

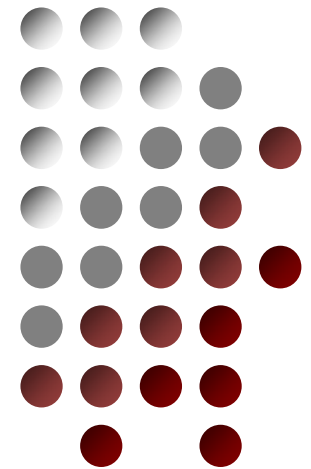
# Environmental Compliance Certifications: What You Need to Know Before Signing

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ACHMM – Heartland Chapter – Kansas City, Missouri

May 18, 2015

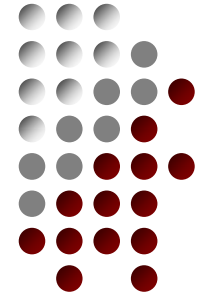
Presented by:  
Andrew C. Brought



**SPENCER FANE**  
BRITT & BROWNE LLP

# Overview

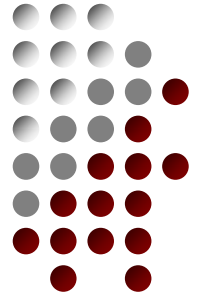
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- Certification Obligations
  - Clean Air Act
  - Clean Water Act
  - RCRA
  - EPCRA
- False Statements and False Reporting
  - Clean Air Act
  - Clean Water Act
  - RCRA
  - Title 18

# Clean Air Act Certifications

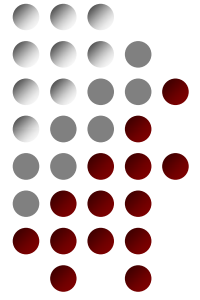
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- CAA section 503(c), 42 USC § 7661b(c)
  - “Any person required to have a permit shall . . . submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted.”
- CAA section 504(c), 42 USC § 7661c(c)
  - “Any report required to be submitted by a permit issued to a corporation under this subchapter shall be signed by a responsible corporate official, who shall certify its accuracy.”

# CAA Certifications

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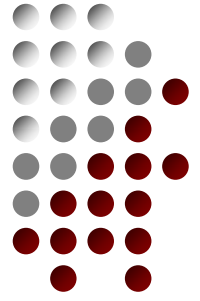


- Title V Permits - 40 CFR 70.6(c)

(c) *Compliance requirements.* All part 70 permits shall contain the following elements with respect to compliance. . . . Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official that meets the requirements of §70.5(d) for this part.

# CAA - Who is a Responsible Official?

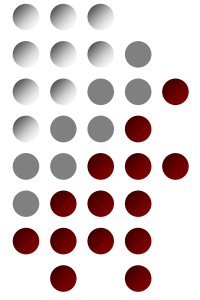
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- 40 CFR 70.2
  - Pres., Sec., Tres., VP (principal business function); or
  - Any other person who performs similar policy or decision-making functions for the corporation; or
  - Duly authorized representative:
    - if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:
      - > 250 employees or have gross annual sales or expenditures exceeding \$25 million; or
      - Delegated authority approved in advance by agency

# CAA - What Does the Certification Require?

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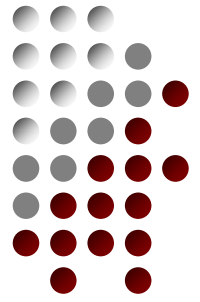


- 40 CFR 70.5(d)

“Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief **formed after reasonable inquiry**, the statements and information in the document are true, accurate, and complete.”

# CAA – Reasonable Inquiry

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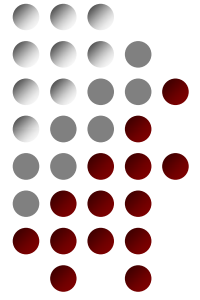
- Title V Permit Program Proposed Rule, 56 Fed. Reg. 21712, 21734 (May 10, 1991)

“This language is similar to that in rule 11 of the Federal Rules of Civil Procedure, upon which it was modeled. The provision makes clear that the signer must make a reasonable (under the circumstances) inquiry before attesting to the truth, accuracy, and completeness of the information and statements.”

