

Title V and FESOP Annual Compliance Certification

Indiana Chapter, A&WMA
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Air Permitting and Compliance Strategies
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What is an Annual Compliance Certification?

- Responsible Official (usually Corporate Officer or Plant Manager) must *certify* to status of compliance with every permit requirement for the year

Enforcement will be based on:

- Non-compliance included in the annual compliance certification
(corporate liability)
- Signing official's failure to properly certify
(personal liability)

Model Permit Condition for Indiana Title V

B.10 Annual Compliance Certification [326 IAC 2-7-6(5)]

(a) The Permittee shall annually submit a compliance certification report which addresses the status of the source's compliance with the terms and conditions contained in this permit, including emission limitations, standards, or work practices.

The certifications shall cover the time period from January 1 to December 31 of the previous year, and shall be submitted in letter form no later than ***(April 15 or July 1)**** of each year to:

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Model Permit Condition for Indiana Title V

B.10 Annual Compliance Certification [326 IAC 2-7-6(5)]

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The submittal by the Permittee does require the certification by the “responsible official” as defined by 326 IAC 2-7-1(34).

Certification Statement

I certify that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Certification:

- Is required for *every* permit requirement
- Must include:
 - ✓ Compliance or non-compliance
 - ✓ Whether compliance was continuous or intermittent
 - ✓ Methods used for determination

Certification must be:

- True
- Accurate
- Complete
- Based on information and belief formed after *reasonable inquiry*.

It all comes down to “Reasonable Inquiry”

- Unlikely to ever be 100% accurate or complete

It all comes down to “Reasonable Inquiry”

- Best defense is to *perform and document* a reasonable inquiry
 - Responsible official should fully and personally understand the factual basis for the certification
 - Systematic approach to determining compliance status
 - Especially important for requirements with hundreds or thousands of records per year and/or where subordinate responsible for tracking

It all comes down to “Reasonable Inquiry”

- For each and every permit requirement, decide:
 - What is meant by “compliance” and “continuous v. intermittent”

It all comes down to “Reasonable Inquiry”

- For each and every permit requirement, decide:
 - What constitutes reasonable inquiry
 - Includes methods used to determine compliance status (must identify in report)
 - Goes deeper to look at internal process for employing those methods

It all comes down to “Reasonable Inquiry”

- For each and every permit requirement, decide:
 - **What constitutes** reasonable inquiry
 - IDEM form identifies various abbreviations for methods used:
 - RK = record keeping
 - RR = records review
 - PM = parametric monitoring
 - VE = visible emissions
 - WP = work practice

It all comes down to “Reasonable Inquiry”

- For each and every permit requirement, decide:
 - **What constitutes** reasonable inquiry
 - Internally, company should determine precisely how these (and other) methods will be carried out
 - How, when, and by whom will records review be done
 - How and to what degree will work practices be verified
 - How will information be delivered upward to the RO

It all comes down to “Reasonable Inquiry”

- For each and every permit requirement, decide:
 - Who will be responsible for compliance and setting up foundation for reasonable inquiry

It all comes down to “Reasonable Inquiry”

- For each and every permit requirement, decide:
 - Decide how to document that a reasonable inquiry was performed

It all comes down to “Reasonable Inquiry”

The process may require corporate environmental personnel, consultants or attorneys.

- Defining terms
- Protecting privileged information
- Determining with what level of uncertainty the company is comfortable in deciding whether inquiry is reasonable for a given requirement
- Determining what type of documentation is best suited for the situation

“Reasonable inquiry” is different for different permit requirements

- Example #1: Emission limit for a process with continuous monitoring
 - What is meant by “compliance”?
 - Usually straightforward comparison of data from continuous monitor vs. emission limitation
 - What is meant by continuous or intermittent?
 - Sometimes a standard may allow something less than compliance 100% of the time.

