

CHAPTER 8

COMPLIANCE

Introduction

As a Title V facility, compliance with the requirements of Title V and the Title V permit must be maintained. This chapter explains a facility's duty and responsibility to:

- Comply with Title V and all of its requirements;
- Submit monitoring reports; and
- Report deviations;

This chapter also describes:

- Who can enforce Title V if the facility fails to comply;
- The penalties and other enforcement actions that can occur for failure to comply;
- The actions the facility can take to protect itself against certain enforcement actions;
- How the facility should review operations and file semi-annual monitoring reports; and
- The procedure for the facility to review and evaluate activities over the year and complete and submit the annual compliance certification.

As soon as the facility receives their Title V permit, the Title V operator should read through the entire permit to ensure that all permitted equipment is included in the permit, and that they fully understand all of the permit terms and conditions. The facility receives, as a courtesy, a draft of the proposed permit prior to issuance and should know what to expect in their permit when the final permit is issued. They should contact the issuing engineer with any questions as soon as practicable if there are any questions or errors.

There are two sections in the permit that are of particular interest for Title V compliance and will be discussed in this chapter. The sections specify the facility's reporting requirements under Title V. The first is Section D, which lists most of the permit conditions; and the second is Section K, specifically conditions 17 & 18, and 22, 23 & 24. The facility is encouraged to pay particular attention to these two permit sections. These sections deal primarily with a facility's compliance requirements under the Title V program.

What Is Required In Title V?

The owner or operator of a Title V facility is required to operate the facility in compliance with all terms, requirements, and conditions specified in the Title V permit at all times. This includes, but is not limited to, performing necessary maintenance on equipment, keeping all required records, identifying and reporting all deviations, submitting Semi-Annual Monitoring reports and an Annual Compliance Certification.

The facility is required to provide periodic reports to both the AQMD and the EPA. The Title V permit provides the requirements to be fulfilled and the associated reporting forms provide the mechanism for facilities to fulfill these requirements.

What Are The Reporting Requirements Of Title V?

Each facility, upon issuance of the Title V permit should thoroughly read and review the entire Title V permit paying particular attention to Section K.

There are several reporting requirements as a part of each Title V permit. Section K of the Title V permit contains the Title V Administrative Conditions required of each facility. These Administrative Conditions listed in Section K include:

- General Permit Provisions;
- Compliance Provisions;
- Emergency Provisions;
- Recordkeeping Provisions;
- Reporting Provisions;
- Periodic Monitoring; and
- Applicable Rules.

Table 8-1 provides an overview of Title V reporting requirements. The forms can be found in Appendix F.

Table 8-1: Overview Of Title V Reporting Requirements

Report Name	Contents	Required For	Frequency	Reporting Form
Deviation Report	Description Of The Deviation Probable Cause(S) Actions Taken	All Facilities	Promptly After Each Deviation	Form 500-N
Semi-Annual Monitoring Report	Report Of Monitoring Identification Of Deviations	All Facilities	Every Six Months	Form 500-SAM
Annual Compliance Certification	Compliance Status With Permit Conditions	All Facilities	Annually	Form 500-ACC
Progress Report	Required Dates Of Remedial Measures Actual Dates That Remedial Measures Were Achieved Why Any Required Dates Were Not Met Preventive Or Corrective Measures Adopted	Some Facilities With A Compliance Plan Or AOC	Semi-Annually Or More Frequently As Required By The Compliance Schedule Or AOC.	Form 500-C2 (see Appendix E)

Title V requires the facility to complete and submit a Semi-Annual Monitoring report for each six months of the calendar year. These reports are made using the 500-SAM form to report no deviations or to list any deviations that occurred during that half of the year. Section K, condition 23 of the permit will identify the actual reporting periods and when the monitoring reports are due. These Semi-

Annual Monitoring reports are required for both RECLAIM and non-RECLAIM Title V Facilities.

Facilities that have additional reporting of required monitoring as part of their permit conditions, e.g. CEMS reports, required monthly recordkeeping, etc., are still responsible for submitting those reports as scheduled in the permit condition. "Required monitoring" does not just mean continuous emission monitoring; however, it also means any reporting observations, calculations, measurements, sampling and anything else involving the operation of a facility's equipment that the permit requires the facility to keep a record of.

Unless specified in the Title V permit or it is required by other regulations, the facility does not need to submit all monitoring data and records. However, the facility must *keep all records* and must report whether or not they have performed all monitoring and recordkeeping as required by their Title V permit. Also, the facility must clearly identify and report any instances of deviations (non-compliance), including but not limited to breakdowns, emergencies, excess emissions, non-compliance with recordkeeping and reporting requirements, etc., from an applicable requirement or condition on the Title V permit by using Form 500-N. A detailed description of the non-compliant activities and how compliance was achieved should be reported with Form 500-C2. The report using Form 500-C2 should be submitted, at the latest, with the required Annual Compliance Certification (Form 500-ACC).

