and remaining activities with respect to MSEE sources will be considered, as appropriate, in the context of the other air and water enforcement priorities facing the Regions and the States. However, given the degree of commitment by EPA and the States to this effort in the last few years, I think it appropriate to summarize for you the history of the effort and its results to date.

GENC 014622

Background of the MSEE

The fundamental elements of the MSEE were first outlined for the Enforcement Division Directors in October 1977. For the effort to prove a success, it was recognized from the outset that the support and cooperation of the States, local agencies, and the Department of Justice (DOJ) would be essential. During October and November of 1977, Headquarters and Regional personnel met with State and local officials and DOJ personnel in each Region to secure their support and to brief them on the MSEE program. Th Regional Offices later met with each of the States individually to compile lists of major violators and to make some preliminary decisions as to what kind of action was appropriate for each (judicial or administrative) and which Agency would be primarily responsible for the action, the State or EPA.

By April 1978, the MSEE list had been put into final form. It was composed of 2,134 major sources; 1,410 of which were air sources and 724 were water sources, excluding Publicly Owned Treatment Works (POTWs). (Since a few sources were listed as both air and water violators, the 2,134 figure includes some double-counting.)

Some significant features behind the numbers are:

- Of the 2,134 air and water sources, 704 were planned civil actions; 10 were planned criminal actions; 924 were planned State or Federal administrative actions; and the rest were projected to come into compliance without further enforcement action.
- The 704 planned civil actions were the core of the MSEE and of these, EPA was to take civil action against 597, the States against 107. All ten criminal actions were to be Federal.
- 617 of the 704 facilities requiring judicial actions were industrial sources (as opposed to State, municipal, or Federal), and half of the 617 were clustered in certain key industries - power plants, iron and steel, pulp and paper, chemicals, petroleum refineries, and smelters. The other half were widely diverse.

Though the core of the MSEE centered around taking judicial action against these 704 sources (597 being EPA responsibility), much effort was also spent by EPA and the States in assuring that all 2,134 sources were brought expeditiously into compliance, or at least had action initiated that would result in compliance. In addition, as a result of constant efforts to refine the initial list, additional sources that met the MSEE criteria of never achieving initial compliance were subsequently added to the list thus causing the universe of 2,134 sources to grow by 260 sources.

Achievem nts to Date

Today, progress in getting all the MSEE sources into compliance has been significant. A summary of MSEE civil, criminal, and administrative activity by EPA and the States follows:

- EPA civil actions against 677 facilities have been initiated, 395 air and 282 water. The status of these cases as of March 1981 is:

  cases against 384 (57%) facilities have been concluded
  cases against 190 (28%) facilities have been filed but not concluded
  cases against 103 (15%) facilities have been initiated and are pending further action

- EPA criminal actions have been initiated against 4 facilities, 2 air and 2 water. The status of these cases as of March 1981 shows 2 filed and 2 concluded.

- State civil actions against 78 facilities have been initiated, 28 air and 50 water. The status of these cases as of March 1981 is:

  cases against 59 (76%) facilities have been concluded
  cases against 2 (2%) facilities have been filed but not concluded
  cases against 17 (22%) facilities have been initiated and are pending further action

- The remaining 1,635 MSEE sources were either targets for EPA or State administrative action or came into compliance without any such action. The current status of these sources, as of March 1981, shows 1,170 sources in final compliance and 465 sources proceeding on a timetable to come into compliance or otherwise expected to come into compliance in the near future.

This effort is even more impressive when it is recognised that many sources outside the MSEE universe were subject to State or EPA civil litigation during this same period. For example, EPA initiated actions against 382 such sources, of which 225 (59%) have now been concluded, 54 (14%) have been filed but not concluded, and 103 (27%) have been initiated and are pending further action. Thus, looking at the Federal litigation picture over the past three years shows civil actions initiat d against 1,059 facilities, 81% of which are filed or concluded. (See Attachment A for a discussion of settlements reached with a few of the most significant MSEE sources.)

Future Eff rts

The MSEE effort began with several thousand sources not equipped with adequate pollution controls. Now, most of these sources have installed or are installing the necessary equipment to control their pollution. With this accomplishment, the Agency's enforcement program is intensifying its efforts in working with States to ensure continuing compliance, to address new source violators, and to assure municipal source complianc . In order to assure the full benefit of the gains of the MSEE, these new efforts will be balanced against the need to follow through with MSEE cases already initiated and to continue tracking court decrees to assure final compliance.

Future activities of the water enforcement program will focus primarily on non-complying municipal permittees. Several components of this new thrust are: 1) a new national enforcement Municipal Management System (MMS), 2) a revised Municipal Enforcement Policy for bringing civil actions where warranted, and 3) a Continuous Compliance Program to insure that, once constructed, facilities built with public funds continue to operate within design and permit limitations.

The aim of MMS is to give the States and the Regions an operational framework within which to coordinate permits and grant conditions and activities so that construction proceeds according to schedule and each plant can meet its final limits when completed. It hopes to achieve the greatest amount of improvement in municipal construction and compliance by directing its resources on those facilities located in the most capital intensive urban areas. Under the Continuous Compliance Program, a plant experiencing serious effluent violations will be ordered to hire a private engineering firm to analyze the plant's operating procedures. The firm will then develop a Composite Correction Plan (CCP) which is designed to follow the plan at their own expense unless they need to solve design problems. The Municipal Enforcement Policy aims to secure maximum pollution abatement by accelerating construction, and making noncompliance less attractive than compliance. In this respect, judicial actions will seek penalties for past violations, a court-imposed compliance schedule, interim effluent limitations, and separ te penalties for any future violations.

A major focus of future activities of the Stationary Air enforcement program will be directed around efforts to ensure continuing compliance. Recent National Commission on Air Quality (NCAQ) studies show that the failure of sources which have achieved initial compliance to meet emission limits on a continuing basis is an air quality problem of growing concern. One particular NCAQ study of air pollution sources showed that 128 of 180 sources reported as complying with air standards had documented incidents of excess emissions resulting in a cumulative

GENC 014625

annual xcess f 25 percent ver th allow d emissions level. To address this serious probl m, DSSE will be launching a continuous compliance study to investigate new means of surveillance, improved inspection techniques, more use of continuous emission monitoring, better permitting requirements, targeting problem sources, expanded uses on penalty authorities and other techniques to improve the ability of EPA and the State to deal with the challenge of ensuring continuing compliance. Additional areas of emphasis in the air enforcement program will be an intensification of efforts to enforce against significant sources in violation of NESHAPs, NSPS and other new source requirements, and new Part D SIP requirements.

All of this new activity under both the air and water programs should result in better self monitoring of sources, provide more consistent application of laws nationwide, and assure that full benefit is obtained from existing controls. This in turn will lessen the burden on all regulated sources to install additional controls while still resulting in a cleaner, healthier environment.

Attachment

ATTACHMENT A

Jones and Laughlin Steel Corporation

In January 1981, the U.S. Environmental Protection Agency signed a consent agreement with Jones and Laughlin Steel Corporation which will bring air and water pollution sources at six steel plants in three states into compliance with applicable air pollution control regulations by December 31, 1982, and with applicable water pollution control regulations by April 30, 1983. The six steel plants covered by the pollution abatement agreement are the Pittsburgh and Aliquippa works in Pittsburgh and Aliquippa, Pennsylvania; the East Chicago works in East Chicago, Indiana; the Cleveland Works in Cleveland, Ohio; and the Brier Hill and Campbell works, in Youngstown, Ohio.

The compliance agreement calls for installation of air and water pollution controls at the companies' coke batteries, blast furnaces, basic oxygen furnace shops, electric arc furnaces and ancillary steel making facilities. In addition, the agreement calls for modernization of coke producing capacity at the East Chicago, Indiana works, which will result in more efficient steel production. Also under the agreement, Jones and Laughlin has agreed, in lieu of being assessed a $10 million civil penalty, to install pollution controls that afford greater environmental benefit to the public than currently required under law.

The agreement will result in significantly cleaner air for citizens in those areas surrounding the plants in Pennsylvania, Indiana, and Ohio, and water quality in those areas will also greatly improve. The total capital cost of the pollution abatement agreement may reach $350 million, depending upon the companies' success in demonstrating the effectiveness of less costly pollution control measures.

National Steel Corporation

In October 1980, the U.S. Environmental Protection Agency signed an agreement with National Steel Corporation to bring company plants in three States into compliance with all air and water pollution control requirements by the end of 1982. The agreement affects one plant in Weirton, West Virginia, one plant just outside Detroit, and one facility in Granite City, Illinois, just north of St. Louis.

The settlement incorporates National's plans for modernization and replacement of several basic steelmaking processes. It will maintain the economic stability of the affected facilities, while protecting the health of citizens in surrounding communities by reducing particulate emissions nearly

GENC 014627

79 percent at the Detroit plant and 80 percent at the Granite City facility. Significant reductions in particulates will also occur at the Weirton plant. The agreement also requires that the Detroit plant expand its maintenance and monitoring programs to improve performance of its water pollution treatment system. (In 1979, EPA and National agreed upon a program for water pollution control at the Weirton plant).

