

Guidance for Deviation Reporting Under the Operating Permits Program in Texas

Texas Commission on Environmental Quality

Purpose

This guidance is intended to provide information related to the reporting of deviations for sources permitted under the Title V Federal Operating Permit program in Texas, and supplements the instructions for the form DevRep. The requirements for reporting deviations are found in 30 Texas Administrative Code (TAC) 122.145.

Where to Find It

Table of Contents

Section	Information	Page
Background	What is Deviation Reporting?	2
Relationship of Deviation Reporting to Other Reporting	Deviation Reporting and Annual Compliance Certifications	2
	Deviation Reporting as Related to Existing Reporting	3
Report Requirements	What Terms and Conditions of the Permit are Subject to Deviation Reporting?	3 – 4
	What Must be Reported?	4
	What Form Should be Used to Report Deviations?	4
	When and Where are Reports Required to be Submitted?	4 – 5
	No Deviations...No Deviation Reports	5
Using Form 'DevRep'	Form 'DevRep' Defined	5
	DevRep Form Structure	5
	A Note on Identifying Terms and Conditions of the Permit	5 – 6

Background

This section provides basic background on deviations and deviation reporting.

What is Deviation Reporting?

Deviation reporting is simply ‘minimum reporting’ under the Operating Permits Program. This reporting requirement came into existence with the Operating Permits program, and is required regardless of any reporting requirements that currently exist in the other various federally enforceable rules.

The goal of deviation reporting is to allow the company, citizens, and the regulatory agencies to know when situations that may indicate potential noncompliance occur and what action was taken to solve those situations. With this knowledge, continuous compliance with all requirements at the site should see an improvement.

Deviation reporting does not alter or eliminate any existing reporting requirements, but many existing reports, if slightly modified, can be used to satisfy both their original reporting duty and the new deviation reporting requirements. Deviation reports, unlike many existing reports, are required to be submitted at least semiannually.

Deviation reports are only required if a deviation of a term or condition of the federal operating permit occurs. Examples of some terms and conditions that apply are either emission limits or other procedural requirements. If no deviations have occurred, then no report is required.

Deviation Definition

A deviation is defined in 30 TAC §122.10(3) as:

“Any indication of noncompliance with a term or condition of the [Federal Operating] permit, as found using, at a minimum, compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit.”

The requirements for deviation reporting have their roots in the Federal Clean Air Act Amendments of 1990 (FCAAA), Section 504(a) and (b). These federal requirements are implemented by EPA in 40 CFR70.6(3)(iii)(A) and (B), and are reflected in state rule 30 TAC 122.145(2).

Relationship of Deviation Reporting to Other Reporting

This section describes how deviation reporting is related to other reporting

Deviation Reporting and Annual Compliance Certifications

All deviations from any term or condition of the permit are required to be summarized, or referenced, in the annual compliance certification. As a result of this, deviation reports are part of the compliance certifications.

The requirements related to annual compliance certification can be found in 30 TAC §122.146, and are the subject of the TCEQ guidance document related to Annual (Permit) Compliance Certification.

Deviation Reporting as
Related to Existing
Reporting

There are a large number of existing reporting requirements found in the rules that already require a company to indicate when specific rule requirements may not have been met. These existing reports, provided three additional obligations are met, can be used to satisfy the deviation reporting requirements of the Operating Permits program. These three additional obligations are:

- The report must clearly identify which Operating Permit is involved.
- The report must contain at a minimum the information as described in the Deviation Report.
- The report must be Certified by the Responsible Official.

Provided they are modified to meet the stated criteria, the following are examples of existing reporting that could be used to fulfill the deviation reporting obligation:

- Emission Event final reports, provided they are submitted in hardcopy format for the public file, and contain the same information required by the Deviation Report.
- Existing NSPS (40 CFR60), NESHAPS (40 CFR 61), or MACT standard (40 CFR 63) required reporting.
- Reporting required in the relevant portions of a PSD permit.

**Report
Requirements**

This section identifies how to determine what should be in the report and information on requirements for submitting the reports.

What Terms and
Conditions of the
Permit are subject to
Deviation Reporting?

Each requirement of the permit is subject to deviation reporting. The requirement applies equally for sites permitted using either a Site Operating Permit (SOP) or a General Operating Permit (GOP).

For an area permitted using a Site Operating Permit (SOP), any requirement found in any portion of the issued permit (unless otherwise indicated in the permit), including:

- General Provisions: e.g., the requirement to keep records for five years or any other requirement under 30 TAC 122.143.
- Special Conditions: e.g., sitewide requirements such as visible emission limitations Under 30 TAC 111.
- Emission Unit Specific requirements: e.g., any reference to a requirement in Attachment A such as a reference for a boiler governed by NSPS Db emission limits on SO₂ together with its associate monitoring, recordkeeping, testing and reporting requirements.
- New Source Review permits, standard permits, and permits by rule that have been incorporated by reference into the operating permit.
- Any federally enforceable requirement found in any other attachment to the permit. Requirements marked 'State Only' or 'State Enforceable Only' are not subject to deviation reporting.

For an area permitted using a General Operating Permit (GOP), any requirement found in any portion of the GOP under which the applicant has been issued the authority to operate, including:

- Qualifying Criteria,
- Site-wide Requirements,
- Permit Tables: e.g., any rule in the GOP table that applies at the site. For example, if an application for a GOP includes a GOP index number linking a stationary gas turbine with a specific requirement found in 40 CFR 60 Subpart GG (Stationary Gas Turbine requirements), then each requirement associated with that GOP index number is a term of the permit for that gas turbine.

What Must be
Reported?

For each deviation, the following minimum information must be reported:

- The emission units affected (unless the requirement was site-wide).
- The relevant term or condition of the permit that was deviated from.
- Time and total duration of the deviation.

- Probable cause.
- Any actions taken to correct the deviation or measures implemented to prevent occurrence.

