

Translating Consent Decree Requirements into Clean Air Act Permits

Apple Chapman
Associate Director
U.S. Environmental Protection Agency
Office of Civil Enforcement
Air Enforcement Division

Example CD Language

By no later than one hundred twenty (120) days following the Date of Lodging of the Consent Decree, the Company shall submit applications to incorporate the emission limits and standards required by the Consent Decree into minor or major new source review permits or other permits (other than Title V permits), which are federally enforceable, and, upon issuance of such permits, shall file any applications necessary to incorporate the requirements of those permits into the Company's Title V permit. In cases where activities required by this Consent Decree do not otherwise require state construction or operating permits, Conoco may propose and include such terms as a part of the Company's Title V permit as federally enforceable terms.

Breaking it Down

- ▶ Consent decree emissions limits and standards - including all attendant monitoring, recordkeeping, and reporting requirements.
- ▶ Must apply for and obtain a Federally Enforceable minor or major new source review or other permit (any SIP approved permitting program).
- ▶ Upon issuance of such permit, source must apply to have its Title V permit revised to incorporate the requirements of this federally enforceable state/local issued permit.
- ▶ Not enough to simply incorporate the consent decree requirements directly into a Title V permit.

General Guidelines

- Emission limits or standards that correspond to a release of liability for New Source Review Requirements have to be in a federally enforceable non-Title V permit- *i.e.*, minor or major source construction permit.
 - When these limits are included in the Title V permit, the consent decree cannot be the basis for the limits; if there is not an underlying non-Title V applicable requirement, then the limit or standard could be dropped at the next Title V renewal.

General Guidelines (con't)

- NSPS or NESHAP applicability and corresponding requirements can usually be handled through the Title V alone- *i.e.*, there is usually not an underlying permit requirement for these regulations, the requirements are self-implementing.
 - Some permitting authorities, however, prefer to use a non-Title V permitting vehicle when the physical activity triggering the NSPS or NESHAP is not clear in the record.

General Guidelines (con't)

- Limits in the consent decree need to be incorporated identically into the permit. These limits are incorporated into a court order and cannot be altered without consent of the court.
 - “500 ppm” is not the same as “500 ppmvd at 0% O₂.”
 - “1 lb PM/1,000 lbs coke” is not same as “1 lb PM/1,000 lb coke on a 3-hr rolling average.”
- No rounding of an emission limit specified in the consent decree or established through a consent decree process.
 - “3.26 lbs/hr” is not the same as “3.3 lbs/hr.”

General Guidelines (con't)

- Any monitoring enhancements specified in the consent decree can usually be included via the Title V permitting through the Agency's gap-filling authority. 40 C.F.R § 70.6(a)(3)
 - E.g., NSPS PM limit, where only an initial performance test is required in the regulation, but the company agrees to annual testing of the PM limit in the consent decree. Permit would need to reference both the NSPS requirements and the annual testing requirement citing the Title V authority or the state equivalent.

General Guidelines (con't)

- Alternative monitoring plans must be in the permit and cannot be referenced.
- CEMS also need to have QA/QC included in the permit-regardless if it is stated in the CD or not.
 - *Example for COMS:* The Company shall install, certify, calibrate, maintain, and operate all COMS in accordance with the requirements of 40 CFR §§ 60.11, 60.13 and Part 60, Appendices A and B.
 - *Example for CEMs:* The Company shall install, certify, calibrate, maintain, and operate all CEMS in accordance with the requirements of 40 CFR § 60.11, 60.13 and Part 60, Appendices A, B and F.

Emission limits or standards that must be in a Federally Enforceable Non-Title V Permit

- Best permitting vehicle would be a New Source Review permit (either major or minor), but permitting authorities often have “catch all” provisions in the permitting regulations (i.e., the SIP), if needed.
- Emission limits- *e.g.*, 30-day avg., 365-day avg.- **must apply at all times and cannot not have any exemptions for start-ups, shutdowns, and malfunctions.**
- If there is need for operational flexibility then the CD can include shorter term limits- *e.g.*, 24-hour avg., 7-day avg. - which are often more stringent. Such limits may exclude emissions occurring during start-ups and/or shut downs but only if there is a longer term limit for that same pollutant and only if this option is already provided for in the consent decree. Cannot be created after the fact.
 - If compliance with the shorter term limits is conditioned on the source following a “plan” at these times, the plan requirements must be in the permit for these times.

