

GlobalChem 2008

When is a regulation not a regulation?

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March 18, 2008

When is a regulation not a regulation?

- Government “voluntary” programs
- Government enforcement initiatives

“Voluntary” Programs

- Remember the Browner EPA:
 - Common Sense Initiative
 - Sector Strategies Program
 - Environmental Leadership Program
 - Performance Track
 - Energy Star

“Voluntary” Programs

- OSHA, too:
 - Voluntary Protection Programs
 - Cooperative Compliance Program
 - Alliances

“Voluntary” Programs

- Not so successful:
 - EPA Common Sense Initiative
 - Metal finishing sector:
 - 180 day hazardous waste storage without a permit
 - But . . .
 - EPA Environmental Leadership Program
 - OSHA Cooperative Compliance Program

QuickTime™ and a
TIFF (LZW) decompressor
are needed to see this picture.

“Voluntary” Programs

- More successful:
 - OSHA VPP
 - 26 years old
 - Facilities average DART rate 52% below relevant industry average
 - EPA Performance Track Program
 - ~ 500 member facilities
 - Growing list of incentives; opportunity for targeted flexibility

“Voluntary” Programs

- How much political commitment?
 - Will agency push or just facilitate?
- What’s the legal realm of the possible?
- How much room for facility/company/association-specific flexibility?
- What’s the quid pro quo?
- How much patience do you have?

Enforcement Initiatives

- Remember the Browner EPA:
 - “Continuous Release Initiative”
 - “Nitrates Initiative”
 - NSR enforcement initiative
- Exploiting ambiguities in rules
- Significant potential for win/win

Enforcement Initiatives

- Continuous Release Initiative
 - What's a federally permitted release for CERCLA/SARA RQ reporting?
 - EPA region VII writes ~300 facilities: where's your continuous release report?
 - Trade associations go see HQ
 - 1999 guidance
 - Trade association lawsuit
 - 2002 guidance

Enforcement Initiatives

- “Nitrates” initiative
 - Reportability under TRI of nitrates created in wastewater treatment processes
 - EPA HQ announces initiative:
 - \$\$\$ per year per facility for Nitrates
 - Trade associations go see HQ
 - \$ per year per facility for ANY TRI chemical, multi-year lookback

Enforcement Initiatives

- Contact your trade association early!
- Identify other current or future victims
- Evaluate the strength of the government's case
- Make a counterproposal that addresses the agency's needs
- Hang together and hang tough

01/20/09!!

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