



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

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CHICAGO, IL 60604-3590

MAR 08 2012

REPLY TO THE ATTENTION OF:

Laurel Kroack, Chief  
Bureau of Air  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276

Dear Ms. Kroack:

I am pleased to transmit to you the final report of the Illinois New Source Review (NSR) Construction Permit Program evaluation that took place on April 20 and 21, 2010. Several representatives of the U.S. Environmental Protection Agency met with the Illinois Environmental Protection Agency (IEPA) managers and staff. The meeting was part of EPA's initiative to evaluate state permit program implementation.

We appreciate the efforts IEPA has taken to improve its program. IEPA continues to evaluate its construction permitting program to improve overall permit quality. As a result of our 2010 program evaluation, EPA recommends that IEPA continue to work on strengthening its response to comments procedures and documentation of permit changes. In particular, as noted in our discussion on permits appealed to the Environmental Appeals Board, IEPA should continue to ensure that any changes it makes to a draft permit during the public comment period are readily apparent. Although the frequency of instances where issues related to the response to comments document has resulted in a permit being found deficient has been small compared to the total number of permits issued, IEPA's overall NSR construction permitting program will greatly benefit from improvements to this area.

We anticipate that IEPA will continue to improve its program. If you have any questions, please contact Genevieve Damico, of my staff, at (312) 353-4761.

Sincerely,



George T. Czerniak  
Acting Director  
Air and Radiation Division

Enclosure

## **2010 Review of Illinois' New Source Review Construction Permit Program**

### **I. Executive Summary**

On April 20-21, 2010, the U.S. Environmental Protection Agency (EPA) conducted an evaluation of the Illinois Environmental Protection Agency's (IEPA) New Source Review (NSR) construction permitting program. This evaluation is part of EPA's ongoing oversight of state and local NSR permit programs. EPA has delegated to IEPA the authority to issue Prevention of Significant Deterioration (PSD) permits pursuant to 40 C.F.R. § 52.21. For nonattainment areas, IEPA implements its nonattainment NSR program, which EPA approved into the Illinois State Implementation Plan (SIP) on September 27, 1995. On August 18-20, 2004, EPA conducted an on-site evaluation of the IEPA PSD/NSR construction permitting programs. In our June 15, 2006 report, EPA noted that IEPA's strengths included IEPA air permit staff's excellent understanding of the NSR/PSD programs, especially with respect to the applicability of the revised federal rules, endangered species act consultation, and updating the RACT/BACT/LAER Clearinghouse as permits are issued. Among areas for improvement, EPA noted that IEPA needed to improve its filing procedures. During our 2010 evaluation, EPA staff toured and reviewed IEPA's file room and permit files. IEPA appears to have resolved the issue raised in 2004 by putting adequate procedures into place for the management of its permit files. However, IEPA stated that it must improve the level of information on best available control technology (BACT) determinations made available to the public in the preliminary determination document of a PSD permit. EPA agrees with this assessment. Additionally, as a result of our 2010 program evaluation, EPA finds that IEPA must improve its response to comments procedures and documentation of permit changes. In particular, IEPA must ensure that any changes it makes to a draft permit during the public comment period are readily apparent and that it completely and adequately explains its permitting actions in its responses to comments.

As a follow-up to the initial evaluation, EPA developed a questionnaire to discuss with IEPA during the evaluation. The following are EPA's general findings from a review of the responses to the questionnaire and of the construction permitting program, and our recommendations to address any program or implementation problems found during our evaluation.

### **II. Evaluation**

#### **A. PSD and NSR permits**

IEPA implements the federal PSD construction permitting program under a delegation from EPA. IEPA has SIP-approved permitting rules for nonattainment NSR areas. IEPA and EPA conduct monthly conference calls to discuss pending PSD and nonattainment NSR permitting actions. These conference calls are for gathering permitting information, identifying issues of potential concern, and initiating discussion on issues. Additionally, IEPA and EPA hold a monthly conference call to discuss programmatic permitting issues.

