

# **Title V Deviation Reporting and Permit Compliance Certification**

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## Introduction

All Title V Federal Operating Permit (Title V permit) holders must submit Deviation Reports for any six-month period where deviations occur, and must submit Permit Compliance Certifications at least annually regardless if a deviation has occurred or not. This guidance is designed to aid in the development and submission of these documents in a timely and complete manner. Unless otherwise specified, the information found in this guide applies to all types of Title V permits whether they are Site Operating Permits (SOP), General Operating Permits (GOP), and whether the site is a major or minor source.

This guidance is designed to supplement the instructions for the forms. The following guide is divided into three sections: guidance common to both forms, then one section each devoted to the Deviation Report and the Permit Compliance Certification.

## Terminology

Unless otherwise described, terms in this guidance have the meaning as implemented in 30 Texas Administrative Code (TAC) Chapter 122. From this regulation the term “annual compliance certification” is synonymous with the term “permit compliance certification” or “PCC” used in this guidance and the form and its instructions. The Deviation Report will often be referred to as “DevRep” in this guidance, regardless of whether the official form is used.

“Title V Federal Operating Permit” may be referred to as “Title V Permit”, “TV Permit”, or simply “permit” in this guidance.

When used as a single word in this document and unless otherwise qualified, “agency” means the Texas Commission on Environmental Quality (TCEQ).

## Disclaimer

This document is intended solely as guidance and is not a regulation or policy. It does not impose legally binding requirements on the Texas Commission on Environmental Quality (TCEQ) or the regulated community. This guidance does not confer legal rights or impose legal obligations upon any member of the public. The general description provided here may not apply to a particular situation based on the circumstances. Interested parties are free to raise questions and objections about the substance of this guidance to a particular situation. The TCEQ retains the discretion to adopt approaches on a case-by-case basis that differ from those described in this guidance where appropriate. This document may be revised periodically without public notice.

## Changes since the 2011 Version

This version of the guidance document contains updated or revised guidance based on input from the regulated community and investigation experience. The following sections contain new or revised material not addressed the immediate previous version (2011):

1. Clarified permit holder's obligation related to credible evidence.
2. Clarified when Agreed Orders and Consent Decrees are reportable for deviations in a Title V permit.
3. Clarified what NSR application representations are reportable for deviations in a Title V permit.
4. Simplified guidance in the section: Liquid Spills, Drips, and Leaks.
5. Simplified Open-ended Lines guidance.
6. Clarified "Calibration Drift" deviation guidance.
7. Under Appendix A:
  - a. Clarified that reasonable inquiry is part of the review process for deviations based on permit information
  - b. Guidance allows for not including alleged violations that are successfully repealed
  - c. Clarified that emergency responses that should be considered under deviation reporting are those that result in an unauthorized emission.

## **General Information and Guidance**

### ***The Use of Official Forms***

Both the Deviation Report (DevRep) and the Permit Compliance Certification (PCC) forms are listed as official TCEQ forms, complete with instructions. Permit holders may use an equivalent document or spreadsheet in place of these forms, provided that the information submitted in lieu of the forms conforms to these general guidelines. The submitted information must:

1. Contain the same informational elements as the forms, and should be laid out in a manner so the reader can follow the data or information in the same way that the forms present it; and
2. Be legibly recorded on paper. At the time of writing this guidance, the TCEQ does not have the capability of accepting submissions of these forms other than paper media. The TCEQ is not responsible for printing out submitted data stored on electronic, magnetic, or optical media.

See separate requirements unique to the PCC form in that section of this guidance.

### ***Certification by Responsible Official (RO)***

All reports required by the TV permit, including the PCC, must be certified by the RO for truth, accuracy, and completeness. This is typically done through the use of the form OP-CRO1. The permit holder need not use this form, but any alternative to the OP-CRO1 form must contain the same information and must use the same certification language.

It is important to note that the OP-CRO1 is not being used to certify compliance; that is the purpose of the PCC form. Instead, the OP-CRO1 is certifying that the information contained on the paper forms attached is truthful, accurate, and complete.

In the instructions for OP-CRO1 form, the permit holder is not allowed to use the “date range” feature. Rather, the specific date must be used since the submission of the DevRep is typically only every six months at most (although some submissions are made more frequent), and the PCC form is usually only submitted annually.

## ***Calculation of Compliance and Reporting Periods and Submission Deadlines<sup>1</sup>***

### **Calculation of Periods Defined by Regulation**

Below are formulae to calculate the *maximum* period for deviation reporting and compliance certification. Note these formulae apply regardless of the number of days in a month, in Leap Year or regular Calendar Year.

Formula for calculating maximum start and end dates of the deviation report: (six months)

Start date = initial permit issuance date or the day after the End date of the previous deviation reporting period

End date = start date + six months – one day

Formula for calculating maximum start and end dates of the permit compliance certification: (twelve months)

Start date = initial permit issuance date or the day after the End date of the previous compliance certification period

End date = start date + twelve months – one day

### **Adjustment of Reporting or Compliance Periods**

Deviation Reports may be submitted more frequently than six months, or the period may be adjusted for a period less than six months in order to line-up periods with other date-driven requirements. The same may be said for the PCC: certifications may be submitted more frequently than annually, or the certification period may be adjusted for a period less than one year in order to line-up periods with other date-driven requirements. In a general sense, any adjustment can be made to the DevRep or the PCC periods as long as:

1. The periods are no longer than those required by regulation; and
2. There are no gaps in the reporting or certification periods.

Note: Although deviations are not used in determining compliance history, the permit holder may be required to submit compliance certifications more frequently than 12 months or deviation reports more frequently than six months as a permit requirement resulting from a poor performance rating on a compliance history review or other ordering provision directed by the commission.

