

Consent Decree Termination

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Petroleum Refinery National Cases

- 32 Consent Decrees since March 2000
- Status: 8 have been terminated
 - 2 after refineries were idled
 - 5 by working with the Agencies
 - 1 by invoking CD termination procedure

Why terminate the PRI Consent Decree?

- Obligations above and beyond regulatory requirements
- Semi-annual or quarterly reporting obligations
- Stipulated penalty vulnerability; no statute of limitations
- Enforceable court order

EPA's CD termination goals and constraints

- Reduce resources required to review CD compliance
- Demonstrate achieved reductions
- Ensure lasting effect of the settlements
- Hampered by few staff available to confirm that proper permits have been received

Requirements for Termination

- Installation of control technology and emission reductions specified
- Compliance with all CD provisions
- Payment of all penalties due
- Completion of SEPs (or payment of penalties)
- Application for and receipt of permits incorporating surviving emission limits and standards established under the CD
- Operation for at least one year in compliance with the emission limits, and certification of such compliance

Consent Decree Termination Procedure

- Company submits Certification of Compliance
- U.S. and relevant states have 120 days to object
 - Objection must be in writing
 - Objection must specify reasons
- Any objection will trigger CD dispute resolution process
- Company bears burden of proof that CD should be terminated

Process to Achieve Agreement on Termination

- Company reviews facility permits for CD limits and standards
- Company prepares submittal to EPA, containing:
 - Proof of compliance with CD provisions
 - Permit excerpts showing CD limits and standards
 - Statement of substantial and material compliance over past 4 quarters
- EPA (HQ *and* Regions) reviews with relevant states
 - See memo from OECA to Regions dated June 25, 2014, “Requirements for Termination of Consent Decrees under the National Petroleum Refinery Initiative”
- EPA raises issues with Company for resolution

Guidelines for Acceptable Permit Terms

- Federally enforceable non-Title V permit
 - Major or minor construction permit
 - Some exceptions allowed (i.e., NO_x limits on combustion sources)
- NSPS or NESHAP applicability may be in Title V only
- Consent Decree alone is not acceptable in most cases
- Must survive the CD and Title V renewal

Incorporating CD Limits in Permits

- CD limits must be identical
 - 50 ppm SO₂ ≠ 50 ppmvd SO₂ at 0% O₂
 - 1 lb PM/1,000 lbs coke ≠ 1 lb PM/1,000 lbs coke on a 3-hr rolling average
- Do not substitute a more stringent limit, with different basis
 - 25 ppmvd SO₂ at 0% O₂ ≠ 270 lbs SO₂/hour
- Do not round CD emission limit
 - 3.3 lbs/hr ≠ 3.26 lbs/hr

Incorporating CD Limits in Permits (cont'd)

Start up, Shutdown and Malfunction Exemptions

- Limits that provide NSR release must apply at all times, without SSM exemptions
 - For example, 365-day average emission limit on FCCUs
- Short-term limits may exclude SSM emissions in permit limit, but only
 - To same extent as CD allows
 - As long as there is a longer-term limit for the same pollutant

Incorporating CD Standards in Permits

- New Source Performance Standards (40 C.F.R. pt 60)
 - Applicability of standard need not be included in construction permits
 - Must be in Title V permit
 - NSPS A and J on FCCU regenerators, heaters, boilers, flares, SRUs
 - Additional NSPS if applicable (i.e., subpts QQQ, H, VV, Ja)
- Benzene Waste Operations NESHAP (40 C.F.R. pt 61, subpt FF)
 - Appropriate compliance option

Requirements for Flares and Sulfur Recovery Plants

- Subpart J applicability must be included in the permit

AS WELL AS:

- Root Cause Corrective Action or Subpart Ja applicability to address flaring events

Compliance Demonstration Requirements

- CEMS requirement must be included in the Title V permit
 - For each applicable unit – controlled heaters and boilers, SRPs, FCCUs
 - CEMS requirement must be specific to the pollutant
 - Include reference to 40 C.F.R. Appendix F or RATA test
- Alternative Monitoring Plans must be included
- Any additional monitoring must be included – not just referenced
 - Annual FCCU testing for PM compliance must be in permit
 - Cite to Title V gap-filling authority

General Issues

Consider how many CDs are to be terminated, and how many permit conditions must be reviewed. EPA is swamped.

The more complete your permits are, the better chance of review and approval.

The better your presentation, the better your chance of review and approval.

Significant CD noncompliance in any of the 4 quarters prior to submittal of certification will delay EPA review of your presentation.

Title V permits are to be *received* – not just applied for. EPA may agree to exceptions where the company has made best efforts and permitting authority delays are documented.

Engage with EPA to address all issues.

Potential Implications of new Administration

The most likely scenario under the Trump Administration and GOP-controlled Congress is a drastically reduced EPA budget

Since resources in the enforcement offices in HQ and Regions are already stretched, any further budget constraints will decrease EPA's ability to address the consent decrees.

Expect further delays in terminating the CDs under the new Administration.

Do NOT expect to be relieved of CD obligations – it's a *court-order* and a *contract*.

All Parties Agree to Termination

- Prepare joint motion for termination
 - All parties to sign
 - Be prepared for delay in signatures from government entities
- Submit motion to the court
- Court will issue final order, terminating the CD

The 'Nuclear' Alternative

- Prepare your certification and submit to the agencies consistent with CD
- Wait 120 days, and if no response has been received, file a motion to terminate with the court
- Be prepared for negative EPA and state agency responses