Permitting Requirements for Termination

“The requirements for termination include payment of all stipulated penalties that may be due to the United States or the Plaintiff-Intervener under this Consent Decree, installation of control technology systems as specified herein and the performance of all other Consent Decree requirements, *the receipt of all permits specified herein*, and EPA’s receipt of the first calendar quarterly progress report following the conclusion of the Company’s operation for at least one year of all units in compliance with the emission limits established herein.”

Examples of CD Language Translation Issues:

17D. Beginning October 31, 2005, the Company shall comply with a final NO_x emission limit of 40 ppmvd at 0% oxygen on a 365-day rolling average basis and a 60 ppmvd at 0% oxygen on a 7-day rolling average basis from the No. 4 FCCU.

...

NO_x emission data during startup, shutdown or malfunction of an FCCU will not be used in determining compliance with the short-term NO_x emission limits provided that during such periods the Company implements good air pollution control practices to minimize the emissions of NO_x.

Excerpt from the Title V Permit

EU ID	Pollutant	Emission Limits
FCCU No. 4	NO _x	60 ⁽³⁾⁽⁶⁾⁽⁷⁾ / 40 ⁽⁴⁾⁽⁵⁾⁽⁷⁾

3. Limit is ppm_{dv} @ 0% oxygen, 7-day rolling average.
4. Limit is ppm_{dv} @ 0% oxygen, 365-day rolling average.
5. Applies at all times of operation including during startup, shutdown and malfunction.
6. Shall exclude periods of startup, shutdown and malfunction but shall apply at all other times that the No. 4 FCCU is operating.
7. For days when the No. 4 FCCU is not operating, which will be defined as operating less than 18 clock hours from midnight to midnight, no values shall be used to calculate averages and those periods shall be skipped in determining the 7-day and 365-day averages.

Corrections to the Title V Permit

EU ID	Pollutant	Emission Limits
FCCU No. 4	NO _x	60 ⁽³⁾⁽⁶⁾⁽⁷⁾ / 40 ⁽⁴⁾⁽⁵⁾⁽⁷⁾

3. Limit is ppm_{dv} @ 0% oxygen, 7-day rolling average.
4. Limit is ppm_{dv} @ 0% oxygen, 365-day rolling average.
5. Applies at all times of operation including during startup, shutdown and malfunction of the FCCU and the corresponding control equipment,
6. Applies at all times of operation except that emission data during ~~Shall exclude periods of startup and shutdown and malfunction of the FCCU but shall apply at all other times that the No. 4 FCCU is operating~~ will not be used in determining compliance with the short-term NO_x emission limits provided that during such periods the Company implements good air pollution control practices to minimize the emissions of NO_x.
7. ~~For days when the No. 4 FCCU is not operating, which will be defined as operating less than 18 clock hours from midnight to midnight, no values shall be used to calculate averages and those periods shall be skipped in determining the 7-day and 365-day averages.~~

5. Applies at all times of operation including during startup, shutdown and malfunction.

5. Applies at all times of operation including during startup, shutdown and malfunction of the FCCU and the corresponding control equipment,

6. Shall exclude periods of startup, shutdown and malfunction but shall apply at all other times that the No. 4 FCCU is operating.

6. Applies at all times of operation except that emission data during Shall ~~exclude periods of startup and shutdown and malfunction of the FCCU but shall apply at all other times that the No. 4 FCCU is operating~~ will not be used in determining compliance with the short-term NOx emission limits provided that during such periods the Company implements good air pollution control practices to minimize the emissions of NOx.

