

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

**Minnesota Pollution Control Agency**

**July 2008**

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## **2008 Review of Minnesota's Combined Title V Operating and New Source Review Permit Programs**

### **I. Executive Summary**

In 2008, 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. The evaluation is part of USEPA's ongoing NSR and Title V program oversight of state and local permit programs.

Overall, USEPA found MPCA to be making steady progress in streamlining permit issuance in both permit programs, is offering financial incentives to staff to assist in permit issuance, and has rectified their Delta system incompatibility issues by providing a great deal of permit information on the internet. Recommendations from USEPA include incorporation of Compliance Assurance Monitoring (CAM) requirements in Title V renewal permits and proceeding with new program funding options with an awareness of Title V program integrity.

### **II. Introduction**

In 2003, as part of its oversight role, USEPA began an initiative to review the implementation of the Title V and NSR permit programs by permitting authorities throughout the country. Minnesota's permit programs were last evaluated by Region 5 in 2003. Program strengths and areas in need of improvement were identified at that time. Due to the length of time since the last evaluation, Region 5 embarked on a second round of permit program reviews. The program evaluation team drafted two separate questionnaires for the Title V and NSR portions of the evaluation. The approach for the evaluation included follow up questions to issues that were identified in the first round of program evaluations. Questions were drafted, specific to MN, to discern if previously identified issues have been pervasive or have been adequately addressed so that they are no longer recurring.

On July 28, 2008, Region 5 staff visited the MPCA offices in St. Paul, Minnesota. Region 5 provided MPCA management and staff with copies of the questionnaire prior to the visit. During the visit, US EPA and MPCA discussed the questionnaire in more detail and a review of some permits incorporating Compliance Assurance Monitoring (CAM) was performed according to the criteria in the questionnaire.

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 permit 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 on 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 1 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 1 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 1 authorities, MPCA established a non-expiring and enforceable NSR permit term that is exclusively housed in a Title V permit that expires every five years. As such, these Title 1 conditions are carried over into the next Title V permit.

### IV. Findings

#### 1. Increase in staff aimed at reducing permit backlog

In the last year, MPCA has focused its staffing efforts toward the operating permit program by increasing its hiring and trying to maintain staff working on operating permits. New permit writers have been hired as part of an expansion of total permit writers, as well as in response to staff turnover. The benefit of this staffing increase is not immediate, however, due to the learning curve for new permit writers and time dedicated by experienced permit writers to train and mentor new staff. USEPA looks forward to the effects the staffing increase is expected to have on permit issuance, especially the current Title 5 renewal backlog.

#### 2. Process improvements aimed at streamlining permit issuance

Multiple process improvement efforts have been initiated by MPCA to enhance proficiency and productivity and to improve the rate of permit issuance. These process improvement initiatives are aimed at shortening permit issuance rates and

reducing backlog, while fulfilling core regulatory responsibilities. They have included conferences with the regulated community to educate, encourage and facilitate more complete permit applications, which has long been an issue cited to delay permit issuance. MPCA has also updated and revised permit application forms provided to the public on their permit website to coincide with recent rule promulgations and court decisions. Permit writers also have updated permit writing tools for a large number of applicable regulations, through their Delta system. In addition, MPCA is refining its management of contract work to assist in the issuance of Title V renewal permits. These and other streamlining efforts have been successful in increasing MPCA's permit issuance since the last program evaluation. USEPA looks forward to the continued progress towards this goal as these recent process improvements mature and realize full benefit.

### 3. Availability of information to the public

Like other states, MPCA provides its citizens and regulated community with a wide variety of information available on its homepage. Rules, regulations, draft permits, technical support documents (statements of basis), final permits, air permit application forms, and guidance documents are all posted on the homepage. MPCA also provides documents such as public notices, news releases, Citizen's Board meeting announcements, agendas, and other documents. Having these resources and documents readily available on-line provides the public with easy access to much of the information needed to participate in the permit issuance process. In addition posting permits on the internet improves agency efficiency and results in cost savings to MPCA as well as USEPA.

### 4. Incentives for staff performance

MPCA faces budgeting concerns and staffing issues, similar to many other state agencies across the nation. This situation is prevalent despite the fact that Title V programs are intended to be independently self-funded. Because of overarching, state-wide human resource policies established by state governments during times of revenue shortfalls, adequate staffing can often be an issue. MPCA, however, has been able to offer financial compensation to employees on an incentive basis, above the basic salaries, by way of paid overtime. Overtime is offered to staff that are willing to work overtime to assist in processing Title V renewal permits, as a way of reducing the renewal backlog.