What Terms and Conditions of the Permit are subject to deviation reporting?
(Con't)

Duration vs Number of Deviations: A continuous deviation of a standard that is cited in terms of units of time for a given emission unit or point may be entered as one deviation. This is because the exceedance of the rate is a deviation no matter how long it has been occurring. For example, a deviation of a short-term limit, expressed in xx lbs/hour that has been exceeded continuously for 10 hours is simply one deviation with a duration of 10 hours.

The Deviation Report that contains all instances of deviations for the reporting period must be certified by the Responsible Official (30 TAC 122.165).

It should be noted that the Annual Compliance Certification requirements found in 30 TAC 122.146(5) require the following additional information related to deviations:

- Identification of the monitoring method used to assess compliance.
- Identification of the frequency that compliance assessments must be made.
- Identification of the total number of deviations that were experienced over the compliance certification period for each term or condition of the permit for which deviations were experienced.

The inclusion of some compliance certification data elements in the deviation reports will significantly simplify fulfilling the annual compliance certification requirements; therefore, the deviation report form, DevRep, includes space for these data elements. For example, the monitoring method used to determine the deviation is not required until certifying compliance. However, it is asked for in the deviation report form since the information is readily available, since it is required specifically for each deviation, and the permit holder need not research the matter weeks or months after it has occurred.

What Form Should be Used to Report Deviations?

Agency staff recommends the use of TCEQ Form DevRep. However, it is the permit holder's choice:

- If an existing report can be modified slightly to contain the information required for deviation reports, then the existing report may be modified and used.
- If an existing requirement does not have a specified reporting format, then form DevRep should be used. Note that form DevRep contains all the data elements that should be included on a deviation report.
- Permit holders are free to create their own report forms. Those report forms must contain the information required for form DevRep in the same order and using the same header labels.

When and Where are Reports Required to be Submitted?

Deviation reports are required to be submitted at least semiannually (if a deviation was experienced in a six month period) to the appropriate TQEC regional office or local program. Follow the form's instructions for submission.

Many existing reporting requirements call for quarterly or annual reporting. These existing reports, modified as required as to content (as described above), can be used to report deviations provided they are submitted no less frequently than semiannually.

Adjustment of Reporting Period: Permit holders may want to adjust the deviation reporting period to line-up with other reporting periods. The permit holder may submit a deviation report earlier than six months to do so. Also, it has been confirmed by EPA Region 6 for federal rules requiring reporting on specified months: the deviation report OR the report required by the rule may be adjusted so they coincide, as long as no report period exceeds that time frame required by the underlying requirement. For example, a deviation report period cannot exceed six months. A report period for a rule initially required in January and July cannot exceed six months.

Reports must be:

- *Submitted to* the ‘Air Section Manager’ of the appropriate regional office of the TCEQ. Note: The rule technically requires the reports be addressed to the Executive Director. Practically, the report should be addressed to the Executive Director, in care of the Air Section Manager and should be mailed to proper regional office and to the central office as described above (*see 30 TAC 122.145(2)(A)*).
- *Submitted at least every six months*, unless a specific applicable requirement requires more frequent reporting (*see 30 TAC 122.145(2)(B)*); and,
- *Submitted within 30 days* of the end of the reporting period, (*see 30 TAC §122.145(2)(C)*).

Computation of Time: Report deadlines that fall on a day that the Chief Clerk would ordinarily be closed shall be processed according to 30 TAC Chapter 1, §1.7. However, this adjustment does not apply to the actual six-month reporting period, because there is no report due on that day (end date). For example, a six month 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).

In addition, all reports required by the permit (such as CAM or periodic monitoring, MACT notifications, Compliance Plan Progress Report, as applicable) must be:

- *Certified* by a Responsible Official in accordance with the requirements of 30 TAC §122.165 (*see 30 TAC 122.165(a)(7)*). (Note: Form OP-CRO1, **Part 1** is used for this purpose).

Change of Ownership: It is recommended that a deviation report be submitted by the previous owner/operator at a time to indicate the end of the reporting period be the date that property is transferred, provided that period does not exceed six months. The same recommendation is suggested in the Permit Compliance Certification guidance. The new permit holder may then begin a reporting period on the day the property is transferred to their possession.

Reporting periods through a change of ownership to be made on dates other than the date of transfer may be made as long as the “losing” and “gaining” entities cover all periods for which they are certifying compliance, there are no gaps in reporting, and all parties are in agreement of this process.

No Deviations...No
Deviation Reports

Deviation reporting is based on individual permit terms and conditions. If no deviations have occurred over the entire reporting period for a given permit term or condition, then no deviation report is required to be submitted for that reporting period for that term or condition.

**USING FORM
‘DEVREP’**

This section provides specific instructions on reporting deviations using form DevRep.

Form ‘DevRep’
Defined

Form DevRep is a means to report deviations from federal operating permit terms and conditions, as required under 30 TAC §122.145(2). It is intended to assist permit holders with deviation reporting requirements by providing a format that is consistent with the rule requirements. The permit holder may develop their own reporting form or format as long as the report contains the same information as the DevRep form.

Form DevRep
Description

Form DevRep is comprised of:

- **Identification Block.**
This block occurs at the top of each page of the report, and contains relevant information to identify the core data, permit, reporting period, and report submittal date.
- **Operating Permit Requirement for Which Deviations are Being Reported Block.**

Form DevRep Permit Requirement Data Elements (Con't)

This section allows the permit term or condition for which deviations have been experienced to be identified. It also contains space for monitoring information that will be required when completing the annual compliance certification.

- **Details of Deviations from Above Referenced Requirement Block**
This block provides space to describe the details of each deviation event. The 'Total Deviations' field captures information required for the annual compliance certification requirements.

Relationship to Title V Permit Terms and Conditions

As stated previously, a site can be permitted using either a Site Operating Permit (SOP) or a General Operating Permit (GOP).

Sources permitted under an SOP can rely on the SOP document to contain all the information that will be needed to identify emission units and applicable requirements related to deviation reporting.

Sources permitted under a GOP must refer to the GOP application, the appropriate GOP, and the appropriate GOP grant letter to find all the information that will be needed to identify emission units and applicable requirements related to deviation reporting.

