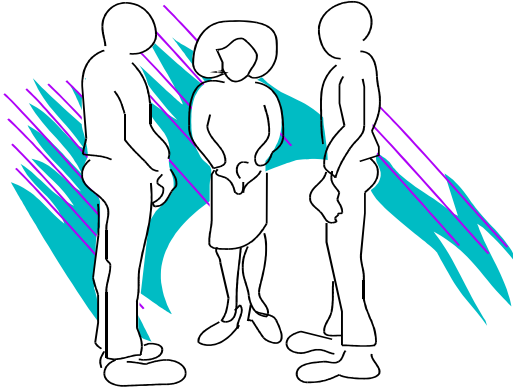# Permit Issuance to Inspector Compliance Coordination Issues

What is Enforceable Language?

- Place the obligation on the owner/operator to come forward with plans and data.
- Require in the permit everything the Agency needs to evaluate the site and required or proposed environmental monitoring.

(Ref.: RCRA Ground Water Monitoring Enforcement: Use of the TEGD and COG, 1987)

Although some owner/operators are very cooperative, others are not. The term of the permit is 5-10 years. Staff may change within the Agency or the facility so make sure what is required is clearly described in the permit so there is no confusion later on.

If the data is not adequate, it is up to the owner/operator to defend the plan and data. 40 CFR §270.14(c) requires the owner/operator to submit all required data, or have it available for inspection.

If the Agency does not require data, the owner/operator is unlikely to volunteer it. The permit conditions need to be in place at issuance in order to avoid permit modifications. Don't assume data will be collected or presented in a certain way unless you specify what you want.

Enforceable Language (cont'd)

- Use mandatory language.
- Be explicit in identifying the substantive tasks for owner/operator compliance.

"Should" and "may" is unenforceable. Always use "shall" and "must". "After considering" is unenforceable. Where such a phrase is used, the owner/operator must be obliged to make its "consideration" explicit and set forth its reasoning for review. Provide rationale (an explanation) why the decision was made. "Based on …EPA guidance…"

If an obligation to comply with a rule already exists, then just citing it is vague. Be specific if you want something specific to comply with the rule. Vague or general language is useless if there is non-compliance. Conditions needs to prove "did they do it?" Avoid words like "substantially", "reasonably", and "as appropriate".

Enforceable Language (cont'd)

- Retain Agency flexibility while constraining that of the owner/operator.

Time deadlines are always on the owner/operator, not the Agency. Establish a timetable (schedule of compliance) for all owner/operator actions. Extension modifications can always be written in. Require submitted plans, proposals, etc. and make them subject to Agency approval.

What an Inspector Needs for Enforceability

- Clear detailed language of what the permittee must do.
- Record keeping descriptions.
- A good compliance schedule.
- Enforcement triggers (If x level is exceeded you must…).
- Other ideas…..discuss.

General inspection items can be created for Subpart X facilities. Specific details are case by case. Specifics will include areas such as weather operating conditions, feed rates that will comply with risk assessments, inspection points.

Understanding Permit Language - Where are There Problems?

- Inspection checklists are going to be formed on a site by site basis so the permit language needs to be clear for the inspector to understand compliance requirements.

- Subpart X regulation is very vague, the permit writer needs to detail what is required to comply.

What Does a Permit Writer Really Mean?

- Justifying to the permittee and public the basis for decision making.
- What language are inspectors having problems with….discuss.
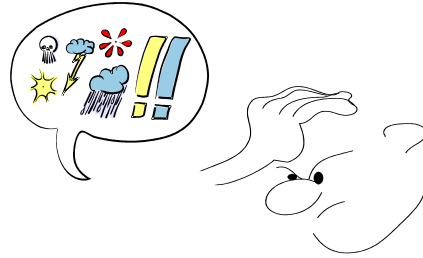
Justifications for decisions should be included in the permit fact sheet or within the record. Areas to justify may include environmental monitoring, extra provisions for safety or maintenance.

When finalizing environmental monitoring based on risk assessments make sure everyone understands what the numbers mean and what triggers non-compliance and further corrective action or shut down. This may mean that technical experts in human, ecological, and air assessments be involved in meetings to discuss final goals. The permit writer has the final decision of conditions in the permit. Make sure the numbers can realistically be monitored. Don't chose numbers that can not be analytically attained.

Coordinating with the Permittee

- Be realistic in timeframes established as conditions.
- Work together during permit review on contents of environmental assessments and what results are expected. Don't waste their money and both of your review time. Results establish permit compliance conditions.
- If you want something specific you need to clearly ask for it.

Work with the permittee on timeframes. If something needs notification immediately, what does that mean. Sometimes establish a phone call within x hours after the event, with a follow up report in writing. Remember many facility operations run 7 days a week, 24 hours a day, not just during Agency operating hours. Work out after hour notifications and who receives notifications if the permit writer is not available.

Inspection Checklists

- Discuss how to improve or create them.
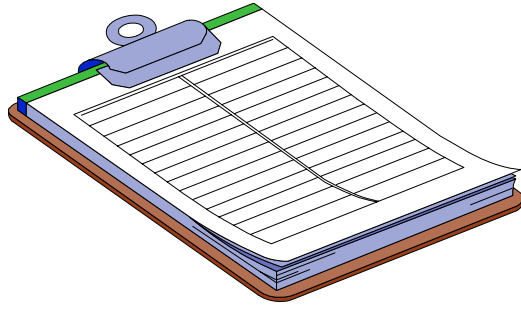
Any other Coordination Issues?

- Where are you having problems…discuss.

End of Coordination Issues