Informal & Formal Enforcement Actions
“If you think compliance is expensive – try non-compliance.”

Former U.S. Deputy Attorney General Paul McNulty
Informal Enforcement Actions

**Notice of Noncompliance (NON)**
- Record keeping
- Notifications
- Emission reports
- Adding emission units without approval/permit
- Late annual/semi-annual reports and CR-02’s

**Letter of Warning (LOW)**
- NON list
- Repeat of NON

Our Mission: To protect and improve the health and environment of all Kansans.
NON’s and LOW’s

-Will state the violation
-Deadline for initial response (usually 30 days from date of letter)
-Deadline for corrections (usually 60 days from date of letter)

(Facility name) is hereby advised that continued noncompliance of any provisions of the Kansas Air Quality Regulations will subject (facility name) to enforcement proceedings as described in K.S.A. 65-6018, which provides for the assessment of penalties up to $10,000 per day and/or other enforcement actions as described in K.S.A. 65-3008b.

Our Mission: To protect and improve the health and environment of all Kansans.
Map back to compliance

-Letter will state compliance schedule and or plan
-Once facility completes the schedule, follow-up inspection may occur
-Once all violations addressed and corrected, follow-up letter sent stating back in compliance for those violations
Letters of inquiry
Have to reply by certain date
If no reply, could face further enforcement actions

In accordance with K.S.A. 65-3007(c), KDHE is requesting specific information related to the operation of this facility. The information requested within this letter is to be submitted to KDHE within 30 days of the date of this letter. Note: This information is being requested under the provisions of K.S.A. 65-3007(c) for requesting facility specific information form air contaminant sources operating in Kansas. Failure to submit the requested information within the specified time period contained in this paragraph may subject Facility to additional enforcement proceedings, as described at K.A.R. 65-3018, which provides for the assessment of civil penalties up to $10,000 per day per violation.
Numbers....

2016:

2 - 3007c
6 - LOW (repeated late reports)
59 - NON’s (late reports, open burning, permit violations)
# Formal Enforcement Actions

<table>
<thead>
<tr>
<th>Consent Agreement and Final Order (CAO)</th>
<th>Administrative Order (AO)</th>
</tr>
</thead>
<tbody>
<tr>
<td>-Willing to work with KDHE</td>
<td>-No cooperation</td>
</tr>
<tr>
<td>-Negotiate lower penalty</td>
<td>-Penalty not reduced</td>
</tr>
<tr>
<td>-Negotiable timetable</td>
<td>-Strict timetable</td>
</tr>
<tr>
<td>-Consideration of SEPs or abeyance</td>
<td>-No SEPs or abeyance</td>
</tr>
</tbody>
</table>

**Our Mission:** To protect and improve the health and environment of all Kansans.
The Enforcement Process

-Made aware of a violation
   -Self disclosure
   -Inspection report
   -Deviation report
   -Complaint
   -Stumbled across it
The Enforcement Process

- Determine severity
  - Major or Minor/Area Source?
  - Federal or State Regulations?
  - Repeat Violation?
The Enforcement Process

-Case building
-Determine:
- Relevant dates
- Number and types of violations
- Details of the violations
The Enforcement Process

- Enforcement meeting
- Violations
- Penalty (matrix)
- Supplemental Environmental Program (SEP)
  http://www.kdheks.gov/air-permit/forms/Air-SEP-policy-4-8-2014.pdf
- Abeyance

- Consent letter/email
- Draft CAO

Our Mission: To protect and improve the health and environment of all Kansans.
STATE OF KANSAS
BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF:

Facility Name
Address
City, Town, Zip

Case No. 17-E-1 BOA
Source ID No. ********

CONSENT AGREEMENT AND FINAL ORDER OF THE SECRETARY

The Parties hereto are the Kansas Department of Health and Environment ("KDHE") and Facility ("the Parties"). Facility operates a plant and is subject to Kansas air quality permits and approvals, described below in the Findings of Fact.

KDHE has made Findings of Fact and Conclusions of Law that are set forth below, based on KDHE’s position that Facility commenced construction of an emissions unit without obtaining a construction approval and failed to adequately maintain required records.

The Parties have met and exchanged information on these disputed facts, and in the interests of conserving resources and avoiding litigation, have agreed that it is in the best interests of the Parties and the public health and environment to resolve this matter by agreement.

The Parties recognize, and the Secretary of KDHE ("Secretary") by entering into this Consent Agreement and Final Order ("CAO") finds that this CAO has been negotiated by the Parties in good faith and avoids litigation between the Parties and this CAO is fair, reasonable, and in the public interest.

The Secretary, having information that the facility violated laws governing air quality and pollution control in Kansas, K.S.A. 65-3001, et seq., (the "Kansas Air Quality Act" or "K-AQA") and regulations promulgated thereunder, deems it in the public interest to dispose of the matter by agreement and on an informal non-adjudicatory basis.