# Federal Rules Civ. Proc.

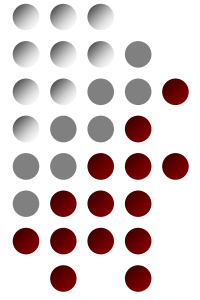
## Rule 11 Standard

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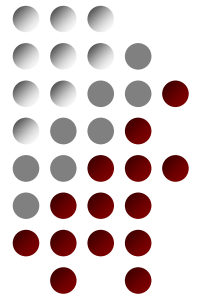
- Individual “certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances”
- Did person stop, look, and listen?

# CAA Compliance Certifications



- *US v. Columbus Steel Castings*, 12-cr-00180 (S.D. Ohio)
- Steel foundry pled guilty to six-count Information
- Count 5 – Title V permit annual compliance certifications were not accurate
  - Deviations unreported,
  - Unreported malfunctions,
  - Emission units operated without control devices,
  - Daily visible emissions checks not conducted.
- \$660K fine, \$165K community service payment

# CAA – False Reporting

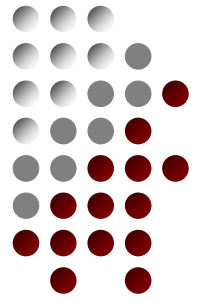


- *US v. Team Industrial Services*, 12-cr-00030 (N.D.Tex.)
- LDAR contractor
- Emissions monitoring data was false
- Falsification of emissions monitoring protocols and false representations and certifications in records submitted
- \$200K fine and 5 years supervised release
- CAA 113(c)(4) - negligent release of HAP, negligently placed others in imminent danger of death or serious bodily injury



# CAA – Additional Certifications for “Designated Representatives”

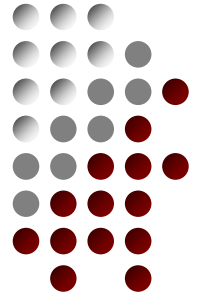
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- Acid Rain – 40 CFR 72.24
  
- CAIR
  - NOX Ozone Annual Trading– 40 CFR 96.113, SO2 Annual Trading - 40 CFR 96.213, NOX Ozone Season Trading – 40 CFR 96.313
  
- Transport Rule
  - NOX Ozone Annual Trading – 40 CFR 97.416, NOX Ozone Season – 40 CFR 97.516, SO2 Trading – 40 CFR 97.616 and 97.716

# Clean Water Act Certifications

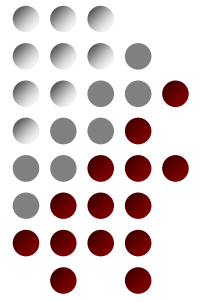
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- Permit applications (40 CFR 122.22(a))
  - Responsible Corporate Officer must sign
- All reports required by permits and other information requested by the Director (40 CFR 122.22(b))
  - Must be signed by a Responsible Corporate Officer or by a duly authorized representative\*

# CWA – Who is a Responsible Corporate Officer?

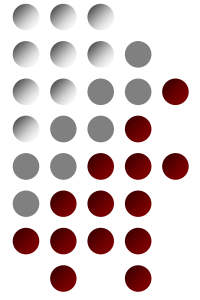
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- 40 CFR 122.22(a)(1)
  - Pres., Sec., Tres., or VP (principal business function);  
or
  - Any other person who performs corporate officer functions; or
  - Managers, IF
    - Decision-making authority for operations, including duty of making major capital investments recommendations and directing compliance measures;
    - The manager can ensure necessary systems established;  
and
    - Authority to sign documents has been delegated.