## V. Recommendations

### 1. CAM plans and incorporation of CAM requirements into permit

EPA developed 40 CFR, Part 64, CAM requirements, in order to provide reasonable assurance that facilities comply with emissions limitations by monitoring the operation and maintenance of their control devices. CAM requires sources subject to the rule to submit a CAM plan with either their initial or renewal Title V operating

permit. Three permits with CAM provisions were reviewed by USEPA staff during the program evaluation. Subsequently, additional CAM permits and plans were randomly selected and reviewed also. Generally, implementation of CAM rule requirements seems to vary widely in MPCA's permits. Some CAM plans reviewed included all the criteria outlined in the rule. Others contained very little information. For example, rationale for selection of indicators and indicator ranges were not provided in all the plans reviewed. Also, permits did not consistently carry over all CAM plan contents and CAM plan contents were not easily identifiable in the permits. Technical Support Documents were also inconsistent in addressing CAM applicability, especially in Title V renewal permits. Since the program review, MPCA has instituted new Delta prompts for permit writers for CAM applicability or non-applicability. In addition, USEPA has provided MPCA with examples of "good" CAM plans and permits that incorporate CAM rules (Attachment A).

## 2. Proceed with caution in new air permitting funding

Over the past 20 years, the main source of funding for the MPCA has shifted from the state General fund to pollution-related fees and taxes. Although not unique among state agencies, MPCA's staff-related costs per employee have recently increased faster than the agency's operating costs and inflation. MPCA is in the process of establishing a fee system to charge for the processing of air and water construction permit applications. The 2007/2008 & 2009 Minnesota legislature directed MPCA to conduct rulemaking to amend Minnesota Rule Chapter 7002, Air Emission and Water Quality Permit Fees. The 2007 Legislative Mandate and the Governor's budget for Fiscal Years 2008 and 2009 included an additional \$1.5 million each year for the MPCA to provide regulatory services to developing economic sectors. This was one-time funding and the Legislature directed MPCA to amend rules and provide recommendations on air program fees changes that will provide ongoing funding for regulatory services. The language in the budget bill placed a priority on bio energy crop utilization technologies but the MPCA understands and intends to provide services to all municipal, industrial and agricultural entities. Per the 2009 legislation, new fee rates were effective on July 1, 2008. Permit applications processed after July 1, 2009 and before implementation of the rule are subject to the new fees and will be charged retroactive fees, as necessary. This is a significant change in the fees that are charged for construction permits in Minnesota.

Currently, fees are not charged for construction permit applications. Fees for facilities holding air permits are charged based on annual emissions from a facility, as required by Title V, and are intended to fully fund the operating permit program costs and other regulatory needs. 40 CFR 70.9(a) requires a state Title V program to collect from Part 70 sources, annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, and the State must ensure that any fee collected be used solely for Title V permit program costs.

Because MPCA issues a combined construction and operating permit, it is difficult to determine how Title V fees are separated from other air emission source fees and how they are tracked and allocated. Funds collected under the new legislation from air and water permit applications, as well as Title V fees, will be collected into and distributed from Minnesota's General fund. USEPA cautions MPCA that this type of allocation and distribution system may not fully satisfy Part 70 requirements. That is, if all monies for the construction and operating permit programs are deposited and allocated into the same fund, it may be difficult to demonstrate that all fees collected under Title V are being used solely for Title V permit program costs.



(AR-18J)

Jeff Smith, Director  
Industrial Division  
Minnesota Pollution Control Agency  
520 Lafayette Road N  
St Paul, Minnesota 55155-4194

Dear Mr. Smith:

I am pleased to transmit to you the final report of the combined Title V operating permit program and new source review permit program evaluation that occurred on July 28, 2008. The purpose of the permit program evaluations is to note practices that are helpful to other permitting authorities, to document areas needing improvement and to learn how EPA can assist permitting authorities in achieving these improvements. This review was intended to identify any persisting issues that have not been addressed or new issues that have emerged since the last program evaluation in 2003.

We would like to thank your staff for their assistance with the evaluation and their efforts to respond to our questionnaire. If you have any questions, please feel free to contact me, or have your staff contact Jennifer Darrow at (312) 886-6315.

Sincerely,

Cheryl L. Newton, Director  
Air and Radiation Division

Enclosures