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<sup>1</sup> The following information under this heading describes the Deviation Report period and Compliance Certification period, including their start and end dates. For information related to the start and end dates for a deviation, refer to the subsection “Timing: Deviation Start and End Dates” in the section “General Requirement for Reporting Deviations.”

## Calculation of Submission Deadline

Both the DevRep and the PCC are required to be submitted within 30 days of the end of the corresponding reporting period. It is important to note that the permit holder should be keenly aware of the date entered into the “END DATE” field of the DevRep or PCC, since this starts the clock for the 30 day period. For purposes of meeting the deadline, the agency follows the practice based on the “mailbox rule” from Texas Rules of Civil Procedure which considers the postmark date as the receipt date for mail delivered to the TCEQ. Consistent with this practice, a similar mailing date printed on an overnight package receipt will also be considered when determining whether or not the deadline has been met. Any document hand-delivered to an agency office should receive a date stamp from the front desk or receptionist for this purpose.

Computation of Time: Report deadlines that fall on a day that the Chief Clerk would ordinarily be closed (i.e., days the agency is officially closed) shall be processed according to 30 TAC §1.7. However, this adjustment does not apply to the actual reporting period, because there is no report due on that day (end date). For example, a reporting period end date falls on a Saturday. That day remains the end date of the reporting period. However, in another situation, a 30-day report submittal deadline that fell on Saturday would be due at the end of the day of the next business day (Monday unless that Monday is a holiday for which the Chief Clerk’s office is closed).

## Deviation Report and Compliance Certification Period Start and End Dates Based on Specific Circumstances

### *Initial Issuance*

The initial issuance (effective) date of a Title V permit always begins the deviation reporting period and the permit compliance certification period for that permit regardless of the existence of previous or other current TV permits at a site. The 60-day public petition period following the effective issuance date has no bearing on the deviation reporting or permit compliance certification periods.

### *Permit Revocation, Termination, or Re-issuance*

Under 30 TAC §122.360, the potential exists for the TCEQ Executive Director or the EPA to revise, revoke, terminate, or re-issue a permit. Permit revisions do not affect the deviation or compliance certification periods.

Revocation and termination of a TV permit ends the permit holder’s deviation reporting and permit compliance certification obligations, going forward after the TV permit has been revoked or terminated, unless a compliance agreement, Agreed Order, or Consent Decree stipulates

reporting and certification as if the permit was still in effect. A final PCC form is required to cover the remaining active permit period from the last PCC to the revocation or termination date. A final deviation report is required from the last six month period until the revocation or termination date to list any deviations that occurred during that period.

For purposes of deviation reporting and compliance certification, a permit re-issuance has the same effect as initial issuance as described above.

#### *Permit Renewal Date and Permit Expiration Date for a Site Operating Under an Application Shield*

The permit renewal date has no significance on the deviation reporting period or the PCC period. Likewise, a site operating under an application shield where the permit is not yet renewed but the renewal application is deemed timely and complete does not affect the schedule of the deviation reporting and permit compliance periods. The six month deviation period and the annual compliance certification period continue from last reporting end dates respectively.

#### *Expired Permit at a Site without an Application Shield*

The date that a permit is allowed to expire where there is no (renewal) application shield marks the end date for the final deviation reporting and permit compliance certification period. A final PCC form is required to cover the remaining active permit period from the last PCC to the expiration date. A final deviation report is required from the last six month period until the expiration date to list any deviations that occurred during that period.

No DevReps or PCCs are required beyond that date, unless an Agreed Order or Consent Decree requires these forms as a requirement for the site owner or operator to continue operating under the terms of the expired permit.

#### *Voided TV Permit*

The date that a permit is voided marks the end date for the final deviation reporting and permit compliance certification period. This void action date is established and documented by the TCEQ upon request of the permit holder. Typically, a final PCC form and DevRep forms (if a deviation was experienced between the last routine submission and the void date) are required. No DevReps or PCCs are required for time periods beyond the permit void date.



### *TV Permit Type Conversion*

A conversion of permit type (such as SOP to GOP or vice versa) is always implemented through the voiding of the existing permit and issuing a new permit of the new type, even if the area under the permit or the requirements are the same. The permit holder must certify the remaining period of time operating under the old permit (from last routine period end date to the void date). The reporting period clock for deviation reporting and permit compliance certification for the new permit begins upon the issuance date of that new permit.

### *Change of Ownership (Recommended procedure)*

Although the permit itself is not new and there are no other date-driven requirements to trigger a new reporting or compliance certification period, it is strongly recommended that both the deviation reporting period and the compliance certification period end and begin on the date that ownership or operational control is transferred. The reason for this recommendation is based on whom (which RO) is certifying to truth, accuracy, and completeness on the OP-CRO1 that is attached to the DevRep and PCC. In other words, it is only fair to hold the RO of the new owner responsible for the conduct and compliance of the permitted area only from the time that he or she has control. The same can be said for the previous owner, and the previous owner's RO should not be held responsible for compliance after control is transferred.

After the transfer takes place and the new owner assumes responsibility for the TV permit obligations, changes to the reporting and compliance certification periods may be adjusted as described previously, while indicating that the start date was the first day of ownership or operational control and the period does not exceed the regulatory requirement. The permit issuance date establishes the initial reporting and certification period.

If this recommended procedure is not followed and the companies do not identify a specific transfer date for responsibility of the reporting and compliance certification periods during the course of an ownership change, then the parties need to be in agreement with the reporting period overlap, and provide for complete reporting coverage and responsibility. Full documentation of compliance certification and deviations must be reported with dates indicating responsibility and ensuring there are no gaps in reporting or certification coverage.