Company estimates put the total cost of the agreement at the three plants at $180 million. Potential liability for past violations at the three plants will be offset through the application of more pollution controls than would otherwise be required.

U.S. Steel - Monongahela River Valley

In one of the biggest environmental control agreements in steel industry history, U.S. Steel, the nation's largest producer, agreed in May of 1979 to bring nine of the company's western Pennsylvania plants into compliance with air and water pollution regulations by the end of 1982. The agreement was reached between U.S. Steel and the U.S. Environmental Protection Agency, the U.S. Department of Justice, the Commonwealth of Pennsylvania, and Allegheny County, Pa. The Pittsburgh-area and western Pennsylvania facilities covered by the agreement are the Clairton Works, both plants of the National-Duquesne Works, both plants of the Edgar Thomson-Irvin Works, Homestead Works (including Carrie Furnaces), the Vandergrift plant, the Saxónburg sinter plant and Johnstown Works.

The agreement covers approximately $400 million of air and water pollution control projects, including a number of control projects already under construction. The $400 million of expenditures are in addition to more than $200 million which U.S. Steel has already spent or committed to air and water quality projects in the Pittsburgh area. The planned result of the agreement is nearly a 50 percent reduction in remaining particulate emissions in the Pittsburgh area. Overall, the agreement will result in a reduction of particulate emissions from the plants covered by approximately 22,000 tons per year. In improving water quality, the decree will result in a [illegible] percent reduction in the discharge of remaining water pollutants from the plants covered, including suspended solids, phenols, cyanide, ammonia, oil and grease, and acidic alkaline solutions.

Ohio Edison Company

On January 19, 1981, the government lodged two separate consent decrees with the appropriate U.S. District Court involving the Ohio Edison Company. One decree settled an action filed against this source in August 1978, for particulate mass and visible emissions at its Sammis plant, one of the largest particulate polluting facilities in the entire country. Under the t rms of th agr ement, Ohio Edison will install controls to bring all seven units at the plant into compliance with th applicable regulations and will pay a civil penalty of $1.35 million. Additionally, the company agreed to reduce emissions at the three largest units to a level 25% below the level required for compliance for a period of ten years. Once compliance is achieved, the agreement will result in a reduction of at least 60,000 tons of particulate emissions annually from the estimated levels which existed when EPA initiated enforcement action in 1976.

The second decree covers ten other facilities owned and operated by Ohio Edison. The company committed to bringing all of these facilities into compliance with particulate mass and visibl emissions limitations, and agreed to pay a civil penalty of $150,000.

Tennessee Valley Authority

In December 1978, the Environmental Protection Agency, ten citizen health and environmental organizations and the States of Alabama and Kentucky announced a final settlement agreement to clean up air pollution at ten of TVA's electric power plants in the Southeast. A consent decree covering TVA's electric generating plants located in the States of Tennessee and Kentucky was entered on December 27, 1980. Entry of the decree had been delayed due, in part, to the intervention of several distributors of TVA power. A consent decree covering TVA's electric generating plants in the State of Alabama was entered on October 15, 1979. Under the agreement, all TVA facilities are required to meet air pollution standards by the end of 1982, with a number of interim steps required to control air pollution.

The settlement requires TVA to install scrubbers at some plants and burn less polluting coal at other plants. The scrubber requirements will allow TVA to burn Eastern coal, which often has a higher sulfur content. Particulate pollution controls are also required where needed. The settlement will mean a reduction of more than 970,000 tons of sulfur dioxide and 85,000 tons of particulate emissions a year.

Michigan: City of Detroit, [illegible] Sewerage Department

On May 6, 1977, EPA, Region V, through [illegible] for the Eastern District of Michigan, filed a complaint against the City of Detroit for violation of its NPDES permit. [illegible] violations included failure to comply with:

1. The effluent limitations for biochemical oxygen demand (BOD) (5-day, 20°C), suspended solids, phenol, oil, coliform bacteria, total phosphorous;

2. Monitoring requirements;

3. Facilities operation and maintenance requirements; and

4. Preparation and submission of a "Facilities Plan" detailing the future needs for pollution abatement facilities in the Detroit service area.

After months of negotiations the parties reached an agreement and a Consent Judgment was entered by Judge John Feikens on September 14, 1977. Among other things this Judgment provided for: the development of a user charge, Industrial Cost Recovery and Local Capital Cost Funding System; an approved Industrial Waste Control Plan on or before March 1, 1978; approved Facilities Plan by May 15, 1978; the increase of the effective capacity for secondary treatment on or before September 1, 1980, as well as a schedule of increasingly more stringent effluent limitations; the design and construction of a phosphorous removal system at the treatment plant. In addition to this Consent Judgment Judge Feikens also appointed a Special Master to have all grievances with regard to increased sewerage service rates charged to any community by Detroit and under decisions on such matters by March 31, 1978. Upon the entry of this Consent Judgment, the Court also ordered that some $399 million in FY 76 Federal construction grant monies be reserved for construction projects in the Detroit area.

The terms of the Consent Judgment went into effect in December 1977. Investigation by EPA revealed that Detroit was violating the second set of effluent limitations. Region V filed a motion for a show cause hearing concerning Detroit's reasons for noncompliance. A hearing was held in early November 1978. The judge ordered a court-appointed monitor to review the plant; its noncompliance and Detroit's ability to comply. After a 30-day review the monitor issued a report citing many inadequacies in th plant's staffing, procurement policies and its operations and maintenance. Subsequently a five-day hearing was held on this report and the court rendered a decision on March [illegible], 1979. At that time the court ordered Detroit's Mayor Coleman Young to appoint an Executive Administrator to run the City's municipal sewerage program and implement the provisions of the Consent Judgment. After a lengthy search Mayor Young appointed Joe Moore, formerly of the Federal Water Quality Administration. The City is currently trying various methods to get their treatment syste to full capacity.

<u>United States Steel, Lorain, Ohio</u>

This was an action filed for civil penalties and injunctive relief against the United States Steel Corporation pursuant to Section 309 of the Clean Water Act, 33 U.S.C. 1319, for allegedly unlawful discharges f pollutants into th Black River. In particular, U.S. Steel was alleged to have fail d to install a blast furnace recycle system at its Lorain facility by July 1, 1977. U.S. Steel was also alleged to have unlawfully by-passed certain elements of its coke plant recycle systems on various occasions, resulting in violations of its NPDES permit.

The case was settled by consent decree entered on June 27, 1980. The decree required U.S. Steel Corporation to install a blast furnace recycle system and to upgrade treatment at its coke plant and at its pipe mill lagoon to meet the effluent limitations prescribed by its NPDES permit in accordance with the compliance schedule contained in the decree.

The decree provides that U.S. Steel will spend $4 million over four years on a dust suppression program to avoid the paym nt of civil penalties. Such expenditures are intended by the parties to be net expenditures after calculation of any tax benefit. The decree also provides for stipulated penalties of $7,500 per day for failure to comply with the terms of the consent decree.

Definition of Significant Violator

One of the objectives of the Administrator's Accountability System for FY 1982 is that resources be used to address significant air violators and return them to compliance. This is designed to ensure that resources are used in the most environmentally beneficial manner. The purpose of this guidance is to assist Regional Offices and States in determining what the Agency considers to be a significant violator.

In determining whether a violation is significant, the nature of the pollutant should be considered, as well as the magnitude and duration of the violation and the population exposed. While no rigid formula need be followed, the following considerations should be kept in mind.

1. A violation of a hazardous air pollutant standard resulting in emissions above the standard should normally be considered significant unless the magnitude and duration f the violation are minimal and the violation nonrecurring.

2. A source in violation of a State implementation plan should be considered significant if the source is of sufficient size and is located so as to impact a nonattainment area. Sources above 250 tons per year emission potential

as defined in the Alabama Power case) should be considered significant violators unless the magnitude and duration of the violation are minimal and the violation generally nonrecurring. (To the extent that available data do not permit easy identification of sources in excess of 250 tons/year potential, sources with more than 100 tons/year actual emissions can be used as a reasonable surrogate.) Other sources in nonattainment areas should also be included if the amount of excess emissions is considered jointly by the Regional Office and State as having an important impact on the continued nonattainment of the area.

3. Sources in attainment areas and not impacting nonattainment areas would not normally be considered significant because of the lack of direct health impact. While States, appropriately, should take action to resolve such violations, EPA will not give them high priority consideration.

4. Sources in violation of new source requirements, including NSPS and PSD/NSR permitting requirements, should also be considered to be significant violators unless the magnitude and duration of the violation are minimal.

As provided for in the Agency's new accountability system, Regional Offices should meet with each of their States to jointly prepare an inventory of known significant vi lators. States should be ncouraged to take the lead with respect to as much of the universe as possible. Wherever possible, EPA should use its resources to supplement those of the State rather than to take the lead on cases itself. This technical assistance can be either in the form of direct case assistance (if requested) or through sponsoring of technical workshops and other program building/supporting activities. EPA should assume the lead only where a State cannot or will not take the lead, despite whatever assistance EPA can provide.

