

Top Ten Mistakes In Title V Deviation and Certification Reports



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Semi-Annual and Prompt Deviation Reporting

Review of the Rules



- Semi-annual Reports – 40 CFR 70.6(a)(3)(iii)(a) – Each Title V Permit must require:
 - Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports....
- Prompt Deviation Reports – 40 CFR 70.6(a)(3)(iii)(b) – Each Title V Permit must require:
 - Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the **probable cause** of such deviations, and **any corrective actions or preventive measures** taken. The permitting authority shall define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements.
 - ✦ 7-day for > RQ or for deviations lasting longer than 7 days
 - ✦ Semi-annual for remainder

1. Failure to Assert Upset Defense



- Upset Defense is Provided in LAC 33:III.507.J
 - **Affirmative defense** to technology based (not air quality based) permit limits
 - Must have **reported per Ch. 39**
 - Applies to “any situation arising from **sudden and reasonably unforeseeable events beyond the control of the o/o**, including acts of God”
 - Does not include noncompliance “to the extent” caused by improper design, lack of maintenance, operator error, careless or improper operation
- Any Ch. 39 report where one says “not preventable” should also say this was an upset per LAC 33:III.507.J
- This applies to both 7 day and semiannual deviation reports
- Upset defense should be asserted in every report
- Use it or Lose It!

2. Incorporating By Reference When Underlying Report Does Not Meet Deviation Reporting Requirements



- **NSPS/NESHAP Excess Emissions Reports**

- Identification of CEMS downtime not due to calibration...
 - ✦ Deviation or not?
 - ✦ Does it matter if below or above the 5% of operating time per reporting period for more detailed reports?
- Identification of periods of excess opacity or excess emissions not due to SSM -
 - ✦ Does it matter if below or above the 1% threshold for more detailed reports?
- Summary reports do not show probable cause of deviation or preventive/corrective measures

- **LDAR Reports**

- May identify deviations such as failure to repair w/in 15 days or failure to monitor certain components timely, or addition of new, not previously identified components
- Does not generally state probable cause of deviation or preventive/corrective measures

3. Failure to Identify As Deviations Matters Included in Underlying Reports Not Incorporated By Reference



- Need to review all other reports required by permit to ensure that there are not matters which could be defined as a deviation
- A deviation is not always a violation
- CEMs monitor downtime for other than required QA/QC
- Excused excursions – are deviations but should clearly state that they are excused excursions
 - Example: HON allows 1 excursion from an operating parameter limit per semiannual period for each control device
 - Example: Combustor MACT allows 10 CO rolling average excursions each 60 day period, for certain types of events
 - Example: Some CAM Plans have specified excused excursions

4. Improperly Using the “Reconciliation Defense”



- LAC 33:III.501.C.12

*Emission estimation methods set forth in the Compilation of Air Pollution Emission Factors (AP-42) and other department-accepted estimation methods may be promulgated or revised. As a result of new or revised AP-42 emission factors...and/or department-accepted estimation methods, changes in calculated emissions may occur. **Changes in reported emission levels as required by LAC 33:III.919.B.2.a due solely to revised AP-42 emission factors or other department-accepted estimation methods do not constitute violations of the air permit**; however, the department may evaluate changes in emissions on a case-by-case basis, including but not limited to, assessing compliance with other applicable Louisiana air quality regulations.*

- This does not apply to calculation errors – only changes in the AP-42 factors or other LDEQ approved estimation method.
- When do you have a “department-accepted estimation method”?

5. Imprecise Reporting of Emission Limit Deviations



- Emission Limits generally are stated in
 - Tons Per Year
 - Average lb/hr
 - Maximum lb/hr
- Do not simply state that the lb/hr was exceeded – should state maximum or average
- If the tpy was exceeded, there almost always is an average lb/hr exceedance as well
 - To Avoid “double counting” say “exceeded tpy and corresponding average lb/hr”

6. Identification of Duration of Deviation



- Guidance indicates duration should be stated, but 70.6 rule does not really state that this is required (Ch. 39 does)
- Don't overestimate by speculating
 - Some reports show duration as the entire duration of the reporting period where they do not know
 - Better practice is to state date of discovery (clearly indicating that is date of discovery) and date of cessation
- Note: Have started seeing this on some open-ended line deviations (date found/date fixed)

7. Not Adequately Describing Corrective Action



- This is a basic requirement and must be stated for the report to be complete
- DO NOT leave blank or state “No Information Provided”
- Even though space is limited, this should be a relatively robust description (avoiding acronyms unique to the plant – i.e. “repaired the T84VX”)
 - It is a public document on EDMS – so should be something you would want the public to see
 - LDEQ will use this description when evaluating enforcement action

8. Not Covering RMP and Part 82 (Refrigerants)



- **Risk Management Plan Requirements**
 - Incorporation of “Part 68” generically means all requirements are incorporated
 - Some permits only incorporate specific sections of Part 68
 - Certify only what is in the permit itself
- **Stratospheric ozone rules 40 CFR Part 82**
 - Almost all facilities have at least comfort cooling units for control rooms subject to the rule and many have larger industrial units
 - The fact that a contractor services does not eliminate need for deviation reporting/certification
 - Common failures include failure to have all technicians who may open equipment certified, failure to use certified recycling/recovery equipment, not determining leak rate appropriately

9. Including State-Only Requirements Not Requiring Deviation Reporting/Certification



- The only state-only requirements subject to deviation reporting are emission limits (i.e., state-only MRR deviations or work practice standards do not require self-reporting)
- By law, all conditions of a Title V permit are presumed to be federally applicable unless they are specifically identified in the permit as being state only
- State-only conditions include:
 - Any marked with a footnote in Table 1 of the permit identifying as state only – typically Ch. 51 requirements
 - Limitations in the State General Conditions are state-only – including GC 17
- HAP/TAP limits in the emission rate sheets that are not clearly marked as state-only are federal (even a TAP that is not a HAP)

Annual Compliance Certification

Review of Rule



40 CFR 70.6(c)(5) - The annual compliance certification must include all of the following but “may cross-reference the permit or previous reports”:

- (a) The identification of **each term or condition** of the permit ...;
- (b) The identification of the **method(s) or other means used by the owner or operator for determining the compliance status** with each term and condition during the certification period. Such methods and other means shall include, **at a minimum, [the MRR specified in the permit]**;
- (c) The status of compliance with the terms and conditions ..., including whether compliance during the period was **continuous or intermittent**. The certification shall be based on the method or means [designated in the MRR requirements of the permit....] The certification **shall identify each deviation** and take it into account in the compliance certification. The certification shall also **identify as possible exceptions** to compliance any periods during which compliance is required and in which an **excursion or exceedance** as defined under Part 64 of this chapter occurred; and
- (d) Such other facts as the permitting authority may require to determine the compliance status of the source.

10. Not Identifying Means by Which Compliance Status Determined Where MRR Is Missing



- Must use all specified federal MRR
- Where MRR is missing – must indicate how compliance was determined to be continuous
 - Example: scrubber flow required to be monitored continuously, but scrubber flow meter was down for a day
 - ✦ If you have an SOP that says you will visually monitor flow when meter down, you would identify this on the annual compliance certification
- Where there is no MRR specified – such as for emission limitations
 - Should describe how you know you met limitations
 - “For example: Review of operating rates was consistent with permit application emission estimation methodology”
- Where there is “credible evidence” outside of MRR
 - Not required to state this was relied upon if all MRR was conducted
 - Cannot ignore credible evidence that is contrary to the MRR – must at least discuss it