“Reasonable inquiry” is different for different permit requirements

- Example #1: Emission limit for a process with continuous monitoring
 - Method used to document compliance?
 - For continuous monitoring, the method used and reported to IDEM would be recordkeeping.
 - Internally, the company should consider how the records are reviewed – this may be a computer-generated report of anything outside the limits or manual review of data.

“Reasonable inquiry” is different for different permit requirements

- Example #1: Emission limit for a process with continuous monitoring
 - What constitutes a reasonable inquiry?
 - For a certified monitor, reasonable to rely on monitoring data
 - Consider whether the particular computer program is reliable means of identifying noncompliance
 - May require company to understand program logic

“Reasonable inquiry” is different for different permit requirements

- Example #1: Emission limit for a process with continuous monitoring
 - Who is responsible for compliance and setting up the foundation for the reasonable inquiry?
 - Should identify each job title necessary, from lowest in chain of command up through RO

“Reasonable inquiry” is different for different permit requirements

- Example #1: Emission limit for a process with continuous monitoring
 - **How to document** that a reasonable inquiry was performed
 - Keep record of when data was reviewed?
 - By whom?

“Reasonable inquiry” is different for different permit requirements

- Example #2: Monitoring / recordkeeping requirements
 - What is meant by “compliance”?
 - Usually straightforward question of whether monitoring was performed or record was kept
 - What about electronic recordkeeping?
 - How to know if monitoring was done properly?
 - What is meant by continuous or intermittent?
 - Are *any* absent records allowed? (Some permits require literally hundreds of thousand of individual records per year)

“Reasonable inquiry” is different for different permit requirements

- Example #2: Monitoring / recordkeeping requirements
- Method used to document compliance?
 - For monitoring, recordkeeping will be usu. be required in the permit for monitoring
 - For recordkeeping requirements, a records review is the method to be used
 - What level of detail should the review take?
 - Will it be once per year or frequently as the year goes by?

“Reasonable inquiry” is different for different permit requirements

- Example #2: Monitoring / recordkeeping requirements
 - What constitutes a reasonable inquiry?
 - Must the RO review every single record?
 - If not, what level is appropriate?
 - To what level of detail must the RO understand the monitoring requirement?

“Reasonable inquiry” is different for different permit requirements

- Example #2: Monitoring / recordkeeping requirements
 - Who is responsible for compliance and setting up the foundation for the reasonable inquiry?
 - Should identify each job title necessary, from lowest in chain of command up through RO

“Reasonable inquiry” is different for different permit requirements

- Example #2: Monitoring / recordkeeping requirements
 - **How to document** that a reasonable inquiry was performed
 - Keep record of when data was reviewed?
 - By whom?

“Reasonable inquiry” is different for different permit requirements

- Example #3: General requirements such as the fugitive dust rule
 - What is meant by “compliance”?
 - Rule has several compliance requirements
 - Some requirements are subjective – who decides?
 - What is meant by continuous or intermittent?

“Reasonable inquiry” is different for different permit requirements

- Example #3: General requirements such as the fugitive dust rule
- Method used to document compliance?
 - Very different approach to documenting compliance
 - Constant monitoring impractical]
 - What steps are appropriate?

“Reasonable inquiry” is different for different permit requirements

- Example #3: General requirements such as the fugitive dust rule
 - What constitutes a reasonable inquiry?
 - Many different opinions possible on how diligently a permittee must look into this requirement

“Reasonable inquiry” is different for different permit requirements

- Example #3: General requirements such as the fugitive dust rule
 - Who is responsible for compliance and setting up the foundation for the reasonable inquiry?
 - Identify job titles with responsibility for identifying potential noncompliance?
 - Identify job title with responsibility for gathering information for ACC purposes

“Reasonable inquiry” is different for different permit requirements

- Example #3: General requirements such as the fugitive dust rule
 - **How to document** that a reasonable inquiry was performed
 - Keep records of reports of noncompliance?
 - What if no data available?

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