## ***Addressing Reports and Certifications for Portables (Regional Jurisdiction)***

Portable sources subject to TV permitting may operate in more than one TCEQ regional office's jurisdiction. At the time of this guidance, Air Curtain

Incinerator GOPs may be found in this situation. When this is the case, the permit holder should submit the DevRep and PCC to the regional office for which the permit holder is located as a base of operations or headquartered in Texas.

If the permit holder knows that the permitted facility will remain within the area bounded by one region, the permit holder has the option to coordinate the submission of reports to the address of that region where the facility is located even when the permit holder's headquarters is in another region. The permit holder must comply with submission deadlines regardless of the final destination of the facility.

It is important to note that the permit holder will be responsible for complying with any requirement imposed on the portable facility based on the geographic area where the facility operates over the reporting period, especially if those requirements change – such as moving into and out of nonattainment areas. Compliance with those requirements must be reported regardless of the location of the headquarters.

# Deviation Reporting Guidance

## *Defining a Deviation*

### **Definition of Deviation**

Permit holders are advised to consider the full meaning of “deviation” as defined in 30 TAC §122.10(5): “Any indication of noncompliance with a term or condition of the Title V permit as found using compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information.”

### **Credible Evidence**

Permit holders are obligated to consider credible evidence that is created by the permit holder (or their agent), or created by a third party and submitted to the permit holder. The third party source could be a result of citizen-collected evidence or information or evidence provided by a regulatory agency, or another party acting as an agent for the permit holder. Credible evidence may be used to indicate a deviation, but may also be used to support and defend a determination of compliance when other forms of monitoring incorrectly indicate noncompliance. Common examples of credible evidence include:

1. Indication of noncompliance from monitoring methods of one rule that can be appropriately applied to another rule. Credible evidence may also be a monitoring result from an occurrence made at a time other than that stipulated by the permit (such as monitoring made more frequently than the permit requires).<sup>2</sup>
2. Credible citizen-collected evidence indicating noncompliance with a permit term or condition brought to the permit holder’s attention.
3. A documented finding from a TCEQ investigation that may include, but not limited to, Areas of Concern, Notice of Violation, or Notice of Enforcement.
4. Other data or information that is likely a result of unauthorized emissions or other noncompliance with the permit, including emissions events, upsets, fires explosions, and other catastrophes resulting in unauthorized air emissions, spills resulting in recordable emissions events, and maintenance records for activities not authorized under an New Source Review (NSR) authorization.

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<sup>2</sup> Except for specific instances of measurements beyond a deviation limit but are averaged and indicate compliance.

Although credible evidence may be difficult to prepare and consider, permit holders are not held to any more stringent requirements than what appears in their permit, or what they are already required to do under other applicable requirements, EPA Consent Decrees or Commission orders. For example, credible evidence gleaned from the results of a valid complaint may constitute credible evidence for that situation only, and not require or impose additional monitoring on its own.

### **Reasonable Inquiry**

The RO is certifying the DevRep is truthful, accurate, and complete based on reasonable inquiry using the form OP-CRO1. Although the TCEQ does not define “reasonable inquiry”, examples of what may constitute reasonable inquiry have been noted over time. For example, not reporting a deviation that is clearly indicated from monitoring data or any other result of not complying with any permit term or condition and identified through reasonable inquiry would also result in a deviation for not reporting a deviation.<sup>3</sup> A list of common examples of activities or events that could be identified under reasonable inquiry by the RO can be found in [Appendix A](#). Please note that the list contained in Appendix A is not exhaustive.

### **Generation and Disposition of a Deviation: Theory and Practice**

Permit requirements are evaluated for compliance, which often involves a review of the results of required monitoring. When a parameter of a monitoring method exceeds a limit, the permit holder is obligated to report that occurrence as a deviation to the standard that is being monitored.<sup>4</sup> This is true whether the monitoring is defined by a rule citation, other permit condition, or a periodic monitoring or Compliance Assurance Monitoring protocol established in the TV permit.

For example, a thermal oxidizer may have an NSR permit requirement to achieve a certain destruction efficiency. The TV permit contains a periodic monitoring protocol for this thermal oxidizer that determines it is operating correctly and controlling emissions by combusting the gases under the conditions for optimum destruction efficiency. That periodic monitoring protocol may require a certain minimum temperature in the combustion zone. If at any time the temperature drops below the minimum combustion zone temperature, the permit holder must record and report a deviation for the thermal oxidizer that is noncompliant with the requirement to control the emissions at the destruction efficiency required by the underlying requirement. If the permit holder has reason to believe that the thermal

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<sup>3</sup> The permit holder is required by the TV permit to comply with the requirement to report a deviation. Noncompliance with that requirement is a separate deviation.

<sup>4</sup> For limits that are defined by an averaging period, a deviation occurs when the emission exceeds that limit for the applicable averaging period as defined in the applicable requirement.

oxidizer actually was operated in a manner that complied with the necessary control (destruction) efficiency even though the minimum temperature was not maintained, then the permit holder should submit that proof as credible evidence along with the deviation.

Although it is widely known that a deviation is not necessarily a violation, most deviations will become alleged violations upon review and investigation by the TCEQ or a regulatory agency with jurisdiction. There are two common exceptions to that result: (1) credible evidence is used to dispute or overturn the apparent noncompliance, or (2) the deviation was reported in error as identified during an investigation. Thus it is extremely helpful that credible evidence is submitted along with the deviation report. This may be used to preempt a deviation from becoming a violation

Deviation reports are not a component evaluated in determining Compliance History. At the time of writing this guidance, the TCEQ does not hold information about deviations in any other media besides the paper files consisting of the documents provided by the permit holder. However, activities resulting from deviations, such as violations or other resolutions of deviations, and investigation documents by an agency with jurisdiction, may be recorded in electronic files. Violations identified in a Notice of Violation (NOV) resulting from a deviation report will be included in the evaluation of Compliance History.