# CWA – Who is a Duly Authorized Representative?

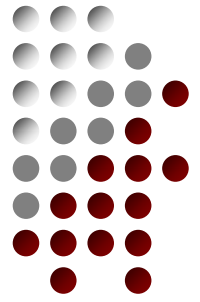
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- 40 CFR 122.22(b)
- Authorization made in writing
- Specifying position title (i.e., EHS Manager) or named individual
- Written authorization submitted to Director of agency

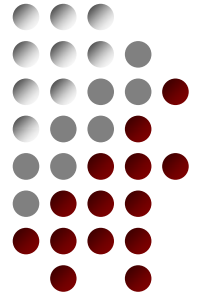
# CWA – What Does Certification Require?

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- 40 CFR 122.22(d)
  - “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

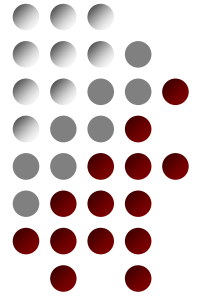
# CWA – False DMRs



- *US v. Christian*, 12-cr-6047 (E.D.Wash)
- Manager of Smith Chrome Plating signed DMR's reporting that company had "zero discharge"
- Sentenced to 5-year term of probation, 4-month home confinement, 200 hours community service
- Company - negligent discharge of pollutant into POTW, 33 USC 1319(c)(1)(A)

# RCRA Certifications

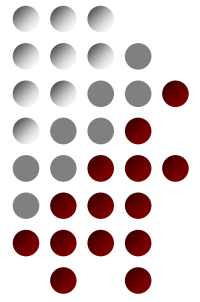
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- Permit applications (40 CFR 270.11(a))
  - Responsible Corporate Officer must sign
- All reports required by permits and other information requested by the Director (40 CFR 270.11(b))
  - Must be signed by a Responsible Corporate Officer or by a duly authorized representative\*

# RCRA – Who is a Responsible Corporate Officer?

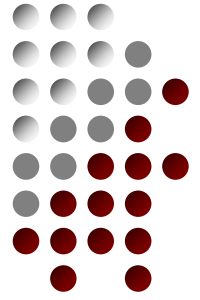
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- 40 CFR 270.11
  - Pres., Sec., Tres., VP (principal business function); or
  - Any other person who performs similar policy or decision-making functions for the corporation; or
  - Duly authorized representative, if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either
    - > 250 employees or have gross annual sales or expenditures exceeding \$25 million; or
    - Delegated authority approved in advance by agency

# RCRA – Duly Authorized Representatives

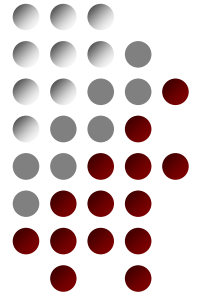
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- 40 CFR 270.11(b)
- Authorization made in writing
- Specifying position title (i.e., EHS Manager) or named individual
- Written authorization submitted to Director of agency

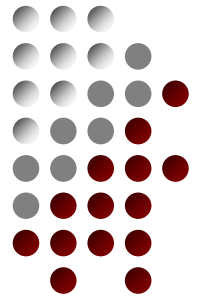
# RCRA – What Does Certification Require?

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- 40 CFR 270.11(d)
  - “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

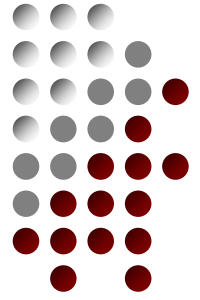
# EPCRA – Tier I and Tier II Chemical Inventory Reporting



- Inventory Reporting to SERC, LEPC, and Fire Department
- Certification by “Owner or Operator” or “Officially Designated Representative”
- 40 CFR 370.41 – Tier 1
  - (a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier I submission is true, accurate, and complete as follows: “I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.”
- 40 CFR 370.42 – Tier II
  - (a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier II submission is true, accurate, and complete as follows: “I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.”