In general, unit-specific requirements will be found in the GOP application together with the GOP tables. These are analogous to the Applicable Requirements Summary attachments of an SOP. Section (b) of each GOP contains site-wide requirements similar in nature to those found in the 'Special Terms and Conditions' section of an SOP, and will contain some of the information that will be needed to complete a deviation report.

For example, emission units with unit specific requirements and GOP index numbers are found in the GOP application. To link these emission units with unit specific applicable requirements, one must refer to both the GOP permit application and the appropriate GOP rule tables.

Finally, most of the Qualification Criteria in section (a) continues to apply to the GOP permit holder. For example, depending on the specific case and Title V program applicability, failure to maintain qualification for the GOP without subsequent submittal of an SOP application may be a deviation.

The use of STEERs reports for form DevRep.

Reportable emissions events are deviations since they represent "unauthorized" emissions. Final reports for these events contain much of the same information that the DevRep report contains. Permit holders may refer to the incident number of that event report in order to include that event in the DevRep. However, the emissions event report does not contain all of the information required by the DevRep report. If the incident report is used (referred to) in the DevRep, the following additional information will be needed to complete the DevRep form for purposes of Title V:

Deviation Report (Part 1)	STEERs Report	Comment
Deviation Item Number	Incident Number	Enter both on DevRep
Unit Number	(EPN number 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 MAERT exceedance.
Pollutant	the compound descriptive type of the individually listed compounds or	Need not duplicate

	mixtures of air contaminants released	
Regulatory 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

GENERAL:

Q: What effect do the following programs have on deviation reporting?

A: (Various Programs and Actions)

- (1) 30 TAC Chapter 101 Affirmative Defense/ Demonstration Criteria: None. Emission events are deviations regardless of the ability of the permit holder to demonstrate an affirmative defense.
- (2) 30 TAC Chapter 101 Reportable Quantities: None. Emission events are deviations regardless of their Chapter 101 “reportable quantity.”
- (3) 30 TAC Chapter 101 Planned/Unplanned Maintenance (and authorized MSS):
 - (a) Unplanned Maintenance activities are deviations.
 - (b) Planned Maintenance activities not authorized by a permit or PBR are deviations, including those that are in an application, but where the permit is not yet issued.
 - (c) Planned Maintenance activities authorized in an issued permit or PBR are not deviations, provided that the permitted limits are not exceeded.
- (4) Audit Privilege Act: No effect on the deviation report. Please mark a deviation as having been disclosed. Be sure to disclose the violation prior to reporting it in a deviation report. See Permit Compliance Certification Guidance for additional notes on the interface of this Act with Title V permitting requirements.
- (5) Texas Water Code (TWC) §7.002511 (Senate Bill 12, 80th Legislative session): when Category A, B, and C violations are aggregated or split: This statute prohibits the TCEQ from combining non-repeat category B and category C violations with a category A or other violation that is going to enforcement as a result of these violations being reported through deviation reports by a person subject to Title V. This prohibition does not apply to a person not subject to Title V, nor does it apply to category B and C violations found by someone other than the permit holder.
- (6) Permit renewal and application shield: the renewal of a Title V permit or the continued operation of a permitted site that is operating under the renewal application shield of a timely and complete application has no effect on the timing of the deviation report or the permit compliance certification.
- (7) Permit revision: a revision has no effect on the timing (deadlines) of the DevRep or PCC. However, note that the permit holder must be ready to monitor and report on deviations on the new or modified permit requirements (including provisional terms and conditions) as soon as they are authorized to operate them.
- (8) Expired permit, Void of Permit - no longer subject to Title V program: deviation reporting and permit compliance certification requirements apply to an effective permit. Voided or expired permits are not effective permits; thus the compliance forms would not be used. However, note that an owner/operator may be found in violation of operating without authorization should the site still be subject to the Title V program, regardless of the presence or absence of these forms.
- (9) GOP to SOP permit conversion: Because the GOP is its own permit that is being voided as a result of the issuance of the SOP, a final PCC form should be submitted to certify compliance with that permit, with any deviations from the GOP terms and conditions as appropriate. The issuance of the SOP that replaces that GOP begins a new certification period, not to exceed 12 months, with deviation report period starting anew for the SOP, not to exceed six months.
- (10) Change of ownership: Although the permit is not changing, the permit holder who is certifying that permit is. The sales and transfer of the permitted facility indicates the end of one certification period and deviation report period (for the seller) and the beginning of a new one (for the buyer).

Frequently Asked
Questions
(cont'd).

Q: Are instances of noncompliance with a requirement only listed on OP-NOTIFY (operational flexibility or off-permit changes) required to be listed as a deviation?

A: 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 requirement 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 operating permit.

Q: How will fugitive components be treated when added to a permit using the OP-NOTIFY form (even when added to an existing fugitive unit)?

A: Adding fugitive components or changing their service (gas vapor/light liquid vs heavy liquid, etc.) requires separate preconstruction authorization. Even in those circumstances where the modification qualifies for a PBR, the information must be provided in an NSR application.

Adding sources of emissions to a Title V permit via OP-NOTIFY is not handled differently between those sources classified as point sources versus those classified as fugitives. Thus these fugitive components “tacked-on” to a Title V permit using an OP-NOTIFY form are not technically a permit term and condition for which deviations should be reported against until such time they are added to the Title V permit during renewal. (And the permit holder is cautioned to continue to comply strictly with the requirements of the added components. They are not exempt from requirements just because they are not listed as a TV permit term and condition.)

Q: Request a reasonable means to report one deviation for a unit where a deviation exists for multiple rules. The concern is a misinterpretation of the true number of violations (such as the true number of open-ended lines).

A: Because deviations are indications of non-compliance with permit terms and conditions, each permit term and condition must be individually reported, even if they are of common cause or look the same. The example of open-ended lines may be the most similar, but other examples are not so similar. An example of a dissimilar deviation could be an emission exceedance of a VOC (noted in a permit), but the VOC is a HAP, for which the HPV level may be different between the permit and a MACT.

