

DEQ Air Programs Working Together: Permitting, Compliance and Enforcement



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Virginia DEQ

- VADEQ administers state and federal laws and regulations for air quality, water quality, water supply and land protection.
- In addition, other programs cover a variety of environmental activities, such as improving the ability of businesses and local governments to protect the environment, and offering technical and financial assistance for air and water quality improvements.
- Through its six regional offices, DEQ issues permits, conducts inspections and monitoring, and enforces regulations and permits.

Air Permitting

- Permit Types
 - Major New Source Review – Prevention of Significant Deterioration (PSD) and Nonattainment
 - Minor New Source Review
 - Title V
 - State Operating Permits
 - General Permits
 - Non-Metallic Mineral Processing
 - Biomass
 - Emergency Generators
 - Demand Response Generators

Major NSR Permitting

- PSD Permits
 - 2 Class 1 Areas
 - Shenandoah National Park
 - James River Wilderness Face
 - Interaction with the Federal Land Managers
 - Modeling
 - Required Pre-application Meeting
 - Regulatory Timeline – 365 Days from Complete Application
 - SIP Approved State

Nonattainment Permitting

- 1 Area Nonattainment for 8-Hour Ozone
 - Arlington County
 - Fairfax County
 - Loudoun County
 - Manassas City
 - Prince William County
 - Alexandria City
 - Fairfax City
 - Falls Church City
 - Manassas Park City
- Stafford County is in the Ozone Transport Region but NOT in the Nonattainment Area
- Lower Major Source Thresholds, Lowest Achievable Emission Rates (LAER), Offsets
- VA Working with MD and DC on Redesignation for PM_{2.5}

Air Permitting – Minor NSR

- Recent Changes to Minor NSR –
 - Approved by the Air Board - September 10, 2010
 - Approved by Governor's Office – September 10, 2012
 - Effective November 7, 2012
- Uncontrolled Emissions to Uncontrolled Emissions Test
- Different Test than Major NSR
- Most Permits - No Public Comment Required
- Regulatory Deadline of 90 Days – Average time for DEQ to Issue – 39 -40 Days

Title V Permits

- 253 Permits Currently Issued
- Title V Permits and Statement of Basis are Posted on the DEQ Webpage
- What Happens if the Title V Expiration Date Passes?
 - If Renewal Application Filed Within 6 Months of Expiration – Nothing
 - If Renewal Application is NOT Filed Within 6 Months of Expiration – You’ve got a problem
 - Will Receive a Letter of Administrative Completeness

New Fees

- \$3M Shortfall with Decreasing Emissions
 - +Emissions Going Down
 - -Workload Going Up
 - 275 – 300 Air Regulations
- 3 Prong Approach
 - Increase \$/ton Rate on Emissions
 - Added Yearly Maintenance Fee - New
 - Added Application Fees – New

Keys to the Permitting Process

- Contact Your Regional Office
 - Assistance in Type of Permit Needed
 - Assistance in Determining Application Fee
- Don't Panic On Application Form – Not as Bad as it Looks!
- Key to Getting a Permit – COMPLETE APPLICATION
- Look Ahead
 - Are There More Projects in the Near Future?

Air Compliance

- VADEQ Air Compliance staff
 - 6 regional offices
 - Air Inspectors – 42 positions
 - Air Compliance Managers – one per region
 - Office of Air Compliance Coordination
 - DEQ central office – responsible for assisting regional staff in work, manage federal fiscal commitments, provide training, policy development, etc.

