



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE
DALLAS, TEXAS 75202-2733

December 22, 1998

Region 6 State Directors
Department
Address
City, State, Zip Code

Re. Annual Compliance Certification Guidance

The purpose of this letter is to assist your staff as they develop and finalize title V operating permit annual compliance certification forms. My staff has conducted a title V/enforcement survey and have identified most states do not have a final compliance certification form established. Pursuant to the federal rule (40 CFR 70.6(c)(5)(iii)) and your states operating permit rule a facilities responsible official is to certify compliance with all applicable permit conditions on an annual basis. I would like to remind you that on October 22, 1997, EPA did revise the part 70 rules specifically compliance certification requirements.

As you are aware EPA is to receive a copy or have access to compliance certifications submitted by the regulated community. As we prepare to review such certifications, my staff has developed a Compliance Certification Review Checklist and Review Key. Enclosure 1 discuss what should be included in the annual compliance certification. Also these documents reflect changes made pursuant to an October 22, 1997, Federal Register notice, for Part 70 – State Operating Permit Programs. Again, these documents will be used by Region 6 to evaluate incoming annual compliance certifications please consider these documents as your staff develops and finalize your agencies operating permit compliance certification forms.

Enclosure 2 is a comparison of the former part 70 rule language compared to the revised language. Some changes made to the to the permit content of the operating permit program regulations include:

- streamlining for monitoring and testing requirements;
- requires owners and operators to identify whether data collection methods used to make the compliance certifications were continuous or intermittent.

Region 6 applauds your efforts to develops procedures to implement and enforce title V operating permits. We look forward to working with your staff while developing and finalizing

your agency's forms. Should you have any questions please call Ms. Donna Ascenzi at (214) 665-7229 or David Garcia at (214) 665-7593.

Sincerely yours,

/s/

Samuel Coleman, P.E..

Director

Compliance Assurance and Enforcement Division

Enclosure (2)

Enclosure 1

Compliance Certification Review Checklist

September 23, 1998
40 CFR 70.6(c)(5)(iii)

General Information

| | | | | |
|--------------------|--|--|----------------------|--|
| Company Name | | | Responsible Official | |
| Facility Type | | | Telephone # | |
| City/Cty or Parish | | | Permit # | |
| State | | | Reviewer | |
| Cert. Date | | | Review Date | |

Review Checklist

| # | Requirements 40 CFR 70.6(c)(5)(iii) <i>Did the facility identify:</i> | Adequate (Y/N) or N/A | Comment |
|-----------------------|---|--------------------------------|---------|
| 1 | <i>each term or condition of permit being certified?</i> | | |
| 2A¹ | <i>the method(s) or other information used to determine the compliance status of each term and condition of a permit? {after responds go to 3A}</i> | | |
| | OR | | |
| 2B² | <i>the method(s) or other information used to determine the compliance status of each term and condition of a permit and whether the method(s) or other means identified provide continuous or intermittent data? {after responds go to 3B}</i> | | |

| # | Requirements 40 CFR 70.6(c)(5)(iii) <i>Did the facility identify:</i> | Adequate (Y/N) or N/A | Comment |
|-----------------|---|--|--|
| 3A ¹ | <i>the compliance status of each term and condition of the permit including whether compliance was continuous or intermittent?</i> | | |
| 3B ² | <i>the compliance status of each term and condition of the permit using the method(s) or other means identified in 2B?</i> | | |
| 4 | <i>provide such other facts that were required to determine the compliance status?</i> | | |
| 5 | <i>deviations or possible exceptions to compliance such as excursions or exceedance?</i> | | <u>Deviation(s) or possible exceptions to compliance</u> Emission Unit/App. Req.: Dates: Action Taken: Note: |
| 6 | <i>Did a responsible official certify that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete? [70.5(d)]</i> | | |

¹ consistent with the original Operating Permits rule, July 21, 1992

² consistent with the revised Operating Permits rule, October 22, 1997

General Overview of Certification:

Comments:

Compliance Certification Review Key

Note: this review key covers certifications under language mirroring the original Part 70 requirements and certifications under EPA's 40 CFR 70 rule revision dated 10-22-97.

| Operating Permit Rule | Preamble | Rule |
|-----------------------|----------------|----------------|
| July 21, 1992 | 57 FR at 32274 | 57 FR at 32305 |
| October 22, 1997 | 62 FR at 54936 | 62 FR at 54946 |

General Information:

This basic information should be easily identified and incorporated into the checklist for tracking, reporting and query purposes.

Checklist Requirements:

1. *Identify each term or condition of a permit that is the basis of certification.*

There are two acceptable ways to address this requirement.

 - i. First the permitting authority can require owners to restate permit terms or incorporate permit tables listing emission units and their respective applicable requirements and compliance methods.
 - ii. Second, should the permitting authority not require all permit terms to be listed in the certification, the certification may cross-reference the relevant terms and conditions of the permit, previous compliance reports, or other applicable documentation in order to satisfy this requirement.

