

TIPS FOR WRITING EFFECTIVE, ENFORCEABLE PERMITS

EPA RESOURCES

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Discussion Items

- Effective Permits
- EPA Region 7 Draft Permit Review
- EPA Resources
- Process Suggestions



Effective Permits

- Effective permits clearly identify the following:
 - Regulated emission units
 - Emission limitations and standards that apply to each emission unit and the facility
 - Legal authority for each limitation and standard included in the permit
 - Compliance demonstration methods and procedures
 - Monitoring, recordkeeping, reporting, stack testing, etc.



Effective Permits

- Why is permit effectiveness important?
 - Accomplishes the objectives of the CAA
 - Provides regulatory certainty – makes it clear to the facility, the public and the regulatory agencies what is required to demonstrate compliance with air quality regulations
 - Minimizes uncertain enforcement outcomes due to ambiguous permit conditions



EPA Region 7 Draft Permit Review

- Standard checklists available for use during permit reviews
- Main issues I look for:
 - Are the permit conditions enforceable as a practical matter?
 - Does the permit include all applicable requirements?
 - Does the permit cite the authority for each applicable requirement?
 - Do the permit limitations accomplish the intended effect (for example, do the synthetic minor limits actually limit the PTE below the thresholds)?



EPA Region 7 Draft Permit Review

- R7 informal analysis of Title V comments made during 2018-2019
- Category of comments with percent of total comments:
 - Not enforceable as a practical matter (34%)
 - Failure to identify all applicable requirements (24%)
 - Legal/procedural error (18%)
 - Material mistake/citation error (11%)
 - Insufficient supporting information/documentation (6%)
 - Permit improvement suggestions (6%)
 - Compliance/enforcement-related (< 1%)



EPA Resources

- Historical EPA Guidance Documents
- Proposed Rulemaking - “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act” (July 26, 2019)
- Other EPA Technical Documents
- Regional Permit Coordination
- EPA Region 5 Webinars



Historical EPA Guidance Documents

- EPA Air Pollution Training Institute (APTI) Course 454 “Effective Permit Writing” Student Guidebook (1/86)
 - Consists of 7 lessons including “Considerations for Writing a Successful Permit” and “Elements of Effective Permit Writing”
- “Guidance on Limiting Potential to Emit in New Source Review”, Seitz, et. al. (6/13/89)
 - Provides insight into several permitting issues including the appropriateness of “blanket” emission limits, time periods for limiting production and operation, and “sham” permits



Historical EPA Guidance Documents

- New Source Review Workshop Manual/Prevention of Significant Deterioration and Nonattainment Area Permitting (8/90)
 - Table H.1 provides suggested minimum contents of air emission permits
 - Legal Authority (basis, effective dates, expiration dates)
 - Technical Specifications (identification of EUs, design/operation parameters, equipment design)
 - Emission Compliance Demonstration (stack testing, monitoring)
 - Definition of Excess Emissions (emission limit and averaging time, malfunctions)
 - Administrative (recordkeeping, reporting, entry and inspections)
 - Other Conditions (post construction monitoring, offsets)



Historical EPA Guidance Documents

- New Source Review Workshop Manual/Prevention of Significant Deterioration and Nonattainment Area Permitting (8/90)
 - Table H.2 provides several guidelines for writing effective specific conditions in air quality permits
 - Chapter I includes 5 steps for drafting an effective permit including: (1) specify emission units; (2) specify pollutants; (3) specify allowable emission rates; (4) specify compliance demonstration methods; and (5) specify other permit conditions



Historical EPA Guidance Documents

- “Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act,” Seitz, et. al. (1/25/95)
 - Confirmed EPA’s past positions and stated that, in general, practical enforceability means the permit’s provisions must specify:
 - Technically accurate limitation and sources subject to limitation
 - Time period of the limitation
 - Compliance demonstration methods
 - Included “Guidance on Practicable Enforceability Requirements for Limiting Potential to Emit through SIP and 112 Rules and General Permits” (1/25/95) as an attachment



