


## Voluntary Audit Program For Texas Flexible CAA Permits


Texas Association of Environmental Professionals  
June 17, 2010 – Brady’s Landing



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EHS SOLUTIONS FOR BUSINESS RESULTS


## Flexible Permit Controversy

- ▶ 1996 – Texas establishes Flexible Permits for CAA Permits Under the State Implementation Plan (SIP)
- ▶ Under Flexible Permit:
  - Facility Has an Emissions Cap for the Facility (or Group of Sources)
  - Allowed Flexibility of Modifications to Sources as Long as the Emissions Cap is Not Exceeded
- ▶ 126 Sites Issued Flexible Permits




## EPA Says “Wait A Minute!”

- ▶ Flexible Permits Never Approved By EPA for Inclusion in the Texas SIP
- ▶ In 2007 Letter to Holders of Flexible Permits:
  - Permits reflect Texas requirements and not necessarily the federally-applicable requirements.
  - Must comply with Federal Rules for New Source Review



## EPA Objection


- ▶ CAA Requires That Each Individual Source be Evaluated for Significant Changes
- ▶ Significant Changes Require New Source Review, meaning:
  - Compliance With Current Rules
  - Lowest Achievable Emissions Rate (LAER)
  - Best Available Control Technology (BACT)



**Example:**


- Flexible Permit Site With 3 Sources: 1, 2 and 3
- Each Emitting 10 Tons of Pollutant Z
- Change Raises Emissions on Source 1 to 28 Tons of Z, but Emission from 2 and 3 Reduced to 1 Ton Each

Texas says “Right On! Way to Get Creative!”	EPA Says “No Way! Source 1 Needs New Source Review and Must Comply with LAER/BACT”
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## Texas Flexible Permit Controversy

- ▶ 10+ Years of Arguing
- ▶ 2007 – EPA Warning Letter to Holders of Flexible Permits
- ▶ All Fun and Games Until Someone Gets Hurt



### Texas Showdown!



Governor Rick Perry:  
Don't Mess With Texas!

EPA Region VI Administrator  
Alfredo "Al" Armendariz:  
Obey The Law!

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### Now Someone Is Getting Hurt

- ▶ May 2010
  - EPA Takes Over Permitting for Flint Hills Refinery
  - Texas Sues To Stop EPA
- ▶ June 10 – EPA Announces Voluntary Audit Program
- ▶ June 15 – EPA Takes Over Permits For 2 More Refineries
- ▶ June 16 – TCEQ Announces More Revisions to Flexible Permit Program
- ▶ June 17 – Voluntary Audit Program Published in Federal Register

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### EPA Rationale For 3<sup>rd</sup> Party Audits

- ▶ Holders of Flexible Permits are Worried About Their Legal Standing.
- ▶ Communities Around Flexible Permits May Be Exposed to More Pollutants Than They Should.
- ▶ Flexible Permit Audit Program is Business's Exit Strategy From This Flawed Program.

75 FR 34445 (June 17, 2010)

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### Flexible Permit Audit Program

- ▶ Employ a Third-Party Auditor to Examine CAA Compliance Since Date of Issuance of Flexible Permit
- ▶ If Problems Found Requiring New Source Review, Then Agree to Obtain a New Permit for Individual Sources.
- ▶ No Civil Fines for Past Violations of CAA – Although Might be Fined for NSR Violation

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### Sign Agreement Up Front

Agree that:

- ▶ EPA has jurisdiction
- ▶ Audit findings are not admission of violation
- ▶ Will correct problems
- ▶ Will seek NSR permit if necessary
- ▶ Will enter into Consent Agreement and Final Order (CAFO) to resolve penalties and permits

Have 6 Months to Agree to the Audit

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### Third-Party Independent Auditor

Must Have:

- ▶ Reasonable number of employees, and at least one must meet requirements of ISO 19011
- ▶ ISO 19011: Guidelines for Quality and/or Environmental Management Systems Auditing
  - Presumably referring to Clause 7 on Competence and Evaluation of Auditors

