

Emissions Event (EE) Work Group

EE Information Streamlining Project

September 1, 2006

Introduction

During a visit to the Houston Regional Office Mr. Glenn Shankle, Executive Director, recommended that staff streamline the emissions event investigation process, specifically the time it takes to interact with regulated entities during the review of emissions events.

The Emissions Event Work Group was charged to explore and recommend changes to the existing information exchange process between investigators and the regulated entity. Mr. Shankle is concerned about the number of iterations it takes to receive information and the associated delays for TCEQ in completing the investigation. This guidance defines a process that encourages and prompts regulated entities to provide the most complete information that is available. Additionally, it establishes a standard process for obtaining any additional and necessary information with reasonable but enforceable deadlines.

Definitions

Rule Compliance Demonstration Request

The Work Group developed a list of questions (Attachment A – Rule Compliance Demonstration Request) to be added to the current STEERS reporting guidance to assist the regulated entity in providing the information necessary to make a demonstration for an affirmative defense. The information is to be submitted with the final report. Currently, the information gathered in response to these questions is often not included in the initial or final emissions event reports.

Additional Specific Questions

A list of additional, specific questions, related to the emissions event, may also need to be developed by the investigator. These questions will likely pertain to, but are not limited to, incomplete answers provided in response to the Rule Compliance Demonstration Request Guidance. An example of an Additional Specific Question might be: Why did this incident take 450 hours when another similar incident at another RE only took 17 hours? Questions may also be taken from the Rule Compliance Determination Request for this purpose, but only the questions that remain unanswered and necessary (from the eleven total questions) shall be forwarded to the RE.

Complex Technical Evaluation Request

The agency may request that the RE conduct a complex technical evaluation pursuant to §101.201(f) if the incident is sufficiently complex. The investigator may establish an enforceable deadline for the RE of up to 60 days to conduct the technical evaluation. Examples of a complex technical evaluation include: 1) any necessary plan of actions to prevent or minimize recurrence, 2) root cause analysis, 3) complex modeling, 4) engineering design analysis, 5) metallurgical analysis where the sample must be sent to a third party laboratory for the analysis, or 6) other sampling analysis that requires more than 14 days to obtain the results.

Proposed Process

1. The instructions in STEERS for initial and final reports will be modified to provide the eleven questions in the Rule Compliance Demonstration Request. The instructions will indicate that the responses should be made in the appropriate sections of the final report (eg Cause of Emissions Event, Actions Taken to Minimize Emissions, and Any Additional Information Necessary to Evaluate the Event). Upon initial notification through STEERS, the system will automatically respond to the RE that the notice was received and that the instructions for the final report have been enhanced to include a list of questions designed to assist the RN in making a demonstration for an affirmative defense.
2. The RE will then provide a final report that should take into consideration the Rule Compliance Demonstration Request within the format of the final report. Initial reports that default to final report status might not be as complete in this regard.
3. The Regional Investigator will begin the emissions event investigation, in accordance with the Emissions Event Investigation Protocol, either following receipt of the final report or after the initial report defaults to final report status.
4. If the information provided by the RE in the final report is insufficient to complete the investigation, the regional office will develop, and forward to the RE, any Additional Specific Questions, or subsets of questions from the Rule Compliance Demonstration Request. A standard request form will be provided for this use. The request for information shall reference the RE's burden of proof for demonstrating the demonstration criteria are satisfied (TAC 101.221(e)). The investigator shall establish a deadline of 14 days from the date the RE receives the request for the RE to provide information, and the notification shall include a reference to the enforceable requirement in the rule for providing this information (TAC 101.201(f)). This request may be submitted to the RE via email or fax. A copy of the fax confirmation should be retained in order to establish the date of receipt. Similarly, emails must include a request that the RE reply to confirm the date of receipt, and a copy of the confirmation response should be retained. If there is no response to the e-mail, a phone call to the RE should be made to confirm receipt. The date of the phone call will be the start date of the 14 day period, and a record of the phone call should be kept. If the request is sent via USPS, it must be sent certified, return receipt requested.
5. If the information required would take the RE beyond 14 days to provide a response, based on the complexity of the issues, a complex technical evaluation request will be made. The enforceable deadlines shall be established and documented following the above-described procedure.
6. The RE must provide a response within the enforceable deadline that commences upon their receipt of the Additional Specific Questions or complex technical evaluation request. If there is no response, or if the response is not provided prior to the established deadline, a notice of violation (TAC 101.201(f)) will be issued.

7. The Regional Investigator will complete the emissions event investigation according to the Emissions Event Investigation Protocol with the information available in the initial and final EE reports and any responses to the Additional Specific Questions received prior to the completion and approval of the investigation. Enforcement action will be taken as necessary and appropriate according to the Enforcement Initiation Criteria.

Attachment A - Rule Compliance Demonstration Request

This information request was extracted from TCEQ Rule 101.222(a-b) regarding demonstration criteria. These responses should be addressed under the appropriate sections of the final report for the incident eg; Cause of Emissions Event, Actions Taken to Minimize Emissions, and Any Additional Information Necessary to Evaluate the Event.

1. How many reportable and recordable emissions events (including this incident) have occurred at the facility/facilities contributing emissions during this incident for the 12 month period prior to this incident?
2. What were the facility/facilities total actual operating hours during the past 12 months?
3. Identify the cause or causes of the emissions event and include all contributing factors that led to the emissions event. Discuss how the emissions event could not have been avoided by good design, maintenance, and operation practices, if applicable. Discuss any sudden breakdown of equipment or process that was beyond the owner/operator's control, if applicable.
4. How were the air pollution control equipment or processes (if any) maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events?
5. How soon was action taken to achieve compliance once the operator knew or should have known that applicable emission limitations were being exceeded?
6. How were the amount and duration of the unauthorized emissions and any bypass of pollution control equipment minimized?
7. What was the operational status of all emission monitoring systems at the facility/facilities during this emissions event? If any emission monitoring systems were not kept in operation during the emissions event, explain why they weren't kept in operation.
8. How were the owner or operator's actions in response to the unauthorized emissions contemporaneously documented?
9. Have other similar incidents occurred at this/these facility/facilities in the past that might be indicative of inadequate design, operation, or maintenance?
10. Identify any information you have (e.g., complaints from neighbors, fence line monitoring, air modeling) which indicates an off-site impact. Identify any information you have which indicates the unauthorized emissions caused or contributed to an exceedance of the national ambient air quality standard (NAAQS), a prevention of significant deterioration (PSD) increment, or to a condition of air pollution.
11. Please provide any additional information to support your claim of an affirmative defense.