At the time of the review, IEPA noted that it would like to hire an additional one to two persons to assist in the pending green house gas requirements for permitting. IEPA, as well as the State of Illinois, was under a mandated hiring freeze. IEPA did not state that it had insufficient staff to currently implement the construction permitting program. In 2007, IEPA initiated a streamlining study of its minor construction permitting program in order to reduce the amount of time and

resources needed in issuing minor source permits from 66 days to 38 days. EPA recommends that IEPA fully implement the findings of its study to help expedite the minor construction permitting process. EPA also recommends that IEPA continue to make every effort to issue major PSD/NSR permits within 180 days of receiving a complete permit application. EPA notes that during the monthly staff calls with IEPA to discuss construction permit applications, IEPA has provided updates of actions taken, such as additional information and status requests to the company, to avoid the permit application becoming idle. IEPA issued five nonattainment NSR permits within the five years preceding the review. Each of the nonattainment NSR permits underwent a public comment period, and four of the five nonattainment NSR permitting actions received public comments during the public comment period.

During our evaluation, IEPA provided EPA a table entitled, "Listing of Major PSD and NSR Permits Issued Since January 1, 2006" (as attached). The table lists 28 entries of permitting actions including issued and reissued permits, and revisions to existing permits. IEPA noted that it has received public comments on approximately 11 of these 28 permit actions. These 28 permit actions include attainment PSD permit actions as well as nonattainment NSR permit actions. IEPA responds to all substantive comments in writing to the commenter and makes the responses available to the public in the "Response to Comments" document. For "nonsubstantive" comments, IEPA addresses those comments in the "Response to Comments" document for that permitting action.

EPA reviewed the response to comments documents for PSD permits issued by IEPA on which it received comments from the public. During the program review, EPA reviewed IEPA's response to comments documents for compliance with the EAB decision in *ConocoPhillips Company*, 13 E.A.D. 768 (June 2, 2008), discussed below. IEPA has now provided in the response to comments document a listing of significant changes between the draft and the final permit. IEPA should regularly include such a section in its response to comments document to provide the public with a concise, clear summary of the changes in the permit due to comments. This section should also reference the comments to which IEPA is responding and that resulted in the changes to the permit described in the section. The following are our findings on IEPA's approach to addressing its response to comments deficiency.

In its August 10, 2006, response to comments for the City of Springfield Water, Light and Power PSD permit (permit number 04110050), IEPA had included a section entitled, "Listing of the significant changes between the draft and the issued permit." However, in the originally issued ConocoPhillips PSD permit response to comments (dated July 2007), IEPA did not include a listing of significant changes to the permit as they had done for the City of Springfield permit that was issued prior to the ConocoPhillips permit. As a result of the Environmental Appeals Board remand for the ConocoPhillips PSD permit, and as further discussed in the section below, on August 2008, IEPA provided a section in the ConocoPhillips permit's responsiveness summary listing out significant changes between the draft and issued permit. Moreover, IEPA also then included a section listing significant changes to the permit between the draft and issued permit in the August 2009, MGP Ingredients of Illinois PSD permit responsiveness summary. In that summary for MGP Ingredients, IEPA also included a description of why the changes were made for each of the other revised permit conditions. IEPA needs to establish a consistent approach to providing responses to public comments, and summarizing any significant changes made between the draft and final permits.

## B. Environmental Appeals Board (EAB) Appealed PSD permits

One of the items that EPA requested from IEPA for the NSR program evaluation was a listing of major PSD and NSR permits issued by IEPA since January 1, 2006. The list contained 28 PSD and nonattainment NSR permitting actions over that time period. IEPA received public comments on 11 of those permitting actions. Additionally, of those 11 permits which received public comment, six permitting actions had been appealed by commenters to the EAB<sup>1</sup> at the time that IEPA prepared the list; Vulcan Materials was appealed after the list was generated. Of those six PSD permitting actions appealed to the EAB, the EAB remanded two permits to IEPA: *ConocoPhillips Company*, 13 E.A.D. 768 (June 2, 2008), and *MGP Ingredients of Illinois*, PSD Appeal No. 09-03 (January 28, 2010).

### 1) ConocoPhillips

Regarding the ConocoPhillips permit, the EAB stated in its remand:

*IEPA failed, however, to specify in its Responsiveness Summary the provisions of the draft permit that had been changed in the final decision as 40 C.F.R. § 124.17(c) requires. Also in contravention of 40 C.F.R. § 124.17(c), IEPA failed to provide adequate rationale for its changes to the final permit. The Board determined that these omissions could neither be cured by viewing the Responsiveness Summary as a whole, nor by providing further clarification through briefing on appeal. As such, the permit decision is remanded to IEPA to identify and explain the changed provisions of the permit in a manner consistent with the applicable regulations and this opinion.*

