

# **Air Management Study Group Issue Brief**

## **August 22<sup>nd</sup>, 2013**

**ISSUE:** Alternate Air Management Enforcement Mechanisms

**METHOD:** Discussion, Input

**PRESENTER:** Bill Baumann

### **BACKGROUND:**

The Air Management Program (with EPA oversight) is responsible for implementing Clean Air Act requirements in Wisconsin, including compliance and enforcement provisions such as the EPA high priority violation (HPV) policy. The HPV policy presumes that monetary penalties will be assessed as part of resolving an HPV case. EPA retains the right to pursue an enforcement case they feel was not appropriately addressed or resolved by DNR.

Under current law, referral of a source to the Wisconsin Department of Justice for prosecution is the sole mechanism available to the Air Management Program that provides for assessing a monetary penalty as part of resolving air violations. Pursuing enforcement under the referral process requires considerable technical and legal staff effort on the part of the Department, the Attorney General's Office, and the regulated source. This effort may be seen as warranted for more environmentally significant violations, such as emission limit violations. However, the effort may be seen as burdensome for resolving relatively lower level violations involving, for example, recording keeping requirements, even if those violations meet the EPA HPV criteria.

Currently, EPA has authority to issue administrative fines and penalties on a limited basis under the Federal Clean Air Act without the need to refer such non-compliance matters to the U.S. Department of Justice. Under EPA's administrative procedures, the regulated entity has the ability to request an administrative hearing to challenge the legal and factual basis for the assessment determination.

DNR currently does not have an enforcement mechanism parallel to this EPA process. Providing a parallel state process would require legislation authorizing the Department to impose fines or administrative penalties for air violations. Possible alternatives to the referral process include but are not limited to:

- Issuing citations for violations
- Issuing administrative penalties

At the May 30, 2013 Air Management Study Group meeting, at least some interest was expressed by study group members in the topic of alternative enforcement mechanisms within the air program. Input is being sought from the group to determine the level of interest, and whether additional follow-up is warranted on this topic.

**RECOMMENDATION:** Discuss the topic and recommend further follow-up actions, if desired.

**PREPARED BY:** Bill Baumann

**SUPPORTING DOCUMENTATION:** None.