UNITED STATES ENVIRONMENTAL PR ATTACEMENT 3
WASHINGTON, D.C. 2

AUG 12 1982

OFFICE OF
AIR, NOISE AND RADIATION

MEMORANDUM

SUBJECT: Guidance Concerning EPA's Use of Continuous Emission Monitoring Data

FROM: Kathleen M. Bennett Kathleen M. Bennett
Assistant Administrator for Air, Noise and Radiation

TO: Directors, Air and Waste Management Divisions, Regions II-IV, VI-VIII, and X

Directors, Air Management Divisions, Regions I, V and IX

This memorandum addresses EPA's use of Continuous Emission Monitoring (CEM) data in enforcement of NSPS and SIP emission and operating and maintenance (O&M) provisions and in other general EPA activities. It provides guidance as to when, as a legal matter, continuous emission monitoring constitutes the test method associated with an emission limitation. It is not intended to preclude the exercise of reasoned discretion by an enforcing agency based on a review of the representativeness of the data and the circumstances giving rise to the excess emissions.

Use of CEMs that are Specified as the Source Compliance Test Method

In each instance where CEMs have been promulgated or approved by the Agency as an official method to determine source compliance with the applicable emission limitations, the Agency can rely upon CEM data when making compliance determinations. CEMs have been specifically prescribed as the method to establish emission violations for on or more pollutants in the following instances:

- NSPS electric utility steam generating units, regulated by 40 CFR Part 60 Subpart Da;
- NSPS primary nonferrous smelters, regulated by 40 CFR Part 60 Subparts P, Q and R;
- NSPS stationary gas turbines, regulated by 40 CFR Part 60 Subpart GG;
- various sources regulated by permits, orders, or consent decrees in which CEM has been specifically designated as the test method;

GENC 014635

- various types of sources which are regulated by SIPs (e.g., Nevada SIP, 40 CFR §52.1475(d)) where the State has specified CEM as the test method.

Some sources object to EPA's reliance upon CEM data to enforce SIP emission provisions for source categories for which EPA has not specified the use of CEMs in comparable NSPS regulations. Such an objection is not legally supportable, since States have the right to specify their own methods in their SIPs, even if they are differ nt from those imposed by EPA for NSPS sources. Section 1.0 of Appendix P to 40 CFR Part 51 delineates that SIPs may specify that CEM data be used "directly or indirectly for compliance determinations or any other purpose deemed appropriate by the State." The Agency can rely upon CEM data for compliance determinations whenever such methods are sp cifi d in the EPA-approved SIP.

Use of CEMs in SIPs where an Emission Compliance Test Method is Not Specified

There are some instances when SIPs do not specify a compliance test method. When that occurs, the applicable regulation, 40 CFR §52.12(c)(1), states that for the purpose of Federal enforcement:

> "sources subject to plan provisions which do not specify a test procedure... will be tested by means of the appropriate procedures and methods prescribed in Part 60 of this chapter; unless otherwise specified in this part."

Generally, Part 60 does not specify CEM as the compliance test method and therefore EPA cannot use CEM data to determine source complianc with a SIP emission limitation. However, in accordance with §52.12(c)(1), CEM data would be the applicable test method for the two categories of sources for which it is the NSPS performance test method, nonferrous smelters (as in Subparts P, Q and R); and stationary gas turbines (as in Subpart GG).

The Agency shall rely upon CEM data to determine a source's compliance status with a SIP emission limit for smelters (for SO_2) and for stationary gas turbines (for NO_x). Since CEM is the only compliance test method specified in Part 60 for these source categories, CEM is clearly the "appropriate" method under Part 60 for purposes of §52.12(c)(1).

In addition, there is some ambiguity regarding the appropriat procedures for fossil-fuel-fired steam generators prescribed in Part 60 because Part 60 contains two significantly different types of SO_2 and NO_x performance test methods. Specifically, Subpart D specifies

Reference (stack test) Methods 6 and 7 as the performance test methods for SO_2 and NO_x emissions, respectively. However, Subpart Da specifies use of CEM data to determine compliance with the SO_2 and NO_x emission standards.

The Agency shall rely upon the performance test methods specified in Subpart D (Reference Methods 6 and 7) to determine a source's compliance status with SIP SO_2 and NO_x emission limits for fossil-fuel-fired steam generators. For this category of sources, it is more consistent with the development of the SIPs to use these methods since they are the traditional compliance test methods for this source category. (For new sources actually subject to Subpart Da, we would not expect this issue to arise since new source permits should specify the applicable test method.)

<u>Use of CEM's where State Regulations Contain Discretionary Authority as to Compliance Test Methods</u>

A problem in interpreting the SIP continually arises because most SIPs specify test methods (often adopting EPA methods by reference) but also allow for discretionary acceptance of an "equivalent" or an appropriate "alternative" by the State. Relying on such languag , many States have accepted CEM data as an adequate demonstration of compliance and have used such data to determine the existence of a violation.

Since EPA's enforcement authority is guided by State regulations specifically approved in the SIP, questions have been raised as t whether EPA will independently apply State discretionary authority and interpret what is reasonable as an "equivalent" or "alternative" compliance test method, or, if not, whether EPA may follow the State's lead, if the State chooses to allow CEM as the test method.

The answer is that EPA will not independently exercise such authority. Only when the State has exercised such authority t adopt CEM as a test method <u>and</u> when the exercise of that authority has been reflected in the SIP, will EPA use CEM as the test method.

<u>Use of CEM Data for Determining Potential Operations and Maint nance (O&M) Violations</u>

NSPS regulations (40 CFR 60.11(d)) specify that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on informati n available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source." Many SIP's have similar provisions requiring proper operation and maintenance. Use of CEM data, while not necessarily conclusive, is a valid indicator of compliance with requirements such as §60.11(d) and can be used as such.

Use of CEMs as a General Compliance Monitoring Tool

CEMs can provide the Agency with useful data for circumstances ther than those delineated above. For instance, CEM data can be used to: (1) screen a source's compliance status (with both emission limitations and O&M requirements); (2) select which sources should be inspected or compliance (stack) tested; (3) document the severity (e.g., duration, magnitude and frequency) of a source's excess missions; and (4) document that a compliance test was performed during "non-representative" operating conditions.

UNITED STATES ENVIRONMENTAL PRO'
WASHIN TON, D.C. 204' ATTACHMENT 4

JUN 24 1982

OFFICE OF
AIR, NOISE AND RADIATION

SUBJECT: Significant Violators

FROM: Kathleen M. Bennett Kathleen M. Bennett
Assistant Administrator for Air, Noise and Radiation

TO: Regional Administrators, Regions I - X

As you know, the Administrator's Accountability System requires each Regional Office to work with its States to resolv instances of noncompliance by significant violators of Clean Air Act requirements. I provided guidance to you in a December 29 memorandum to assist you in determining what we consider to be a significant violator.

The purpose of this memorandum is to supplement our earlier guidance. After a review of the Regional submissions of their respective significant violator lists, it became apparent that some fundamental inconsistencies existed. The Administrator asked me to explore the reasons for these inconsistencies and provide whatever guidance is necessary to resolve them. This will enable the Regional Offices to refine their lists in a manner so as to make them nationally consistent.

Initially, let me address one point of apparent confusion relative to the significant violator exercise as a whole. The significant violator exercise is intended solely to identify th highest priority sources for the air enforcement program and to establish a special tracking system for resolving violations by these sources. It is in no way intended to limit the Regional Office in its addressing other sources, or in its assistanc to States in addressing other sources, so long as such actions will not detract from the significant violator exercise and will have a real environmental benefit.

In terms of the definition of a significant violator, our earlier guidance (copy attached) still stands. However, in interpreting this guidance, please keep the following points in mind:

GENC 014639

(1) do not list any source in compliance with its emission limitations or in compliance with an acceptable compliance schedule;

(2) do not list any source of unknown compliance status;

(3) if you propose to include a source not meeting my December 29 guidance (for example, an existing source in an attainment area), please specifically identify such source on your list and include a brief explanation of the environmental justification for including the source; and

(4) if you propose to not list any sources which would meet my December 29 guidance (for example, a 250-ton source in a nonattainment area), please separately list such sources and include a brief explanation of the basis on which you have determinied that exclusion is appropriate.

Thus, the universe for the significant violator exercise will be limited to sources in violation and either not on a schedule or in violation of a schedule (CDS SCMS codes 1 and 6) which otherwise meets the December 29 guidance. Exclusion of sources meeting compliance schedules (SCMS 5) does not detract from the importance of the Region's having an effective system to ensure that the schedules are being followed. Similarly, exclusion of sources with unknown compliance status (SCMS 0 and 7) does not denigrate from the importance of resolving those unknowns as soon as possible. (Where flexibility exists, highest priority for inspections should be directed at those unknowns that would otherwise meet the significant violator definition.) These criteria are intended only to keep the significant violator exercise to a manageble list of known violators for which further action (State or Federal) is required.

We intend to "flag" significant violator sources in CDS to facilitate tracking. Please ensure that the latest compliance data are entered into CDS so that two data bases (CDS and the significant violator list) are consistent. This will eliminat much possible confusion and could ultimately be used to minimize your reporting burden.

