

**A&WMA Lake Michigan States Section
2011 Air Quality Management Conference**

**Air Regulatory Challenges:
A Midwest Industry Perspective**

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Air Permitting Tips and Pitfalls



Air Permitting Tips and Pitfalls

- ❑ Meet with agency early and often
 - IDEM Policy
 - EPA?

Air Permitting Tips and Pitfalls

□ Use “Justifiable” Emission Factors

➤ Test Data?

- Margin for Safety

➤ “Applicable” Emission Factors Where No Test Data

Air Permitting Tips and Pitfalls

❑ Designate and Separate Confidential Business Information

- Trade Secrets
- Competitive Secrets



Air Permitting Tips and Pitfalls

□ Address “Controversial” Issues

- CO²/Greenhouse Gases
- PM_{2.5}
- Fugitive Emissions

Air Permitting Tips and Pitfalls

- ❑ Accept “Reasonable” and “Proper” Emission Limits
 - Margin of Safety
 - Justify
 - Comparison to Industry Sector

Air Permitting Tips and Pitfalls

- ❑ Seek to avoid PSD/NSR
 - Don't forget GHGs
- ❑ Be ready to address SO₂ and NO₂
NAAQS

Air Permitting Tips and Pitfalls

□ Review, Review, and Review

- Application, Draft Permit, Final Permit
- Any Mishap Might Send You to Square 1

Greenhouse Gas BACT

□ If triggered, might apply to:

- CO₂
- Methane (CH₄)
- Nitrous Oxide (N₂O)
- Hydrofluorocarbons (HFC)
- Perfluorocarbons (PFC)
- Sulfur hexafluoride (SF₆)
- Other fluorinated gases, including NF₃ and HFE

Greenhouse Gas BACT

- Might need “limits”
- Might apply to all GHGs, not just CO₂
- Might need monitoring
- Might need testing

Tactics for Litigation Defense

- Enforcement of Violations
- NSR
- Interest Group Challenges

Tactics for Litigation Defense — Enforcement

□ Information Requests

- Answer legitimate questions honestly
- If question is beyond scope, object clearly
- Requests for testing?
- Qualify any ambiguities in answers
- Minimize creation of new documents
- Separate out CBI and privileged documents

Tactics for Litigation Defense — Enforcement

□ Inspections

- Allow entry
- Assign contact person
- Answer questions honestly, briefly
- Do not provide excess information
- Request copies to be viewed to determine CBI
- Seek to provide documents after review, if possible

Tactics for Litigation Defense — Enforcement

□ Notices of Violation

- Best defense is good offense – make sure permit and support documents are accurate and clear
- Meet with agency
- Present all mitigating circumstances
 - Weather?
 - Force Majeure?
 - Lack of harm?
 - Lack of clarity of requirement?

Tactics for Litigation Defense — Enforcement

- Present corrective action
 - Change in procedures?
 - Change in responsibilities?
 - Change in technologies?
- Do not make formal admission of guilt

Tactics for Litigation Defense — NSR

- ❑ Confirm emission calculations
- ❑ Confirm proper “test” for this time period
- ❑ Confirm that changes “cause” increases
- ❑ Consider legal defenses
 - Statute of limitations/one time event
 - Approved by permit
 - Laches
 - Estoppel

Tactics for Litigation Defense — Interest Groups

- ❑ Confirm “standing”
 - Are they “injured”?
- ❑ Confirm they are not “pre-empted”
- ❑ Other possible legal defenses
 - Non-participation in process
 - Improper forum
 - Laches

Questions?

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