Rather than try to “group-up” deviations of a common cause in one line, the permit holder may explain common cause or common units in the description. Consequences, severity, enforcement discretion, and penalties may eventually differ as well. Therefore, the permit holder is asked to continue to report deviations per unit and different “applicable requirement.” Note that although this question originally was asked for a fugitive component, the answer applies to all emission units subject to the operating permit.

Q: Explain why a deviation would be required for every emission event when that event cannot be tied back to an operating permit term and condition?

A: In general, each and every event that can be associated with a facility, including maintenance, start-up, or shutdown that are not permitted, will be a deviation, regardless of whether that emission would ever be authorized.

Q: Change of ownership on a previous site, how do the deviations of the previous owner affect Compliance History of the new one (if at all)?

Frequently Asked
Questions
(cont'd).

A: Deviations are not part of a Compliance History; only violations resulting from an investigated deviation report are included (with other violations not part of a deviation). In general, violations incurred from a previous owner are not assessed to a new owner, but are associated to the site. In other words, violations, investigations, and other issues resulting in a compliance history score remains associated with the site (through the Regulated Entity Number). So a new owner is essentially purchasing the site's compliance history. For more information regarding a site's compliance history, including status of previous violations, contact the Enforcement Division at 512/239-DATA (-3282). Also, the website at: http://www.tceq.state.tx.us/compliance/enforcement/history/get_report.html provides extensive CH information.

CREDIBLE EVIDENCE:

Q: Are the results of testing performed in addition to the minimum regulatory requirements subject to deviation reporting? For example, if you are required to perform Hazardous Organic National Emission Standards for Hazardous Air pollutants (HON) heat exchanger tests quarterly, and you perform additional, voluntary, weekly tests using your own method, do you have to report the weekly tests? Are the weekly tests considered "credible evidence"?

A: If the weekly test is based on a scientifically valid method, then it is considered credible evidence. If a weekly test indicates parameters are not within the limits prescribed by the applicable requirement, then it should be listed as a deviation. In the "probable cause of deviation" column of the deviation report, the test method for determining the deviation should be described in addition to the cause of the deviation. On the Permit Compliance Certification (PCC) form; the "Monitoring Requirements" column should be filled in with "other" or "credible evidence" in order to indicate that information other than the required monitoring was used to identify the deviation.

Q: If you perform a visible emission check for opacity according to 30 Texas Administrative Code (TAC) §111.111 once per quarter and find no deviation, but document excess opacity while performing a Method 9 test to meet a separate requirement, is this credible evidence of a deviation from 30 TAC §111.111?

A: Yes. A valid Method 9 observation conducted for any purpose that documents excess opacity would be considered credible evidence of a deviation from the 30 TAC §111.111 requirement, and is required to be reported as a deviation.

Q: Permit holders want a level of understanding as to their obligations once a form of credible evidence is used under the concept of reasonable inquiry. Will they be held to that form of evidence from that point on?

A: 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.

30 TAC CHAPTER 101, EMISSION EVENTS, MAINTENANCE, START-UP, AND SHUTDOWN:

Q: If a HON plan is followed during times of start-up, shutdown, and malfunction in accordance with the rule, is the event considered a deviation even though it is not a violation because the HON plan was followed?

Frequently Asked
Questions
(cont'd).

A: It is not a deviation if the plan is followed, and if the rule provides a specific exception from the emission standard during the time of start-up, shutdown, and malfunction. However, the units in question may also be subject to other applicable requirements, such as New Source Review (NSR) permit requirements, that may not have similar provisions for periods of start-up, shutdown, and malfunction. In this case, a deviation could stem from a separate requirement.

Q: Are emissions events that are reported in accordance with 30 TAC §101.201 considered deviations? If the emissions were below a reportable quantity, and only required to be recorded in accordance with the rule, does it still need to be reported as a deviation?

A: Emissions events, even when reported in accordance with the applicable rule, must be reported as a deviation from a Title V permit. If the emissions event was not reported in a timely manner, in accordance with the rule, that would result in a separate deviation. Although the emission events rules provide an affirmative defense for certain emissions, those emissions remain unauthorized and must be reported as deviations. "Reportable quantity" is an emissions event concept that simply identifies which unauthorized emissions must be reported directly to the TCEQ, and which unauthorized emissions must be recorded and those records that must be maintained and available for review by the TCEQ. Therefore, even emissions events that do not exceed a reportable quantity are subject to deviation reporting. Also, if an authorized emissions limitation is exceeded, a deviation from the authorization limit must also be reported as a deviation.

Q: What affect is there when the emission events rules become applicable requirements of the Title V program?

A: When the emission event rules are incorporated into the Title V permit, failing to comply with the rule requirements (initial reports and final reports within prescribed time frames, for example) will have to be reported as a deviation. Due to a change in the definition of applicable requirement (30 TAC §122.10), the emission event requirements (as well as minor NSR and emissions inventory requirements) became applicable to the Title V program. These requirements are not subject to deviation reporting or certification until they are actually incorporated into the applicable Title V permit.

Q: With regard to reporting deviations for planned MSS in a permit application not yet issued, what level of deviation reporting should the permit holder undertake?
For example: reporting each and every maintenance activity (like that provided in the NSR application) would be overly burdensome.

A: Suggestions for deviations include reporting to the same level as the (draft) NSR permit provides.

FUGITIVES AND LEAK DETECTION AND REPAIR:

Q: What is considered a deviation from a requirement that prohibits open-ended lines (OELs)? Must a separate deviation be reported for each day a line is open-ended, or is it a single deviation for each occurrence of an open-ended line? Do we have to create a whole new system or procedure to look for OELs?