# EPCRA – Toxics Release Inventory

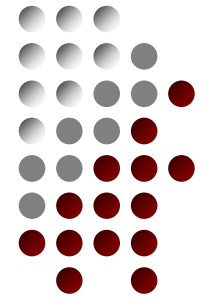
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- Section 313, 42 USC § 11023(g)
  - Such form shall—
    - (A) provide for the name and location of, and principal business activities at, the facility;
    - (B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report;

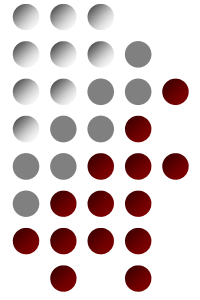
# EPCRA - TRI

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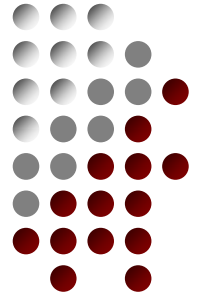
- TRI – Form R Reporting
- Certification by Senior Management Official
- 40 CFR 372.85(b)(2)
  - Signature of a senior management official certifying the following: “I hereby certify that I have reviewed the attached documents and, to the best of my knowledge and belief, the submitted information is true and complete and that amounts and values in this report are accurate based upon reasonable estimates using data available to the preparer of the report.”

# False Statements, False Reporting, and False Records



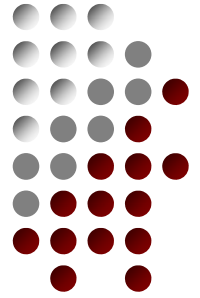
- Criminal violations under the major environmental statutes for false statements, falsifying records and data
- Title 18 false statements

# CAA False Statements



- CAA section 113(c)(2), 42 USC § 7413(c)(2)
- Any person who knowingly—
  - (A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required . . .
  - (B) fails to notify or report as required . . . ; or
  - (C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method . . . .

# CAA False Compliance Certifications



- *US v. Corn Plus*, 11-cr-00315 (D.Minn)
- Ethanol producer
- Baghouse pressure readings outside permitted levels for PM
- False readings submitted in Title V reports, false compliance certifications
- Guilty plea to CAA false statement, 42 USC § 7413(c)(2)(A)
- \$450K fine and three-year term of probation

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 11-315(JRT)

UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. )  
CORN PLUS, A MINNESOTA COOPERATIVE, )  
Defendant. )

AMENDED INFORMATION  
{42 U.S.C. § 7413(c)(2)(A)}

THE GOVERNMENT STATES THAT:

COUNT 1  
{False Statements}

On or about January 27, 2011, in the State and District of Minnesota, the defendant,

CORN PLUS, A MINNESOTA COOPERATIVE,

did knowingly make a false material statement, representation, and certification in violation of the permit required under the Clean Air Act, Title 42, United States Code, Section 7401 et. seq., by falsely certifying compliance with its permit requirements under the Clean Air Act permit, when, in fact, defendant knew it was not in compliance. Specifically, defendant falsely certified compliance with its permit requirements knowing that pollution control equipment designed to prevent the discharge of particulate matter was operating outside permit parameters, all in violation of Title 42, United States Code, Section 7413(c)(2)(A).

Dated: October 27, 2011

Respectfully submitted,

B. TODD JONES  
United States Attorney

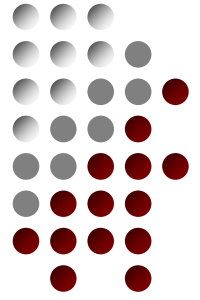
BY: David M. Genrich  
Assistant U.S. Attorney  
Attorney ID No. 028131

SCANNED  
OCT 27 2011  
U.S. DISTRICT COURT DISTRICT OF MINNESOTA

OCT 27 2011

# CWA False Statements

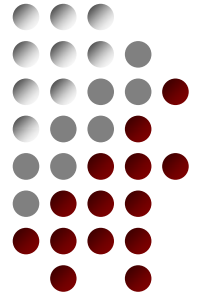
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- CWA section 309(c)(4), 33 USC § 1319(c)(4)
  - “Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter. . . .”

