

# 2015 Missouri Air Compliance Seminar March 5, 2015

Bob Lambrechts  
Lathrop & Gage LLP  
10851 Mastin Blvd., Suite 1000  
Overland Park, KS 66210  
(913) 451-5126  
[blambrechts@lathropgage.com](mailto:blambrechts@lathropgage.com)

# Deputizing the Public - Next Generation Compliance Initiative

- Designing and drafting regulations and permits that are simpler and easier to implement;
- Using advanced emissions/pollutant detection technology so that regulated entities, government, and the public have prompt access to monitoring data concerning environmental conditions;
- Electronic submission of permit applications and monitoring data;
- Prompt web-posting of traditional compliance data, and presenting information obtained from advanced emission monitoring and electronic reporting (so-called big data sets) to the public; and
- Developing data analytics to guide enforcement activities.

# DRAFT EPA Next Generation Air Monitoring (NGAM) Strategy

- The NGAM strategy sheds light on the agency's plans.
- The strategy sets three goals for the agency's NGAM efforts.

# DRAFT EPA Next Generation Air Monitoring (NGAM) Strategy

- The central goal of this strategy is to deputize citizens and other groups and arm them with monitoring equipment.
- This goal is also reflected in the EPA's "Air Sensor Guidebook" (U.S. EPA Office of Research and Development, June 2014)

# Fitting the Noncompliance Allegation to the Evidence

- The data, from monitors in the vicinity of facility, might prove to be of limited value as evidence of an actual violation.
- However, it appears that EPA has thought of this issue and has proposed at least one solution: a fence line standard.
- The concept of fence line monitoring – requiring companies to set up passive monitoring systems around the perimeter of their facility – has crept into a handful of EPA proposals recently.

# Petroleum Refinery Sector Proposal

- On June 30, 2014 EPA proposed the risk assessment and technology review requirements for the Petroleum Refinery Sector

# Shifting the Burden

- If finalized in its proposed form, the refinery rule creates an ambitious standard that can be measured and violated notwithstanding the absence of any direct connection to actual emissions from regulated sources or activities.
- Also, the burden shifts to the refiner to demonstrate that pollutant concentrations in fence line ambient air are not the result of its activities.

# Start Up Shut Down and Malfunction (SSM)

- The EPA has long recognized the reality that it can be difficult, if not sometimes impossible to avoid exceeding emission limits when a unit starts up, shuts down or when control equipment fails.
- In September of 2014, in response to a petition by the Sierra Club, the EPA rescinded its SSM policy with respect to affirmative defenses provided under SIPS.
- As a result of these various actions, regulatory relief for SSM periods and events could be all but eliminated.

# Start Up Shut Down and Malfunction (SSM)

- As the EPA has historically understood, malfunctions of equipment are a given at some point in time.
- Not only will these events now constitute inexcusable violations, they will become so in an environment of much greater scrutiny.

# The Bottom Line

- While the types of evidence available for proving violations of the CAA, or even just mounting an enforcement case, are growing, the defenses available for countering such actions are diminishing.

# Yates v. United States

- A tale of 70 plus fishes

