

Checklists for Reviewing a Title V Air Pollution Permit

- Checklist #1: Source-Specific Documents to Review Before Commenting on a Draft Permit
- Checklist #2: Reviewing a Draft Permit

Checklist #1:

Source-Specific Documents to Review Before Commenting on a Draft Permit

Permit application

Important information:

- ✓ identification of the facility, description of facility processes, type and quantity of pollutants emitted;
- ✓ citation and description of applicable requirements and a description of or reference to any applicable test method for determining compliance with each requirement;
- ✓ certification of truthfulness by a “responsible official”;
- ✓ compliance certification (stating whether the facility is currently complying with air quality requirements and identifying the monitoring methods on which this determination is based);
- ✓ compliance plan (primarily of interest when the facility is out of compliance or if the facility is about to be subject to a new requirement).

Tips:

- ✓ Make sure that monitoring in the draft permit is at least as strenuous as monitoring described in the application. In particular, if the permit application states that continuous emissions monitors (CEMs) are installed at the facility, make sure that they are identified as a required monitoring method in the draft permit;
- ✓ Certification of non-compliance is a red flag that there is a problem at the facility. Make sure that a compliance schedule is included in the draft permit.
- ✓ Check inspection records, monitoring records, and stack test reports to assess whether the facility is currently in compliance with Clean Air Act requirements (see below);
- ✓ Compare the requirements described in the permit application to the requirements included in the draft permit. Investigate any differences thoroughly;
- ✓ If the facility emits large amounts of hazardous air pollutants, check to see if a MACT standard applies.

Inspection records

Look for:

- ✓ violations or close calls (might still be out of compliance, or could justify increased periodic monitoring);
- ✓ monitoring methods currently employed by the facility;
- ✓ records currently maintained by the facility.

Notices of violation (may be called something different)

Look for:

- ✓ resolution of the issue (Did they pay a fine? Is it ongoing? Is there a consent order or agreement?);
- ✓ any consent agreement, order, or judgment that requires the facility to abide by specific requirements. (Unless the facility has already fully complied with a requirement and no ongoing action is required, the requirement must be incorporated into the permit. Make

sure you photocopy any consent agreement, order, or judgment so that you may refer to it when reviewing the draft permit).

- Previously issued permits** (any federally-enforceable permit conditions must be included in the Title V permit)

Look for:

- ✓ PSD or NSR permits;
- ✓ a permit that limit the facility's "potential to emit" so that it is not subject to PSD or NSR. (Sometimes a permit limits the potential emissions of a particular emission unit at the facility (rather than limiting emissions from the entire facility) to avoid triggering PSD or NSR requirements.)
- ✓ a previously issued Title V permit (if the permit you are reviewing is a renewal, reopening, or modification).

Tips:

- ✓ It may not be easy to determine when a permit is a federally-enforceable PSD or NSR permit because your state may have issued "state" permits prior to Title V, and the PSD/NSR permits may look the same as the state permits. If you have any doubt as to whether a permit or permit condition is federally enforceable, simply state in your comments that "a pre-existing permit issued to (facility) requires (x). If that permit condition was based upon a federal requirement, it must be included in the Title V permit."
- ✓ Though most Title V permits include "state only" requirements in addition to federally-enforceable requirements, this is not required under federal law. Thus, U.S. EPA lack authority over "state-only" permit conditions. This means that the Permitting Authority can misapply or leave out state-only conditions and U.S. EPA will not object. Despite U.S. EPA's lack of authority, you can submit comments to your Permitting Authority regarding state-only conditions. Moreover, if a pre-existing state-only permit condition relates to monitoring or recordkeeping, you can argue that it should be included as a federally-enforceable periodic monitoring condition (designed to assure compliance with a federally-enforceable requirement).

- Monitoring reports** (recommended)

Look for:

- ✓ the type of monitoring already being performed at the facility;
- ✓ monitoring and reporting frequency;
- ✓ information provided in reports;
- ✓ blatant non-compliance.

Tips:

- ✓ In most cases, you probably won't have time to scour through lengthy monitoring data for a pattern of violations. Make sure that the permit requires the facility to submit reports to the Permitting Authority that make it easy for you to identify permit violations. For example, if the monitoring reports that the facility submitted in the past do not clearly identify violations, insist that the permit include a specific requirement that this be done. If the applicable limitation is in "tons per year," but the reports that the

facility typically submits are in “lbs,” insist that the permit require units of measurement used in monitoring reports to correlate with the units of measurement of the underlying applicable requirement. If current monitoring reports that the facility currently submits require you to perform calculations in order to identify a violation, insist that future monitoring reports include the calculations.

- ✓ Make sure that the permit does not reduce reporting requirements that are included in underlying requirements or pre-existing permits.

Stack test results

Look for:

- ✓ whether the facility passed the test;
- ✓ how close the facility came to failing the test.

Tips:

- ✓ If the facility was required to perform a stack test, you are likely to find two thick reports in the file. The first is the monitoring protocol. Don't worry too much about this report--it is likely to be highly technical and probably won't help you with your comments. Simply read the introduction and conclusion. The second report is the results of the test. Again, read the introduction and conclusion. Photocopy any charts that tell you exactly how each boiler, stack, generator, etc. performed during the test. These numbers may be useful as you review the draft permit.
- ✓ Be on the lookout for improper averaging schemes that allow the facility to continue to operate equipment that failed the stack test so long as the overall average of all units at the facility complies with the requirement. Averaging is usually allowed, but there are constraints. If the facility appears to be relying upon averaging to demonstrate compliance, you will most likely find a reference to the regulation that allows averaging. Evaluate whether the regulation allows averaging under the particular circumstances.
- ✓ If the facility came close to failing the test, this is a basis for arguing that additional periodic monitoring is necessary to assure the facility's compliance with applicable requirements over the course of the permit term.
- ✓ Be careful when requesting copies of stack test results before you have a chance to see the documents. You could end up with a high bill for photocopying and only a small amount of useful information. If you cannot go to the Permitting Authority's office to review the facility file, simply request copies of the few pages that report the actual results, as well as the introduction/conclusion.

