


Compliance Certification



CAPCA Spring 2005

Points of Interest

- ✍ EPA Interest & Review
- ✍ Reasonable Inquiry
 - Other Material Information
 - Credible Evidence & Permit Shield
- ✍ Continuous Compliance – Really?
- ✍ Examples

EPA Focus

- ✍ EPA has, over the past several years, stated that they will focus on compliance certifications
 - Certifications go to State/Local Agency
 - Certifications go to EPA directly
- ✍ What is really happening?
 - Who is going to challenge?

Reasonable Inquiry

- ✍ How much inquiry is “reasonable?”
 - Plant personnel
 - Environmental Staff
 - Consultants
 - Inside Counsel
 - Outside Counsel
 - What about sworn statements from maintenance personnel?
- ✍ Who is minding the store?

Reasonable Inquiry

- ✍ Modeled after Rule 11
- ✍ Rule 11 for attorneys who file civil complaints in court to avoid frivolous lawsuits:
 - Frivolous lawsuits?
 - McDonalds
 - Anheiser-Busch
 - Barney
 - Tony the Tiger
 - Sea World

Reasonable Inquiry

- ✍ Still not clear
- ✍ Highly subjective standard
 - Case specific
- ✍ Documentation – Process
 - Follow Process

Reasonable Inquiry

2003 Register Notice

- This notice clarified the issue of certifying continuous compliance using intermittent methods and data.
 - YES – You can certify CC using IM&D
- Interestingly, what was removed from the rule was the requirement that the RO must consider “other material information”
 - Limited discussion in the preamble

Reasonable Inquiry

- ✍ Permit Shield + 2003 Rule Change
 - Result may be to limit the volume of information you are required to look at to certify compliance.
 - The Part 70 rules state : “The certification **shall** be based on the methods of means designated in paragraph (c)(5)(iii)(B) of this section.”

Examples

- Example: RTO with temperature monitor
 - 25 lb/hr VOC limit
 - 8760 X 60 minutes X 60 seconds
 - Permit says 3-hour average temp > 1300 F
 - Many 2 hour averages below 1300
 - Certify compliance?

Examples

✍ RTO Monitoring

- Getting ready to sign the certification and the engineer says that it's a good thing the average is 3-hours because at 1100 F the destruction efficiency is 50%
- Do you have an obligation to calculate the actual VOC emissions to determine compliance with the VOC limit (e.g. 25 lb/hr limit – 3-hour average)?

Reasonable Inquiry

Certify Compliance?

- YES: Permit Shield says compliance with terms of permit is deemed compliance with the Act.
- YES : 2003 Register notice removed requirement “other material information”
- NO : ACE and other information

Continuous Compliance

✍ Which raises more eyebrows

- Continuous compliance every second of every day.
- Intermittent compliance based on intermittent data. (no certification made for those periods between monitoring events)

✍ Read the 2003 Register Notice

Practical Tips

- ✍ Read your permit
- ✍ Check your files for NOVs (warnings)
 - Check Central Office
 - Check Regional Office (highly recommended in NC)
- ✍ NC - If you reported excess emissions due to a malfunction they are **VIOLATIONS** unless excused under 2D .0535
 - If you don't get a response from the agency you should follow up

Practical Tips

✍ No Regulatory Definition

– NC Guidance – May 8, 2002

- Narrow
- Report w/in 2 business days

– SC Guidance – Guidance Document for Form DHEC 3650 (Rev. 6/03)

- Broad
- Report w/in ___ days

Practical Tips (con't)

✍ Deviations – NC (May 8, 2002)

– If you are doing what your permit requires – “It would not be reasonable to consider . . .as [a] deviation[].”

- Inspections made pursuant to your I&M requirements
 - PM/Opacity not directly measured and therefore use I&M if controls to ensure compliance
 - » If you have a daily requirement – problems noted must be corrected within the day.
 - » NOTE: Still may be violation of state only requirement
- CAM monitor outside range triggers action which is taken and everything returns to “normal”
- SSM Emissions under MACT (SC Different?)

Practical Tips

✍ State Only Regulations:

- NC - No need to certify compliance with State only requirements
 - Air toxics
 - 502(b)(10) - Part II State Only Construction and Operating permit conditions
 - Note: These same conditions may appear in both Part I (Title V) and Part II (State C&O)
- SC – “very important and expects facilities to certify compliance with all of them.”
 - Including 502(b)(10) changes

Practical Tips

✍ Don't turn it in late

– Automatic \$\$ penalty

✍ If you feel the need to report every deviation, then carefully explain:

– Don't turn deviations into violations.

- Other people will do that for you
- The Title V permit should be the primary source of compliance information.