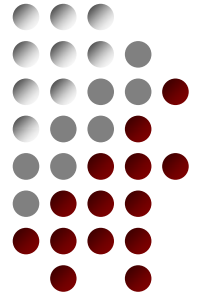
# CWA False Compliance Certifications

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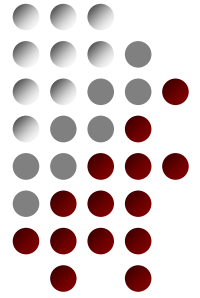
- *US v. Hill*, 09-40045 (C.D. Ill).
- Environmental coordinator at farm-equipment manufacturer
- POTW industrial pretreatment permit
- Failure to report amounts of Ni and Cr
- False statement and certification when he certified reports mailed to the POTW as being “true, accurate and complete”
- Guilty plea, including 1319(c)(4) false statement
- 1 month prison, 12 months of probation

# RCRA False Statements



- RCRA 3008(d)(3), 42 USC § 6928(d)(3)
  - “knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter.”

# RCRA False Statements

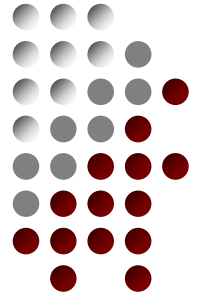


- *US v. Moloian*, 10-cr-20666 (E.D.Mich)
- President of Chem-Serve Corp., chemical soaps and dyes
- 2,000 drums accumulated off-spec chemicals
- MDEQ issued LOWs, and President responds “we have very few items that can be considered as waste.”
- Sentenced to 1-year prison (to be served at residential re-entry facility), and pay \$2.7 million in cleanup restitution



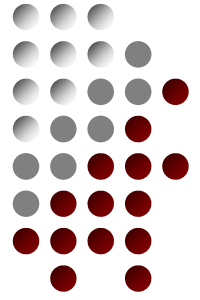
# 18 USC § 1001

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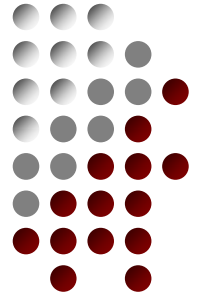
- Felony crime in any matter with the federal government to knowingly and willfully:
  - Falsify a material fact (or conceal such, or cover up by any trick, scheme, or device such);
  - Make materially false, fictitious, or fraudulent statements or representations;
  - Make or use any false writing or document, knowing the same to contain any materially false, fictitious, or fraudulent statement.

# CAA False Compliance Reports Result in Title 18 Violation



- *US v. Spectro Alloys Corp.*, 12-cr-001110 (D.Minn.)
- Secondary aluminum recycling
- Company submitted compliance report claiming facility was in compliance (but testing revealed excess dioxins / furans)
- Plead guilty to two false statements, 18 USC § 1001
- \$500,000 fine and 2 years supervised release

# CAA False Certifications

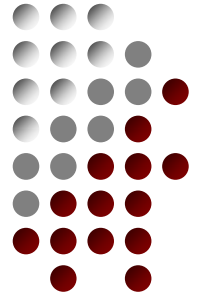


- *US v. Certified Environmental Services*, 09-cr-00319 (N.D.N.Y.)
- Asbestos abatement contractor
- False air results and monitoring
- Four-week jury trial
- 735 F.3d 72 (2d Cir. 2014)
- Acted in good-faith belief that they were conducting air monitoring in compliance with regulations, evidence allowed



# CWA False DMRs Result in Title 18 Violation

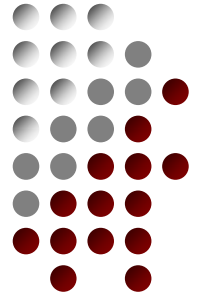
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- *US v. Clark*, 11-cr-00063 (E.D. Tenn.)
  - Licensed wastewater treatment plant operator
  - 72-count indictment of making false documents
  - Falsified DMRs by stating that wastewater had been treated and tested with chlorine
  - Plead guilty to 12 counts, 18 USC § 1001
  - 6 months in prison, two year supervised release, 150 hours community service