Form 500-C2 should also be used by a facility that has been granted an active variance by the AQMD Hearing Board, or is subject to an abatement order issued by the Hearing Board, whenever required to submit progress reports on a schedule defined in the variance or abatement order. The requirements for the progress reports will be specified in the variance, or abatement order, and may also be in the Title V permit.

For all reports, the responsible official, listed in Section A of each permit, from the facility must certify that, based on information and belief formed after reasonable inquiry, the statements and information in the reports are true, accurate, and complete.

When Is A Deviation Reportable?

Section K of each Title V permit defines the different types of incidents reportable as a deviation under 40 CFR Part 70. These deviations are listed below, along with the relevant condition in Section K.

- Emergency – Section K, condition 17
- Breakdown – Section K, condition 22(A)
- Excess Emission – Section K, condition 22(B)
- Other deviation – Section K, condition 22(D)

Form 500-N Notification Report for Deviations, Emergencies, & Breakdowns provides a checklist that describes the applicable Rule(s), verbal reporting requirements and timetable, and the written reporting requirements timetable. The facility must verbally report a deviation classified as an emergency, breakdown, or one that results in an excess emission to the AQMD by calling 1-800-CUT-SMOG, providing the requested information, and then obtaining a

notification number. For deviations reported after business hours, the facility should pursue obtaining the notification number since use of the number on Form 500-SAM will assist in avoiding inadvertent duplicate reporting of the deviation.

The facility should make note of this notification number. The notification number, for each individual deviation, is important as it will be listed on the Form 500-SAM Semi-Annual Monitoring Report to help identify compliance with Regulation XXX, and assist in linking the verbally reported deviation with the submitted written report.

What Is An Emergency?

An emergency is any situation arising from sudden and reasonably unforeseeable events beyond control of plant personnel.

1. It includes events that are considered to be “acts of God” **and** it must meet **all three** of the following criteria:
2. Requires immediate corrective action to restore normal operation, **and**
3. Causes facility to exceed technology-based emission limit, **and**
4. It was not caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

The Emergency Provision provides an affirmative defense to action brought for non-compliance with technology-based emission limits only and **ONLY** when all four criteria are met. However, the facility must refer to Section K, condition 17 for more specific requirements and applicability.

An example of emergency may be a tornado rendering a bag house to be inoperable and the facility shuts down the process right away but it takes the remainder of a full process cycle for the process to completely cease, hence they may have continued to emit without control. They may have an affirmative defense against non-compliance with PM10 limits but the situation may not necessarily excuse them from violating a public nuisance rule.

If the deviation is the result of an emergency involving a technology-based limitation, a facility should also comply with the AQMD requirements for a Title V permit (Rule 3002(g)), and either Rule 430 - Breakdown Provisions, or Rule 2004 (i) - Requirements (RECLAIM). Complying with these requirements can give a facility an affirmative defense to enforcement action.

What Is A Breakdown?

In Section K, condition 22(A) of the Title V permit states:

“Breakdowns shall be reported as required by **RULE 430 - BREAKDOWN PROVISIONS** or Subdivision (i) of **RULE 2004 – REQUIREMENTS**, whichever is applicable. “

Since AQMD **RULE 430 - BREAKDOWN PROVISIONS** is not a SIP-approved rule, EPA does not recognize breakdowns. Therefore, a valid breakdown is not recognized under Title V and must be reported as a deviation. A Rule 218 breakdown is also reportable as a deviation. **RULE 430 - BREAKDOWN**

PROVISIONS applies to non-RECLAIM Title V facilities or to pollutants not regulated under the RECLAIM program at RECLAIM facilities. RECLAM facilities should follow Rule 430 for breakdowns if such a breakdown involves only non-RECLAIM pollutants.

For RECLAIM pollutants, **RULE 2004 – REQUIREMENTS**, Subdivision (i) identifies breakdowns for facilities that are governed under the RECLAIM program. For example, a CEMS breakdown is not necessarily a deviation because [1] RECLAIM regulation is SIP-approved, and [2] it provides a procedure for missing data. If by applying the missing data procedure, the emission limit is exceeded, then this becomes an excess emission deviation.

The facility must verbally report the deviation to the AQMD by calling 1-800-CUT-SMOG, providing the requested information, and obtaining a notification number.

