



ENVIRONMENTAL AND SAFETY UPDATE

Spring 2014

STAYING IN COMPLIANCE WITH AIR QUALITY REGULATIONS

Does your facility have an air quality permit? If so, when was the last time it was updated? If your facility is not a major source of emissions, you may have an air permit with no expiration date. This can lead to situations where the air permit is 10 years, 15 years, or even older. Have facility operations not changed at all during that time? Has new equipment been installed? Are you sure that new boiler/oven/paint booth/etc. that was installed was truly exempt from an air quality permit? When was the last time the EPA or your State's environmental agency inspected your facility? If you are a major source of emissions, you probably see your inspector annually, but if you are not a major emitter, the inspections can be much more random.

“There are few manufacturing facilities that are exempt from operations without an air quality permit.”

There are few manufacturing facilities that are exempt from operating without an air quality permit. Even an exempted facility could trigger air permitting requirements as a result of a modification. Before any modification that affects air emissions is started, a revised air quality permit application is required. The term “modification” means any change in or alteration of fuels, processes, operations, or equipment which affects the amount or character of any air pollutant emitted, or which results in the emission of any air pollutant not previously emitted.

Fines for non-compliance with air quality regulations are some of the highest in the environmental sector. From 2013 data provided by the EPA, there are nearly 43,000 facilities in the United States with air quality permits. The EPA and/or state agency can only inspect a fraction of these facilities each year. Of the inspected facilities in 2013, nearly 2,000 for-

mal enforcement actions were issued. The monetary penalties resulting from these enforcement actions totaled \$51,500,000. This put the average penalty from enforcement action at just over \$26,000 each.

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The majority of the enforcement actions with monetary penalties are the result of deviations from required reporting, failed emission compliance tests, or items discovered during inspections (e.g. unpermitted equipment, missing records, violations of visible emission standards). Deviations from reporting or compliance tests are often known by the facility who in turn, notifies the EPA and/or State of the deviation; therefore, responding to the violation can often be an easier task than preparing for an inspection. Inspections are typically unannounced. An inspection by an EPA or State air quality inspector will check the following during an evaluation:

1. Does the facility's as-built and operational parameters, especially air emissions, match the data submitted in the air permit application(s)?
2. Is all equipment with the potential for emissions included in the current air quality permit?
3. Is the required recordkeeping maintained and up to date? This can include the previous 5 years of recordkeeping.
4. Were all notifications, fees, and reports submitted to the EPA and/or State and in a timely manner?
5. Is pollution control equipment operated as required? Are visible emissions in compliance?
6. Is the facility following applicable work practice standards?

Can you say for certain that you can show compli-

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DEALING WITH AN OSHA INSPECTION

Step #1: Identify

Ask the inspector for his/her business credentials (photo identification with a serial number), business card, and the reason for the visit. If the reason is an employee complaint then request a copy of the complaint that was made to the OSHA office.

Step #2: Notify

Ask the inspector to please wait so that you can bring him/her your business card. Also let him/her know that he/she will need to wait for a bit because you need to make arrangements for someone to take over your immediate work duties so that you are available to spend time with the inspector. While he/she is waiting you should contact your safety consultant, and at that point a decision should be made if your consultant should head up your way. In case of an extreme situation, if you really need the extra time for your safety and other representatives to arrive on site, or if the inspector is unwilling to inform you of the reason and scope of the visit, you can ask the inspector for a warrant. **NOTE** that the OSHA inspector should wait for your consultant and other representative to arrive on site for a period not to exceed 1 hour.

“Have an informed and knowledgeable person escort the inspector through the facility at all time. DO NOT let the inspector roam...”

Step #3: Opening Conference

- In the opening conference you will learn why your facility is being inspected, the scope of the inspections, and the OSHA standards that are likely to apply.
- Make sure that you fully understand the reasons your facility is being inspected, as you may have different rights based on the reasons (i.e. Is it an employee complaint, programmed inspection, or a follow-up inspection).

Step #4: Inspection Walkthrough

- Have an informed and knowledgeable person escort the inspector through the facility at all times. **DO NOT** let the inspector roam by him/herself!
- List all instruments the inspector uses, who he/she speaks to, and what photos are taken. In fact, if possible, perform the same activities that the inspector does. Take a photo of what he/she does, take notes when he/she does, and perform the same air sampling or monitoring that the inspector does.
- The inspector will most likely interview employees about safety equipment in the workplace, processes and procedures, and about required safety training. Do not interfere with the interviews. The inspector is also very likely to check for required postings and perform a Logs and Records Review on OSHA 300 logs, basic safety & health programs, training procedures, etc.

Step #5: Closing Conference

- Do not let the OSHA inspector leave without conducting a closing conference.
- Take detailed notes of all that is discussed.
- The inspector will inform you of the items that he/she observed during the inspection, and apparent violations that may be cited. The inspector will also describe abatement requirements and suggested abatement time that the violations should be rectified by.
- Be careful about agreeing with what the inspector says regarding apparent violations, as admissions of guilt could be damaging during your appeal process.
- **NOTE** that an OSHA inspector will **NEVER** request any fine payments during the inspection. In fact, the inspector is not the person who decides what fines are to be allocated; the Area Director decides fine amounts.

OSHA Sent Me a Citation Letter...Now What?

NOTE: All citations must be issued within 6 months of the start of the inspection. Once you received the citation letter you must post a copy at the work area that was inspected until the violations have been abated or for 3 working days, whichever is longer. After you have received the citation letter, and posted it in the work area, you have the following options going forward:

1) Informal Conference

- Always schedule an Informal Conference within the 15 working day window from the date you received the citation, if you want to contest any of the violations. If you miss that 15 working day window you miss your opportunity to request the informal conference.
- If you need an extension for the conference, submit your request in writing and with a good reason.
- In the Informal Conference, your attitude should show a team effort for fixing any problems and improving the safety culture from the top down at your facility.
- It could definitely help your case if abatement actions and procedures are presented to the OSHA representative(s) at the Informal Conference to demonstrate a positive attitude for change and advancement.
- At the end of the Informal Conference OSHA should revise some or all of your fines and/or abatement dates. But, always try and negotiate them lower.

“...be aware that OSHA could return for another visit at any time”

2) Notice of Contest

- If you are still unsatisfied with the citation, it may be time to file a “Notice of Contest (NOC).” The NOC demonstrates that you are still contesting the violation, proposed penalties, abatement deadlines, or all three.
- Filing an NOC stops the abatement requirements and deadlines until the case is settled.

- NOTE that filing an NOC means that this case may end up in court, so your attorneys should be notified.

Once everything is settled, fines are paid, and the inspection is behind you, be aware that OSHA could return for another visit at any time. In order to prevent re-occurrences and the potential for willful and repeat violations (which come with much higher fines), it may be a good idea to begin an inspection program and/or have a 3rd party conduct mock OSHA inspections, including photos, descriptions, and corrective action recommendations.

If you follow the steps outlined above, you will be prepared for a surprise OSHA inspection and emerge from it ready to improve your facility’s safety culture and practices and keep your employees safe.



Staying in Compliance... (Continued from Page 1)

ance with those items when the EPA or State is at your facility? To stay in compliance with air quality regulations, an inspection to address the above should be conducted periodically by a qualified person familiar with the facility’s operation, air quality permit, and the applicable air quality regulations. This can save the facility from costly enforcement actions. Even if compliance issues are discovered that must be reported to the EPA and/or State, self-reporting compliance deviations can result in more lenient actions than if discovered by the EPA or State during their inspection.

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