A: Unlike rules addressing leak detection and repair, OEL rules are a prohibition that does not allow a prescribed time for corrective action. Therefore, any occurrence of an OEL would be a deviation from the requirement. The occurrence of an OEL would be considered one deviation. The deviation report must delineate the actual or best estimate for the length of time that the deviation occurred (the line remained open-ended). For example, if the line was found on the first of the month, but it was not fixed until the fifth of the month, then it would be reported as a single

Frequently Asked Questions (cont'd).

deviation with a duration period of five days. Inspection and repair programs may be developed and implemented at a frequency determined by the permit holder as appropriate to ensure lines are properly capped. However, at a minimum, the monitoring provision in the Title V permit must be implemented.

Q: If a leaking valve is identified through a leak detection and repair (LDAR) program, and it is repaired within the time allowed by the rule, is it required to be reported as a deviation?
 No. The rule specifically addresses the repair of leaking components and allows time to complete the repair. However, if the component was not repaired within the time required by the rule, then it would be a deviation subject to reporting.

A: Many other air rules exist that contain similar provisions, such as the Benzene Waste Operations NESHAP (BWON), NSPS QQQ, NSPS Kb and many others. These rules contain equipment standards, but they contain provisions requiring inspections for defects and providing time limits in which repairs must be made. The presumption is that the equipment is initially designed to a standard, but normal wear and tear will ultimately result in defects that must be identified through inspection and repaired. A few specific examples, including rule citations, of these kinds of equipment standards with repair provisions are provided in Table 1.

Table 1.

Equipment and Rule	Equipment Standard Citation	Description of Standard	Repair Citation	Description of Repair
Internal and External Floating Roof Tanks; NSPS Kb	§§60.112b(a)(1)(ii) and (a)(2)(i)(A)	Floating roof closure device must maintain continuous contact between the wall and the floating roof.	§§60.113b(a)(2) and (b)(4)	Failures detected during inspections should be repaired within 45 days, with the possibility of a 30 day extension.
External Floating Roof Tanks; NSPS Kb	§60.113b(b)(4)(i) & (ii)	There are to be no holes, tears or other openings in the shoe, seal fabric or seal envelope.	§60.113b(b)(4)(ii i)	Failures detected during inspections should be repaired within 45 days.
Individual Drain Systems; NSPS QQQ and BWON	§§60.692-2(a)(1) and 61.346(b)(1)	Each drain shall be equipped with water seal controls.	§§60.692-2(a)(5) and 61.346(b)(5)	Low/empty water levels shall be filled within 24 hours of detection (QQQ) or within 15 days (FF).
Junction Boxes; NSPS QQQ	§60.692-2(b)(2)	Junction box covers must maintain a tight seal.	§60.692-2(b)(4)	Broken seal or gap shall be repaired within 15 days.
Closed Vent Systems; BWON	§61.349(a)(1)(i)	Closed vent systems shall be designed/operated with no detectable emissions (<500 ppmv above background).	§61.349(g)	When emissions are detected (>500 ppmv above background), first attempt within 5 days and repair within 15 days.

Therefore, such situations should not be considered deviations. Instances of a company finding equipment defects that are contemplated in the rule and taking action within limits established in the rule should not be considered deviations. Under this interpretation, facilities would still be required to report the following situations as deviations: (i) discovery of defects not contemplated in the rule; (ii) discovery that equipment was not designed in accordance with the standards in the rule; or (iii) failure to correct a defect within the time frames specified in the rule.

However, it is important that permit holders notice that different rules have different standards and sometimes different definition of leaks. Therefore, each applicable requirement must be compared against the particular circumstance and any noncompliance result entered as a deviation.

Frequently Asked
Questions
(cont'd).

Q: A valve is discovered that has never been tagged or inspected. The valve was installed 6 years ago and should have been monitored quarterly for that 6 year period. The facility has a Title V permit that was issued 3 years ago. How many deviations should be reported in the current deviation report for this one valve? Would the facility count the deviations that occurred during: (1) just the most recent 6-month deviation report period; (2) the entire period that the Title V permit was effective (3 yrs); (3) the 5 yr recordkeeping period required under Title V; or (4) the entire period that the valve should have been monitored (6 yrs)?

A: Only the deviations that occurred during the reporting period should be counted. Since the reporting period is for the six or twelve months covered by the deviation report or compliance certification, then the facility should only count monitoring that was missed during that period. Thus, in the above, for one valve that is required to be monitored quarterly, the facility would report only two deviations in its six-month deviation report. This is supported by 30 TAC 122.145 and 122.146. For example, deviation reports are required to be submitted “for at least each six-month period Y.” The rule also makes clear that “no report is required if no deviations occurred over the six-month reporting period.” 30 TAC 122.145(2)(B). If the facility would not need to report at all if there were no deviations during the 6-month period, then it makes no sense to force that facility to include in its deviation count those deviations that occurred outside that period.

For purposes of the Title V program and the operating permit for which the owner/operator is certifying compliance, the regulation and the accompanying form instructions describe deviation reporting to be no greater than six months, and the certification period to be no greater than 12 months. Therefore, the deviation should be reported in the current six month period from the beginning of the report period. Then if the deviation was discovered in the second six months and known to be present in the first six months, a correction should be made to the first six-month deviation report when submitting the annual compliance certification. However, note that the actual start date and time should be entered, regardless of the reporting period.

Q: Assume that monitoring of 1 valve on quarterly monitoring is missed once during the 6-month reporting period. Assume that 2 different LDAR requirements apply B e.g., a 30 TAC Chapter 115 state SIP rule and NSPS VV. Should this be reported as one deviation or two?

A: It should be reported as two deviations. A deviation is an indication of noncompliance with a term and condition of the permit. It is significant that the definition relates to a singular permit term and condition. This has been understood to apply to the rule level.

Q: Using the same example above, but for one rule: Do facilities also have to count as separate deviations the failure to create a record of the missed monitoring and the failure to include the missed valve in LDAR reports?

A: Unlike the previous scenario, which described two different rules, this example may be viewed differently as we consider different “requirements” within the rule. In this situation, one line of requirements is written in the permit for a given rule has standard, monitoring, recordkeeping, and reporting. Conceivably, a complete failure to act on a whole set of requirements could be reported as a deviation for each and every citation. However, this is the situation that best describes the “multiple citations” instruction in the rules. I.e., the permit holder could simply report as one deviation (per rule), and the case would be understood as apparent noncompliance with each individual citations= requirements.

