



TCEQ AUDIT PROCESS

Introduction

On August 8, 2019, at the Region VI Pretreatment Association (RVIPA) workshop, the Texas Commission on Environmental Quality (TCEQ) Pretreatment Team presented updates to their auditing processes. The WEAT Pretreatment Knowledge Committee (Committee) is in agreement that most changes have resulted in a more streamlined and positive audit experience. Providing additional advance notice for the audit allows the Control Authority (CA) to complete the initial interview checklist and prepare for the audit with minimal interruption to normal operations. CAs recently audited by the new TCEQ team had several observations. The TCEQ staff seem to be more prepared for the audit due to the increased preparation time and the amount of information requested ahead of the audit. The actual audit is well organized and TCEQ staff are very professional. The audit team provides the potential findings timely and allows the CA to provide a response with additional documentation to alleviate any findings.

The new audit process has been fairly well received. The Committee, however, would like to provide comments to the following:

- Timeline to address alleged violations and corrective actions and formal TCEQ response to corrections
- Inconsistencies in audit findings
- Pre-audit electronic files request

In addition, the Committee requests that TCEQ communicate future changes to the audit process to the pretreatment program community prior to implementing the changes. Communication with the pretreatment program community prior to implementing changes will allow for a transparent process, avoid the perception of arbitrary changes, and help the community be better prepared.

Timeline to Address Alleged Violations and Corrective Actions and Formal TCEQ Response

The audit team provides the summary of alleged violations and corrective actions within a few days after the audit exit meeting. The alleged violations are assigned a category based on the TCEQ Enforcement Initiation Criteria (EIC). In recent audits the CA has 14 days to respond and provide additional documentation, corrections, and applicable responses. In previous years the response time was 30 days for some violations. The Committee is seeking clarification on the new timelines for responses and procedures related to the audit responses. Additionally, the CAs would like a formal response from TCEQ on the adequacy or completeness of the CA response. For any alleged violations for which the CA disputed the findings in the audit response, the Committee requests that TCEQ provide an explanation to justify the alleged violation.

Inconsistencies in Audit Findings



Over the years the rule interpretations have changed and been applied differently (i.e. alleged violation versus recommendation) depending on the TCEQ auditor. Some programs have received violations for findings while other CAs have received the alleged violations as recommended changes. Specific examples of inconsistencies have included significant noncompliance determination, influent and effluent sampling according to Texas Pollutant Discharge Elimination System (TPDES) permit, and industrial waste survey requirements. Many of the violations cited in these areas are being enforced without established requirements in Federal, State, or Local law.

Significant Noncompliance Determinations

One such violation that has been cited for several CAs is a failure to comply with the public participation requirements of 40 CFR Part 25 (i.e., annual publication of significant violators). The TCEQ's opinion is that a failure to document the review of SNC criteria (C) through (H) of 40 CFR §403.8(f)(2)(viii) for every SIU on a rolling quarter basis is a failure to satisfy the public participation requirements in 40 CFR Part 25. The review of SNC criteria at (C) through (H) on a rolling quarter basis, however, is not supported by any rule or guidance. The CAs properly conducted the rolling quarter evaluation of the numeric criteria (A) and (B) in accordance with procedures described in Environmental Protection Agency (EPA) 1991¹ and 1992² memorandums, and the CAs accurately published SNC on an annual basis to comply with the public participation requirements. The evaluation of (C) through (H) are criteria that are continuously evaluated. When a violation occurs for one of these criteria, the SIU is in SNC. Therefore, a rolling quarter checklist is not appropriate for these criteria. The activities conducted by the CAs comply with the requirements specified in the regulations and in the CAs' pretreatment programs that were reviewed and approved by TCEQ. Therefore, this violation cited by TCEQ is not supported by regulation.