Texas Water Code (TWC) §7.00251 (Senate Bill 12, 80th Legislative session): This statute prohibits the TCEQ from combining violations that are not automatically resulting in an enforcement action with a violation that is going to enforcement as a result of these violations being reported through deviation reports by a person subject to Title V (the permit holder). This prohibition does not apply to a person not subject to Title V, nor does it apply to violations found by someone other than the permit holder.

## ***General Requirement for Reporting Deviations***

### **General Report Content**

Per regulation, deviation reports are required for any six month period where a deviation is experienced. A permit holder is not required to submit a report where no deviations have taken place during the period.

At the option of the permit holder, a “blank” deviation report may be submitted to the agency with notes stating that “no deviations took place.” (The same could be accomplished with a letter or other document stating the same.) This is often done to aid in the permit holder’s efforts to keep track of reporting periods and let permit holder staff, TCEQ staff, and the general public know that there were no deviations experienced.

A report or document that is submitted stating no deviations occurred should be certified by the responsible official, and the reporting period

entered on the form or document clearly indicating the dates. Permit holders need to be aware that the submission of a blank report does not afford them any different coverage from enforcement since the submission of a substantially inadequate report will likely result in the same enforcement action as a failure to submit the report, should deviations be found that should have been reported.<sup>5</sup>

### **Timing: Deviation Start and End Dates/Times**

Deviations are required to be reported during the period which they occur and are discovered. The start date for the deviation does not depend on the start date of the reporting period, so if an ongoing deviation is discovered, reasonable inquiry will determine the start date regardless of the report period (the deviation start date can be earlier than the report period start date). There is one exception: a deviation will not start before the initial issuance date of the TV permit. That is because a deviation is an indication of noncompliance with a permit term and condition; therefore, you would not have a deviation with a permit term if you do not have a permit.

Likewise, it is possible that the deviation is expected to continue through the end of the reporting period, so there would not be an end date. In this case, an entry of “ongoing” would be used in the end date field of the deviation entry.

If a noncompliance situation is discovered that should have been reported in a two periods prior and ended before the current reporting period, that specific noncompliance would not be reported in the current deviation period. However, the permit holder should determine what failures were present, and may still be present, and unearth the reason why that noncompliance was not found. Perhaps some failures in the monitoring systems or insufficient monitoring as assessed using reasonable inquiry will trigger a deviation report.

When reporting a deviation that started in the immediate previous deviation reporting period and is still active or unresolved in the current reporting period (meaning it is continuous from the previous period), the permit holder should be sure to indicate that the deviation was continuous, and not a “repeat” violation. It should be clear that a deviation that continued over more than one deviation period is not a repeat deviation. Also, see the Enforcement Initiation Criteria for a complete description of “repeat Category B violations.”

### **Multiple Deviations from a Single Event**

It is possible that a single event will cause multiple deviations: noncompliance with multiple permit requirements. In this case, each

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<sup>5</sup> At the time of writing this guidance, Enforcement Initiation Criteria version 13, category A12.i.(7) describes the enforcement path described in this guide.

deviation must be listed separately. And depending on each requirement's standard or limit, there could also be some circumstances where a deviation occurs with a very stringent requirement, but not necessarily cause a deviation with another similar but less stringent requirement. It is up to the permit holder to make these determinations and report accordingly.

## ***The Requirements Subject to Deviation Reporting***

### **Site Operating Permit (SOP)**

The following requirements are subject to deviation reporting:

1. The entire TV permit, including the permit face, General Terms and Conditions, Special Terms and Conditions, and all attachments.
2. Applicable requirements referenced in the TV permit, including rules, regulations, laws and statutes, NSR case-by-case permits, NSR standard permits, and Permits By Rule (PBRs), TCEQ Agreed Orders or EPA Consent Decrees if those decrees or orders are incorporated in the TV permit, case-by-case Reasonably Available Control Technology and other site-specific State Implementation Plan requirements, and any other compliance plan agreements whether stated in full or referenced in the TV permit.
3. Final version of NSR permit application representations and conditions as described in 30 TAC Chapter 116, §116.116(a).
4. For minor revisions, application information that constitutes "provisional terms and conditions" upon which the permit holder may operate the change as soon as it is submitted to the agency (prior to approval of the minor revision). After approval of the minor revision, the permit holder should discontinue reporting on the provisional terms and conditions since they have been replaced with revised permit terms and conditions.
5. For significant revisions, revision items should be reviewed for deviation reporting only after the significant revision is approved.
6. The information submitted on OP-NOTIFY forms are not part of the permit and thus not subject to deviation reporting. Because these "changes" are not permit terms and conditions, they would not be considered deviations. However, the permit holder must ensure that no operating permit term or condition was deviated as part of the implementation of the off-permit or operational flexibility change. For example, some emissions may be authorized under operational flexibility. However, the permit holder must have New Source Review authorization for the change. The requirement to obtain NSR authorization is a Title V permit term and condition: "The permit holder shall comply with 30 TAC Chapter 116 by obtaining a New Source

Review authorization prior to new construction or modification of emission units located in the area covered by this permit.” Therefore, even though a change may qualify for an operational flexibility notice, a lack of NSR authorization is a violation of a permit term and thus a deviation to the TV permit.

### **General Operating Permit**

The following requirements are subject to deviation reporting:

1. Requirements in the letter issued for “Authorization to Operate” (ATO).
2. The specific site’s GOP application.
3. The GOP terms and conditions, including qualification criteria.
4. For minor revisions, application information that constitutes “provisional terms and conditions” upon which the permit holder may operate the change as soon as it is submitted to the agency (prior to approval of the minor revision). After approval of the minor revision, the permit holder should discontinue reporting on the provisional terms and conditions since they have been replaced with revised permit terms and conditions.
5. The requirements from the tables as defined by the application’s GOP index numbers. I.e., the requirements defined by the operating parameters and citations found in the tables only for the index numbers as provided by the applicant.
6. Requirements referenced in the GOP terms and conditions and applicable tables, including rules, regulations, laws and statutes, NSR standard permits, and PBRs.