CONTINUOUS EMISSIONS MONITORING SYSTEMS (CEMS):

Q: A Continuous Emission Monitoring System (CEMS) is used to demonstrate compliance with a rule standard of 160 ppmv H₂S on a three hour rolling average. The CEMS experiences 5 hours

Frequently Asked
Questions
(cont'd).

of downtime while being repaired. How many deviations should be reported for this downtime event?

A: The 5 hour period of CEMS downtime should be one deviation.

Q: Assume 5 hours of CEMS downtime occurs on a CEMS that is required to comply with a minimum of 22 valid days of data shall be obtained every 30 rolling calendar days. If the 5 hours of CEMS downtime, accumulated with any other downtime from that CEMS, does not result in less than 22 valid days of data being obtained in a 30 rolling calendar day period, is the downtime considered a deviation? If so, how many deviations should be reported?

A: In general, no deviation has occurred when monitoring downtime allowed by a rule is not exceeded, and any other monitoring requirements required during the downtime are conducted as required. The rule is anticipating occasional CEMs outages.

Some rules allowing downtime may also require alternative monitoring methods to replace the CEMS for 75% of the days, 22 out of 30.

Other rules do not appear to require alternative monitoring, just the minimum number of good data days.

Q: Assume 5 hours of CEMS downtime occurs on a CEMS required by a state permit that demonstrates compliance with an hourly average NO_x limit. The permit includes a condition stating that up to 5% invalid data on a rolling 12-month basis is acceptable provided it is only generated when the monitor is broken down, out of control, being repaired, etc. If the 5 hours of CEMS downtime, accumulated with any other downtime from that CEMS, does not result in greater than 5% invalid data on a 12-month rolling basis, is the downtime considered a deviation? If so, how many deviations should be reported?

A: No deviation occurs if invalid data are less than 5% on a 12-month rolling basis, as long as all requirements of the permit were met while the CEMs were down and the downtime occurred for the reasons stated. The permit is anticipating occasional CEMs outages. In the example above, the outage did not exceed the permit's requirements.

Q: Please explain how Calibration Drift (CD) plays a role in deviation reporting for CEMs.

A: You should report a deviation with regards to the CEMs not providing data on line when the CD value is so high and for so long that the CEMs is deemed "out of control." Appendix F to NSPS states you cannot use the monitoring data from that CEMS during the time it is out of control. Unless you can throw out the data 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, §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.

GENERAL REPORT SUBMITTAL, TIMING, AND SCHEDULING:

Q: Does a "reasonable inquiry" for compliance have to be conducted by an independent party, or can the permit holder provide the necessary training and instructions to their own employees as to what to look for and report?

A: No, "reasonable inquiry" does not have to be conducted by an independent party. The term "reasonable inquiry" is not defined in the rule. It is up to the permit holder to determine what type of system is best, based on the complexity of the site, number of applicable requirements, company organization, and other site-specific considerations.

Frequently Asked Questions (cont'd).

Q: May I report deviations more frequently than every six months?

A: Yes. The rule sets the maximum length of six month reporting periods. Reports are due no later than thirty days from the end of a six month period. However, the rule does not prevent the submission of deviation reports on a more frequent (quarterly, monthly, weekly, etc.) basis. In addition, the rule requires more frequent reporting if required by an applicable requirement. In addition, please be aware that the deadline for the report is 30 days from the end of the reporting period. Therefore, that requirement is still imposed on the end date and not six months.

Q: How do I report a deviation that is continuous over more than one six month period?

A: Report the deviation with the original start date and complete the record in subsequent reports with any updates to the description, cause, and corrective action. Make a note in the description that it is a continuation of a deviation reported in an earlier DevRep and not a repeat deviation.

Q: What are my obligations for deviation reporting for the Risk Management Plan requirements from 40 CFR Part 68 related to Process Safety Management?

A: The following is quoted from an EPA letter dated May 30, 2006: "Violations of the Occupational Safety and Health Act (OSHA) Process Safety Management (PSM), including PSM audit findings which are violations of Risk Management Plan (RMP) requirements, should be Title V deviations subject to deviation reporting. Credible evidence of a violation of a PSM, that is also a violation of an applicable requirement RMP of the Clean Air Act, is a Title V deviation subject to reporting requirements." A copy of the letter that includes additional background material supporting this conclusion is available on file in the TCEQ Field Operations central office, Austin, Texas, MC 174.

DEVIATIONS RECENTLY DISCOVERED OLDER THAN SIX MONTHS OR ONE YEAR:

(1) Explain how and what an entity does to report deviations going further back and beyond the current reporting/certification period, while the entity was subject to Title V.

a. Q: What is the obligation if that deviation is still on-going, or was on-going at the time of the current reporting period? **A: Enter the deviation in the current report, and note the actual start date/time as best known by the RO upon reasonable inquiry.**

b. Q: What is the obligation if that deviation ended before the current reporting period? **A: For purposes of deviation reporting under 30 TAC Chapter 122, §122.145-146, there is no obligation. However, this concept does not restrict agencies with jurisdiction from pursuing enforcement action based on violations of the underlying requirement.**

(2) Explain how and what an entity does to report deviations going further back and beyond the current reporting/certification period, before the entity was subject to Title V.

a. Q: What is the obligation if that deviation is still on-going, or was on-going at the time of the current reporting period? **A: Enter the deviation in the current report, and note the actual start date/time as best known by the RO upon reasonable inquiry.**

b. Q: What is the obligation if that deviation ended before the current reporting period? **A: For purposes of deviation reporting under 30 TAC Chapter 122, §122.145-146, there is no obligation. However, this concept does not restrict agencies with jurisdiction from pursuing enforcement action based on violations of the underlying requirement.**

Frequently Asked Questions (cont'd).

(3) Q: Although the deviation reporting period can only be six months, can the start date for a deviation that is being reported during those six months be earlier than the start date of the deviation report?