NOW, THEREFORE, before taking any testimony, without the adjudication or admission of any fact or law except as provided in the Jurisdiction section below, and with the consent of the Parties, this CAO is entered into this day of , 2017, ("Date of the CAO") by and between KDHE and Facility. Upon the Secretary’s signature, it will become the Final Order in this case.
The Enforcement Process

-Key parts of the action
  -Findings of Fact
  -Conclusions of Law
  -Schedule of Compliance

Our Mission: To protect and improve the health and environment of all Kansans.
The Enforcement Process

-1st half of concurrence (CAO)
### BUREAU OF AIR

**CONCURRENCE SHEET**

This sheet with attachments is being circulated for your review and concurrence on the following issue(s):

**Air Violations**  Case No. 15-E-10 BOA

### Action:

Company or Institution:  [Redacted]

Source ID Number:  [Redacted]

### Comments

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
</tr>
</thead>
</table>

---

### Check Originating Section:

- [ ] Bureau Director
- [ ] Air Compliance & Enforcement
- [ ] Air Operating & Construction Permits
- [ ] Air Monitoring, Inventory, & Modeling

### ORDER OF CONCUR:

<table>
<thead>
<tr>
<th>ORDER OF CONCUR</th>
<th>NAME</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Originator (Ahumada)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Clerical (Moon)</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Legal (Glessen)</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Associate Chief Counsel (Dernovish)</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Section Chief</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Bureau Director (Brunetti)</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Return to Originator (Ahumada)</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Send to Legal (Kosdahl)</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Send to facility</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Date action returned</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Division Director (Mitchell)</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Deputy Chief Counsel (Keck)</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Deputy Secretary (Mason)</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>KDHE Secretary (Moss)</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Return to Legal for Mailing</td>
<td>Submit to Facility</td>
</tr>
<tr>
<td>16</td>
<td>Return packet to Agency with signed copy</td>
<td>Originator (Ahumada)</td>
</tr>
</tbody>
</table>
The Enforcement Process

-Draft CAO sent to facility for signature
The Enforcement Process

-2^{nd} half of concurrence
### BUREAU OF AIR

#### CONCURRENCE SHEET

This sheet with attachments is being circulated for your review and concurrence on the following issue(s): Air Violations Case No. 15-E-18 BOA

**Action:**

Company/Institution: [Redacted]

Source ID Number: [Redacted]

**Comments**

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
</tr>
</thead>
</table>

*Check Originating Section:
- [ ] Bureau Director
- [ ] Air Compliance & Enforcement
- [ ] Air Operating & Construction Permits
- [ ] Air Monitoring, Inventory, & Modeling*

#### ORDER OF CONCUR.

<table>
<thead>
<tr>
<th>ORDER NO.</th>
<th>NAME</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Originator (Ahumada)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Clerical (Moon)</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Legal (Gleson)</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Associate Chief Counsel (Dernovish)</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Section Chief</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Bureau Director (Brunetti)</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Return to Originator (Ahumada)</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Send to Legal (Rosdahl)</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Send to facility</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Date action returned</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Division Director (Mitchell)</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Deputy Chief Counsel (Keck)</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Deputy Secretary (Mason)</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>KDHE Secretary (Messar)</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Return to Legal for Mailing</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Return packet to Agency with signed copy</td>
<td>Originator (Ahumada)</td>
</tr>
</tbody>
</table>
The Enforcement Process

- Secretary executes CAO
AUTHORIZATION OF SIGNATORIES TO EXECUTE
THE CONSENT ORDER AND BIND THE PARTIES

39. The Parties hereto have affixed their signatures on the dates inserted below to
acknowledge their agreement to this CAO. The signatories to this CAO certify that they
are authorized to execute and legally bind the Parties they represent to this CAO.

IT IS THEREFORE ORDERED AND AGREED that this CAO, when signed by all the
Parties hereto, shall become a Final Order of the Secretary of KDHE.

IT IS SO ORDERED.

[Signature]

Susan Moeller, MD, Secretary
Kansas Department of Health & Environment
11/3/15

[Signature]

11/2/15

DATE

CERTIFICATE OF SERVICE

I do hereby certify that on this 8th day of December, 2015, a
true and correct copy of the foregoing CONSENT AGREEMENT AND FINAL ORDER was
deposited in the United States mail, postage paid, and addressed to:

[Signature]

KDHE Staff Member
Now what?

- Once penalty paid and compliance schedule is completed, termination letter is sent

- If on abeyance, after period of set time is over, then termination letter sent

- Consent agreement is closed out
Questions?

THANKS FOR "LISTENING" TO MY PRESENTATION

Our Mission: To protect and improve the health and environment of all Kansans.