## ***Reporting Unauthorized Emissions***

### **Citing Unauthorized Emissions**

Emissions from sources at an area covered by a TV permit must be authorized under some NSR authorization mechanism. That general requirement to obtain authorization is found under 30 TAC §116.110. This citation should be used on the deviation report for the data cell “Regulatory Requirement Citation” when reporting an unauthorized emission. This is the minimum deviation associated to an unauthorized emission; the permit holder should ensure that all other noncompliance situations with other applicable requirements have been reported as well. For example, an exceedance of a permit limit measured at the point or unit that is regulated under the NSR authorization should be cited against that NSR permit.



## Reportable Emissions Events

All TV permit holders are subject to the Emissions Events rules in 30 TAC Chapter 101. Under current operations through the State of Texas Environment Electronic Reporting System (STEERS), permit holders are reporting those events meeting the reportable quantities within a time frame usually well before the six month deviation report. Since many (but not all) of the reporting elements in STEERS for these events are the same as the deviation report, permit holders are asked to simply record the “STEERS Incident Number” on the DevRep form in the column provided. This will streamline the investigation on the entire report, since the reportable event has already been investigated. Note that the report of an emissions event through STEERS does not constitute a deviation report for the Title V permit.

Refer to the table in [Appendix B](#) which describes what elements of the incident report need not be repeated or duplicated when reporting a reportable emissions event on DevRep.

## Recordable Emissions Events

Recordable (or non-reportable) emissions events are unauthorized emissions that must also be reported as deviations. The term “non-reportable” refers to the 30 TAC Chapter 101 requirements for reporting emissions events into STEERS. However, emissions event reporting in Chapters 101 and 122 are separate and distinct. As stipulated in 30 TAC §122.145(2)(D): “Reporting in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements and Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements) does not substitute for reporting deviations under this paragraph.”<sup>6</sup>

At the time of writing this guidance, DevRep Part 2 is the deviation report form for listing recordable emission events. Permit holders are not required to use Part 2 (they may use Part 1), but using Part 2 for recordable events will streamline the investigation process.

## Maintenance, Start-up, and Shutdown (MSS) Emissions

Emissions from MSS activities that are not authorized by an NSR authorization are deviations; regardless of amount, application status, or whether the MSS was scheduled or planned or neither. Emissions from planned MSS activities authorized by permit or PBR should not be reported as deviations unless the amount exceeds the permit limit in any manner, including quantity, frequency, type of pollutant, resulting from an activity

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<sup>6</sup> These citations do not exist in the current version of regulation 30 TAC Chapter 101. They refer to the requirements as listed in the parenthetical, currently found in Divisions 1, 2, and 3 of 30 TAC Chapter 101, Subchapter F.

that is not listed in the permit, or whether or not the emission is subject to enforcement discretion.

### **Liquid Spills, Drips, and Leaks**

Spills or similar unauthorized liquid discharges should be viewed in terms of what TV permit requirement is potentially violated: what is the applicable requirement?

The permit holder may determine a deviation based on whether the liquid discharge results in a reportable or recordable emission event, or based on other credible evidence. Thus the liquid spill, drip or leak may not be the deviation, but the resulting air emission due to evaporation is a deviation.

### **Other Unauthorized Emissions**

All unauthorized emissions in the area or an activity covered by the permit need to be reported regardless of status, liability or fault, whether they meet affirmative defense, or they are the subject of enforcement discretion. This includes emissions from upsets or any other unauthorized emission, even if it can be demonstrated that the unauthorized emission can be shown to be below the NSR permit limit and it emanated from the point or location of the site's NSR permit. This is because those emissions are still indications of noncompliance that must be noted as deviations.

## ***Deviations Potentially Subject to the Texas Environmental, Health, and Safety Audit Privilege Act (Self Audit Act)***

(a) The audit privilege under this Act does not apply to documents, reports, and data that are required to be collected, developed, maintained, or reported under state or federal law, or to information obtained independent of the audit process [Article 4447cc, Vernon's Texas Civil Statutes, Section 8(a)]. All claims of immunity for the potential violations are reviewed by the Enforcement Division on a case-by-case basis.

(b) Guidance for Title V reporting concerning The Texas Environmental, Health, and Safety Audit Privilege Act:

An entity may conduct an Environmental Self Audit pursuant to The Texas Environmental, Health, and Safety Audit Privilege Act ("the Act"), with a scope that includes the Title V permit. However, when violations pertaining to the Title V permit requirements are identified under the audit, the entity should:

1. Include the violations identified in the audit on the next required Title V report, and submit an audit disclosure of the violations prior the submittal of a required Title V report. The Act does not in any way allow the due date of the required Title V report to be changed.
2. Include in the cover letter of the audit disclosure an explanation of how the Title V violations were identified outside of the entity's usual reasonable inquiry process.
3. In the required Title V report add a note to each violation identified pursuant to the Act, which states that the violation was identified during an Environmental Self Audit.
4. Provide all of the required information in the deviation report. The permit holder cannot refer to or incorporate by reference the deviation information from the audit disclosures.
5. The TCEQ reviews each audit disclosure and may deny immunity for any violation(s) disclosed. For example, a failure to submit or late submittal of a required Title V report will be denied immunity.

### ***Deviations Potentially Subject to the Voluntary Supplemental Leak Detection Rule***

As it relates to 30 TAC Chapter 101, Subchapter C: all leaks detected by an optical gas imaging instrument where the leaks are not authorized by rule or permit must be recorded as a deviation regardless of the leak meeting the incentives under this program.