*Because the added provisions of the permit, which concerned flare-related emissions controls and monitoring requirements, were not appropriately identified or explained by IEPA, the Board was unable to evaluate the reasonableness and adequacy of these provisions. Nevertheless, mindful of the time-sensitive nature of PSD permitting, the Board provides certain observations for IEPA's consideration on remand, including the need for a proper BACT analysis for CO emissions from flaring and, based on that analysis, appropriate, enforceable CO BACT controls (ConocoPhillips at 768-769).*

We note the importance of this EAB remand. IEPA must identify any revisions it has made when issuing a permit that has provisions that are changed between the draft and final permits. Also, IEPA must provide an explanation as to why the changes have been made in its response to comments document as part of the permit issuance. The EAB further noted that “compliance with [the requirement to specify areas of a draft that have been changed in the final issued permit] is of primary importance because it ensures that all significant permit terms have been properly noted in the record of the proceeding and illuminates the permit issuer’s rationale for

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<sup>1</sup> Because Illinois issues PSD permits pursuant to a delegation of authority to implement the federal PSD program, PSD permits issued by IEPA are appealed to the EAB.

including key terms. It further ensures that interested parties have an opportunity to adequately prepare a petition for review and that any changes in the draft permit are subject to effective review.” (*ConocoPhillips* at 780.) IEPA made changes to the final ConocoPhillips PSD permit concerning flaring in response to comments received. IEPA did not specify in its response to comments which provisions were changed as a result of those comments. Additionally, IEPA’s response neither describes the changes made to the work practice requirements, nor describes how IEPA arrived at its conclusion that the work practices it ultimately imposed satisfied the BACT requirement for control of carbon monoxide emissions from flaring.

## 2) MGP Ingredients of Illinois

Regarding the MGP Ingredients of Illinois permit, the Sierra Club alleged in its appeal that: (1) because EPA concluded in April 2009 that carbon dioxide (CO<sub>2</sub>) is regulated by the CAA, IEPA is required to include BACT limits for CO<sub>2</sub> in MGP’s permit; (2) IEPA ignored EPA guidance in several respects when it calculated the cost-effectiveness of clean fuels in its BACT analysis; and (3) IEPA failed to require compliance with the requirement to update BACT determinations for independent phases of the project that do not commence construction within 18 months. The Illinois Office of Attorney General voluntarily accepted a remand of the permit back to IEPA for reissuance.

PSD permits appealed before the EAB are stayed and construction on the source cannot commence until there is a final action on the PSD permit. Therefore, IEPA must provide a strong permitting record to support its BACT analyses and other permitting decisions in order to facilitate and expedite the EAB appeal process.

### **C. Endangered Species Act Consultation**

As noted above, IEPA issues PSD permits under a delegation from EPA. As such, the PSD permits issued by IEPA are considered “federal actions,” and are subject to applicable federal requirements, including the Endangered Species Act (ESA). ESA requires consultation with the appropriate federal land manager prior to PSD permit issuance to assess the potential impacts upon endangered species in the impact area affected by a proposed PSD permit. IEPA has been actively informing EPA when a permit application is ready for consultation under ESA. IEPA will continue to provide EPA with advanced notice of PSD permit applications in a timely manner to help expedite compliance with this requirement. IEPA stated that the ESA consultation process has added time to the PSD permitting process, but has not held up any PSD permits being issued.

### **D. Filing Procedures and File Review**

During our evaluation, EPA staff reviewed the IEPA Springfield office file room. The file room was clean and appeared well organized. IEPA staff was able to quickly locate a permit for Gateway Coke and show us the permit file with all of its associated attachments. We support IEPA’s efforts to have the permit files available electronically, including items such as permit applications.

### **E. IEPA suggestions**

During the evaluation, IEPA staff was asked to provide comments and suggestions on improvements to implementation of the NSR permitting program. The following are solely IEPA's opinions and do not represent EPA position or policy.

IEPA staff has been updating the RACT/BACT/LAER Clearinghouse (RBLC) with information on recently issued permits. IEPA's policy is to place information into the RBLC once the project is constructed. IEPA recommends that having a single individual input the RBLC data is better for consistency. Also, the RBLC should be linked to the state permit database in order to access more information from the actual permit.

IEPA also recommends that EPA develop a policy that NSR emissions offsets expire within five years of being generated. IEPA stated that it hasn't observed a historic undersupply of available emission offset credits and would like clear guidance from EPA on managing NSR emission offsets.