Condition 22(B) defines the reporting requirements for deviations with excess emissions.

What Are Excess Emissions?

Section K condition 22(B) of the permit defines an excess emission as a deviation from permit or applicable rule emission limitations, equipment operating conditions, or work practice standards that results in emissions greater than those allowed by the permit or applicable rules. Excess emission deviations must be reported within 72 hours, or less if specified in any other applicable state or federal regulation, of the discovery of the deviation. The facility must verbally report the deviation to the AQMD by calling 1-800-CUT-SMOG, providing the requested information, and obtaining a notification number.

What Are Other Deviations?

Any deviation that is not a Breakdown, Emergency or that does not result in Excess Emissions, as described above, is considered an Other Deviation. This includes failure to complete and submit Semi-Annual Monitoring Reports (Form 500-SAM), Annual Compliance Certifications (Form 500-ACC), discovery of the failure to keep required records, maintenance logs, being issued a Notice of Violation, etc.

Other Deviations, as defined, need only be reported with the Semi-Annual Monitoring Report in the time period when they are discovered. There is no necessity for obtaining a notification number for Other Deviations.

What If The Facility Is Not In Compliance?

Rule 3004 provides that a Title V permit include requirements for prompt reporting of a deviation (non-compliance) from any permit condition.

Section K of the Title V permit specifies how soon after it is discovered that the deviation must be reported to AQMD. The report of the deviation, using Form 500-N, must include the date, time, and duration of the deviation, the probable or known cause of the deviation, any corrective actions or preventive measures that were taken, and a certification of the information submitted by a responsible official as previously described.

What Are The Consequences For Failure To Comply?

Any failure to comply with a Title V facility permit term, requirement or condition is a violation of Regulation XXX (see Rule 3002 (c)), and may be a violation of an AQMD, state, or federal air pollution regulation. Each day during which any portion of a violation occurs is a separate violation. Any violation of a Title V permit can be grounds for:

- Enforcement action (e.g., a Notice of Violation);
- Permit termination;
- Permit revocation and re-issuance;
- Permit revision; and/or
- Denial of a permit renewal application.

Who Can Enforce Title V?

The AQMD is the primary authority that can enforce Title V requirements, both federally and non-federally enforceable regulations. However, EPA, the state and private citizens can also take enforcement actions against facilities that violate federally enforceable regulations governing Title V.

AQMD Enforcement Authority

The AQMD has the authority to enforce **all Title V program requirements** and all permit terms. The AQMD is given authority to impose sanctions for violations of any rule, regulation, permit, or order of the AQMD as stated in the California Health and Safety Code Sections 41513 and 42400, et seq.

EPA Enforcement Authority

EPA has the authority to enforce:

- The requirement to have a Title V permit; and
- Any federally enforceable term or condition of a Title V permit.

Title V permits will typically contain some terms and conditions that are federally enforceable and some that are not.

What Is “Federally Enforceable”?

In order to achieve clean air, the AQMD has adopted a State Implementation Plan (SIP). The SIP contains rules and other programs to reduce emissions and improve air quality. When AQMD adopts or amends a rule that is proposed in the SIP, the rule is forwarded to EPA for SIP approval. After EPA “SIP-approves” the rule, the rule becomes **federally enforceable**, meaning that EPA can take enforcement action on a violation or failure to comply with the rule. Federal regulations, such as NESHAP and NSPS regulations, and standards promulgated by the AQMD pursuant to delegated federal authority, such as case-by-case MACT determinations under federal Clean Air Act Section 112 (g), are also federally enforceable.

Rules and rule amendments that are not SIP-approved or federally promulgated are not federally enforceable. Rules that are ***not federally enforceable*** include:

- Rules and rule amendments that have been adopted by AQMD but are pending EPA review and have not yet been SIP-approved; and
- State and local rules that are not contained in the SIP, such as Rule 1401 - New Source Review of Carcinogenic Air Contaminants and state air toxic control measures.

Federal law allows EPA to impose sanctions and or fines for Title V violations as stated in the federal Clean Air Act Section 113.

Citizen Enforcement

Under the federal Clean Air Act, citizens may also take certain actions to enforce Title V requirements. A citizen can file suit to enforce:

- The requirement to obtain a Title V permit; and
- Any federally enforceable term or condition of a Title V permit.

By federal law, citizen suits are subject to the following:

- Civil penalties awarded in a citizen's suit are turned over to EPA for enforcement purposes;
- The court may award the costs of the suit to the citizen, including expert fees and attorney fees; and
- Citizens cannot seek criminal penalties; however, citizens can receive an award of up to \$10,000 from EPA for information leading to a criminal conviction or civil penalty.