### ***Deviations for Noncompliant Situations Reported on Form OP-ACPS (Application Compliance Plan and Schedule)***

#### **As Part of the Initial Issuance Application**

Applicants for a SOP are required to submit the form OP-ACPS and report any noncompliant situations at the time of the initial application<sup>7</sup>. If the noncompliant situation is not corrected by the time the permit is issued, the permit will then contain the noncompliant situation description and corresponding corrective action plan. If there is a corrective action plan in an issued permit, the permit holder should be reporting deviations for that noncompliant situation until it is corrected.

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<sup>7</sup> Relevant only to SOP initial issue applicants. Due to qualification criteria, applicants with noncompliance situations at the time of application are disqualified for any General Operating Permit.

## **As Part of the Renewal Application**

Because applicants for permit renewal are already holding an active permit, it follows that there should be a deviation report for every noncompliant situation reported on form OP-ACPS, and carried on the DevRep until the situation is corrected or until the permit expires or is voided (unless a commission order or consent decree requires continued reporting as if the permit was still active). The form OP-ACPS does not serve as a deviation report.

## ***Deviations Reported on Documents Other Than Form DevRep***

Some rules listed in the TV permit require reporting of issues or problems that constitute noncompliance with that rule. An Agreed Order or Consent Decree that is incorporated in a TV permit may also require reporting of issues or events that constitute noncompliance with the requirements of that Order or Decree. These documents may be used to report the issue as a deviation so long as these conditions below are met:

1. The operating permit is identified on the document.
2. The document is certified by the Responsible Official,
3. The issue is fully documented and described, containing all of the applicable elements that the DevRep contains, including, but not limited to, cause and corrective action; and,
4. The permit holder refers to the document in Part II of the PCC (see PCC guidance).

## ***Situation-Specific Deviation Reporting Guidance***

### **Leak Detection and Repair (Fugitives)**

In general, applicable permits and regulations containing a leak detection and repair (or LDAR) program are based on authorizing the facility an emission rate equivalent to a detected “leak” under conditions that include, but are not limited to: restricting the leaks to certain components, a rigorous leak detection protocol or method that outlines detection procedure, equipment, frequency, trained operators, calibration, difficult-to-monitor scenarios etc., and repair procedures that include follow-up leak detection and time frames, and what to do with difficult repairs.

When these LDAR requirements apply, the leak itself is not a deviation, but a failure to comply with any of the LDAR requirements: including the detection and repair requirement examples listed above, are deviations, and must be reported as such.

## **Open-Ended Lines (OELs)**

Unlike rules addressing leak detection and repair, OEL requirements are a work practice that does not allow a prescribed time for corrective action. Therefore, any occurrence of an OEL without the proper plug, cap or double valve configuration would be a deviation from the requirement. Multiple OELs at a facility may be recorded in one line of a deviation report form and the number of OEL occurrences may be simply entered as “# of deviations” in the appropriate column of the form.

## **Continuous Emissions Monitoring Systems (CEMS)**

Applicable CEMS requirements in the TV permit will generally include averaging periods, data sufficiency or “downtime” allowances, and calibration and span specifications.

### *Calibration Drift (CD)*

A permit holder should report a deviation with regards to the CEMS not providing data on line when the CD value is beyond the prescribed range of the method and the CEMS is deemed "out of control" and if that out-of-control period causes a situation of insufficient CEMS reporting (excessive downtime). Appendix F to New Source Performance Standards (NSPS) states monitoring data from that CEMS during the time it is out of control cannot be used. Unless the data can be thrown out when CEMS monitoring data was collected during the “out-of-control” period and still maintain sufficient data per the rule, deviations should be reported for CEMS according to NSPS, 40 CFR §60.13

Correcting CD less than 2.5%, as long as it is done correctly, appears to provide the source data of sufficient quality or precision as to be acceptable per the method.

### *CEMS Downtime*

Most, if not all rules and permits that contain CEMS requirements will provide for downtime or periods where it is known that data or measurements are not valid. These requirements will describe acceptable downtime and missing or invalid data in terms of percentage or outage time. In general, so long as the CEMS on-line time and data are within the rule or permit parameters, there are no deviations. All requirements of the permit or rule must be met while the CEMS was down or invalid or missing data was produced, and the downtime occurred for the reasons described in the permit or rule.

### *Excursions Noted During Averaging Periods*

Typically every CEMS output will be averaged over a time period prior to use in determining compliance. When averaging is used as prescribed by the applicable requirement, instantaneous measurements over or under a limit should not be considered a deviation so long as the average is within the deviation limit allowed under the applicable requirement, and those measurements are made within the range or span parameters specified by the equipment used and the method the permit or rule employs.

### **Part 68 Risk Management Plan**

Contact the Surveillance Section of EPA Region 6 Dallas office for the latest guidance regarding what constitutes a deviation from Risk Management Plan requirements from 40 Code of Federal Regulations (CFR) Part 68.

## Permit Compliance Certification Guidance

### *General Requirements for Compliance Certification*

The Texas Title V permit program uses the “short form” of compliance certification for permits; also known as “in compliance, with noncompliance by exception.” In order to correctly certify in this manner, it is important that the permit holder affirm the compliance status as described in 30 TAC Chapter 122.

The permit holder is required to certify compliance with the entire permit at least annually. Section 122.146 lists the requirements of the certification, including specific language that the permit holder is required to use to certify compliance. Part I of the PCC form contains the certification statement that, when used in conjunction with the deviation reports submitted during the compliance period, will satisfy the requirements for section 122.146, contingent on two other conditions:

- (1) The permit holder checks the “Yes” box for the statement in Section I.;  
and,
- (2) The words are not altered from the form.