A: Yes. The correct date as determined by the Responsible Official based on reasonable inquiry should be entered as start date and time on the form for each deviation even when that deviation started before the current reporting period.

Q: (General comment) The discovery of a deviation that had been occurring in a previous deviation period but not reported is not an automatic deviation of "failure to report." Other factors must weigh-in, such as "reasonable inquiry."

A: Correct. The finding of "failure to report" should not be generated automatically. Reasonable inquiry process should be considered and knowing what the information was "in front of the Responsible Official" at the time the deviation took place is critical in making that determination. Note however that information required by the permit is automatically considered to be known by the Responsible Official at the time it is collected, recorded, and reported.

Q: The rule does not require a deviation report if no deviation was experienced for the reporting period. However, it is the practice of many permit holders to submit a report stating "no deviations during the reporting period" for documentation purposes. When this type of report is made, is an OP-CRO1 required?

A: Although the 30 TAC Chapter 122 does not require a deviation report in this case, if one is provided to the agency, it should be certified with form OP-CRO1, **Part 1** just the same.

Q: Could the PDF version of the form automatically populate the end date of the reporting period for DevRep and the PCC?

A: A formula to calculate the maximum period would tend to give everyone the false impression that a PCC would not be required until such date, when other intervening events may prove otherwise. A "maximum end date" formula might be provided in guidance, but not on the form.

Formula for calculating maximum end date of the deviation report: (six months) *
End date = start date + six months – one day

Formula for calculating maximum end date of the permit compliance certification: (twelve months) *
End date = start date + twelve months – one day

* Note this formula applies regardless of number of days in a month, in Leap Year or regular Calendar Year.

INTERFACE WITH PERMIT COMPLIANCE PLANS

The following guidance is provided for those permits that contain a compliance plan developed from the application form OP-ACPS: Application Compliance Plan and Schedule.

Q: When issued, Title V Compliance Plans and Schedules become a part of the Title V permit. Is it correct to say that the Plans and Schedules are subject to regional review during Title V related investigations, and any deviations from the Plans/Schedules in the issued Title V permit may result in violation of the permit?

A: Correct. These are "Compliance Plans and Schedules" brought into the permit through the application form called OP-ACPS. So in addition to the Regional office conducting a review of

Frequently Asked
Questions
(cont'd).

the plan submitted by the title V permit holder, the region would be acting appropriately to investigate and process non-compliance reported under this form. It is not voluntary self-reporting.

However, it should be noted that non-compliance (violations) meeting the Category A enforcement criteria that are reported under the application form OP-ACPS will also be treated in accordance with TWC §7.002511: when Category A, B, and C violations are aggregated or split. This statute prohibits the TCEQ from combining non-repeat category B and category C violations with a category A or other violation that is going to enforcement as a result of these violations being reported through “information it receives as required by Title V of the federal Clean Air Act” by a person subject to Title V.

Q: Is it correct to say that any non-compliance issues not covered under Audit Privilege should be addressed via a Notice of Violation or Notice of Enforcement, even if they are already included in a Title V Compliance Plan? The Title V Compliance Plan covers the permit holder so that they don't receive a Chapter 122 violation for not having them in the permit, but does not address the fundamental non-compliance issue with the underlying requirement.

A: Correct. Identification of non-compliance in the application using the form OP-ACPS is required by the rule and is not available as Audit Privilege material unless the information was first disclosed through the APA.

Q: Should permit holders list all non-compliances as deviations, regardless of whether or not they are addressed in a Compliance Plan/Schedule within the permit?

A: Yes.

Example Deviation Reports

The following examples of deviations represent some common deviations reported based on typical permit requirements. Each permit holder should refer to the permit requirements, explicit or referenced, in their permit documents.

Cases:

The first two examples make use of the Part 3 Miscellaneous Monitoring portion of the deviation form. In the first case (the first two pages), a deviation to the required opacity limit was reported based on a verified citizen complaint and corresponding investigation report. (It was not based on the permit's required quarterly observation). Therefore, the monitoring method was "other" since it was not the permit's monitoring method.

The next case (pages 3 and 4) illustrate how the miscellaneous monitoring form can be used to defend a compliant status when the permit's monitoring method was not available or indeterminate.



**Texas Commission on Environmental Quality
Federal Operating Permit Deviation Report Form
Form DevRep (Part 1)**

Permit Holder Name	ABC Company				Customer Number	CN6xxxxxxxxxxx	
Area Name	ABC Permit Area Name				Regulated Entity Number	RN1xxxxxxxxxxx	
Report Period Start Date	01/01/2001	Report Period End Date	6/30/2001	Operating Permit Number	OXXXX	Report Submittal Date	07/15/2001

Operating Permit Requirement for Which Deviations are Being Reported

ID Number		Term & Condition No.	Pollutant	Regulatory Requirement Citation	Type of Requirement	SOP or GOP Index Number	Monitoring Method	Monitoring Frequency
Unit ID	Group ID							
F-1		n/a	Opacity	30 TAC Chapter 111, §111.111(a)(1)(B)	Standard	n/a	Other	n/a

Dev Item No.	STEERS Track No.	Deviation Period				No. of Dev	Cause of Deviation	Corrective Action Taken to Remedy or Mitigate Deviation Situation	
		Start		End					
		Date	Time	Date	Time				
1	n/a					1	Insufficient supplemental natural gas for BTU requirements		
Total Deviations:		Is there a Part 2 Miscellaneous Monitoring/Credible Evidence form supporting this deviation report?						<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	



**Texas Commission on Environmental Quality
Federal Operating Permit Deviation Report Form
Form Dev Rep (Part 3)
OPTIONAL**

Miscellaneous Monitoring and Credible Evidence Submittal

Deviation Item Number	Monitoring Method/ Evidence Reference	Monitoring/Evidence Results supporting Compliance Status	Additional Materials attached? Y/N
1	Complaint investigation report, no. XYZ, 10/21/2006	Flare F-1 reported smoking through citizen complaint, verified by TCEQ investigator	N



