

**Review of Minnesota's Combined Title V Operating and New Source
Review Permit Programs**

Minnesota Pollution Control Agency

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2003 Review of Minnesota's Combined Title V Operating and New Source Review Permit Programs

I. Executive Summary

In 2003, the United States Environmental Protection Agency (USEPA), Region 5, conducted an evaluation of the Minnesota Pollution Control Agency's (MPCA) combined Clean Air Act Title V operating and new source review (NSR) permit programs. This evaluation is part of USEPA's ongoing NSR and Title V program oversight of state and local permit programs.

Overall, USEPA found MPCA's program strengths to include good quality permits, with thorough and concise technical support documents, ample opportunity for public participation, and weekly staff meetings, where permitting issues are shared and minutes are taken and used for reference. Areas found to be in need of improvement at that time include the lack of electronic information sharing due to MPCA's DELTA database system, and a backlog in issuance of initial Title V permits. Since the time of the program evaluations, MPCA has adequately addressed the deficiencies in electronic information sharing due to the DELTA database system. USEPA intends to further investigate the low number of NSR permits issued per year and questions regarding the adequacy of Minnesota's Title V fee structure.

Because MPCA's Title V permit program has not met its initial permit issuance deadline, USEPA recommends MPCA further explore and implement new ideas on how to expedite permit issuance. USEPA would also like MPCA submit to EPA an action plan that details each outstanding federally enforceable state operating permit (FESOP) and Title V permit along with an expeditious schedule of issuance and a commitment to comply with the schedule.

II. Introduction/Audit Program

In 2003, as part of its oversight role, USEPA began a four-year initiative to review the implementation of the Title V and NSR permit programs by permitting authorities throughout the country. USEPA developed two standard program evaluation protocols in the form of questionnaires, one addressing Title V and one addressing NSR, for Regional offices to use to conduct a consistent review of all of the permitting authorities. The program review questionnaires consist of two components; questions about program implementation and criteria for a file review. The purpose of the program evaluation was to meet with each permitting authority to evaluate its implementation of the permitting programs, note practices that could be helpful to other permitting authorities, document areas needing improvement, and learn how USEPA can help the permitting authorities and further improve the national programs.

On August 18 - 20, 2003, Region 5 staff visited the MPCA offices in St. Paul, Minnesota. Region 5 met with MPCA management and staff by conference call to

discuss the questionnaire provided prior to the visit. During the visit, USEPA and MPCA discussed the questionnaire in more detail and a file review was performed according to the criteria in the questionnaire. The results of these discussions are in Appendices A and B.

This final report summarizes findings and conclusions of Region 5 from its review of the combined Title V and NSR program of MPCA. The findings and conclusions in the report are based on the answers MPCA gave to the questionnaire, the file review, and USEPA staff knowledge of the program from experience with reviewing MPCA permits. This information was compared to the statutory and regulatory requirements for federal permitting programs as outlined in the questionnaire.

III. Program Description - *Minnesota's Combined Permit Program*

MPCA's permitting rule, Minnesota Rules, Chapter 7007, combines the State's preconstruction and operating permit programs into a single permitting program. As such, one permit is issued to authorize both construction and operation of a facility or a facility modification.

The MPCA submitted its Title V operating permits program for approval on November 15, 1993 and USEPA gave final full approval of Minnesota's operating permit program on December 4, 2001. In addition, on November 23, 1993, the MPCA submitted revised air permitting rules for approval as part of the State Implementation Plan (SIP). These rules represent Minnesota's consolidated permitting regulations, which include provisions for operating permits for major new sources and major source modifications pursuant to Parts C and D of Title I of the Clean Air Act, and operating and construction permits for minor sources and minor modifications. On May 2, 1995, USEPA approved these revisions to Minnesota's combined permit program. Included in these rules are non-expiring, enforceable "Title I conditions", defined in Minnesota Rule 7007.0100 as (1) any conditions in a permit which are based on new source review requirements, (2) any conditions imposed to assure attainment, or (3) any conditions established to avoid being subject to new source review. In essence, MPCA's combined permit program works by labeling certain permit requirements as Title 1 conditions, and thus, using its Title I authorities, MPCA establishes a non-expiring and enforceable NSR permit term that is housed exclusively in a Title V permit that expires every five years. As such, these Title I conditions are carried over into the next Title V permit.

