



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
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July 2, 1999

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Re. Annual Compliance Certifications

This letter is in response to your June 1, 1999 request for guidance on Title V annual compliance certifications. You seek our views on two examples described below. I would like to commend you and your staff for the leadership and initiative represented by your office to resolve such title V enforcement issues. Below is a discussion on annual compliance certifications that responds to your specific questions.

40 CFR § 70.6 (c)(5) and state regulation 26.7(a) require annual compliance certifications to include the identification of each term or condition of the permit. Based on the permitted monitoring methods and other material information and belief formed after reasonable inquiry, the responsible official must identify the compliance status of each permit term and condition. EPA considers any situation in which an emissions unit fails to meet a permit term or condition reason to prevent the facility from certifying an in compliance status. The annual compliance certification should be used as an enforcement tool to indicate possible exceptions to compliance. The permitting authority should evaluate each potential noncompliance on a case-by-case basis. After all credible and material information is considered, if the permitting authority or EPA determines that a violation exists, then appropriate enforcement action should be taken. With that established, below are our responses to the two examples raised in your June 1, 1999 letter.

Question 1

Assume a facility is required to operate a continuous emissions monitoring system (CEMS) for SO₂ on a particular source. The permit has an emission limit of 10 pounds per hour on that source. Another requirement of the permit is that the CEMS be operated in such a manner as to have 95% up-time, and demonstrate compliance with the emission rate 95% of the time. Quarterly reports for the CEMS are also required. The facility met the two 95/95 requirements, with 98% up-time, and was in compliance with the emission rate 98% of the time also. Can the facility certify continuous compliance, even though, for 2% of the year, they were above their emission limitation?

Response 1

This scenario describes three permit requirements: a 10 pound per hour emission limit, a requirement that the CEMS be operated with 95% up-time, and a requirement that the CEMS demonstrate compliance with the emission rate 95% of the time. Based upon this understanding, a responsible official for the facility may certify continuous compliance with the 95% CEMS up-time requirement and the 95% CEMS compliance demonstration requirement. This response is based upon the understanding that the CEMS operated with 98% up-time and that the CEMS demonstrated compliance with the emission rate 98% of the time, as well as the assumption that the source is not aware of other material information indicating noncompliance with these requirements.

The responsible official should not certify continuous compliance with the 10 pound per hour emission limit, however, for two reasons. First, because the facility has not provided continuous monitoring data on an annual basis (providing data for 98% of the time), EPA interprets compliance certifications based on monitoring that provides intermittent data as compliance on an intermittent, rather than continuous, basis. See 62 FR 54900, 54937 (Oct. 22, 1997). Accordingly, the responsible official should certify to intermittent compliance. Id.

Second, your factual description indicates that the facility was above its emission limitation for 2% of the year. It is not entirely clear why this is the case, but we take it as a given for our response.¹ The facility should not certify continuous compliance with the pound per hour emission limit when the unit exceeds the limit 2% of the time. EPA believes that a source's compliance with emission limits -- such as this 10 pound per hour limit -- must be continuous (consistent with any averaging times) except where a particular limit specifically and clearly provides otherwise. See 62 FR 8314, 8323 (Feb. 24, 1997). For example, some standards may not require compliance with emission limits during periods of startup, shutdown or malfunction. See, e.g., 40 CFR § 60.8(c).

We believe the permit requirements described in your question require continuous compliance with the 10 pound per hour emission limit. Your office has provided us separate from your June 1 letter with an example of permit conditions reflecting the two 95% CEMS

¹ For example, it is not clear whether CEMS data indicated exceedances of the emission limitation for 2% of the year, or whether material information other than CEMS data indicated 2% noncompliance. If, however, your conclusion that the facility operated above its emission limitation is based *solely* on the absence of CEMS data for 2% of the year, with no other material information indicating noncompliance, this does not *necessarily* mean that the facility is operating above its emission limitation. It may simply mean that there are periods of time in which the source's compliance status is unknown. As noted above, this means only that a responsible official must certify to intermittent compliance, which EPA does not interpret necessarily to mean that the responsible official is certifying to periods of noncompliance. See 62 FR at 54937.

requirements in the monitoring requirements of an Arkansas permit.² Both of these permit conditions end with footnotes referencing an EPA guidance memorandum issued by John S. Seitz and Robert Van Heuvelen on February 7, 1992, covering the “Timely and Appropriate Enforcement Response to Significant Air Pollution Violators.” (“Significant Violator Guidance”). This guidance deems repeated or chronic violations of SIP, NSPS or NESHAP emission, procedural or monitoring requirements to be “significant violations” when there are exceedances of emission limits or an absence of continuous monitoring data “for 5% or more of the time in a calendar quarter.” Significant Violator Guidance at page 6. The purpose and context of this guidance is to establish enforcement priorities among EPA and the states in targeting Clean Air Act violations. See generally *id.* at pp.4-5. The guidance is not meant to suggest, of course, that violations that do not constitute significant violations are not violations at all. Exceedances of emission limits for less than 5% of the time are still considered violations, based upon the Agency’s view that compliance with emission limits must be continuous absent clear and specific provision to the contrary. Accordingly, we believe the 10 pound per hour emission limit in your question must be met continuously, and on the facts presented in your question, the facility may not certify to continuous compliance with this limit.

Question 2

Assume a facility has an emission limitation of 30 pounds per hour of VOC’s from a press that is controlled by a thermal oxidizer (TO). An upset condition (equipment malfunction, breakdown, storm, etc.) causes the TO to go off-line. The facility immediately contacts the Department to report the problem, and initiates repairs promptly, bringing the TO back on line within two hours. However, between the time the TO went off line, until the facility could shut down the press, the hourly emission rate was exceeded. Can the facility certify compliance, even though the emission limit was exceeded during the referenced time period?

Response 2

A responsible official for the facility should not certify to continuous compliance when an emission unit exceeds this emission limitation (or any other permit term or condition). As noted, above, if a standard does not require compliance with an emission limitation during some period, e.g., startup or shutdown, then a responsible official may certify to continuous compliance when there are exceedances during such period. Here, however, there is no indication in your question that compliance is not required during the upset condition or possible exceptions to compliance and explain any unique circumstances, such as the upset condition. The responsible official should

² One permit condition requires that “[a]ll CEMS shall be in continuous operation and shall meet minimum frequency of operation requirements of 95% up-time for each quarter for each pollutant measured. Failure to maintain operation time shall constitute a violation of the CEMS conditions.” The other condition provides that “[a]ll sources with a CEMS shall meet 95% compliance per quarter for each pollutant. Failure to maintain compliance shall constitute a violation of the CEMS conditions.”

certify to either intermittent compliance or possible exceptions to compliance and explain any unique circumstances, such as the upset condition, that may have contributed to this compliance status.

I appreciate your interest in identifying issues you feel affect the successful implementation of the title V program. Should you have any other question or would like to discuss this matter further please contact me at (214) 665-7220 or Ms. Donna Ascenzi at (214) 665-7229 or Mr. David Garcia at (214) 665-7593.

Sincerely,

/s/

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Chief
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Coordination Branch

cc: Bennett Farrier (LDEQ)
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