Historical EPA Guidance Documents

- Hu Honua Bioenergy Facility Title petition response Order, No. IX-2011-1 (February 7, 2014)
 - Addresses several issues including the practical enforceability of facility-wide emission limits
 - Contends that emissions from all emission units must be included in facility-wide emission limits
 - Must consider startup, shutdown and malfunction emissions
 - Must consider emissions from all smaller-emitting sources
 - Contends that emission calculation methodologies must be part of the permit



Proposed Rulemaking (July 26, 2019)

- “Reclassification of Majors Sources as Area Sources Under Section 112 of the Clean Air Act”
- Primarily addresses EPA’s interpretation of *when* a facility can become an area source
- Provides insight into what EPA believes is an enforceable condition as it relates to SM limits
- Preamble generally uses the concepts from previous guidance documents



Other EPA Technical Documents

- Technical Guidance Document: Compliance Assurance Monitoring (August 1998)
- Appendix B: CAM Illustrations, Revision 1 (January 2005)
- New Source Review & Title V Operating Permit Policy and Guidance Document Index Websites
 - <https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index>
 - <https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index>



Other EPA Technical Documents

- NSPS & NESHAP Applicability Determination Index (ADI)
 - <https://cfpub.epa.gov/adi/>
 - Currently contains over 3,000 EPA letters and memoranda
 - Updated on a regular basis
 - 45 documents added on 2/1/19 (3/18/19 FRN)
 - Includes both applicability determinations (decisions at a specific facility) and regulatory interpretations (decisions that broadly apply to an entire source category)



Regional Permit Coordination

- Monthly EPA/State permitting calls provide an opportunity to:
 - Work through permitting issues prior to public notice or issuance
 - Share information
 - Public interest in the facility and/or the project
 - Regulation updates
 - General permitting trends (such as number of facilities subject to major source MACT standards pursuing synthetic minor limits)
- Quarterly 4-state permitting calls provide an opportunity to:
 - Poll other states for permitting advice/experience
 - Discuss applicants' assertions regarding air permitting requirements in surrounding states



Regional Permit Coordination

- Annual Region 7 EPA/State/Local meeting provides an opportunity to:
 - Expand on permitting issues from the quarterly calls
 - Discuss issues that overlap between permitting, compliance and planning
- State-specific permitting training/roundtable discussions
 - Past topics included putting emission limits in permit, when to require stack testing or a CEM, incorporation of NSPS/NESHAP conditions in permits, definition of “replacement unit”, fugitive emission inclusion, and PSD netting
- Your regional permitting coordinator



EPA Region 5 Webinars

- <https://www.epa.gov/caa-permitting/caa-permitting-epas-great-lakes-region>
- Topics covered:
 - “Monitoring in Clean Air Act Permits”
 - “Title V Statement of Basis”
 - “EPA Review Strategy and Common Permit Issues”



Process Suggestions

- 10-day pre-public notice review for PSD permits (Iowa)
 - Can add time to upfront but major issues could be resolved quicker and prior to the public notice
 - To reduce added time, share draft permit with the applicant at the same time
- Peer review of draft permits



Process Suggestions

- Guidance documents/standard procedures
 - Counteract turnover and lead to more consistent permit conditions
 - However, they take time to develop and require support from management
- Electronic permit application options
 - Kansas & Iowa are implementing online options for submitting applications
 - Electronic processing of applications has usually led to more consistent permits with fewer errors
 - Time and cost have been a hindrance to more extensive use of electronic options



Process Suggestions

- Documentation
 - A well detailed permit record reduces the impacts of staff turnover
 - Reduces the potential for EPA and/or public comment which reduces the time spent responding to comments
- Permit TSD/SOB Documentation Example:
 - OK – “The boiler isn’t subject to NSPS Subpart Dc because the boiler predates the NSPS.”
 - Better – “The boiler isn’t subject to NSPS Subpart Dc because the boiler commenced construction on January 1, 1985 and NSPS Subpart Dc applies to boilers that commenced construction after June 9, 1989. Further, the boiler has not been modified or reconstructed after commencing construction.”



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