These provisions are stated in the federal Clean Air Act Sections 113(f) and 304.

How Is A Facility Protected From Enforcement Action Upon Discovering Non-Compliance?

If equipment at a facility is currently operating out of compliance, or it is anticipated that it will be operating out of compliance in the near future, the permit holder may seek protection by:

- Petitioning for a variance pursuant to Rule 518 - Hearing Board Procedures for Title V facilities; and
- Petitioning for an Alternative Operating Condition (AOC) pursuant to Rule 518.2 - Permit Appeal Procedures for Title V Facilities.

Both a variance and an AOC are orders issued by the AQMD Hearing Board based upon necessary or required legal findings that allow a source to be operated for a specified period of time in a manner that would otherwise be considered non-compliant. The term of a variance or AOC is not indefinite or permanent. An AQMD local variance and an AOC are only granted for a limited period of time determined by the AQMD Hearing Board and with an end date clearly stated in the variance or AOC.

A local variance will protect a facility from enforcement actions taken by the AQMD or the state, **but not** EPA or citizen enforcement actions. An AOC will protect your facility from enforcement actions taken by the AQMD, state, EPA, and citizens. It is possible that an AOC may not be granted for which a local variance may be warranted. For this reason, it is recommended that separate petitions for an AOC and a local variance be filed concurrently.

This distinction is explained in the following discussion.

Variance And Alternative Operating Condition

A local variance under Rule 518, if granted, will protect the facility from enforcement actions taken by the AQMD or state. The EPA does not recognize such variances. Therefore, the facility could still be subject to EPA or citizen enforcement action, even if a local variance has been granted.

An AOC, if granted, will protect the facility from enforcement actions taken by the AQMD, state, EPA, or citizens. The proposed AOC will be subject to concurrent review for 30 days by the public and any affected state, and for 45 days by the EPA. If the EPA does not object to the AOC, it shall become operative, effective as of the date of issuance by the Hearing Board, subject to the public petition requirements of Rule 3003 (l).

For both a variance and an AOC, the protection from enforcement action applies only to the specific equipment or operations for which the variance or AOC is granted.

There are certain requirements from which a facility cannot obtain a variance or AOC. Table 8-2 lists examples of violations from which a facility owner/operator may not seek a variance or AOC. See Rule 504, Rule 518, and Rule 518.2 for more details.

Table 8-2: Applicability Of Variances And Alternative Operating Conditions

Type of Violation	Variance or AOC Procedure Available?
Any requirement to apply for and obtain a Permit to Construct or a Permit to Operate, including the requirement to apply for and obtain a Title V permit	NO
Any rule setting forth requirements for Permits to Construct	NO
Any federally promulgated rule, including NSPS, NESHAP, Title IV and Title VI	NO
Any requirement contained in a permit issued by EPA	NO
Any rule or provision in Regulation XII	NO
Rules 202, 203, 217, 218 and 221	YES
Regulation IV, except Rules 402 and 430	YES
Regulation VII	YES
Regulation XI	YES
Regulation XX, except provisions which require Permits to Construct or set forth requirements for Permits to Construct; missing data provisions; annual allocation as stated in Rule 2004(b) and (d); and any permit conditions which state annual allocations	YES

Petitioning For A Variance Or Alternative Operating Condition

To seek a variance or AOC, the facility must file a petition with the AQMD Hearing Board. In order to grant a variance or AOC, the Hearing Board must make specific findings regarding the facility and the circumstances of the variance or AOC.

A variance or AOC will establish specific conditions for operating the source during the period of the variance or AOC. The variance or AOC will apply for a limited time only, after which the source must be in compliance.

For more information on variances and AOC's, call (800) CUT-SMOG or (800) 288-7664 or stop by the Public Information Center and request the AQMD pamphlet entitled "Variances and the Hearing Board." To obtain the variance information package, call the AQMD Clerk of the Board at (909) 396-2500, or pick up the package in person at the Clerk of the Board's Office at the AQMD Headquarters in Diamond Bar or at the Long Beach field office located at 1500 W. Carson Street, Suite 115, Long Beach, CA 90810, telephone number (310) 233-7000.

When Does An AOC Become Effective?

If EPA does not object to the AOC within the 45-day review period, the AOC generally becomes effective on the day the Hearing Board approves the petition. The Hearing Board, however, may grant the AOC effective date retroactive to the date the AOC petition was filed if excess emissions that occurred between the petition filing date and the issuance of the AOC are quantifiable and all the circumstances specified in Rule 518.2 (e)(2) existed during the period. Refer to Rule 518.2 for all of the specific circumstances that must exist for an establishment of an AOC.