Air Compliance

- Identifying alleged violations is a DEQ compliance function, not an enforcement function.
- Violations identified in a number of ways
 - Inspections
 - Facility reports
 - Facility self-reporting
 - Follow-up to citizen complaints

Air Compliance

- Compliance program's main objective is to ensure that Virginia's regulated facilities are complying with applicable regulatory requirements in order to meet DEQ's mission
- Works with Enforcement Division when compliance issues arise
- Coordinates with EPA on High Priority Violations and regional initiatives

Division of Enforcement

- The Division of Enforcement provides legal, policy and technical oversight in support of enforcement actions.
- Divided up by media at central office
 - Air
 - Water
 - Waste
 - Wetlands/Petroleum Program
- Assists and coordinates successful statewide implementation of DEQ's Enforcement Program

Division of Enforcement

- Enforcement Program Mandate
 - Protect human health and the environment
 - Return responsible parties to compliance
 - Require appropriate corrective action from responsible parties
 - Promote deterrence
 - Promote a level economic playing field for industry
 - Exercise authority fairly, professionally and responsibly

Division of Enforcement

- During Federal Fiscal Year 2011 (FFY11):
 - 318 cases resolved
 - 328 active cases pending
 - civil charges of \$3,036,258 were assessed, including bankruptcy settlements
 - \$615,505 of civil charges assessed were directed to the satisfactory completion of 12
 - supplemental environmental projects (SEPs)
 - 266 facilities returned to compliance