I.e., the permit holder is making the certification statement by checking in the affirmative. The “No” box should not be checked as that will result in an instant violation of the certification requirements.

Therefore, PCC Part I (or the permit holder’s equivalent document) is always required regardless of the presence, or absence, of deviations.

The permit holder may use their own form, but the certification statement must be worded the same, and deviations referenced in the same manner, as Part I of the agency’s PCC form.

### *Reference to Deviations Reported During the Certification Period*

Because the PCC is certifying compliance with the exception of the deviations reported; when any deviations are reported, Section II of Part I must be answered appropriately and Part II must be used. A “Yes” answer to Section II A. indicates that there was at least one “non-blank” deviation report submitted prior to this PCC submission; a “Yes” answer to Section II.B. indicates that there is at least one “non-blank”<sup>8</sup> deviation report being submitted with the PCC. To ensure timely receipt of the documents, placing

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<sup>8</sup> The questions ask if there were any “deviations”, not just any deviation reports. Since a blank deviation report contains no deviations, the answer to the question in Section II would be “No.”

all of the forms inside the same envelope is highly encouraged. Permit holders are not required to re-submit previously submitted deviation reports with the PCC submission.

Part II is a list of deviation reports submitted. If there are any deviation reports submitted, either before the PCC or submitted with the PCC, they need to be listed on this page. This includes other reports or documents that are not DevRep forms and that the permit holder is using to declare deviations.

When listing forms, documents, and letters as deviations, it is important that the permit holder understands that all information provided on those documents are considered to be deviations, unless specifically noted on the document.

### ***Monitoring Options: PCC Form Part III***

The vast majority of permit requirements will usually only have a single method to determine compliance; i.e., one monitoring method. However, there are occasions where certain rules provide multiple equivalent methods to determine compliance with one applicable standard. Through the title V permit writing process, the resulting permit may cite only one method from the various choices. However, there can be a situation where all of the methods are rolled-up in one citation, thereby giving the permit holder choices or monitoring options to select from without having to revise the operating permit every time the method changes. In the latter case of choice, the permit holder is required to declare which monitoring option was used during the reporting period when certifying compliance.

Part III is used to make that declaration. See [Appendix C](#) for an example when this form is used.



## **Appendix A**

# **Reasonable Inquiry: Guidance for Establishing Failure to Report a Deviation**

The guidance provided below, although not exhaustive, is meant to aid a permit holder through an evaluation of an unreported deviation to determine if a separate deviation needs to be reported. A general exception: a deviation that occurred in a prior reporting period and ended before the current reporting period. Thus, even if a violation is evident from one of the information sources listed below, there is only an obligation to include that violation in a deviation report if the violation occurred or was still occurring during the current reporting period. And although the deviation need not be reported, there are situations where the failure to report that deviation is a deviation. Finally, the permit holder is cautioned that all deviations are included either by reference or part of the submission package in the Permit Compliance Certification (annual compliance certification) process.

### **Deviations/violations that are expected to be recorded as a deviation (lack of such a record is a separate deviation).**

1. Noncompliance with a permit term based on information required by the permit and available to the RO through a reasonable inquiry.
2. Subject of an alleged violation related to a permit requirement and received by the permit holder during the immediate past deviation reporting period, unless the alleged violation is successfully repealed.
3. Lack of NSR authorization for a new or modified facility owned or operated within the area covered by the TV permit, by the permit holder or by a contractor working for the permit holder, and regulated by the subject Title V permit where such new construction or modification triggers NSR per the regulations or statute.
4. Violations reported through an audit program by the permit holder. The Texas Environmental, Health, and Safety Audit Privilege Act addresses immunity from penalties. This limited immunity does not affect the TCEQ's authority to seek injunctive relief, make technical recommendations, or otherwise enforce compliance; therefore, the violation/deviation must be reported under Title V regardless of immunity status.
5. Reportable emissions events recorded in STEERS.
6. "Non-reportable" emissions events as recorded by the permit holder.

7. Until they are corrected, noncompliance situations reported in the form OP-ACPS: Application Compliance Plan and Schedule during permit renewal.
8. Those deviations referred to or described in other reports required by regulations (i.e., NSPS or NESHAPS).

**Deviations/violations that are ordinarily expected to be recorded as a deviation (lack of such a record is very likely a separate deviation). These may require a more in-depth case-by-case evaluation.**

1. Violations discovered through a separate on-site investigation or records review by a regulatory entity having jurisdiction (TCEQ, local programs acting on behalf of the TCEQ, or EPA). This is the guidance provided in an ongoing compliance investigation while a deviation report is required. If the investigation has concluded with an alleged violation, refer to number 2 above for automatic deviation.
2. Except for planned MSS authorized under an NSR mechanism, maintenance activities on units and systems subject to the operating permit that result in identification of deviations from equipment standards, work practice standards, or unauthorized emissions. Includes repairs and related work orders.
3. Unauthorized emissions or other violations that result in responses by emergency response crews or teams, including internal or external fire departments that result in an unauthorized emission.

**All other deviations/violations should be reviewed on a case-by-case basis.**

As indicated earlier in this guidance document, the TCEQ has not adopted a general definition of the term “reasonable inquiry”. However, to provide some guidance for this term, one possible interpretation could be: If it was reasonable to expect the Responsible Official (RO) to know a deviation was happening (or not happening), by way of some reporting mechanism or data (including credible evidence that was brought before the RO), then the deviation should have been reported. An RO may not avoid the reporting of deviations through a refusal to review available information.

