

Indiana AWMA Spring Technical Meeting

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Stack Testing and the Law

What You Need to Know



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What You Need to Know

□ Source Sampling Procedures

- Only applicable when

This rule applies to any facility emissions testing performed to determine compliance with applicable emission limitations contained in this title, or for any other purpose requiring review and approval by the department (such as an alternate emission factor determination).

326 IAC 3-6-1

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What You Need to Know

❑ Required Stack Testing must be performed under certain conditions.

(b) All emission tests shall be conducted as follows:

(1) While the facility being tested is operating at ninety-five percent (95%) to one hundred percent (100%) of its permitted operating capacity.

(2) Under conditions representative of normal operations.

(3) Under other capacities or conditions specified and approved by the department. As used in this subdivision, “capacity” means the design capacity of the facility or other operating capacities agreed to by the source and the department.

326 IAC 3-6-1(b)(1) – (3)

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What You Need to Know

□ Protocols and Report

- Protocols required 35 days prior to intended test.

When an emissions test is to be performed by any person other than the department, the source shall complete a test protocol form and submit the test protocol form to the department not later than thirty-five (35) days prior to the intended test date unless more notice is required under the applicable program.

326 IAC 3-6-2(a)

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What You Need to Know

- Report for required tests are due 45 Days after completion of testing.

All emission test reports must be received by the department not later than forty-five (45) days after the completion of the testing. An extension may be granted by the department if the source submits to the department a reasonable written explanation for the requested extension not later than five (5) days prior to the end of the initial forty-five (45) day period.

326 IAC 3-6-4(b)

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What You Need to Know

- ❑ Test methods must be performed by approved protocols
 - Particulate Matter Tests

(a) Particulate matter tests shall be conducted in accordance with the following procedures:

(1) 40 CFR 60, Appendix A, Method 5*, 5A*, 5B*, 5C*, 5D*, 5E*, or 5F*, as applicable, or other procedures approved by the department.

326 IAC 3-6-5(a)(1)

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- Sulfur Dioxide Tests

(b) Sulfur dioxide (SO₂) tests shall be conducted in accordance with the following procedures:

(1) 40 CFR 60, Appendix A, Method 6*, 6A*, or 6C*, or 8*, as applicable, or other procedures approved by the department.

326 IAC 3-6-5(b)(1)

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- Nitrogen Oxide Tests

(c) Nitrogen oxide (NO_x) tests shall be conducted according to the following procedures:

(1) 40 CFR 60, Appendix A, Method 7*, 7A*, 7B*, 7C*, or 7E*, as applicable, or other procedures approved by the department.

326 IAC 3-6-5(c)(1)

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- Volatile Organic Compounds

(d) Volatile organic compounds (VOC) emissions tests shall be conducted in accordance with the following procedures:

(1) 40 CFR 60*, Appendix A, Method 25*, or other procedures approved by the department, shall be used for the total nonmethane organic emissions.

326 IAC 3-6-5(d)(1)

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What You Need to Know

❑ What should be done if a stack test fails?

- (a) ... the Permittee shall take appropriate response actions. The Permittee shall submit a description of these response actions to IDEM, OAQ, within thirty (30) days of receipt of the test results. The Permittee shall take appropriate action to minimize excess emissions from the affected facility while the response actions are being implemented.
- (b) A retest to demonstrate compliance shall be performed within one hundred twenty (120) days of receipt of the original test results. Should the Permittee demonstrate to IDEM, OAQ that retesting in one hundred twenty (120) days is not practicable, IDEM, OAQ may extend the retesting deadline.
- (c) IDEM, OAQ reserves the authority to take any actions allowed under law in response to noncompliant stack tests.

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What You Need to Know

May non-official tests be used for determining compliance?

For the purpose of submitting compliance certifications or establishing whether or not the Permittee has violated or is in violation of any condition of this permit, nothing in this permit shall preclude the use, including the exclusive use, of any credible evidence or information relevant to whether the Permittee would have been in compliance with the condition of this permit if the appropriate performance or compliance test or procedure had been performed.

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Must non-official test results be considered when submitting compliance certifications?

- (c) The annual certification report shall include the following:
- (1) The appropriate identification of each term or condition of this permit that is the basis of the certification;
 - (2) The compliance status;
 - (3) Whether compliance was continuous or intermittent;
 - (4) The methods used for determining the compliance status of the source, currently and over the reporting period consistent with 326 IAC 2-7-5(3); and
 - (5) Such other facts, as specified in Sections D of this permit, as IDEM, OAQ, may require to determine the compliance status of the source.

I certify that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

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What You Need to Know

Must non-official test results be provided to EPA in response to information requests?

(a) Authority of Administrator or authorized representative

For the purpose (i) of developing or assisting in the development of any implementation plan ..., (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this chapter...

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(1) the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, ...

(G) provide such other information as the Administrator may reasonably require

42 U.S.C. 7414(a)(1)(G)

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What You Need to Know

❑ May emissions test data be withheld on the basis of confidential business information?

(a) The following public records are excepted from section 3 [IC 5-14-3-3] of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

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(cont.)

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person.

Ind. Code 5-14-3-4(a)(1)-(5)

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(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

...

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

- (A) a public agency;
- (B) the state; or
- (C) an individual.

Ind. Code 5-14-3-4(b)(2)

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What You Need to Know

- ❑ May test results be withheld on the basis if performed at the direction of counsel?
 - Rules of Professional Conduct require an attorney

“to maintain inviolate the confidence, at every peril to himself or herself to preserve the secrets, of his or her client”

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But

“An attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent the attorney reasonably believes the disclosure is necessary to prevent a criminal act, if the attorney reasonably believes it is likely to result in death, or substantial bodily harm to, an individual...”

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What You Need to Know

□ Attorney Work Product Privilege

- Protects “from discovery documents and tangible things prepared by a party or his representative in anticipation of litigation.”

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□ Attorney-Client Privilege

- Covers communications between clients and attorneys that assist the attorney in performing legal services for the client.
- Covers communications only and not the data underlying those communications.

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What You Need to Know

□ When can emission test results be used as an alternative emission factor?

(E) Emission factor, if part of emissions calculation. Acceptable sources of an emission factor include the following:

- (i) AP-42, “Compilation of Air Pollutant Emission Factors AP-42” as defined at 326 IAC 1-2-20.5.
- (ii) Site-specific values accepted by the department and the U.S. EPA.
- (iii) Other documentable methodology accepted by the department and the U.S. EPA.

326 IAC 2-6-4(c)(5)(E)

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What You Need to Know

Sources with facilities or units having potential emissions less than two-hundred fifty (250) tons per year (TPY) of any regulated air pollutant and whose actual emissions are less than fifty percent (50%) of an applicable limit may petition to use representative test data obtained through testing of identical or very similar processes within their company's hierarchy, or through manufacturer or trade group association studies. This data may be used to provide emission factors for permitting decisions, emission estimation or billing purposes or to demonstrate compliance in lieu of a stack test.

Air – 034-NPD