

Responding to Section 114 Letters from EPA

114 Letter Requests

Using broad authorities under Section 114 of the CAA, EPA can request voluminous information related to compliance with:

- MACT Standards
- SIP rules
- Title V requirements
- PSD (look backs at potential subject projects).

Request requires submittal within 30 days.

Foundries have been targeted.

114 Letter Requests (cont.)

The information requests are often very cumbersome and ask for the following information:

- Information that is publicly available, e.g., issued permits and permit applications.
- Stack tests (official and engineering tests)
- Compliance Monitoring Data
- Submitted and internal records and reports.
- Information dating back more than the past five (5) years. EPA has asked requested information dating back to 2000 in a recent request.
- Detailed information about capital expenditures for all capital projects in a given time frame, e.g., the past five years
- Supporting documentation for emissions calculations

What does EPA Want?

- To find instances of non-compliance and initiate an enforcement action.
- If PSD may have applied: require PSD permit application and permit including BACT and air quality modeling.
- Penalties (potentially significant)

What do you do?

Get legal counsel and special assistance.

Request an extension.

Respond to requests fully.

If you don't have records, just say so.

Counsel may object to certain requests.

Assess the potential liabilities of the response materials.

May want to claim some materials as “Confidential”.

What to Expect

- EPA may not respond for some time.
- EPA may issue an NOV without prior discussions with source.
- EPA may over reach on alleged violations.
- EPA may use indirect information as “credible evidence” of a violation.
- EPA may pile on multiple violations from a single cause.
- EPA may re-interpret your permit, and underlying rules.
- IDEM will likely not be a player.

Playing Defense

- Cooperate to the extent possible.
- Written follow-up to alleged violations to correct misinterpretations of data and regulatory/ permit requirements.
- Stand by your permit.
- Statute of Limitations (5 years for alleged PSD issues based on 7th Circuit decision).
- If there is a clear violation, get it settled quickly and move on.
- Decide where the “settlement line” is and when you’d be willing to fight the issue in court.