

CAA 112(r) Enforcement: Navigating RMP Enforcement Negotiations with EPA

AWMA
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EPA Enforcement Trends 112(r)(1) and 112(r)(7)



- More Onsite Inspections
- Higher Penalties (phase out of ESAs)
 - Recent \$15 million civil penalty (largest ever assessed)
- Cases with referrals
- Review of facilities that deregistered

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EPA Enforcement Trends 112(r)(7)



- Region 7 Administrative Cases 2007 – 2011
 - 2007 – 22 Cases
 - Highest Penalty - \$9,550
 - 2008 – 20 Cases
 - Highest Penalty - \$46,000 (includes SEP)
 - 2009 – 19 Cases
 - Highest Penalty - \$50,778
 - 2010 – 20 cases
 - Highest Penalty - \$79,367
 - Combined SEP and penalty \$137,790
 - 2011 – 7 Cases (as of April 15, 2011)
 - Highest Penalty (to date) \$54,922

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EPA Enforcement Trends 112(r)



- Region 7 Judicial Cases
 - 2007 – Waldbaum – 112(r) and CWA violations, \$133,000 for 112(r) violations
 - 2009 – Frontier Refining – 112(r)(7) RMP violations - \$358,051 penalty, \$180,000 SEP (rapid deployment kits)
- General Duty Clause Enforcement 112(r)(1)
 - 2008 – ChemCentral - \$225,000 and response costs of \$150,000
 - 2010 – Region 6 EPA - \$15 million
- Compliance orders associated with inspections and mechanical integrity – good engineering practices

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EPA Enforcement Trends 112(r)(7) – What’s Causing the Shift



- Enforcement in past - did the company file?
 - Now, shift away from June 21, 1999 filing deadline to on-site inspection of facility
- EPA/OIG Report Feb. 2009 Recommendations
 - Implement additional management controls to identify facilities that have not yet filed RMPs;
 - Target higher-priority facilities for inspections.
- More news attention to chemical accidents and industrial releases and explosions



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EPA Enforcement 112(r)(7) - Enforcement Mechanisms



- Warning Letter
- Issuance of Finding of Violation
- Penalty Actions
 - Expedited Settlement Agreements (ESAs)
 - Administrative Penalties
 - Civil Judicial Enforcement (referrals to DOJ for cases with penalties in excess of \$295,000)
- Issuance of Compliance Order
- Criminal Penalties

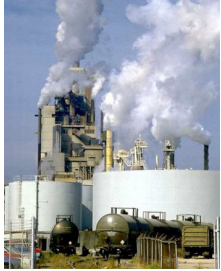
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EPA Enforcement 112(r)(7) Understanding the Penalty Policy



- Penalties are comprised of two overarching components:
 - gravity of the violation
 - economic benefit
- Gravity of the violation based on:
 - Seriousness of the violation;
 - Duration of the violation;
 - Size of the violator
- Adjustment factors



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Understanding the Gravity Penalty Seriousness of Violation



Type of Facility

Extent of Deviation

Violations after 1/12/09	Program 3	Program 2	Program 1
Major	Not less than \$38,500	\$76,900 \$32,010	\$107,800 \$44,010
Moderate	\$44,000 \$23,010	\$32,000 \$15,410	\$18,700 \$7,700
Minor	\$23,000 \$9,900	\$15,400 \$6,600	\$7,700 \$2,500

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Understanding the Gravity Penalty Duration of Violation



Months	Penalty
0-12	\$500 per month
13-24	\$1,000 per month
25-36	\$1,500 per month
37+	\$2,000 per month

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Understanding the Gravity Penalty Size of Violator



Table III
Size of Violator Component
for violations after March 14, 2004

Net Worth		Size Adjustment
under \$1,000,000		\$0
\$1,000,000	\$5,000,000	\$11,700
\$5,000,001	\$20,000,000	\$23,400
\$20,000,001	\$40,000,000	\$40,950
\$40,000,001	\$70,000,000	\$58,500
\$70,000,001	\$100,000,000	\$81,900
over \$100,000,001		\$81,900 + 25,000 for every additional \$30,000,000

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EPA's 112(r)(7) Penalty Policy Adjustment Factors



- Degree of willfulness or negligence – upward only (as much as 75%);
- Degree of cooperation – upward or downward;
- History of noncompliance – upward only;
- Environmental damage – upward only;
- Other:
 - Ability to pay;
 - Litigation risk;
 - Offsetting penalty to state/local government;
 - Use of Supplemental Environmental Projects (SEPs)

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112(r)(7) RMP Expedited Settlement Agreement Policy



- Penalties generally less than \$7,500
- Title V facilities not eligible
- Minor, easily correctable violations
- Cannot be used if there is an imminent and substantial endangerment to human health or environment
- No repeat violations in last 5 years for the same or closely related violation at same facility or multiple facilities

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RMP Criminal Enforcement



- Hershey Creamery Co. (M.D. Pa. Nov. 2008)
 - Failure to develop risk management programs at two facilities
 - Guilty plea to felony CAA violation and \$100,000 fine
- MFA, Inc. (E.D. Mo. Oct. 2007)
 - Employee injured while loading anhydrous ammonia from bulk tank to nurse tank;
 - Negligent failure to inspect, detect wear, replace valve
 - Guilty plea to negligent release provisions of CAA, resulting in \$100,000 fine and \$600,000 in required safety upgrades

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112(r) Enforcement Misc. Issues



- Changes to SEP Policy and impacts on emergency response equipment purchases
- Interplay of 112(r)(1) General Duty Clause and 112(r)(7) RMP
- Increased employee participation in RMP inspections



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Questions?



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