## Appendix B

### Comparison of STEERS and DevRep Reporting Elements

<b>Deviation Report</b>	<b>STEERS Report</b>	<b>Comment</b>
Deviation Item Number	Incident Number	Enter both on DevRep
Unit Number	(Emission Point Number (EPN) for an NSR permit)	Need not duplicate
Group Number	No equivalent	Must enter on DevRep if event occurred to all units in a group.
Term and Condition Number	No equivalent	Must enter on DevRep if event violated a separate permit term. Not needed if simply a Maximum Allowable Emissions Rate Table (MAERT) exceedance.
Pollutant	the compound descriptive type of the individually listed compounds or mixtures of air contaminants released	Need not duplicate
Requirement Citation	the preconstruction authorization number or rule citation of the standard permit, permit by rule, or rule, if any, governing the facilities involved in the emissions event	Need not duplicate
Type of Requirement	No equivalent	Must enter on DevRep
SOP or GOP Index Number	No equivalent	Must enter on DevRep, if appropriate. Usually the emission event will be a deviation of an NSR authorization, and thus index number will not apply
Monitoring Method	No equivalent required. Need not duplicate if the permit holder entered in report.	Depends on STEERS report contents.

Monitoring Frequency	No equivalent required. Need not duplicate if the permit holder entered in report.	Depends on STEERS report contents.
Start Date	the estimated duration of the emissions	Need not duplicate
Start Time		Need not duplicate
End Date		Need not duplicate
End Time		Need not duplicate
Number of Deviations	Only if multiple start and end date times entered in report	Enter in deviation report if multiple entries are not indicated on STEERS
Cause of Deviations	the best known cause of the emissions event	Need not duplicate
Corrective Action Taken to Remedy or Mitigate Deviation Situation	the actions taken, or being taken, to correct the emissions event and minimize the emissions	Need not duplicate

## Appendix C

### Example Use of PCC Form Part III: Monitoring Options

In this example, the permit holder is subject to MACT G of the Hazardous Organic NESHAPS. An emission point (a vent labeled “3-2-103”) is subject to a hazardous air pollutant emission limit, and compliance is determined using any of the monitoring methods available grouped-up section 63.115(c), as shown in the row of the example permit’s Applicable Requirements Summary below. The monitoring citation that includes multiple methods is shown in bold in the Monitoring and testing Requirements column (eighth column from the left).

Unit/Group/ Process		SOP Index No.	Pollutant	Emission Limitation/Standard or Equipment Specification		Textual Description (See Special Term and Condition 1.B.)	Monitoring And Testing Requirements	Recordkeeping Requirements (30 TAC § 122.144)	Reporting Requirements (30 TAC § 122.145)
3-2-103	EP	63G-H	112(B) HAPS	40 CFR Part 63, Subpart G	§ 63.113(g) [G]§ 63.115(f)	The owner or operator of a Group 2 process vent with a concentration less than 50 ppm by volume shall maintain a concentration less than 50 ppm by volume, and comply with the sections as specified	[G]§ 63.115(a) <b>[G]§ 63.115(c)</b> § 63.115(e) § 63.115(e)(1) [G]§ 63.115(f)	[G]§ 63.118(e) [G]§ 63.152(a)	§ 63.115(e)(2) § 63.117(d) [G]§ 63.118(g) [G]§ 63.118(j) [G]§ 63.118(k) [G]§ 63.151(b) § 63.151(e) [G]§ 63.151(e)(1) § 63.151(e)(3) [G]§ 63.151(j) [G]§ 63.152(a) § 63.152(b) (truncated for display purposes)

Now for purposes of describing the monitoring requirements shown by the “grouped-up” citation [G]§63.115(c), we see the actual rule text below.

(c) Each owner or operator seeking to demonstrate that a vent stream has an organic HAP concentration below 50 parts per million by volume in accordance with the Group 2 process vent definition of this subpart shall measure either total organic HAP or TOC concentration using the following procedures:

(1) The sampling site shall be selected as specified in paragraph (a) of this section.

**(2) Method 18 or Method 25A of 40 CFR part 60, appendix A shall be used to measure concentration; alternatively, any other method or data that has been validated according to the protocol in Method 301 of appendix A of this part may be used.**

**(3) Where Method 18 of 40 CFR Part 60, appendix A is used,** the following procedures shall be used to calculate parts per million by volume concentration:

(Method 18 detailed text omitted for clarity)

**(4) Where Method 25A of 40 CFR Part 60, appendix A is used,** the following procedures shall be used to calculate parts per million by volume TOC concentration:

(Method 25A detailed text omitted for clarity)

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Thus clearly from the rule text under this citation, the permit holder is free to use Methods 18, 25A, or “any other method or data that has been validated according to the protocol in Method 301 of appendix A...”

The information above allows the permit holder to use any or all methods allowed under the grouped-up citation, but when certifying compliance, the permit holder must note which one was used during the reporting period. For purposes of this example, let’s say the permit holder only used Method 18 during the reporting period. Therefore, the permit holder would submit a Part III with the PCC submission, as shown in the example form below:



**Texas Commission on Environmental Quality  
Federal Operating Permit Form  
PCC – Monitoring Options Selected (Part 3)**

<b>Permit Holder Name</b>	Example Case 1 Inc.	<b>Customer Number</b>	CN600XXXXXXXX
<b>Area Name</b>	Case 1 Area	<b>Account Number</b>	RN100XXXXXXXX
<b>Operating Permit Number</b>	O-XXXX	<b>Report Submittal Date</b>	January 28, 2006
<b>Certification Period Start Date</b>	January 2, 2005	<b>End Date</b>	January 1, 2006

ID Number		Regulatory Requirement (Rule or Permit No. and Prov.)	Pollutant Monitored	SOP or GOP Index Number	Monitoring Option Used	Dates		Description/Comments
Unit ID	Group ID					Begin	End	
3-2-103	N/A	MACT G	112B HAPS	63G-H	63.115(c)(1)-(3)	01/02/2005	01/01/2006	Used Method 18 for HAPS monitoring at vent