

# **Federal TOC representatives’ comments on “Process for Assessing Data Usability” May 3, 2011**

*Related to agenda item number 5, Data Usability Determinations*

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## **Federal TOC representatives' comments on "Process for Assessing Data Usability"**

**May 3, 2011**

We appreciate the opportunity to comment on DEP's document as a proposed data usability protocol for TOC. In general, we believe the specific technical aspects of this document are sound, and would form a firm foundation for a TOC-accepted protocol. While we do offer some minor technical comments about the document, our major comments are related to the process that should be adopted and used by the TOC.

### General comments:

The following comments could be addressed by either (1) making changes to the appropriate sections of the DEP document, and adopting that new version for the TOC, or (2) by developing a TOC document that refers to particular sections of the DEP document as needed.

There are two process-level issues that must be resolved by either of the two approaches listed above. First, the Consent Decree assigns the final decision about data usability to the TOC. The relevant section in the DEP document probably is Section 18.1, in which references to "data auditors" could be replaced by reference to "TOC members", and in Section 18.2, the sentence could read, "Based on the evaluation, the TOC members will determine how the data can be used for determining Consent Decree compliance and/or for other purposes." In addition, Section 17 could be amended to include only examples that are relevant to Consent Decree compliance.

The second issue not covered by the DEP document is whether or not additional data, not collected during the compliance sampling, can be brought to bear when calculating values for comparison to a Consent Decree limit or level. An example might be if the TOC members determine some or all data collected during the compliance sampling are unusable. Can other data collected before or after the compliance sampling trip be used for compliance calculations, or for determining whether or not there was error or extraordinary natural phenomena during the compliance sampling trip? Although these situations would be quite rare, the topic should be discussed by TOC members, and guidance should be included as part of the TOC data usability protocol.

Finally, when an exceedance is calculated, the Consent Decree provides that the TOC may determine that it does not constitute a violation. The procedure adopted by the TOC should explicitly state that the acceptance of these procedures does not limit the TOC's authority and responsibility to use all relevant information when deliberating on the question of whether "substantial evidence" exists.

### Specific comments:

In Section 3.2 and in subsequent sections, outlier data are addressed, and it is stated that "any appropriate statistical test for outliers" may be applied. It would be helpful to have a discussion about

the outlier data, and to specify the appropriate tests. The topic is important in light of the disagreements that exist over the May and June 2005 data collected in the Refuge compliance network.

At the end of the page in Section 6.2, there appears to be missing text.