IV. Findings

A. *Joint Issues - Title V and NSR programs - The following findings of program strengths and areas needing improvement are common to MPCA's combined Title V and NSR programs and cannot be specifically attributed to one program or the other.*

1.) Strengths

a. Quality of Permits

During the program evaluation, USEPA performed a file review. USEPA reviewed 6 different types of permits, including a NSR permit, a MACT permit, a CAM permit, a netting permit, a permit that generated public interest/comment, a general permit, and a synthetic minor permit. In reviewing these permits, USEPA found that MPCA's permits include thorough technical support documents (TSDs). The TSDs serve as the Part 70 required statement of basis. MPCA's TSDs go far beyond the requirement to provide a statement that sets forth the legal and factual basis for the draft permit conditions. MPCA's statement of basis includes information such as a source description, a description of the permit action, a facility emissions summary, a regulatory and/or statutory overview, emissions calculations, a discussion on the necessity of periodic monitoring, and a discussion on insignificant emission units. This information is useful to all reviewing parties and also serves MPCA by providing a written account of certain determinations made and the reasoning behind them; thus, calling attention to them for future permitting actions. Other findings in MPCA's permits include adequate permit shield language, adequate monitoring and an easy to follow format that clearly states the origin and authority of the applicable regulations. Attachment B contains a typical permit issued by MPCA.

b. Public Participation

MPCA works to involve the public in its permitting program. They are very willing to accommodate citizen requests for public meetings/hearings. In fact, MPCA routinely schedules pre-public hearing meetings for sources with known public interest or controversial permits. In an effort to continue to improve its public participation process, MPCA embarked on a Community Involvement Project (CIP). The initial purpose of the CIP was to integrate community involvement practices into the air quality permitting program. By implementing the community involvement process, MPCA believes they will be better equipped to understand the interests of the communities, improve their ability to communicate, save time usually spent in reacting to unexpected occurrences and contested permits, reduce stress and add value to the permit issued. USEPA applauds this effort and encourages MPCA to continue to work for community education and involvement.

c. LEADS meetings

MPCA holds bimonthly LEADS meetings, where staff share ideas, brainstorm on specific issues, discuss and make policy decisions and discuss technical issues and guidance. Minutes are taken during the LEADS meetings to memorialize group discussions and decisions. These minutes are available to staff for future reference. USEPA agrees with MPCA that the LEADS meetings help them to improve writing and processing time by sharing ideas and expertise. USEPA views these LEADS meetings and minutes as extremely beneficial resources for MPCA permit writers and believes this opportunity for communication and discussion of issues among technical staff contributes to the quality of permits issued by MPCA.

2.) Areas Needing Improvement

a. DELTA system

The use of MPCA's DELTA database system is both an asset and liability to permit issuance. DELTA enables MPCA to create permit template language that is available to permit engineers and eliminates the need to "reinvent the wheel" with each permit. DELTA also has the capability to automatically provide deviation information to enforcement personnel and simplifies modifications with its editing capabilities.

However, in the area of electronic transfer and sharing of information, the use of the DELTA system has been a barrier. Prior to the program review in August 2003, MPCA was sending hard copies of all draft and issued permits to Region 5. This required a considerable amount of resources from engineers and clerical staff to mail this information to Region 5. It also required USEPA resources to file and maintain the hard copy permit files. Since the program review, MPCA has modified this process and now posts their draft permits and technical support documents on their internet site. MPCA and USEPA have agreed to a solution where USEPA accesses the draft permits from the internet, after receiving a hard copy of the public notice. This is currently being implemented.

B. Title V Operating Permits Program

1. Areas Needing Improvement

Permit Issuance

MPCA did not meet its goal of 100% initial Title V issuance by December 1, 2003. As of the date of this report, MPCA has stated that they have 24 initial Title V permits left to issue. MPCA anticipates that the first round of Title V permits may be fully complete by July 2005. In addition, since the program review, it has come to EPA's attention that

there are 50 - 60 Title V sources that have submitted applications to MPCA which most likely will be addressed through the issuance of synthetic minor permits. MPCA projects that these FESOPS may be addressed with their new Environmental Management System (EMS) and Capped Permit rules. With USEPA's assistance, MPCA is developing two new permitting rules intended to streamline the permit process. The Capped Permit rule is a new registration permit option for sources limiting emissions to 90% of the Title V threshold. The EMS-based permits are individual permits for sources meeting EMS requirements. Sources receiving this type of permit may qualify for reduced monitoring, recordkeeping, and reporting requirements. MPCA plans to submit the rules to USEPA for SIP approval in Fiscal Year 2005.

MPCA contends that the delay in Title V and FESOP permit issuance is due to the complexity of air quality regulations, lack of necessary emissions data, investment of resources in implementation of other programs, lack of timely national guidance, the burdens of the public participation process, and prioritization of NSR permit issuance in the combined permit program. Although USEPA recognizes that these issues are challenges to timely permit issuance, with the exception of the combined permit program prioritization of resources, these challenges are common among all Region 5 permitting authorities.