Please reevaluate your initial submission in light of this additional guidance and resubmit your list to this office by no later than July 31. In the meanwhile, third quarter reporting should be in accordance with the guidance sent to you on Jun 15 by the Office of Management Systems and Evaluation.

If you have any questions on this memorandum or expect any difficulties in meeting the July 31 date, please call Ed Reich, Director, Division of Stationary Source Enforcement at (FTS) 382-2807.

Attachment

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

SEP 20 1982

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Enforcement Action Against Stationary Air Sources Which Will Not Be In Compliance By December 31, 1982

FROM: The Administrator

TO: Regional Administrators
Regions I-X

The Environmental Protection Agency has sought to bring stationary sources located in primary non-attainment areas into compliance as expeditiously as practicable, but no later than December 31, 1982, the statutory deadline for attainment of primary ambient standards. As we approach that date, it has become clear that some sources will not be able to achieve timely compliance and that enforcement action to address these sources is needed. This memorandum sets forth a comprehensive policy for judicial enforcement against such sources under Section 113(b) of the Act.

Based on the recent Supreme Court decision in Weinberger v. Carlos Romero-Barcelo, 50 LW 4434 (April 27, 1982), both the Justice Department and EPA's Office of Legal and Enforcement Counsel have concluded that a district court has equity power to fashion relief that allows a source to continue in operation beyond 1982 while taking steps to come into compliance. As a matter of policy, shutdown by 1982 may be the appropriate relief in some cases, but an expeditious compliance schedule going beyond 1982 may be appropriate in others. Proceeding from that conclusion, this policy sets forth criteria to determine the specific equitable relief the Agency should seek in each case. In developing this policy, I recognize that Congress, in passing th Steel Industry Compliance Extension Act of 1981, intended to give special relief to an industry which had unique demands for capital to modernize and improve efficiency and productivity. Congress specified statutory conditions under which such relief could be granted. I have attempted to incorporate as many of these requirements as are generally applicable, and to include other requirements which are at least as stringent and sometimes mor so. In this way I believe that this policy is equitable in its treatment of all sources which it addresses.

GENC 014642

As a general rule, the goal of any EPA enforcement action against a source in a primary non-attainment area is to bring the source into compliance as expeditiously as possible, but no later than the end of 1982.[1] However, when EPA seeks enforcement in Court, we can stipulate to facts that would warrant relief which allows the source to remain in operation and out of compliance beyond 1982 if, at a minimum, all of the following threshold criteria are met: 1) the source must be unable to comply by December 31, 1982, other than by shutdown, 2) the source must demonstrate that there is a public interest in continued operation of the source which outweighs the environmental cost of an additional period of noncompliance, and 3) if there is any doubt about the source's financial condition, the source must demonstrate that it will have sufficient funds to be able to comply expeditiously. The second determination must be made on a case-by-case basis and should include consideration, at a minimum, of the type of business, the magnitude of excess emissions, the amount of time needed to comply, the public service nature of the source (hospital, electric utilities), the adverse public consequences which would result from closure (e.g., significant unemployment impact), and the impact on public health and welfare. We expect that in some cases the Agency will reject an extension beyond 1982 based on this criterion.

As to the third threshold criterion, Regional Administrators should exercise judgment to determine whether sufficient uncertainty exists as to the financial status of the source to warrant a detailed economic analysis. Technical support may be available in Headquarters on a case-by-case basis to assist in making this determination. If necessary, we can work with the Office of Policy and Resource Management to develop further guidance on this point.

Another factor to be considered is whether the source has been or is currently undertaking good faith efforts to comply with applicable emissions standards. Although in some cases there may be an overriding public interest in continued operation of the source under a phased compliance schedule, generally a prior history of disregard for environmental obligations should militate against further extensions.

I wish to emphasize that this policy should not be seen as an invitation to renegotiate consent decrees. Sources which have already made a commitment, in the settlement of an enforcement action, to come into compliance by December 31, 1982 should be required to do so unless the relevant circumstances clearly and convincingly warrant a modification. In cases where a consent decree already exists, a contempt action should be filed if the

---

[1]/Section 172(a)(2) provides for extensions of the deadline for attainment of primary standards for ozone or carbon monoxide until December 31, 1987. This policy does not address sources of pollutants in areas which have received an extension of the attainment deadline for that pollutant.

source is violating th t rms of th existing decree. Only after such an action has been filed should EPA agree to pr senting stipulations to the court under the terms of this guidance. Similarly, for new cases, the civil action should be filed before negotiations are concluded and stipulations are ready to be filed.

Additionally, this policy is not intended to affect or to include guidance on the SIP planning process in areas which will remain non-attainment at the end of 1982. The Agency is currently undertaking a separate effort to address such issues.

Requirements for EPA to Agree to Stipulations

A complaint must be filed first, asking the court to enjoin the source to comply with the State Implementation Plan and, if appropriate, to comply with the existing consent decree. If the three threshold criteria outlined above are met, the Agency may choose to enter stipulations under terms of the guidance and not to oppose requests to the court to exercise its equitable jurisdiction to enter an order establishing a post-1982 compliance schedule. The Agency should insure, at a minimum, that the order incorporates the following:

1) The source commits to come into compliance with the applicable State Implementation Plan as expeditiously as possible. If no Part D plan is in force where one is required, the source commits to comply with requirements for Reasonably Available Control Technology (RACT). The expeditiousness of these sch dul s should be scrutinized closely.

2) The compliance schedule contains enforceable increments f progress.

3) The court order requires interim emission limitations and controls to the extent practicable. Emission reductions, while not mandated in every case, should be required where practicable.

4) The court order includes monitoring requirements.

5) The court order includes reporting requirements, including timely reporting to EPA and the court of the completion of each increment in the schedule.

6) The court order provides for stipulated penalties. At a minimum, these penalties should apply to failure to implement interim controls, failure to meet increments of progress in the compliance schedule, and failure to demonstrate final compliance.

7) The court order contains provisions preventing increases of emissions from the source. Production increases may be allowed so long as emissions per unit of production are not increased.

8) The court order requires payment of a significant cash civil penalty. This should reflect the economic benefit of delayed compliance from the date of the earliest provable violation to the date of final compliance in the order. The economic savings figure may be increased or reduced in accordance with other applicable criteria as provided under the existing Civil Penalty Policy. Credits against a civil penalty may be allowed but will be carefully scrutinized to assure that they are consistent with existing policy. A substantial cash component should be included in all cases.

9) The court order explicitly reserves the right to se k further injunctive relief, including shutdown of the facility, if the source does not comply with the order.

10) Extensions beyond 1982 are not allowed for sources which a company does not intend to control. As currently required by the Limited Life Facilities Policy, if a company plans to comply by shutdown, the company must post a bond equal to the pollution control costs, to be forfeited if the uncontrolled source is not shut down in a timely manner, i.e., by December 31, 1982.

Mechanism for Judicial Resolution

A district court, in its exercise of equity power, can order relief which permits a source to continue in operation beyond 1982. The court may exercise its equity power based on a stipulation of facts, including expeditious compliance sch dul s. The court may unilaterally issue a judgment order based on such stipulations. Specific guidance on procedures for using the stipulation approach in individual cases can be obtained from the Office of Enforcement Counsel.

In addition to negotiating stipulations, of course, litigation is always to be considered as an enforcement option, if other efforts to resolve the problem are not fruitful. While the government may presumably take a stronger position in litigation than it would in stipulations, the government can seek relief other than shutdown if the same threshold criteria are met.

All stipulations and pleadings involving schedules for stationary air pollution sources extending past attainment dates where the source is located in a primary non-attainment ar a should be reviewed in accordance with the case referral procedures contained in Robert Perry's July 6, 1982 memorandum titled "General Operating Procedures for the Civil Enforcement Program."

Deferral to State Action

The principles set forth in this memorandum should also be used to evaluate the adequacy of state administrative or judicial enforcement action addressing these sources. A Regional Administrator should exercise judgment to set priorities f r

Federal enforcement action in cases where state action is determined to be inadequate. Each Regional Administrator should, consistent with available resources, selectively refer separate Federal enforcement actions in cases in which state action is inadequate. If the Agency can follow through on this policy early, it will send a clear signal to violating sources and the states that EPA will not defer to enforcement resolution which deviates significantly from these principles.

If you have specific questions about how this policy should be implemented, they should be addressed to Michael Alushin, Air Enforcement Division, Office of Enforcement Counsel. He can be reached at FTS 382-2820.

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

12 JAN 1983

MEMORANDUM

SUBJECT: Guidance on Implementation of the 1982 Deadline Enforcement Policy Issued September 20, 1982

FROM: Robert M. Perry Robert M. Perry
Associate Administrator
and General Counsel

Kathleen M. Bennett Kathleen M. Bennett
Assistant Administrator for Air, Noise and Radiation

TO: Regional Administrators
Regions I-X

Regional Counsels
Regions I-X

This memorandum provides supplemental guidance on the interpretation and application of the enforcement policy sent by the Administrator to the Regional Administrators on September 20, 1982. That policy established criteria for determining the type of relief the Agency should seek in taking enforcement action against sources in primary non-attainment areas which will not be in compliance by December 31, 1982. Regional staff have ask d us to clarify certain elements of the policy to assure consistency in its implementation.