- 2A. *Identify method(s) or other information used to determine compliance status of each term and condition of a permit.* The certification is to identify monitoring and/or testing methods for each emission unit and its associated applicable requirement. The certification may cross-reference the permit, previous compliance reports, or other applicable documentation in order to satisfy this requirement. The cross-reference should be clear as to what the unit's requirements and methods used to determine compliance status are. In addition, the certification should identify other material information that has been assessed in relation to how the information potentially affects the source's compliance status during the certification period.¹

¹ If a source becomes aware of other material information that indicates that an emission unit has experienced deviations (as that term is defined in State programs) or may otherwise be out of compliance with an applicable requirement even though the unit's permit-identified data indicates compliance, the source must consider this information, identify and address it in the compliance certification, and certify accordingly. See, e.g., 62 FR 8314, 8320 (Feb. 24, 1997). Sources may not ignore obvious relevant information and risk making a false certification, omitting material information, or otherwise violating prohibitions on fraud.

- 2B.** *Identify the method(s) or other information used to determine the compliance status of each term and condition of a permit and whether the method(s) or other means identified above provide continuous or intermittent data.* The certification must include the information identified in **2A** above. In addition, the certification must identify whether the methods or other means used for determining the compliance status provide continuous or intermittent data. If the owner or operator uses cross-referencing to identify the methods or other information used to determine the source's compliance status, the certification must clearly indicate whether the cross-referenced information provides continuous or intermittent data.
- 3A.** *Identify the compliance status of each term and condition of the permit, including whether compliance was continuous or intermittent.* The certification requires the responsible official to certify continuous or intermittent compliance with each term and condition of the permit. If the permitting authority provides for cross-referencing specific permit terms and other applicable documentation, the certification may utilize cross-referencing to identify the compliance status of permit terms, so long as it is clear whether compliance with each cross-referenced term and condition is continuous or intermittent.
- 3B.** *Identify the compliance status of each term and condition of the permit using the method(s) or other means identified in 2B.* In section **2B**, the responsible official identified whether the compliance determination methods provide continuous or intermittent data. Based on those methods and other material information, the responsible official must identify the compliance status of each permit term and condition. There are two acceptable ways to address this requirement.
- i. The certification requires the responsible official to certify compliance with each permit term or condition. If the permitting authority provides for cross-referencing specific permit terms and other applicable documentation, the certification may utilize cross-referencing to identify the compliance status of permit terms, so long as it is clear what the compliance status is for each cross-referenced term and condition.
 - ii. The following compliance statement could also satisfy this requirement: "With the possible exception of those permit terms and conditions identified below (referring to a list of deviations, exceedances and excursions), emission units described in permit # were in compliance with all permit terms and conditions over the previous year as determined by all required testing and monitoring in the permit and other material information."

For both of these approaches (**3A** and **3B**), in identifying the compliance status of each term and condition of the permit, a source shall certify intermittent compliance when basing its certification on methods or other information providing intermittent data, and on methods or other information providing continuous or intermittent data which identifies any deviation, exceedance or excursion. A source may certify continuous compliance when basing its certification on methods or other information providing continuous data but not indicating deviations, exceedances or excursions from those permit terms or

conditions. EPA does not interpret a certification of intermittent compliance to necessarily mean that the responsible official is certifying periods of noncompliance.

4. *Identify such other facts that were required to determine the compliance status as necessary.*
5. *Identify deviations or possible exceptions to compliance:* For those units in which a deviation (as defined by state rule) or an excursion or exceedance (as defined in the CAM rule, 40 CFR 64.1) has occurred over the certification period, the certification should identify the emissions unit, applicable requirement(s), monitoring requirement(s), dates of the deviation, excursion, exceedance or other possible exceptions to compliance, and actions taken to rectify the deviation, excursion, or exceedance. Under the original Part 70 regulations, an identification of deviations, exceedances, and excursions is necessary to fully comply with the requirement to identify whether compliance is continuous or intermittent.
6. *Responsible Official certification.* In order to comply with 40 CFR 70.5(d), the following statement is required: “Based on information and belief formed after reasonable inquiry, I certify that the statements and information in this certification are true, accurate, and complete.”

General Overview:

After completing the checklist provide any comments or concerns as needed.

Enclosure 2

Compliance Certification Requirements

| Former language | Revised language |
|--|---|
| <p>70.6(c)(5)(iii) - A requirement that the compliance certification include the following: (A) The identification of each term that is the basis of the certification of each term that is the certification; (B) The compliance status; © Whether compliance was continuous or intermittent; (D) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and (E) Such other facts as the permitting authority may require to determine the compliance status</p> | <p>70.6(c)(5)(iii) - A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit, or previous reports, as applicable): (A) The identification of each tem or condition of the permit that is the basis of the certification; (B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods or means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information in that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information; © The status of compliance with the term and conditions of the permit for the period covered by the certification, based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and (D) Such other facts as the permitting authority may require to determine the compliance status of the source.</p> <p>70.6(c)(5)(iv) - A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority.</p> |