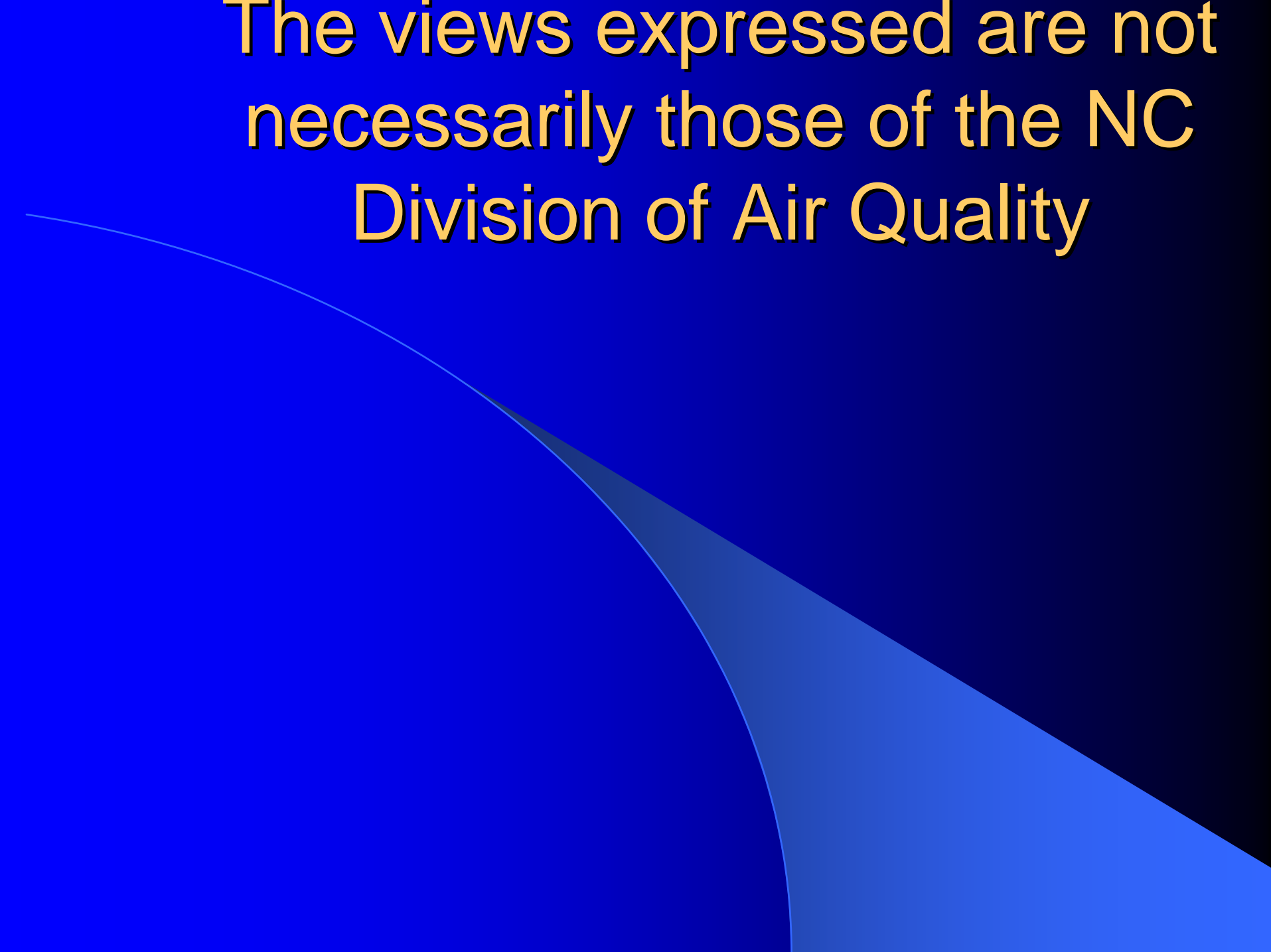


Title V – Have We Missed the Boat or Was it Sunk?

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The views expressed are not
necessarily those of the NC
Division of Air Quality

The background of the slide features a dark blue gradient. A large, light blue, curved shape, resembling a stylized 'C' or a partial circle, is positioned in the lower-left and bottom-center areas. The text is centered in the upper portion of the slide.