Requirements for Limited Life Facilities

The policy indicates on page 4 that if a company intends to comply by shutdown, then the source must be closed by December 31, 1982, as required by the Limited Life Facilities Policy. This statement applies only if the company is not building a replacement facility. If the company is replacing the existing unit and commits to commencing and completing construction of the new facility as expeditiously as practicable, then the company may continue to operate the old unit until the scheduled date for starting operation of the new unit, provided the other criteria in the September 20 policy are satisfied. In implementing this approach the Region will need to consider the effect of any sanctions which may b in place in the area. The schedule for shutting down the existing unit generally should not exceed an expeditious schedule for controlling that same unit. Additionally, the company must commit to

GENC 014647

appropriate interim operation and maintenance provisions designed to minimize emissions from the existing unit. The schedule for construction of the replacement facility should include increments of progress and stipulated penalties sufficient to provide a clear incentive to meet those increments. A surety bond would also be required, to be forfeited if the old facility does not permanently cease operation by the specified date.

For purposes of the Limited Life Facilities Policy, a "replacement facility" can include an existing unit which is currently shut down if the company is proceeding with an expeditious schedule to install controls and bring it back on line in compliance. In such an instance, units currently in use may remain in operation until the scheduled date for resuming operation of the units currently shut down, subject to the same conditions enumerated above.

The Limited Life Facilities Policy is currently under review by the Office of Legal and Enforcement Policy, and further guidance may be forthcoming.

Compliance with RACT if Part D Plan is Not in Force

The policy states on page 3 that if no Part D plan is in force, the source must commit to comply with requirements of Reasonably Available Control Technology (RACT). The judgment order should indicate that RACT limitations acceptable to EPA remain in effect and that the court retains jurisdiction to enforce this provision until such time as a Part D plan satisfying the requirements of Section 172 is approved by EPA and becomes effective.

Significant Cash Penalty

Page 4 of the policy indicates that a court order allowing a source to operate out of compliance beyond December 31, 1982 must require payment of a significant civil penalty, including a "substantial" cash component. While credits are still considered an option, they must be clearly justified under the terms of the Civil Penalty Policy. In all cases at least one third of the penalty settlement amount should be in cash.

A new civil penalty policy is currently being developed by the Office of Legal and Enforcement Policy. The existing Civil Penalty Policy remains in effect until a new policy is issued.

Filing a Federal Action Where State Action Is Inadequate

The September 20, 1982 memorandum recognizes that states have primary responsibility for enforcement of the Clean Air Act but clearly indicates that Federal enforcement will be initiated where states are not adequately addressing a violation. The principl s set forth in that memorandum are to be used to evaluate the adequacy of the state action. While we do not expect states to track the policy in every detail, the state's action should be consistent with the threshold criteria set forth in the September 20 policy for determining whether a source should be allowed to remain in operation beyond December 31, 1982. For sources for which an extended compliance deadline is justified, a state judicial order or administrative order other than a delayed compliance order must, at a minimum, include the following key elements to justify EPA deferral:

1) The source commits to an expeditious schedule to come into compliance with the applicable State Implementation Plan (or RACT, if no Part D plan is in force).

2) The compliance schedule contains enforceable increments of progress.

3) The order includes reporting requirements, including reporting to the state and, if a judicial order, to the court, of completion of each increment.

4) The order treats limited life facilities consistent with this guidance.

5) The order requires payment of a significant cash penalty. A state does not necessarily have to assess a penalty which would suffice as a settlement figure for a Federal action under the Civil Penalty Policy. However, some penalty must be included, and it must be reasonable in light of the statutory criteria set forth in Section 113(b) of the Clean Air Act. If a state order is adequate in all respects except the amount of penalties, the Region should consider a Federal penalties action under Section 113(b) or 120.

We do not think it is practical to set rigid deadlines for state resolution of a violation under this policy. However, each Region should document the terms of deferral in every instance, confirm them with the States, and promptly initiate Federal enforcement action if those terms are not met. The terms of deferral should require that the state expeditiously resolve each violation. For any source which has been continuously in violation for a long time and where the state has already failed to take timely enforcement action, EPA should prepare to file an action quickly. We expect to see a significant portion of the sources subject to the policy in every Region either in compliance, on an acceptable compliance schedule or subject to enforcement action within the first six months of 1983.

Issuance of Notices of Violation by EPA

In light of the need to bring sources subject to the policy into compliance as expeditiously as practicable, each Region should begin issuing Notices of Violation to these sources as quickly as possible. This practice should be followed even if the state is proceeding with an enforcement action against the source, so that EPA will be in a position to initiate its own enforcement action in the event the Agency determines that the state action is inadequate. (Attached is a sample paragraph which may be used in an NOV when a state action is proceeding.) Issuance of NOV's should be postponed only if a SIP revision has been submitted to EPA which would place the source in compliance and which, based on preliminary review, appears to be approvable. If the state completes enforcement action which conforms to the terms of the policy and this guidance, EPA should notify the source and the state that it views the state action as a satisfactory resolution of the violation. A Federal NOV should be formally withdrawn only if EPA subsequently determines that there is no factual basis for it.

Implementation guidance issued by the Office of Air, Noise and Radiation on September 20, 1982 advised the Regions to consult with states to identify the lead enforcement agency for each source subject to the policy. This effort should continue in addition to the Federal issuance of NOV's to all such sources.

Facilities Subject to the Policy

The policy applies to all sources located in areas which are designated primary non-attainment for one or more pollutants for which the emission limitations are being violated (unless subject to an attainment date later than December 31, 1982). If Federal judicial action is taken against any such source, it must be consistent with the policy.

The policy does not apply to any source which is issued a delayed compliance order under Section 113(d) of the Act by EPA, or by a State provided that the order meets the statutory criteria and is submitted to and approved by EPA.

Updating Lists of Sources Subject to the Policy

We request that each Region update its list of sources subject to the policy and submit the updated list to Ed Reich, Director, Stationary Source Compliance Division, by January 31, 1983. This list should be comparable in format to the previous submissions, and it should include all Class A sources (including A-2 sourc s) which are in noncompliance as of December 31, 1982 and subject to the policy. We will use this list to monitor the initial implementation of the policy. While we recognize that the universe of sources subject to the policy will continue to change, we do not plan to ask for further updating of this list. After the initial phase of implementation, we will monitor the effectiveness of the program through the reporting on "significant violators" currently required by the Management Accountability System.

Additional Guidance

Requests for additional guidance should be directed to Elliott Gilberg (382-2864) or Michael Alushin (382-2820) of the Offic of Enforcement Counsel, Air Division, or Ed Reich of the Stationary Source Compliance Division (382-2807).

Attachment

cc: Carol E. Dinkins
Assistant Attorney General
Land and Natural Resources Division
Department of Justice

Stephen D. Ramsey, Chief
Environmental Enforcement Section
Department of Justice

Directors, Air & Waste Management Divisions
Regions II-IV, VI-VIII, and X

Directors, Air Management Divisions
Regions I, V, and IX

Sample Language for Notices of Violation

Since the ____________ facility is located in a primary non-attainment area for (pollutant) and will not be in compliance by the statutory attainment deadline of December 31, 1982, EPA will closely monitor the state's efforts to bring the source into compliance in accordance with the enforcement policy issued by the EPA Administrator on September 20, 1982 (attached). Under that policy, if a state or local air pollution control agency proceeds with satisfactory enforcement action, EPA will defer Federal enforcement action so long as the source meets the terms of the state order and achieves compliance with the applicable regulation. This notice [illegible] sued under Section 113(a)(1) of the Act so that if Federal enforcement action becomes necessary, EPA may promptly issue an order requiring compliance with the applicable provisions listed above or commence a civil action pursuant to Section 113(b) of the Act.

GENC 014652

X

ATTACHMENT 7

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

SEP 15 1983

MEMORANDUM

SUBJECT: Guidance on Use of Section 303 of the Clean Air Act

FROM: Edward E. Reich, Director
Stationary Source Compliance Division

Michael S. Alushin M. A. Alushin
Acting Associate Enforcement Counsel for Air

TO: Directors, Air Management Divisions
Regions I, V, and IX

Directors, Air and Waste Management Divisions
Regions II-IV, VI-VIII, and X

Regional Counsels
Regions I-X

Attached are two documents regarding procedures to be followed during emergency situations covered by Section 303 of the Clean Air Act. One is the final guideline explaining the statutory requirements of Section 303 and the relief available in a legal action taken under that section. The second is a manual outlining the services that can be provided through the contract mechanism of the Stationary Source Compliance Division of OANR providing technical support in any emergency episode that arises.

After we distributed draft versions of these documents to you last April, we received some comments and have tried to incorporate them into the final guidance being distributed today. Thank you for all the comments we received.

We hope that this guidance will encourage greater use of Section 303. If you have any questions about these materials, please contact Mark Antell at 382-2883 concerning the technical manual or Judy Katz at 382-2843 concerning the legal guidance.