2. Area Needing Additional Information

Accounting/Tracking

MPCA charges fees based on emission volume and collects all its air emission facilities fees together. The fees are used to cover the costs of the state's Title V program and the state programs historically funded by the state general fund. The air emission fee structure specified under the section 502(b)(3) of the Act requires that states collect a minimum fee of \$25 per ton or another amount that reflects the reasonable cost of the Title V permit program. To separate out the Title V fees annually, MPCA estimates the presumptive minimum (\$25 per ton, adjusted for inflation since 1989), and multiplies it by the number of tons emitted of each chargeable pollutant listed in the most recently available emission inventory). The state has set a maximum of 4,000 tons per pollutant per facility for this calculation. The state adjusts for inflation in accordance with MPCA's state rule which serves as the basis to stabilize the budget for Title V.

Based on the answers MPCA gave in the questionnaire, it is difficult to determine how Minnesota separates its Title V fees from other air emission source fees and how the state ensures that they do not use Title V fees to fund non-title V work. Thus, in order to fully evaluate the permit fee components of Minnesota's Title V program, USEPA is requesting additional information regarding Minnesota's part 70 fee program.

C. *New Source Review Program*

1. Areas Needing Additional Information

Because USEPA has delegated to the State of Minnesota the authority to implement the PSD and nonattainment NSR programs, the NSR reform rules became effective in Minnesota on March 3, 2003. MPCA has been busy implementing this new program. Staff that were previously reviewing Title V applications and writing permits have been redirected to develop guidance documents, update application forms, update their website and educate/train other staff engineers on the reform requirements. They also hired a contractor to develop and give training on the reform regulations to the regulated community. This training occurred in June 2004.

One issue that should be noted is the number of major PSD permits issued each year by MPCA. According to MPCA, they issued 5-6 major new construction or modification permits in 2002. However, in 2003, they issued only 1-2 PSD permits. MPCA works with facilities to restrict their potential emissions by taking federally enforceable permit restrictions that allow them to bypass the PSD process and make the project a "synthetic minor". This is not to say that what MPCA is doing is inappropriate. However, it is worth noting simply because MPCA issues fewer PSD construction permits than other states in Region 5. It may be an indication of a trend in PSD construction permits, especially since it seems to correlate with the inception of the NSR reform rules. Region 5 intends to follow up with the state to ensure that they are handling properly sources subject to new source review.

V. **Recommendations**

A. Delta System

As mentioned previously, since the program review, MPCA has taken steps to resolve the issues with electronic data sharing by placing proposed permits and technical support documents on their website. This has been working well and has adequately addressed this issue.

B. Title V Permit Issuance

Because MPCA's Title V permit program has not met its initial permit issuance deadline, USEPA recommends MPCA further explore and implement new ideas on how to expedite permit issuance. It is noted that MPCA has currently hired a contractor to assist them in writing Title V permits, but with 24 permits left to issue, there is a real possibility that they may not be issued by July 2005. Continued or increased use of contractors to expedite permit issuance and to meet this issuance goal may be worth exploring. In addition, USEPA would like MPCA to submit a Title V permit issuance action plan within 60 days of receipt of this program evaluation. The action plan would include a detailed report of the remaining initial Title V permits, the engineer assigned to

each permit with an indication if the engineer is managing a contract for the permit, the date when the permit draft is submitted for peer and team member review, the projected date of public notice, the projected date of draft issuance, and the identification of any issues that may complicate or delay permit issuance. Minnesota must commit to an expeditious schedule for permit issuance and must report monthly on their progress.

For the 50-60 FESOP sources, USEPA recommends that a similar action plan be submitted within 90 days of receipt of this program evaluation. The FESOP action plan will include a detailed list of sources, the assigned staff engineer, the date when the letter requesting an update of the permit application is sent to the facility and a permitting strategy for each source.

In addition, USEPA would like MPCA to submit a quantification of Title V permit renewals and modifications that are beyond the statutory deadlines for issuance, along with an expeditious schedule for issuing them. This information should be submitted with the action plans.

C. Accounting/Tracking

Because it is difficult to determine how Minnesota's Title V fees are separated from other air emission source fees and how they are tracked and allocated for the Title V program, USEPA is requiring MPCA to provide additional information regarding their part 70 fee program. Therefore, in order to fully evaluate the permit fee components of Minnesota's Title V program, USEPA asks MPCA to submit detailed answers to the questions outlined in Addendum 1. The state should submit to USEPA answers to these questions within 60 days of receipt of this program evaluation report.