Influent and Effluent Monitoring Violations

CAs have been cited for failure to conduct influent and effluent monitoring within specific time frames. For example, the permit may require the plant to conduct sampling for the toxic pollutants listed in 40 CFR Part 122, Appendix D, Table III once per three months. The expectation has been that the sampling is completed once per quarter based on the quarters defined in the pretreatment year. The time frames are not defined in the permit other than once per six months, three months, etc. There are instances where samples are collected within the required timeframe, but uncontrollable circumstances at the laboratory, such as MALs are not achieved for effluent testing, samples invalid, broken samples, etc., necessitates a resample, which may not be collected until the next quarter, depending on timing. In this instance, CAs members have met the quantity and frequency sampling requirement; however the TCEQ has issued violations when replacement sampling was conducted in the wrong time period. The

¹ EPA Memorandum, Application and Use of the Regulatory Definition of Significant Noncompliance for Industrial Users, September 9, 1991

² EPA Memorandum, Determining Industrial User Significant Non-Compliance-One Page Summary, January 17, 1992



Committee feels the CAs are meeting the intent of the permit by collecting the required number of samples within the required sampling timeframe based on the initial samples.

Industrial Waste Survey Requirements

40 CFR §403.8(f)(2)(i) requires publicly owned treatment works (POTWs) to identify and locate all possible industrial users (IUs) which might be subject to the POTW Pretreatment Program. As a result, most CAs develop industrial waste survey (IWS) procedures as part of their Pretreatment Program. CA's procedures vary with some programs having more detailed requirements than others. In the past CAs have been cited for failure to conduct the IWS as defined by the program. The recommended action from TCEQ was to ensure that all IUs have submitted an IWS and are revisited every three years.

Many POTWs have found that certain types of businesses typically do not pose a reasonable potential to violate any pretreatment standards (general and specific prohibitions or local limits) and therefore should not be included as part of the IWS (i.e. commercial businesses). The following EPA Guidance document supports a basis as to why CAs do not need to consider certain IUs in the evaluation of the IWS.

EPA Guidance Manual for POTW Pretreatment Program Development³

“POTWs with current industrial information may find it feasible to eliminate particular industries or groups of industries from survey efforts if the industry is:

- *A manufacturing operation which does not generate wastewater (dry manufacturing process)*
- *A direct discharger*
- *A discharger of sanitary wastewater only*

If your master list of potential industrial users includes theaters, beauty shops, barber shops, or retail sales firms, such businesses can usually be eliminated prior to contacting the firms. These businesses can be eliminated because their discharges typically do not contain the volume or type of significant pollutants that concern the POTW.

Other listings may be classified as industries but are actually offices or warehouses, with no nondomestic wastewaters discharged. Thus, they also may be eliminated from the master list. Hotels, motels, restaurants, and gas stations may be removed as well if they do not contribute to problems in the collection system or the treatment plant involving oil and grease or other discharged substances.”

It is the Committee's belief that the TCEQ audit of the IWS Procedures should only be evaluated based on the procedures defined in the Approved Pretreatment Program.

³ EPA Guidance Manual for POTW Pretreatment Program Development, 833B83100, 1983 pages 2-2 and 2-3



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TCEQ Response to Addressed Audit Findings

Another item related to audits that Committee members would like improved is the response and communication after completion of the audits. Many times, audit responses have been submitted to TCEQ with no return response. The CAs have responded to address violations and update work processes based on the response or keep processes the same if they see the violation as a misinterpretation. Future audits have resulted in the same violations which should have already been addressed by TCEQ with a response to the previous audit.

Pre-Audit Electronic File Request

A change to the audit process that TCEQ has implemented is the request for files to be transmitted electronically to TCEQ prior to the audit. For those entities that have not previously converted the documents requested by the auditor to an electronic filing system, this task could be time consuming, thus burdensome for some programs. The Committee appreciates TCEQ's attempt to streamline the audit process, but request that TCEQ consider this as a courtesy request only. If the CA is unable to provide the electronic files to the audit, the CA will provide the files during the audit.

Conclusion

The Committee appreciates that TCEQ aims to improve the auditing process. However, changes must be consistent with the rules and regulations and not auditor preferences. The Committee expects the TCEQ to adopt and implement policies and procedures that achieve transparency and uniformity in the enforcement process to ensure it is fair and just. In addition, proposed changes should be presented to the regulated community to determine practicality and impact on program resources prior to implementation. The Committee continues to offer assistance to TCEQ to achieve our mutual goal of protecting water quality and the public investment in the treatment works.