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### ISO 19011 Clause 7 Auditors

- ▶ Gained competency through combination of education, auditor training, work experience, and audit experience
- ▶ Set of Personal Attributes
  - ethical, open-minded, diplomatic, protective, perceptive, versatile, tenacious, decisive and self-reliant

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### 3<sup>rd</sup> Party Auditor Cannot

- ▶ Be a current or former employee of auditee
- ▶ Own stock in auditee
- ▶ Have any financial stake in the outcome of the audit
- ▶ Have been involved in development of the auditee's CAA permit
- ▶ Take on any additional work for auditee for a year after submittal of the report

EPA has right to veto the selection.

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### Audit Has 3 Aspects

- ▶ Identification of applicable rules
- ▶ Assessment of compliance with those rules
- ▶ If the event of non-compliance, recommended corrective action

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### Audit: ID Applicable Rules

- ▶ For each emission source, ID all current applicable CAA requirements (Texas and EPA):
  - Emission limitations/standards
  - Operational limitations/special conditions
  - Routine Maintenance, Repair and Replacement (RMRR) requirements
  - Specific references for all federal requirements identified
- ▶ Apply the federal version of NSR regulations in place at time of changes to the emission unit

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### Audit: Assess Compliance

- ▶ Inspect equipment
- ▶ Interview personnel
- ▶ Examine records

CEMS Data, Construction and Maintenance Activities, Inspections, Calibrations, Leak Detection, etc. etc. etc.

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### Audit: Recommend Corrective Action

- ▶ Corrective Action and Preventive Action (CAPA):  
Find Fault - Correct Fault - Prevent Future Faults
- ▶ For NSR Faults, Audit is Expected to Identify What the Emission Limit and Control Technology Should Be

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### Reports Publicly Available

- ▶ 160 Days From Signed Audit Agreement to Audit and Produce Final Report
- ▶ 250 Days From Signed Audit Agreement for Company to Offer Comments and If Needed, Counter-Proposal to LAER/BACT
- ▶ Public But Can Redact Confidential Information



### Report Certifications

- ▶ Auditor: Report is Complete, True and Accurate
- ▶ Engineer: Report and Emission Unit Requirements are Complete, True and Accurate
- ▶ Auditee: Everything is Complete, True and Accurate – AND We Cooperated Fully AND We Gave the Auditors Everything They Asked For



### CAPA

- ▶ Implement CAPA for all CAA Findings
- ▶ If Any Sources Had Modifications, Work With EPA on Plan for Implementing LAER/BACT With New Permit(s)
- ▶ Commit to CAPA and LAER/BACT via CAFO



### And By The Way...

- Implement a Community Project
  - ▶ Related to air emissions
  - ▶ Of Benefit to the Community
  - ▶ Cost Related to Size/Complexity of Your Site
    - EPA Assigned Each Site to 1 of 4 Tiers of Size/Complexity
    - Tier 1 Site Needs to Cost \$2 – 4 Million
    - Tier 4 Site Needs to Cost \$50 – 250 Thousand



### Benefit To Industry

- ▶ Protection From Certain CAA Violations
  - Only if CAPA put into the CAPO
  - Not Necessarily for NSR
  - Not for Criminal
  - Not for Imminent and Substantial Endangerment
- ▶ Certainty With Respect to Air Permit



### TCEQ Defense

- ▶ TCEQ Commissioners Approved Amendments to Flexible Permit Program on 6/16/2010
  - <http://www.tceq.state.tx.us/rules/pendprop.html>
- ▶ Issuing Flexible Permits Brought Grandfathered Facilities Under Permit



### What Happens Next?

- ▶ Will EPA Approve the TCEQ Changes?
- ▶ What Will EPA Do With The 3 Facility Permits?
- ▶ What Will EPA Do With Facilities That Don't Sign Up For The Voluntary Audit?

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### Thank You!

### Questions?

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