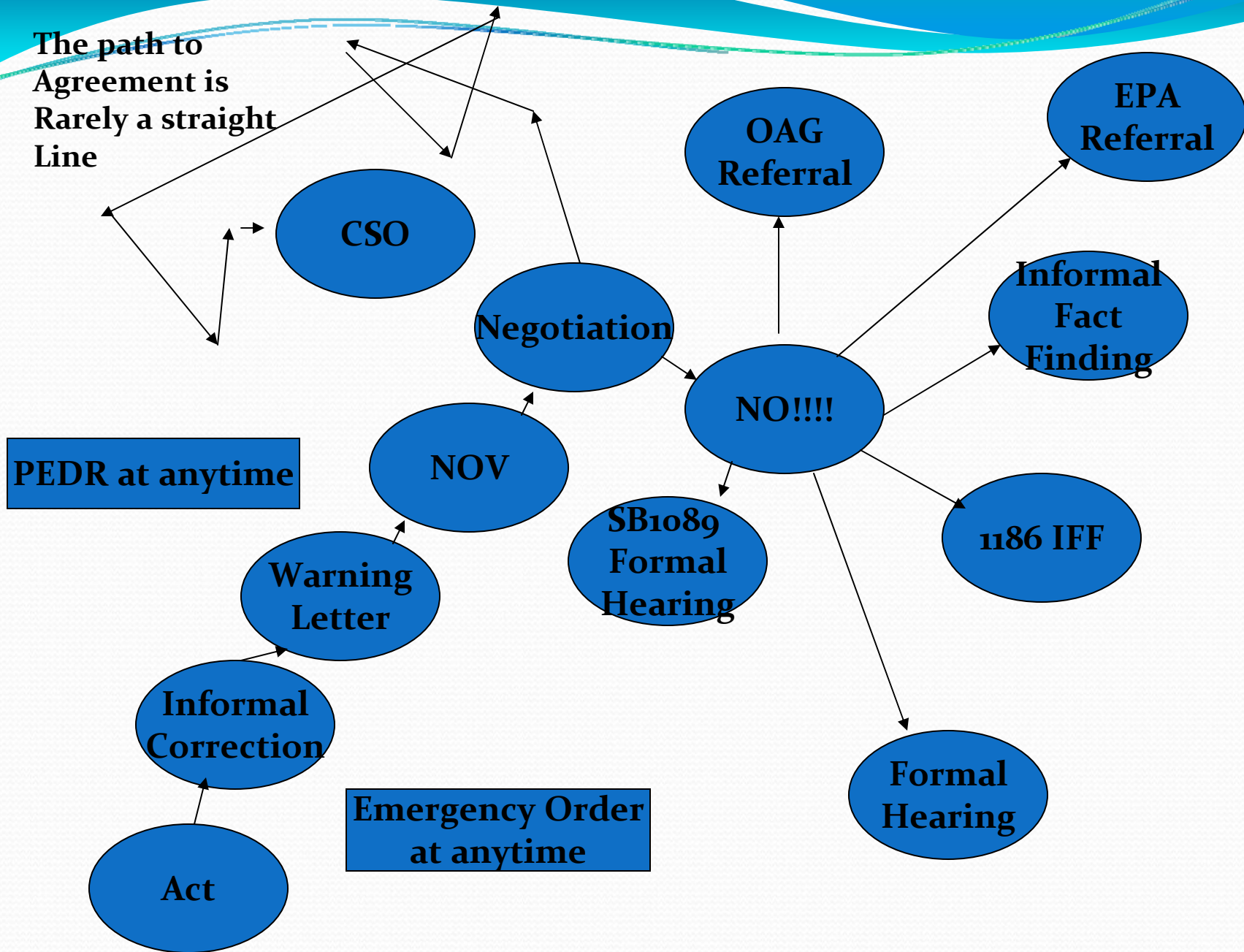
Enforcement Authority

- State Air Pollution Control Law and regulations
- Va. Code § 10.1-1316 provides for an injunction for any violation of the Air Pollution Control Law, Air Board regulations, order or permit condition
 - Also allows for civil penalty of up to \$32,500 per day for each violation
- Va. Code §§ 10.1-1307 and 1309 authorize the Board to issue orders to any person to comply with Air Pollution Control Law and regulations, including imposition of civil penalty for violations up to \$100,000.
- Va. Code § 10.1-1186 further authorizes Director of DEQ to issue special orders requiring compliance and to impose a civil penalty of up to \$10,000.

Enforcement Options

- Informal Correction
- Warning Letter
- Notice of Alleged Violation
- Letter of Agreement
- Consent Order
- Administrative Hearings
- OAG/CA referral
- EPA referral
- Permit rescission/modification

The path to Agreement is Rarely a straight Line



Administrative Proceedings

- Informal Fact Finding Proceedings, Va. Code 2.2-4019
- Formal Hearings, Va. Code 2.2-4020
- 1186 – IFFC, civil charge up to \$10,000.00, injunctive relief up to 12 months
- SB1089 – must have 2 NOVs on same or similar issue, 130 days, injunctive relief unlimited, penalties up to \$100,000.00

Due Process

- State agency actions are governed by the Virginia Administrative Process Act, Va. Code §§ 2.2-4000 et seq.
- Sets forth due process rights of individuals subject to state agency determinations when agency basic laws do not spell out different process
- Sets out notice requirements, process, and appeal rights

Virginia Environmental Emergency Response Fund

- Established by Virginia Code § 10.1-2500
- Contains moneys received by State Treasurer for noncompliance penalties assessed under State Air Pollution Control Law
- Va. Code § 10.1-2502 specifies how the Director requests disbursement and qualifications on such disbursement
- To be used for the purpose of emergency response to environmental pollution incidents and to conduct assessments of potential sources of toxic contamination

State Agency's Role

- Regional Inspectors conduct full compliance or partial compliance evaluations
- May result in warning letter, NOV, etc.
- Compliance staff write notice of violation, refer file to enforcement staff for negotiation/settlement.
- Central office staff review to encourage consistency throughout the regional offices and how each media treats similar factual situations
- Predictable, escalating action progressing from the informal to the formal

Industry's Role

- Don't panic!
- Coordinate with internal permit and policy folks
- Work with the state/federal agency involved
- Provide information requested whenever possible
- Remember - goal is compliance, not punishment

Working Together

- Permitting, Compliance and Enforcement staff must coordinate for successful program
- Requirements of Consent Orders often become incorporated into permits
- Supplemental Environmental Projects may have permitting requirements
- Provide additional information to regulated parties when possible

Useful links

- EPA's Environmental Compliance Assistance Center:
 - <http://deqnet/programs/aircompliance/pdf/EnvCompCenterTrifold%20spring08%20epa.pdf>
 - <http://www.envcap.org/statetools/>
 - By state and by area of compliance
- DEQ Enforcement website:
 - <http://www.deq.state.va.us/Programs/Enforcement/FinalOrders.aspx>

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