Attachments

GENC 014653

INITIATION OF ADMINISTRATIVE AND CIVIL ACTION UNDER SECTION 303 OF THE CLEAN AIR ACT DURING AIR POLLUTION EMERGENCIES

The purpose of this guideline is to explain the statutory requirements and resource needs which must be met in order to take action under Section 303 of the Clean Air Act[1] in the event of an air pollution emergency. This guideline is directed towards both meteorological episodes (e.g., thermal inversions)

1/Section 303, as amended in 1977 and codified at 42 U.S.C. Section 7603, reads as follows:

(a) Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that the appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other actions as may be necessary. If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator begins an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such orders shall be effective for a period of forty-eight hours or such a longer period as may be authorized by the court pending litigation or thereafter.

(b) Any person who willfully violates, or fails or refuses to comply with, any order issued by the Administrator under subsection (a) of this section may, in an action brought in the appropriate United States District Court to enforce such order, be fined not more than $5,000 for each day during which such violation occurs or failure to comply continues.

involving dangerously high levels of criteria or non-criteria pollutants, situations in which chronic exposure to air pollution causes endangerment by cumulative effect, and incidents involving industrial accidents or malfunctions (e.g., breakdown of pollution control devices) resulting in the release of air pollutants in hazardous concentrations.

STATUTORY PREQUISITES

1. An Imminent and Substantial Endangerment to Health

The threshold prerequisite is the existence of "evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial risk of harm. It should be emphasized that endangerment means a risk or threat to human health, and that EPA should not delay action until actual injury occurs. Such delay would thwart the express intent of the Clean Air Act to protect the nation's air quality in the interest of the public health. Section 303 is a precautionary provision, aimed at the avoidance of potential harm. This is best illustrated by the House Report on the Clean Act Amendments of 1977:

> In retaining the words "imminent and substantial endangerment to the health of persons", the committee intends that the authority of this section not be used where the risk of harm is completely speculative in nature or where the harm threatened is insubstantial. However,... the committee intends that this language be constructed by the courts and the Administrator so as to give paramount importance to the objective of protection of the public health. <u>Administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing</u>.

H.R. Rep. No. 95-294, 95th Cong., Sess. 328 (1977) (emphasis added).

There is also some judicial opinion supporting an interpretation of the endangerment standard as being merely precautionary, and permitting remedial action prior to the occurrence of any actual harm. In <u>Ethyl Corporation v. Environmental Protection Agency</u>, 541 F.2d 1 (D.C. Cir. 1976), the Court ruled that EPA had properly acted to regulate lead in gasoline upon finding, under Section 211 of the Clean Air Act, that lead emissions would "endanger" as requiring only a finding only a finding that lead emissions presented a "significant risk" of injury to the public. There were no findings of the presence of actual harm. In upholding the Agency's view of the "endanger" standard in Section 211, the Court explained:

> When one is endangered, harm is <u>threatened</u>; no actual injury need ever occur.. A

> statute allowing for regulation in the face of danger is, necessarily, a precautionary statute. Regulatory action may be taken before the threatened harm occurs; indeed, the very existence of such precautionary legislation would seem to demand that regulatory action precede, and, optiomally, prevent, the perceived threat.

541 F.2d at 13. In Reserve Mining Company v. Environmental Protection Agency, 514 F.2d 492 (8th Cir. 1975), the Court had similarly interpreted an endangerment standard in the Federal Water Pollution Control Act in a case involving asbestos discharges into Lake Superior. The court stated that "Congress used the term "endangering" in a precautionary or preventive sense, and, therefore, evidence of potential harm as well as actual harm comes within the purview of that term." 514 F.2d at 528.

An important question for purposes of Section 303 of the Clean Air Act, however, concerns the effect of the modifying phrase "imminent and substantial" upon the meaning of "endangerment." In Reserve Mining, the Court stated that the "term 'endangering'... connotes a lesser risk of harm than the phrase 'imminent and substantial endangerment to the health of persons.'" 514 F.2d at 528. Accord, Ethyl Corporation v. Environmental Protection Agency, 541 F.2d at 20 n.36. This issue is particularly important to EPA's ability under Section 303 to abate suspected carcinogens, the harm from which might take many years to manifest itself.

It is our position that in order to adequately safeguard public health by being in a position to preclude an air pollution emergency at its inception, the phrase "imminent and substantial endangerment" must be interpreted to refer to an imminent and substantial risk of harm, no matter how distant the manifestion of harm may be. If there exists a non-speculative risk of harm, the agency may properly act under Section 303. This is consistent with the legislative history quoted previously, and with the established definition of "endangerment" as referring to the risk of harm, not actual harm itself. This is also consistent with the 1970 Senate Report on Section 303, which states:

> The levels of concentration of air pollution agents or combination of agents which substantially endanger health are levels which should never be reached in any community. When the prediction can reasonably be made that such elevated levels could be reached even for a short period of time--that it is that they are imminent --an emergency action plan should be implemented...

S. Rep. No. 91-1196, 91st Cong., 2d Sess. 36 (1970). Thus, EPA may properly take action to abate air emissions when a substantial risk of harm is about to arise. This is several steps prior to the occurrence of any actual harm, but is appropriate in view of the precautionary nature of Section 303.2/

This approach is also crucial to the Agency's ability to abate emissions which are believed to be but which are yet not confirmed as dangerous to human health. In United States v. Vertac Chemical Corporation, 489 F. Supp. 870 (E.D. Ark. 1980), the Court found the chemical dioxin, widely believed but not fully proven to be hazardous, to be presenting a "reasonable medical concern over public health" and to be thereby constituting an imminent and substantial endangerment to health under Section 7003 of the Resource Conservation and Recovery Act. Id. at 885. An Agency response under Section 303 of the Clean Air Act would be appropriate in the presence of pollutants reasonably believed to be dangerous to human health. As with regard to any pollutants sought to be abated under Section 303, EPA must be prepared to document the basis of its belief in the danger of these pollutants. If the Agency can show a "reasonable medical concern" created by the suspect emissions, it will have met the "imminent and substantial endangerment" test of Section 303.

Appendix L of the State Implementation Plan regulations (40 CFR Part 51) outlines a phased emission reduction program for air pollution emergencies involving criteria pollutants. In increasing degrees of seriousness, the levels are "alert", "warning", "emergency", and "significant harm to health." The "significant harm to health" levels are levels at which actual injury occurs and are levels that should never be reached. It is not consistent with the intent of the Act for the Regional Offices to wait until the levels of "significant harm to health," specified in 40 CFR 51.16(a), are reached prior to initiating a Section 303 action. The "emergency" level is intended to be the level at which action must be taken to avoid reaching levels of significant harm. Generally speaking, it is at these designated emergency levels that an imminent and substantial endangerment, i.e., an imminent and substantial risk to public health, is deemed to exist. The "warning" and "alert" levels specified in Appendix L are designed to ameliorate situations before the emergency stage by application of moderate controls.

2/ This permits the Agency to act to seek abatement of emissions reasonably believed to be carcinogenic but for which a harmful level, and the time for harm from such emissions to become apparent, are both uncertain.

Under certain circumstances an imminent and substantial endangerment to health may exist even though the Appendix L emergency levels have not been reached. Accordingly, the concentrations outlined in Appendix L as the "emergency levels" are only to be considered as a guide in determining when an imminent and substantial endangerment to health exists. Flexibility is essential and appropriate action must be taken pursuant to Section 303 whenever it is necessary to prevent the significant harm to health levels from being reached. For example, if review of forecasted meteorological conditions indicate that a situation is likely to deteriorate so rapidly that any action started at the emergency level in Appendix L would come too late to be effective in preventing the significant harm to health level from being reached, the Agency should act at such earlier time as is necessary to allow for enforcement action to be effective. Moreover, emergency conditions can be present even if there is no clear prediction that specified endangerment levels will be reached. An imminent and substantial endangerment to health may exist, for example, where pollutant concentrations lower than established emergency levels occur or are predicted to occur for an extended period of time.

With regard to non-criteria pollutants, sources of information on dangerous concentrations may vary. Among these are standards established by the Occupational Safety and Health Administration (OSHA) for exposure to air pollutants inside the workplace. Although not directly related to ambient air, these standards might provide a starting point for assessing the risk to the public when such pollutants, e.g., various organics, become airborne in a community. Computerized health effects data bases, such as Toxline and Chemline, might also be helpful. (These data bases are run by the National Library of Medicine and may be accessed through the EPA Headquarters or regional office libraries.) It will be necessary to gather scientific and medical data, in addition to meterological data, in order to find an imminent and substantial endangerment to public health as a result of emissions of non-criteria pollutants. The role of experts for this purpose is discussed below.