Thus, when an AOC is granted, it will be considered as a temporary amendment to the portion of the Title V permit affected by the AOC. The terms of the AOC may contain compliance measures requiring the facility to modify their operations in order to return to compliance. Depending on the type of modification, a separate application to revise the Title V permit may be required. For instance, the AOC may require the facility to replace an existing piece of air pollution equipment. In this case, the facility operator must submit applications to replace the equipment and modify the Title V permit.

What Is A Semi-Annual Monitoring Report And When Is It Due?

Semi-Annual Monitoring Report – AQMD Form 500-SAM

Each permitted Title V facility is required to submit monitoring reports to AQMD at least twice per year. A report for the first six calendar months of the year is due by August 31 of that year and a report for the last six calendar months of the year is due by February 28 of the following year. It is recommended that each facility review the Title V permit Section K Condition 23.

The first Semi-Annual Monitoring report, using AQMD Form 500-SAM Semi-Annual Monitoring Report, is due following the issuance of your Title V permit and summarizes the monitoring activities for the facility from the date of issue of the permit to the end of the six month period in which the permit is issued.

For example:

If the permit is issued ***any time*** during the first six months of a year, February 14, 2003 for instance, the first Semi-Annual Monitoring report is due to the AQMD no later than August 31, 2003 and should cover the time period from date of issuance, February 14, 2003, through the end of the first six months of the year, June 30, 2003.

The Second Semi-Annual Monitoring report is due to the AQMD no later than February 28, 2004 and should cover the last six months of the year, July 1, 2003 through December 31, 2003.

The same logic applies to a permit issued in the second half of a year. From the date of issuance to December 31, this will be due February 28 of the following year.

The reporting period for the Semi-annual Monitoring Report is the same regardless of a facility's RECLAIM participation. The Semi-Annual Monitoring Reports are always due at the same time for all facilities.

Deviations are to be reported, using Form 500-SAM, in the six month period in which they were discovered. All deviations, whether previously reported on or not, **MUST** be reflected in the Semi-Annual Monitoring Report submitted to cover the period when the deviation was discovered.

What Is The Annual Compliance Certification?

All Title V facilities are required to certify annually to compliance with the terms and conditions of the Title V permit. This process is called the ***Annual Compliance Certification***.

When Does A Facility Submit An Annual Compliance Certification?

In addition to the Semi-annual Monitoring Report described in the previous section, the facility is also required to provide an Annual Compliance Certification that certifies that the facility has operated in continuous compliance with all applicable rules and regulations during the previous year. The facility must also provide a certification, if this is the case, that in some instances they have been operating with intermittent compliance; that is where they were operating at times with excess emissions, improper recordkeeping, had an equipment breakdown, etc. The permit holder would benefit by reviewing the Title V permit Section K, condition 24.

- For **non-RECLAIM or RECLAIM Cycle 1** facilities, the required certification Form 500-ACC – *Annual Compliance Certification for Title V* for each calendar year must be submitted by March 1 of the following year.
- For **RECLAIM Cycle 2** facilities, the required certification Form 500-ACC – *Annual Compliance Certification for Title V* for the 12- month period from July 1 of the previous year to June 30 of the current year must be submitted by September 1 of the current year (the same reporting period as APEP)

If the facility has received the Title V Permit during the year, the annual compliance certification should reflect the facility's compliance from the issue date of the permit through the end of the reporting year and submitted as described above.

Every facility is required to submit a compliance certification annually, by the date specified, to both the EPA and the AQMD.

How Can The Facility Perform An Annual Compliance Certification?

Perform the following steps:

1. Verify that the equipment descriptions on your Title V permit agree with the equipment actually operating at your facility.
2. Review all records to determine if your facility complied with all terms and conditions on the Title V permit, including emission limits, work practice standards, test methods, and monitoring, reporting and recordkeeping (MRR) requirements.
3. Complete Form 500-ACC - *Annual Compliance Certification*
Listing non-compliant equipment on Form 500-ACC does not protect the facility from possible enforcement action.
4. Submit all forms and other information to AQMD and EPA by the due date in the Title V permit.

A facility may be visited by state-registered portable equipment that is not exempted from a Title V permit pursuant to Rule 3004 (h). In this case the Title V operator may certify compliance for the equipment by obtaining from the contractor a copy of the contractor's state registration and a written certification signed by the contractor that the contractor complied with all conditions of the registration. Only the following state-registered portable equipment are exempt from being listed in the Title V permit and therefore, are exempted from compliance certifications:

- Portable non-road engines; and
- Military tactical support equipment.

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