**Texas Commission on Environmental Quality
Federal Operating Permit Deviation Report Form
Form Dev Rep (Part 1)**

Permit Holder Name	ABC Company				Customer Number	CN6xxxxxxxxxxx	
Area Name	ABC Permit Area Name				Regulated Entity Number	RN1xxxxxxxxxxx	
Report Period Start Date	01/01/2001	Report Period End Date	6/30/2001	Operating Permit Number	OXXXX	Report Submittal Date	07/15/2001

Operating Permit Requirement for Which Deviations are Being Reported

ID Number		Term & Condition No.	Pollutant	Regulatory Requirement Citation	Type of Requirement	SOP or GOP Index Number	Monitoring Method	Monitoring Frequency
Unit ID	Group ID							
BLR-1A			NOx					

Dev Item No.	STEERS Track No.	Deviation Period				No. of Dev	Cause of Deviation	Corrective Action Taken to Remedy or Mitigate Deviation Situation
		Start		End				
		Date	Time	Date	Time			
1	n/a					1	Power to CEMS interrupted during maintenance, process continued in operation	Upon discovery of incorrect power outage, power restored to CEMS equipment for Boiler 1A
Total Deviations:		Is there a Part 2 Miscellaneous Monitoring/Credible Evidence form supporting this deviation report?						<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO



**Texas Commission on Environmental Quality
 Federal Operating Permit Deviation Report Form
 Form Dev Rep (Part 3)
 OPTIONAL**

Miscellaneous Monitoring and Credible Evidence Submittal

Deviation Item Number	Monitoring Method/ Evidence Reference	Monitoring/Evidence Results supporting Compliance Status	Additional Materials attached? Y/N
1	Boiler operational parameters	Although CEMS used as monitoring method required by permit requirements, it is believed that the NOx limit was not exceeded. The boiler had been operating steady state under operational conditions similar to that when NOx compliant: fuel usage, firebox temperature, airflow , and ammonia injection (control) were all consistent with conditions at the time the NOx test was conducted, and limits were met.	Operator's log, including boiler process unit sensor logs showing operational conditions previously described.



**Texas Commission on Environmental Quality
Federal Operating Permit Deviation Report Form
Form Dev Rep (Part 1)**

Permit Holder Name	ABC Company				Customer Number	CN6xxxxxxxxxxx	
Area Name	ABC Permit Area Name				Regulated Entity Number	RN1xxxxxxxxxxx	
Report Period Start Date	01/01/2001	Report Period End Date	6/30/2001	Operating Permit Number	OXXXX	Report Submittal Date	07/15/2001

Operating Permit Requirement for Which Deviations are Being Reported

ID Number		Term & Condition No.	Pollutant	Regulatory Requirement Citation	Type of Requirement	SOP or GOP Index Number	Monitoring Method	Monitoring Frequency
Unit ID	Group ID							
SRU-1			SO2	NSR 99999	Standard	n/a		

Dev Item No.	STEERS Track No.	Deviation Period				No. of Dev	Cause of Deviation	Corrective Action Taken to Remedy or Mitigate Deviation Situation
		Start		End				
		Date	Time	Date	Time			
1	99999	03/21/2001	21:03	03/22/2001	03:13	1	Momentary Power interruption from storm, SRU control did not reset.	Controls reset. See STEERS report incident 99999
Total Deviations:		Is there a Part 2 Miscellaneous Monitoring/Credible Evidence form supporting this deviation report?						<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO



**Texas Commission on Environmental Quality
Federal Operating Permit Deviation Report Form
Form Dev Rep (Part 1)**

Permit Holder Name	ABC Company				Customer Number	CN6xxxxxxxxxxx	
Area Name	ABC Permit Area Name				Regulated Entity Number	RN1xxxxxxxxxxx	
Report Period Start Date	01/01/2001	Report Period End Date	6/30/2001	Operating Permit Number	OXXXX	Report Submittal Date	07/15/2001

Operating Permit Requirement for Which Deviations are Being Reported

ID Number		Term & Condition No.	Pollutant	Regulatory Requirement Citation	Type of Requirement	SOP or GOP Index Number	Monitoring Method	Monitoring Frequency
Unit ID	Group ID							
Tanks T-21, T-22	GRPFUEL			122.145	Reporting			

Dev Item No.	STEERS Track No.	Deviation Period				No. of Dev	Cause of Deviation	Corrective Action Taken to Remedy or Mitigate Deviation Situation
		Start		End				
		Date	Time	Date	Time			
1						2	Failure to report a deviation (lack of seal gap inspections) within six month period discovered on two tanks	The two fuels tanks in question (previously with the fuels team) were placed on the chemicals team inspection and reporting cycle, since the tanks are geographically closer to the chemical tanks.
Total Deviations:	2	Is there a Part 2 Miscellaneous Monitoring/Credible Evidence form supporting this deviation report?						<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO



**Texas Commission on Environmental Quality
Federal Operating Permit Deviation Report Form
Form Dev Rep (Part 1)**

Permit Holder Name	ABC Company				Customer Number	CN6xxxxxxxxxxx	
Area Name	ABC Permit Area Name				Regulated Entity Number	RN1xxxxxxxxxxx	
Report Period Start Date	01/01/2001	Report Period End Date	6/30/2001	Operating Permit Number	OXXXX	Report Submittal Date	07/15/2001

Operating Permit Requirement for Which Deviations are Being Reported

ID Number		Term & Condition No.	Pollutant	Regulatory Requirement Citation	Type of Requirement	SOP or GOP Index Number	Monitoring Method	Monitoring Frequency
Unit ID	Group ID							

Dev Item No.	STEERS Track No.	Deviation Period				No. of Dev	Cause of Deviation	Corrective Action Taken to Remedy or Mitigate Deviation Situation
		Start		End				
		Date	Time	Date	Time			
Total Deviations:		Is there a Part 2 Miscellaneous Monitoring/Credible Evidence form supporting this deviation report?						<input type="checkbox"/> YES <input type="checkbox"/> NO