2. State or Local Authorities Have Not Acted to Abate Pollution Source(s).

A second prequisite to initiating a Section 303 action is that the Administrator receive evidence "that appropriate State or local authorities have not acted to abate such sources." Section 51.16(a) of 40 CFR requires that each State Implementation

Plan for a Priority I region include a contingency plan which, as a minimum, provides for taking any emission control actions necessary to prevent ambient air pollutants concentrations of criteria pollutants from reaching levels which could cause significant harm to the health of persons. More specifically, the State Implementation Plans submitted to the Administrator were: (1) to specify two or more stages of episode criteria; (2) to provide for public announcements whenever any specific stage has been determined to exist; and (3) to specify emission control actions to be taken at each episode stage. (Section 51.16(g) of the Implementation Plan regulations requires that the State Implementation Plans for Priority II regions include, as a minimum, requirements (1) and (2);) Although Section 51.16 addresses only SIP contingency plans for criteria pollutants, the requirement of State or local failure to abate applies also to conditions involving non-criteria pollutants. The issue for purposes of implementing Section 303 is at what point it becomes the duty or the prerogative of EPA to act to abate an air pollution emergency.

Prevention and curtailment of an air pollution emergency is initially the responsibility of State and local governments. EPA has secondary responsibility for taking steps to avert emergency conditions. The Regional Office's initial duty, therefore, is to observe State and local abatement efforts (e.g., monitoring implementation of an emergency episode plan) and to render assistance should a State or locality request it. The Regional Office should take action under Section 303 only if State and local action is either unsuccessful or not forthcoming, as where a State lacks adequate abatement resources or simply refuses to attempt to abate the emergency. Under such circumstances, the Regional Office may assume primary responsibility for curtailing the emergency or, preferably, render technical assistance to the State's abatement efforts.

The time allowed for State and local government to take adequate action prior to EPA's assuming primary responsibility will obviously depend on the nature of the potential or actual emergency. The more the endangerment would be increased by delay, the shorter this lead-time should be. All that is required by Section 303, however, is that State or local action be insufficient to abate or preclude the emergency conditions, and that the appropriate State or local agency be consulted in order to determine what action it intends to take, and whether the information upon which EPA intends to act is accurate. The requirement of consultation should not be viewed as an obstacle to effective action by EPA. As explained in the House Report on the 1977 Clean Air Amendments:

> The consultation requirement is in furtherance of the committee's intent that the Administrator not supplant effective State or local emergency abatement action. However,... if State and local efforts are not forthcoming in timely fashion to abate the hazardous condition, this provision would permit prompt action by the Administrator.

H.R. Rep. 95-294, 95th Cong., 1st Sess. 328 (1977). The consultation requirement is therefore not a concurrence requirement, but rather one of notification and corroboration prior to taking action. The scope of action taken by EPA should be restricted to what is necessary as a supplement to any action taken by State or local authorities, as, e.g., where a State is able to implement only portions of its SIP emergency episode plan, yet further action is needed to curtail the episode.

RELIEF AVAILABLE UNDER SECTION 303

The foregoing statutory prerequisites apply to both the initiation of a civil action to abate an air pollution emergency and to the issuance of an order by the Administrator directly to the source of the hazardous air emissions, demanding a curtailment of those emissions. These two forms of relief--the civil action for an injunction and the administrative order--are briefly discussed below.

1. Injunctive Relief

Section 303 permits the Administrator to seek injunctive relief in a federal district court "upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that the appropriate State or local authorities have not acted to abate such sources..." Pursuant to the Memorandum of Understanding between EPA and the Department of Justice, codified in Section 305 of the Clean Air Act, the action would be filed on behalf of the Administrator by the United States Attorney for the appropriate federal court district. EPA Regional and Headquarters Offices, however, have the responsibility of providing all data and evidentiary material to the Department of Justice.

As will be discussed more fully below, it is essential to a successful civil action that expert testimony be elicited, either in the form of affidavits or through expert appearances at depositions or trial, regarding the risk of harmful effects to the health of persons from exposure to the relevant pollutant. This is especially so in the case of an emergency involving a non-criteria pollutant, the harmful levels or effects of which have not already been established by EPA or other agencies. A diligent effort should be made to obtain evidence, perhaps from citizen complaints or hospital records, that the particular emission sought to be controlled has in fact already caused adverse effects to the health of some individuals. Such evidence, while not essential to a Section 303 action, could be helpful in substantiating an imminent and substantial endangerment. Among the experts to be consulted concerning hazardous pollutants and the presence and extent of any adverse health effects are physicians, epidemiologists, and toxicologists.

In addition, expert meteorological testimony is needed in order to assess the magnitude of hazardous pollutant concentrations and to pinpoint the source of the dangerous emissions, if not already known (as in an area of numerous industrial point sources), and to ascertain the expected geographical breadth of the emergency, based upon such parameters as current and forecasted wind speed, wind direction, atmospheric stability, temperature, and precipitation.3/ The meteorological expert may also be able to predict the duration of an emergency episode by determining the time which will elapse before changed meteorological conditions might substantially improve the dispersion of the hazardous pollutant concentrations.

Also, experts in industrial processes and pollution controls will be needed in order to explain to a court the nature of the polluting process and what abatement options are available, e.g., plant shutdown versus reduced production. In any action for an injunction, a court can be expected to provide no more relief than is necessary, and place as light a burden as possible on the emitting source, in providing for effective curtailment of the air pollution emergency. The industrial expert will thus play a crucial role in the shaping of judicial relief in a Section 303 action.

This testimony--medical, scientific, meteorological, and technical--is essential to prevailing in a Section 303 suit. The burden of proof will be on the Government, which must show by a preponderance of the evidence that the defendant is the source of air pollutants which, by their very nature or because of existing meteorological conditions, have caused harm to individuals or are presenting an imminent and substantial risk of such harm. In order to assure the credibility of this testimony, sampling personnel should be prepared to testify to the reliability and quality assurance of the air samples evaluated by the experts.

The procedure for seeking an injunction are set forth in the Federal Rules of Civil Procedure, Rule 65 (copy attached). In the event that immediate relief is needed, Rule 65 provides for temporary injunctive relief in the form of a preliminary injunction which can be obtained from a federal district court, after a hearing, in order to reduce further emissions of the suspect pollutant below emergency levels until a full trial can be held. The government should be prepared to have its experts testify in court if preliminary or permanent injunction is sought.

3/ Atomospheric stability refers the degree of turbulence in the atmosphere.

The following should be kept in mind as elements of proof necessary to obtaining a preliminary injunction:

1. Absent immediate injunctive relief, irreparable harm will be caused by the polluting source(s); 2) this harm would outweigh any harm to the source(s) from the granting of relief requiring the source(s) to abate emissions; 3) the risk to public health is sufficient to make success on the merits and the granting of a permanent injunction likely; and 4) the public interest necessitates immediate relief. See 7-pt. 2 Moores Federal Practice para, 65.04 (1980); See also United States v. Midwest Solvent Recovery, Inc., 484 F. Supp. 138. 144 (N.D. Ind. 1980).

In addition, Rule 65 provides for injunctive relief in the form of ten-day temporary restraining order (TRO), which can be granted without a hearing while a motion for preliminary injunction is prepared.4/ Expert testimony in the form of affidavit should suffice for the purpose of obtaining a TRO.

The proof necessary to obtain a TRO is that immediate and irreparable injury will occur if injunctive relief is withheld until the defendant can be given notice and an opportunity to appear. Rule 65 implies that a hearing on a motion for preliminary injunction should take place as soon as possible after the granting of a TRO. Id., Para. 65.05-65.08; see also 4 West's Federal Forms §5297 (1970).

2. Administrative Order

Prior to the 1977 Clean Air Act Amendments, the only method of enforcement provided in Section 303 was injunctive relief from a federal district court upon a showing of imminent and substantial endangerment from air pollutant emissions. The 1977 Amendments left this authority in place and added a provision authorizing the Administrator to issue an order to a source to take steps to curtail its emissions in the event "it is not practicable to assure prompt protection of the health of persons solely by commencement of... a civil action." Within twenty-four

4/ Only once has a TRO been requested under Section 303. The incident occurred in 1971, in Birmingham, Ala. After local efforts to curtail emissions from several sources failed, a TRO was requested and granted under Section 303, requiring various process modifications and cessations.

hours of issuing the order, however, the Administrator must file a suit for injunctive relief, or the order will expire. Upon such filing, the court may then extend the life of the order pending litigation. Violation of the order may be penalized up to $5,000 per day per violation. This penalty may be sought in a civil action brought to enforce the order.[5/] Also in such an action, a source may challenge the Administrator's basis for issuing the order.

This administrative order mechanism was intended by Congress to enhance EPA's emergency response capability even beyond that provided by the TRO process previously discussed. As explained in the 1977 House Report:

> Even more prompt action may be necessary where pollution levels exceed the never to be exceeded levels without prior forecast that this may occur... The committee bill reflects the committee's determination to confer completely adequate authority <u>to deal promptly</u> and effectively with emergency situations which jeopardize the health of persons. Thus, the section provides that if it is not practicable to assure prompt protection of health solely by commencement of a civil action, the Administrator may issue such orders as may be necessary for this purpose.

H.R. Rep. No.95-294, 95th Cong., 1st Sess. 327-28 (1977) (emphasis added). The administrative order is thus an available enforcement mechanism in those instances where even a TRO might be issued too late to effectively curtail an endangerment to public health. Such situations might be those involving emissions that are hazardous even in very limited duration of exposure, rendering a TRO too late to be fully effective, or situations which, although potentially quite harmful, are expected to be of very short duration, such that the emissions would cease before the TRO could issue (e.g., the demolition of an asbestos-lined building). In such situations, the time required to gather the expert evidence in support of a TRO might defeat efforts to avert adverse public health effects, absent a more immediate enforcement mechanism.