# Resources: CAA Certifications

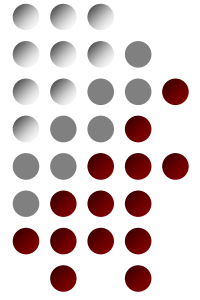
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- Title V Permits
  - EPA's Implementation Guidance on Annual Compliance Certification Reporting – Apr. 30, 2014
  - EPA Part 71 compliance templates for annual compliance certifications and certification of truth, accuracy and completeness
  - Various state guidance on Certifications by Responsible Official
    - TCEQ Form OP-CRO1-Instructions

# Resources: CAA Certifications

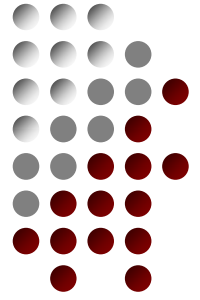
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- Acid Rain, CAIR, Transport Rule
  - EPA's Certificate of Representation
    - <http://www.epa.gov/airmarkt/business/docs/forms/CertofRepFINAL.pdf>

# Resources

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- ABA SEER – Year in Review – Environmental Enforcement and Crimes
  - [http://www.americanbar.org/groups/environment\\_energy\\_resources.html](http://www.americanbar.org/groups/environment_energy_resources.html)
- EPA Summary of Criminal Prosecutions
  - <http://www2.epa.gov/enforcement/summary-criminal-prosecutions>

## Environmental Compliance Certifications – Summary Chart

Program	Who Must Certify?	Who Qualifies?	Certification
Clean Air Act  Title V Air Operating Permit  40 CFR 70.5(d)	Responsible Official	- Pres., Sec., Tres., or VP (principal business function); <u>or</u> - Person who performs similar functions or decision-making; <u>or</u> - Duly authorized representative, with responsibility for the overall operation of one or more facilities <u>and</u> either: <ul style="list-style-type: none"> <li>• 250 employees or &gt; \$25 million in sales or exp.; or</li> <li>• delegated authority approved in advance by agency.</li> </ul>	“Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.”
Clean Water Act  40 CFR 122.22(d)	Responsible Corporate Officer	- Pres., Sec., Tres., or VP (principal business function); <u>or</u> - Person who performs corporate officer functions; <u>or</u> - Managers, <u>IF</u> <ul style="list-style-type: none"> <li>• decision-making authority, including duty of making major capital recommendations and compliance;</li> <li>• manager can ensure necessary systems established; and</li> <li>• authority to sign documents has been delegated.</li> </ul>	“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
	RCO or Duly Authorized Representative (for Reports)	- Authorization made in writing - Specifying position title (i.e., EHS Manager) or named person - Written authorization submitted to Director of agency	
RCRA  40 CFR 270.11	Responsible Corporate Officer	- Pres., Sec., Tres., or VP (principal business function); <u>or</u> - Person who performs similar functions or decision-making; <u>or</u> - Duly authorized representative, with responsibility for the overall operation of one or more facilities <u>and</u> either <ul style="list-style-type: none"> <li>• 250 employees or &gt; \$25 million in sales or exp.; or</li> <li>• delegated authority approved in advance by agency</li> </ul>	“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
	RCO or Duly Authorized Representative (for Reports)	Authorization made in writing - Specifying position title (i.e., EHS Manager) or named person - Written authorization submitted to Director of agency	
EPCRA Tier II  40 CFR 370.42	Owner / Operator or “Officially Designated Representative”		“I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.”
EPCRA TRI  40 CFR 372.85(b)(2)	Senior Management Official		“I hereby certify that I have reviewed the attached documents and, to the best of my knowledge and belief, the submitted information is true and complete and that amounts and values in this report are accurate based upon reasonable estimates using data available to the preparer of the report.”

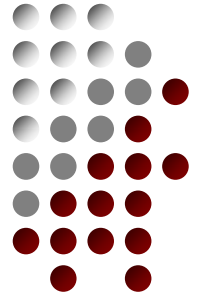


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# Questions?

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