Letters exchanged between the Permitting Authority and the applicant, and between the Permitting Authority and U.S. EPA

Look for:

- ✓ Any dispute over permit conditions;
- ✓ Any evidence that the facility is in violation of a requirement.

Tips:

- ✓ Letters can be the best way to hone in on critical issues surrounding the facility. They provide a clue as to how the regulators view the situation. If there is a dispute over a

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- permit condition or a compliance issue and it is resolved in a way that you find unsatisfactory, the letters may provide you with counter-arguments.
- ✓ If you can visit the Permitting Authority, frame your records request as broadly as possible so that you won't miss anything.

Checklist #2: Reviewing a Draft Permit

Review the statement of basis

Look for:

- ✓ Justification for the Permitting Authority's choice of monitoring, recordkeeping, and reporting requirements;
- ✓ Why conditions that appear to be applicable are not included in the draft permit (This is particularly true when the permit includes a specific condition stating that a requirement is inapplicable to the facility);
- ✓ Whether the facility performed required initial stack tests, and, if it did, whether it passed;
- ✓ Any other explanations that are necessary for you to understand the basis for permit conditions
- ✓ Any conditions that are mentioned in the statement of basis but NOT covered by the draft permit.

Tips:

- ✓ The permit must include a statement of basis, but the statement may be called something different;
- ✓ The statement of basis is not part of the enforceable permit--it is only an explanation of permit conditions. Any condition mentioned in the statement of basis as applicable to the facility must also be included in the permit;
- ✓ If there is anything in the draft permit that requires an explanation, it is appropriate to demand that the Permitting Authority include that information in the statement of basis. Keep in mind that in the future, others will rely upon the statement of basis to understand permit conditions and to interpret ambiguous permit terms.

Review general conditions required under 40 CFR Part 70

Look for:

- ✓ Inclusion of all general conditions required under 40 CFR Part 70.
- ✓ Proper wording of the optional emergency defense, if included.

Tips:

- ✓ Make sure that any variation from Part 70 language does not change the meaning of the condition. Sometimes subtle differences can have a large impact. For example, Part 70 requires a permittee to submit "reports of any required monitoring." Sometimes, a permit will say that the permittee shall submit "reports of any monitoring required under the permit." This is a problem because it can be argued that the modified condition in the permit only requires the facility to submit certain monitoring reports that are specifically identified in the permit. By contrast, Part 70 requires the facility to submit a report of *all* required monitoring.

Review general conditions based upon SIP requirements

Look for:

- ✓ any difference between the language of the SIP requirement and the language of the permit condition;
- ✓ whether it is necessary to add more details to explain exactly how the requirement applies to the facility. (If more details are needed, review the condition as a source-specific condition, below).

Tips:

- ✓ Unless the Permitting Authority provides a reasonable explanation in the statement of basis for why periodic monitoring is unnecessary, periodic monitoring must be included for SIP-based conditions.
- ✓ SIP-based conditions often appear to be “general” simply because the permit does not require the facility to perform periodic monitoring to assure compliance with the condition. As with all permit conditions, it is appropriate for you to ask for periodic monitoring to assure compliance with a SIP-based condition if you believe that such monitoring is needed.
- ✓ It must be clear exactly how each condition applies to the facility.

Review any provisions that allow the Permitting Authority to excuse unavoidable violations (These provisions are often referred to as “excess emissions provisions.” Permits in your state or locality might not include an excess emissions provision.)

Look for:

- ✓ whether the excess emissions provision is allowed by a federally-approved air quality regulation (e.g., SIP) or a federal regulation;
- ✓ whether the permit expands the circumstances under which the Permitting Authority may excuse a violation;
- ✓ whether the permit needs additional terms to assure that the facility can be held accountable for violations when the excess emissions provision does not apply.

Tips:

- ✓ A permit may not include an excess emissions provision that is not included in an underlying applicable requirement. Nor may a permit enlarge an existing excess emissions provision.
- ✓ Make sure that the permit requires the facility to thoroughly document and report any violations, even if they are eventually excused. You should insist that reports be in writing and that they be submitted automatically, not just upon request by the agency.
- ✓ 40 CFR § 70.6(a)(1) provides that a Title V permit must assure compliance with all applicable requirements. Thus, you can argue that the Permitting Authority is required to add terms to the permit to clarify the scope of the excess emissions provision if such terms are necessary to assure the facility’s compliance with other applicable requirements.

Review Source-Specific Conditions

Look for:

- ✓ whether the permit condition correctly reflects the requirements of the underlying statute or regulation;
- ✓ whether the permit condition is practically enforceable;
- ✓ whether the permit condition is accompanied by sufficient “periodic monitoring”;
- ✓ whether the condition is accompanied by adequate recordkeeping and reporting requirements so that you will know the results of any required monitoring on a timely basis;

Tips:

- ✓ Inadequate periodic monitoring is one of the most common bases for the U.S. EPA Administrator to object to a permit.
- ✓ Reviewing source-specific permit conditions is the most important part of permit review. If a condition does not meet the requirements listed above, it will be difficult if not impossible for a you to determine whether the facility is complying with that condition over the course of the permit term.

Evaluate the adequacy of the annual compliance certification requirement

Check to see whether any federal requirements are incorrectly identified as state-only requirements