Purpose of the Task Force

- Provide most of the views of those whose lives are touched by Title V
- Discuss those aspects of title V that worked, and those that did not work
- Most of the time was spent on the latter

Task Force Members

- Environmental Groups
 - Cross Section of such groups participated – large NGO down to more local groups
- Good cross section of states
- Industry groups – only the largest and most adverse to competition were represented
 - Brings into question the relevance of the industry perspective

Process Topics

- EPA review of proposed permits (concurrent v sequential)
- Public access to documents (on-line accessibility)
- Public hearings (when to hold)
- Public notice throughout process (web-based)
- Statement of basis (clarification)
- Responses to public comments (response to each comment)

Process

- Draft to facility
- Changes made before proposed permit
- Are these changes documented?
- Proposed permit
- Changes again – documented?

Process Topics

- Permit re-opening, revisions, and operational flexibility
 - Definition of revisions
- Appeals and Petitions (Part 70 petitions should be less formal)

Substantive Issues

- Incorporation of applicable requirements
- IEU
- Monitoring
- Title V/Title I
- New requirements
- Definitiveness of Permit

Substantive Issues

- Compliance Certification Forms
- SSM
- Compliance Schedules

Incorporation of Applicable Requirements

- MACT requirements were a hot topic
 - (how should they be handled in the permit?)
- Industry and EnviroS generally wanted either exact language or citations only
- Quite a departure from reality
- Doubts could be resolved by definitiveness of permit

Monitoring

- Much mysticism primarily introduced by the utility representative (the most monitored segment of our industrial mix)
- Statement was made that even a failed reference test is not necessarily non-compliance
- UARG obsessed with Ajax

What is Compliance?

- Are yearly stack tests a new substantive requirement?
- Weekly?
- Daily?
- Is compliance required, but no monitoring?

New Substantive Requirements

- Usually focused on averaging times and methods used
- Question was never answered, would p.a. be forced to frequent stack tests, or CEMs?
- Parametric monitoring is clearly appropriate despite silliness over new substantive requirement

Permit Definitiveness

- What does the permit mean?
- What has title V added to the permit mechanism?
- Why is monitoring being asked for?

Credible Evidence

- Was added to CAA (1990) simply for the assessment of the duration of a violation already established through other means
- Overturned *Kaiser* which was explicitly distinguished from *Donner*.
- Later, the EPA hijacked CE concept

Example

- Applicable requirement = 95% reduction by oxidizer
- Permit – maintain temperature greater than 1400F
- If $T_c < 1400\text{F}$ – noncompliance?
- If $T_c > 1400\text{F}$ – compliance?

Case 1. No Shield

- If over 1400F, third parties and regulators *could* sift through process data to find other CE to show destruction efficiency was <95%
- If under, facility could find other information to prove compliance

Case 2. Shield

- If over 1400F, then in compliance
- If under 1400F, then either
 - a. the facility is in noncompliance, or
 - b. the facility can use other CE to prove compliance

Case 2b – Shield, but No CE

- If over 1400F, facility is in compliance
- If under 1400F, facility is out of compliance
 - Facility, P.A., EPA, or third parties could sift through data to determine duration of violation to determine enforcement amount.

Another example

- Opacity standard – 1/hr, 4/day, etc.
- Method 9?
 - “THE” compliance method in most SIPs
- COM?
 - Certainly accurate

Example

- COM measures some excess emissions (outside of the su/sd and malfunction exemptions and 1/hr and 4/day)
- There was some guidance called CEP – 2, 5, 20%
 - This was really enforcement policy
 - Some states included it in their SIP

Example

- Compliance status under:
- Method 9 placed in the permit
 - With shield
 - With CE rule
- COM

Congress and CE

- Outside Section 113(e), Congress did anticipate using non-reference methods to determine compliance (504). BUT, the methods were to be added explicitly to the permit. No stealth CE.

From a Permit

- “Written responses to the quarterly reports of excess emissions shall constitute prima facie evidence of compliance with the applicable...emission standard. For the purposes of annual certification of compliance with the applicable ...emissions condition, the acceptance, by the Division, of the quarterly reports of excess emissions shall be the basis of said certification.”

Let's Look at some ACCs

- “For period..., we are identifying as possible intermittent deviations from permit requirements non-exempt ...[excess emissions]. [We do] not think these are properly considered deviations. However, EPA has taken the position that [we] should not certify compliance with [these] requirements on the basis of the Division’s responses...”

Cont'd

- “Historically, the Division has based its determinations of ...compliance on its knowledge of plant control equipment and maintenance practices as well as adjusting [CEMS] data by applying a 2-percent deminimis safe harbor to account for the increased stringency that results from [using CEMS] rather than method [x], the specified compliance method.”

Cont'd

- “The title V permit was amended effective...The compliance method is now specified as method [x].

Later on...

- “As you know, the applicable permit was revised to specify Method [x] as the method for determining ...compliance and this certification is based on method 9 test results for this operating period.”