5/ This is analagous to the provision in Section 113(b) of the Clean Air Act for a civil action to enforce, and seek penalties for violation of, an order issued under Section 113(a) to comply with emission limitations.

The administrative order is just such a mechanism. Expert testimony is not required for issuance of an administrative order. What is needed, however, is evidence which reasonably leads the Administrator to believe that certain air emissions from particular sources are creating an imminent and substantial endangerment to public health. This evidence might be in the form of emissions data combined with adverse meteorological reports and medical bulletins. Provided the informal consultation requirement has been met, the Administrator may issue an order calling for abatement of emissions by whatever means the Administrator determines are necessary under the circumstances of the case. Because of the potential adverse economic impact of such an order upon the source, the order should require no more than what is clearly necessary to curtailing hazardous emissions. The fact that the order may only last twenty-four hours, during which time a TRO application and civil suit can feasibly be filed, and that the basis of the order may be challenged by any source subject to it in a proceeding to enforce the order, are indicative of Congress' intent that the order be immediately available although not necessarily supported by the best possible expert credible evidence.

Note that the administrative order may also be used to require additional sampling or monitoring by the suspected source with a view towards abating its emissions. This additional data can then by utilized in a subsequent civil action, if such an action is necessary to abatement. Additional sampling and monitoring may also be required of a source through the use of Section 114 of the Clean Air Act Act. Section 113(a)(3) permits EPA to issue an order to a source if its fails to comply with a requirement of 114. Such an order is not effective until the person to whom it is issued has had an opportunity to confer with EPA.

Thus, Section 114 provides a mechanism for requiring source sampling and monitoring with a much lower standard of proof of violation than that required by Section 303. EPA may issue an order requiring sampling and monitoring under Section 114 for the purpose "(i) of developing or assisting in the development of any implementation plan under section 110 or 111(d), any standard of performance under section 111, (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this Act..." This is contrasted with the requirement under section 303 that EPA have evidence that a source "is presenting an imminent and subtantial endangerment to the health of persons, and that appropriate State or local auhorities have not acted to abate such sources." However, while the standard for issuing a 114 order is lower, a 114 testing order takes longer to enforce because it must be enforced by the issuance of a 113(a)(3) order after the source has been offered an opportunity to confer.

Delegations for Issuing Administrative Orders and Judicial Complaints Under Section 303

I. Administrative Orders

Pursuant to Delegation 7-49, authority to issue administrative orders under Section 303 rests with the Regional Administrators and the Assistant Administrator for Air, Noise, and Radiation. The Regional Administrators must consult with the Associate Enforcement Counsel for Air before issuing such orders. The Assistant Administrator for Air, Noise and Radiation must consult in advance with the Associate Enforcement Counsel for Air and notify any affected Regional Administrator or their designees before issuing orders. Because speed is of the essence in issuing administrative orders under Section 303, the Headquarters concurrences can be issued by telephone and followed up later in writing.

II. Referral of Civil Actions for Injunctive Relief

Pursuant to Delegation 7-22-A, all referrals to the Department of Justice of requests for civil actions for emergency TRO's must be made by the Special Counsel for Enforcement. The Special Counsel for Enforcement must notify the Assistant Administrator for Air, Noise and Radiation and the appropriate Regional Administrator when a case is referred to the Department of Justice.

FORMS FOR OBTAINING INJUNCTIVE RELIEF

MOTION FOR TEMPORARY RESTRAINING ORDER

The United States of America, by its undersigned attorneys, by authorization of the Attorney General and acting at the request of the Administrator of the Environmental Protection Agency, moves that this Court, in order to prevent irreparable injury to the United States and its citizens, enter immediately an order to restrain temporarily the defendatns set for thi n the compalint from discharging excessive (pollutant) into the ambient air pending action by this Court on te complaint filed this day by the United States in this cause, and in support of the motion, states:

Defendants are discharging from their plants and/or installations at (city, state) , substantial amounts of (pollutant) , into the ambient air. Such discharges (in combination with adverse weather conditions) have caused or are contributing to, concentrations of (pollutant), in the ambient air exceedings a level of (number) (units) of (pollutant . This level presents an imminent and substantial endangerment to the health of persons.

The appropriate state and local authorities have diligently attempted to decrease the level of contamination in the atmosphere. However, defendants continue to discharge (pollutant into the ambient atmosphere causing imminent and substantial endangerment to the health of persons.

The presense of such levels of (pollutant is a present and continuing danger to human health. Unless the discharges of (pollutant are immediately restrained, the health of people in the area will continue to suffer immediate and irreparable harm.

Plaintiff further moves for said Temporary Restraining Order to be issued forthwith and without notice, on the ground that the discharge constitute and imminent and substantial endangerment to the health of persons.

Therefore, in view of the immediate danger to public health that the defendants are contributing to by the release of (pollutants) into the ambient air, plaintiff prays that the Court enter a temporary restraining order immediately.

Respectfully submitted,

Assistant Attorney General

United States Attorney

By (signature)

Assistant United States Attorney

(signature)

Attorney
Department of Justice
Washington, D.C. 20530
Attorneys for Plaintiff

TEMPORARY RESTRAINING ORDER

This cause came to be heard on the motion of plaintiff, upon the complaint herein and affidavits attached thereto, for a temporary restraining order; and, it appearing to the court therefrom that immediate and irreparable injury, loss and damage will result to the plaintiff before notice can be given and the defendant or his attorney can be heard in opposition to the granting of a temporary restraining order for the reason that continued levels of pollution by (pollutant) will cause irreparble damage to the health of persons, it is

ORDERED, that defendants set out in the complaint filed herein, their agents, servants, employees and attorneys and all persons in active concert or participation with them are hereby restrained from causing or contributing the alledged pollution and each defendant separately must take the following action:

(List each defendant separately and state what immediate action that defendant must take).

ORDERED, that this order expire within 10 days after entry, unless within said time it is for good cause shown extended for a longer period, and it is further

ORDERED, that plaintiff's complaint be set for hearing on preliminary injunction on (date) at (time) of that day or as soon thereafter as counsel can be heard, in the United States District courtroom in the City of ______________, State of ______________.

This order issued at city, state, this _______ day of (month), (year).

United States District Judge

COMPLAINT
(for Civil Action)

The United States of America, by its undersigned attorneys and by authority of the Attorney General alleges that:

1. This is a civil action to enjoin the above names defendant(s) from discharging any (pollutant) into the ambient atmosphere from their manufacturing operations in the (city, state) area. Such discharges contribute to the imminent and substantial endangerment to the health of persons as determined by the Administrator of the Environmental Protection Agency. Authority to bring this action is in the Department of Justice by 42 USC 7605.

2. This court has jurisdiction of the subject matter of this action pursuant to 28 USC 1345.

3. Defendant(s) are corporations doing business in (city,) state) within the ________ District of (Federal district court).

4. During normal operation of the defendants' plants the defendants discharge (pollutant) into the ambient air.

5. The Administrator of the Environmental Protection Agency has received evidence that a combination of pollution sources, including the defendant's plants, are presenting an imminent and substantial endangerment to the health of persons of discharging matter into the ambient air.

6. The appropriate State and local authorities have diligently attempted to decrease the level of contamination in the atmosphere. However, the various sources emitting (pollutant) in significant quantities, including the defendants plants, continue to discharge (pollutant)into the ambient atmosphere to levels that cause significant harm to the health of human beings.

7. The average (pollutant) level in the ambient air for the past forty-eight (48) hours is approximately (number) (units) Such levels for such periods of time are harmful to the health f human beings.

8. The discharges of matter by the defendants should be eliminated pursuant to Section 303 of the Clean Air act which provides:

> (a) Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted at abate such sources, may bring
>
> on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such order shall be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter.
>
> (b) Any person who will fully violated or fails or refuses to comply with, any order issued by the Administrator under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day during which such violation occurs or failure to comply continues.

9. The continuous emission of (pollutant) into the ambient air by the defendants contributes to the present situation which, if allowed to continue, will cause significant harm to the health of persons in the city area.

10. The United States of America and its citizens will suffer immediate and irreparable harm to their health unless the defendants are immediately restrained from discharging (pollutant) into.

WHEREFORE, THE UNITED STATES PRAYS:

a. That the defendants, their officiers, directors, agents, servants, employees, attorneys, successors, and assigns, and each of them cease the discharge of (pollutant) into the ambient air in a manner prescribed by this Court and not discharge such matter thereafter unless pursuant to instruction to do so from this Court.

b. That costs and disbursements of this action be awarded to the plaintiff; and

c. That this Court grant such other and further relief as it seem just and proper.

(no signature necessary)
Assistant Attorney General

(no signature necessary)
United States Attorney

By ______________________
Assistant United States Attorney

____
Attorney, Department of Justice
Washington, D.C. 20530

Attorneys for Plaintiff