VI. **State Recommendations for USEPA**

MPCA stated that there are two main areas in which USEPA could provide assistance to the states and would greatly aid them in implementing their permit programs. First, MPCA has repeatedly asked the region and HQ for written guidance documents in implementing the NSR reform rules. Available guidance documents would reduce the staff hours required to make permitting decisions, as well as enable MPCA to reference these documents when dealing with sources that disagree with or dispute certain determinations.

In addition, MPCA has asked USEPA to provide the states with updated emission factor information. They stated that AP-42 has outdated emission factors or no emission factors at all for some industry sectors. In the event that USEPA is not able to provide new emission factors, MPCA would like USEPA to allow them to utilize their engineering expertise in generating their own emission factors. They also suggested working with industry sectors that have expressed interest in conducting and funding projects to generate emission factors. According to MPCA, these industries include the taconite mining and wood and paper sectors.

VII. Good News Stories

1.) Permit Issuance Streamlining Matrix

In an effort to expedite the time for permit issuance, MPCA and Region 5 worked cooperatively to identify and implement several streamlining procedures that are outlined in Attachment A (permit streamlining matrix). Among these are pre-approved permit templates, sector-oriented batch processing of permits, earlier USEPA assistance in applicability determinations, reduction in USEPA review time, assistance from USEPA enforcement staff in incorporating consent decree requirements into permits, and USEPA-assisted training efforts for industry and the public. Since its inception last year, the matrix has not necessarily assisted MPCA in issuing initial Title V permits faster or accomplished the original intent of relieving MPCA of all the specifically-mentioned responsibilities that they wanted to share with USEPA, especially those items that require assistance from HQ. However, it has brought certain issues to the forefront and has required Region 5 to be more responsive to MPCA's requests for assistance and in that regard, has been successful.

2) LEADS meetings

USEPA views MPCA's bimonthly LEADS meetings as an effective tool in sharing critical permit-related decisions and information. In addition, the records of the LEADS meetings are also a very beneficial tool for MPCA's permit engineers. This innovation is something that all permitting authorities could benefit from and is an idea that should be shared with other regions and permitting authorities.

3) Quality of TSDs

USEPA applauds MPCA's thorough and concise TSDs. As stated previously, the TSD goes beyond the Part 70 statutory requirement of providing a statement of legal and regulatory basis and puts forth an ample amount of useful information that can be used by the regulated community, concerned citizens and/or groups, USEPA, and MPCA itself in future permitting actions. MPCA's TSDs should be shared with other regions and permitting authorities that are dealing with programs experiencing deficiencies in providing an adequate statement of basis.

ADDENDUM 1

Section 502(3) of the Act and 40 C.F.R. § 70.9 require that states establish a fee schedule that results in the collection of fees sufficient to cover the costs of the Title V permitting program, and prohibit the use of fees collected for Title V for any other purpose. In order to fully evaluate the permit fee components of Minnesota's operating permit program, including the specific concerns outlined below, we are requesting additional information regarding your part 70 fee program. We ask that you submit to USEPA the following documentation within 60 days of receipt of this report so that we may complete our review of your part 70 program:

1. A complete description of the current state fee structure and updated rules and/or statutes.
2. A description of all the operating permit program activities and costs (including permit issuance and enforcement), and a full description of the activities funded by Part 70 fees, including personnel.
3. An explanation of how Minnesota's fee structure cover all costs, and results in the collection and retention of fees in an amount sufficient to meet the requirements of implementing the operating permit program. As part of this demonstration, specify the number of staff necessary to fully implement each part of the Title V program and all direct and indirect costs associated with the necessary staffing levels.

The description of the costs should include, but is not limited to, the costs of the following activities as they relate to the Title V operating permit program; preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement; reviewing and acting on any application of a permit, permit revision, or permit renewal; general administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification and related data entry; implementing and enforcing the terms of any Part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program; emissions and ambient monitoring; modeling, analyses, or demonstrations; preparing inventories and tracking emissions; and providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained the section 507 of the Clean Air Act in determining and meeting their obligations under the Clean Air Act.

- 4) Describe in detail MPCA's air emissions fees accounting system, highlighting the methods used to ensure that Title V fees are segregated from other fees as they are collected from sources, that the Title V fees are used only for Title V expenses, and that non-Title V fees are not used to pay for Title V expenses.
- 5) An assurance that Minnesota is not using any revenue generated under Title V to fund non-Title V programs or activities.