



Permitting – Enforcement Interface



Jim Nolan
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Permit and Enforcement Interface

- ◆ **What are the issues**
- ◆ **Examples of specific problem areas**
- ◆ **How we have tried to move forward**

What are the Issues – EPA OECA

- ◆ **Historically enforcement and permitting have not coordinated**
- ◆ **Possible reasons**
 - ◆ Lack of familiarity with enforcement policies
 - ◆ Enforcement has an adverse relationship with source
 - ◆ Misinterpretation of “commingling” policies
- ◆ **To effectively perform our responsibilities –we need to coordinate**

What are the Issues - NACAA

- ◆ **The permit and enforcement staff have different missions which sometimes causes problems.**
 - ◆ **Permit writers draft Title V and New Source Review permits, often communicating closely with sources.**
 - ◆ **Enforcement staff is tasked with inspecting facilities and finding violations, where they occur.**
- ◆ **Permit writers may unknowingly undercut future enforcement actions by including unit modifications in Title V or NSR permits that arguably should have complied with CAA requirements.**
- ◆ **Schedules in consent decrees and administrative orders negotiated by enforcement staff need to be included in permits.**

What are the Issues - PSCAA

◆ Construction permits are fixed in time

- ◆ Facility can rely on the construction permit in perpetuity
- ◆ Can only reopen with the agreement of the source
- ◆ We need to get it right the first time

◆ Permit terms and conditions

- ◆ Engineers want to be seen as helpful to the source
- ◆ Inspectors want the permit to be enforceable

◆ Permit and rule interpretation

- ◆ Engineers think they understand the requirements they wrote
- ◆ Inspectors can read too

Permit Terms and Conditions

◆ Missed Requirements

- ◆ Is this unit subject to an EPA standard?
- ◆ Does PSD or NSR come in to play?

◆ Averaging Times Not Specified

- ◆ e.g. Afterburner temperature or pressure drop
- ◆ Did we mean on average or at all times?

◆ Inadequate monitoring

- ◆ The construction permit may only specify a one-time test
- ◆ Parameter monitoring may not be a good surrogate for the source test

◆ Narrative Standards

- ◆ “Maintain the equipment in good working order.”

Permit and Rule Interpretation

◆ Words, words, words

- ◆ “Should” versus “shall”
- ◆ “May” versus “must”

◆ Vague permit conditions

- ◆ No averaging time (e.g. temperature or pressure drop)
- ◆ What to do when parameters are out of range (Is it a violation or are corrective actions required?)

◆ We don't reference every rule in a construction permit

- ◆ Construction permits are not mini Title V permits
- ◆ How does the inspector know a standard applies?
- ◆ What about new rules that are adopted after the permit is issued?

◆ How to evaluate upset/breakdown/SSM claims

How We Have Tried to Move Forward

◆ Rules - Clear and Easily Enforceable

- ◆ Monitoring, recordkeeping, and reporting clearly specified
- ◆ Inspectors are full participants in the process

◆ Construction Permits – Right the First Time

- ◆ Permit engineers must consult with inspectors
- ◆ Inspectors review draft permits and sign off on them

◆ Title V Permits – Decisions Are Transparent

- ◆ Permit engineers and inspectors develop the statement of basis
- ◆ Inspectors review draft permits and sign off on them

◆ Enforcement – One Agency View

- ◆ Clear enforcement policies (enforcement response and penalty policies)
- ◆ Permit engineers and inspectors jointly review reports, conduct significant inspections, and recommend enforcement