~~7. For days when the No. 4 FCCU is not operating, which will be defined as operating less than 18 clock hours from midnight to midnight, no values shall be used to calculate averages and those periods shall be skipped in determining the 7-day and 365-day averages.~~

Emission Credit Generation

- ▶ Companies may not use Consent Decree emission reductions as netting reductions, emissions offsets, or to apply for, obtain, trade, or sell any emission reduction credits.
 - ▶ See Appendix A for example CD language
- ▶ EPA has provided limited, narrowly tailored exceptions to the general prohibition against the use of emission reductions that result from compliance with the CD.
 - ▶ See Appendix A for example CD language

Emissions Credit Generation

- ▶ Questions about what is or is not allowed under a specific provision should be addressed to EPA not the permitting authority because permitting rules may be different than what was negotiated in the CD.
- ▶ The limits and standards imposed by the Emission Credit Generation provisions of the CD must be incorporated into either a federally-enforceable permit or the appropriate state SIP.
- ▶ In addition to stipulated penalties, any type of permit that improperly relies on CD emissions reductions in violation of the CD will be subject to reevaluation as to whether a significant net emissions increase occurred.

For Additional Questions Please Contact

- ▶ Apple Chapman
 - ▶ Chapman.Apple@epa.gov
 - ▶ 202-564-5666
- ▶ Gregory Fried
 - ▶ Fried.Gregory@epa.gov
 - ▶ 202-564-7016
- ▶ Teresa Dykes
 - ▶ Dykes.Teresa@epa.gov
 - ▶ 202-564-9883

Appendix A - Example CD Language

Definition: “CD Emissions Reductions” shall mean any emissions reductions that result from any projects, controls, or any other actions utilized to comply with this Consent Decree.

Prohibition. Defendant shall neither generate nor use any CD Emissions Reductions: as netting reductions; as emissions offsets; or to apply for, obtain, trade, or sell any emission reduction credits. Baseline actual emissions for each unit during any 24-month period selected by Defendant shall be adjusted downward to exclude any portion of the baseline emissions that would have been eliminated as CD Emissions Reductions had Defendant been complying with this Consent Decree during that 24-month period. Any plant-wide applicability limits (PALs) or PAL-like limits that apply to emissions units addressed by this Consent Decree must be adjusted downward to exclude any portion of the baseline emissions used in establishing such limit(s) that would have been eliminated as CD Emissions Reductions had Defendant been complying with this Consent Decree during such baseline period.

Example CD Language Cont. - Outside the scope of the prohibition

Outside the Scope of the Prohibition. Nothing in this Section is intended to prohibit Defendant from seeking to:

- a. Use or generate emission reductions from emissions units that are covered by this Consent Decree to the extent that the proposed emission reductions represent the difference between CD Emissions Reductions and more stringent control requirements that Defendant may elect to accept for those emissions units in a permitting process, except as provided in Paragraph 4;
- b. Use or generate emission reductions from emissions units that are not subject to an emission limitation or control requirement pursuant to this Consent Decree; or
- c. Use CD Emissions Reductions for compliance with any rules or regulations designed to address regional haze or the non-attainment status of any area (excluding PSD and non-attainment NSR rules, but including, for example, RACT rules) that apply to the facility; provided, however, that Defendant shall not be allowed to trade or sell any CD Emissions Reductions.

Example CD Language - Exception to the Prohibition

Exception to the Prohibition. Notwithstanding the general prohibition set forth in Paragraph 2, Defendant may use XX tons per year of NO_x, XX tons per year of SO₂, XX tons per year of PM, XX tons per year of CO, and XX tons per year of VOCs from the CD Emissions Reductions as netting reductions or in determining whether a project would result in a significant emissions increase in any PSD, major non-attainment, and/or synthetic minor NSR permit or permit proceeding occurring after the Date of Lodging of the Consent Decree. Utilization of this exception is subject to each of the following conditions:

Example CD Language Cont. - Exception to the Prohibition

- a. Under no circumstances shall Defendant use CD Emissions Reductions for netting and/or in determining whether a project would result in a significant emissions increase prior to the time that actual CD Emissions Reductions have occurred;
- b. Each new or modified emissions unit has a federally enforceable, non-Title V Permit with the following limits, as applicable: [CD would specify BACT-like limits for types of emissions units that could be new or modified];
- c. CD Emissions Reductions may be used only at the facility that generated them;
- d. Defendant shall still be subject to all federal and state regulations applicable to the PSD, major non-attainment, and/or minor NSR permitting process; and
- e. At such time as Defendant seeks to use any emission reduction credits allowed under this paragraph, Defendant shall provide notice of such projects to EPA (including copies of all permit applications and other relevant documentation submitted to the permitting authority).