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**Category:** 61 – Delayed Compliance Orders

April 26, 1983

MEMORANDUM

**SUBJECT:** DCOs for Surface Coating Facilities

**FROM:** Christopher C. Herman

**TO:** Michael Vaccaro, Attorney, Office of Regional Counsel

The Commonwealth of Pennsylvania has submitted an order for review by EPA under Section 113(d) of the Clean Air Act relating to delayed compliance with applicable SIP requirements relating to VOC emissions at the Hanover Borough, Pennsylvania, facility of the Hanover Wire Cloth Division of CCS.

Two sets of questions have arisen with respect to EPA's review of the order under Section 113(d). One set relates to the standards for EPA substantive review of the notice and, relatedly, the contents of EPA notices announcing proposed or final EPA action. The other relates to the existence of possible legal obstacles to the proposed use of standardized language to process what may be a relatively large number of similar DCOs.

Consistent with the memorandum of the Assistant Administrator for Air and Radiation relating to processing of DCOs, this memorandum advises that the standards for EPA review of the approvability of a proposed DCO are those of Section 113(d); that EPA notices, while they may be summary, must describe the factual and analytical basis for EPA action in a fashion which adequately informs the public of the nature of and basis for the action; and that the use of standardized language is not legally objectionable so long as the language adequately serves the purposes just described. This memorandum addresses only the issues stated and should not be construed as addressing any related to EPA discretion to approve DCOs or any other issue. Consistent with EPA practice, it assumes that DCO orders are actions within the meaning of Section 307, which therefore governs any discrepancy (none is intended) between the requirements of Section 307 and the advice in this memorandum.

Content of notices

Apart from the usual Federal Register language identifying the agency, summarizing the action, and providing relevant dates and addresses, DCO notices should state the minimum relevant facts, including the identity of the affected facility, the nature of the affected emissions, the facility's compliance status, the applicable legal requirements, the provisions of Section 113(d) pursuant to which the application has been reviewed, and the dates from which and to which compliance would be delayed.

An order being reviewed under Section 113(d)(1) must provide a brief analytical statement showing why EPA considers that the order does or does not conform to applicable requirements, i.e., those of Section 113(d)(1), (5), (6) and (7). Section 307(d)(3) also requires notice of any major legal

interpretations and, possibly more relevantly, major policy considerations underlying the action. Since Section 113(d)(1) relates to delay for reasons of inability to comply, notice of Section 113(d)(1) action should describe the nature of the inability and the basis for the agency's expectation that compliance would or would not be achieved by the relevant date.

#### Use of standardized language

As long as the notice adequately informs the public and otherwise provides the information required by Section 307, the use of standardized language is unobjectionable. Obviously, judgment must be used to determine which portions of notices all of which relate to basically similar problems are susceptible to "boiler-plate" treatment and which portions by their nature require individualized treatment.