



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 22 2011

REPLY TO THE ATTENTION OF:

Christopher Ethridge  
Acting Supervisor  
Southeast District Office  
Michigan Department Environmental Quality  
301 East Louis Glick Highway  
Jackson, Michigan 49201-1556

Dear Mr. Ethridge:

The U.S. Environmental Protection Agency has the following comments on the Michigan Department of Environmental Quality's (MDEQ) draft renewal of the Renewable Operating Permit for Detroit Edison – Trenton Channel Power Plant, State Registration Number B2811.

1. Permit term FG-BLR\_9&16-19 IV Monitoring/Recordkeeping 1 requires the permittee to comply with 40 C.F.R. Part 75 with no further explanation of which specific requirements of 40 C.F.R. Part 75 are applicable to the permittee. Permit term FG-FUGITIVE DUST IX Other Requirements 1 requires the permittee to comply with 40 C.F.R. 60 Subparts A and Y with no further explanation of which specific requirements of Subparts A and Y are applicable to the permittee. White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program<sup>1</sup> (March 5, 1996) does clarify that it is acceptable to cite an applicable requirement in a permit; however, the guidance does specify the level of detail required of the permit. White Paper 2 states:

*“Citations, cross references, and incorporations by reference must be detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation. Where only a portion of the referenced document applies, applications and permits must specify the relevant section of the document. Any information cited, cross referenced, or incorporated by reference must be accompanied by a description or identification of the current activities, requirements, or equipment for which the information is referenced.”* (White Paper 2 at 37)

MDEQ must state in the permit which requirements of 40 C.F.R. Parts 75 and 60 are applicable to the permittee.

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<sup>1</sup> <http://www.epa.gov/region07/air/title5/t5memos/wtppr-2.pdf>

2. In the conditions listed below, the permit cites the “Michigan State Implementation Plan” (SIP) as the origin and authority for that term. MDEQ must cite to the specific requirements of the Michigan SIP as the origin and authority. The permit conditions at issue are:
  - a. Permit term FG-BLR\_9&16-19 II Material Limits 1 and 2
  - b. Permit term FG-BLR\_9&16-19 IV Monitoring/Recordkeeping 2 and 3
3. Permit term FG-BLR\_9&16-19 IV Monitoring/Recordkeeping 3 requires the permittee “to keep records of the sulfur content, amount and type of coal as it is fired ... in lieu of Part 75.” MDEQ must consider continuous emission monitoring (CEM) data in determining compliance with the SIP limit. 40 C.F.R. § 70.6(c)(5)(iii)(B) provides for the use of “any other material information” in certifying compliance with the Title V permit. The CEM data collected under Part 75 would be considered such material information.

The credible evidence rule further strengthens this point by making it clear that any credible evidence can be used to demonstrate compliance with or show a violation of an applicable requirement. The CEM data would be considered credible evidence. (See the September 27, 2000<sup>2</sup> letter to Robert Hodanbosi from Pamela Blakley.)

MDEQ must, at a minimum, strike the phrase “in lieu of Part 75” from Permit term FG-BLR\_9&16-19 IV Monitoring/Recordkeeping 3 and clearly inform the permittee that it must consider CEM data in addition to the permit monitoring requirement when completing the compliance certification for the SIP sulfur dioxide limit under the credible evidence rule.

4. The staff report is lacking information required by 40 C.F.R § 70.7(a)(5) which requires that each draft permit must be accompanied by “a statement that sets forth the legal and factual basis for the draft permit conditions.” The May 10, 1991, preamble to the proposed Part 70 rule also suggests the importance of supplementary materials.

*“[United States Environmental Protection Agency (USEPA)]...can object to the issuance of a permit where the materials submitted by the State permitting authority to EPA do not provide enough information to allow a meaningful EPA review of whether the proposed permit is in compliance with the requirements of the Act.” (56 FR 21750)*

The staff report is, in particular, lacking a rationale for the monitoring requirements and compliance history. (See the December 20, 2001 letter<sup>3</sup> to Robert Hodanbosi from Stephen Rothblatt which list several types of information that should be included in the statement of basis.)

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<sup>2</sup> <http://yosemite.epa.gov/r5/r5ard.nsf/8a853ab744d510c68625745800533fd5/8cacdd8552103232862574c8006e22de>

<sup>3</sup> <http://www.epa.gov/region07/air/title5/t5memos/sbguide.pdf>

a. Monitoring

MDEQ must demonstrate that the permit has: (1) satisfied the monitoring requirements of 40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1); and (2) provided a rationale for the monitoring requirements placed in the permit, see 40 C.F.R. § 70.7(a)(5) (See In the matter of Citgo Refining and Chemicals, Petition Number VI-2007-01, February 2, 2007.) For example the staff report does not provide:

- i. The rationale for why the testing of particulate matter in permit term FG-BLR\_9&16-19 V Testing/Sampling 1 once per permit term is sufficient to assure compliance with SIP requirements,
- ii. How the recordkeeping in FG-RULES290 VI Monitoring/recordkeeping assure compliance with the particulate matter and opacity requirements in FG-RULES290 I Emission Limits,
- iii. How the testing and recordkeeping in FG-ASH\_HANDLING V Testing/Sampling and VI Monitoring/recordkeeping assure compliance with the particulate matter requirements in FG-ASH\_HANDLING I Emission Limits and why annual testing is an appropriate testing frequency, and
- iv. How the testing and recordkeeping in FG-FUGITIVEDUST V Testing/Sampling and VI Monitoring/recordkeeping assure compliance with the opacity requirements in FG-FUGITIVEDUST I Emission Limits and why annual testing is an appropriate testing frequency.

b. Compliance

The staff report states “The AQD finds that the stationary source is expected to be in compliance with all applicable requirements as of the effective date of the ROP.” EPA has issued at least one notice of violation (NOV) (on July 24, 2009) to the permittee. The staff report failed to include an adequate discussion in the permitting record regarding NOV’s issued to the facility and an explanation as to why a compliance schedule is not required. (See In the Matter of Valero Refining Co. Petition No. IX-2004-07 March 15, 2005<sup>4</sup>.) MDEQ must either incorporate a compliance schedule in the permit or provide a more complete explanation for its decision not to do so.

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<sup>4</sup>[http://www.epa.gov/region07/air/title5/petitiondb/petitions/citgo\\_corpuschristi\\_west\\_response2007.pdf](http://www.epa.gov/region07/air/title5/petitiondb/petitions/citgo_corpuschristi_west_response2007.pdf)

<sup>5</sup>[http://www.epa.gov/region7/air/title5/petitiondb/petitions/valero\\_decision2004.pdf](http://www.epa.gov/region7/air/title5/petitiondb/petitions/valero_decision2004.pdf)

Furthermore, MDEQ must include the following placeholder language in the permit.

*“This condition is to clarify that issuance of this permit provides no shield from the Act, or regulations promulgated thereunder, including state regulations, pertaining to requirements of the New Source Performance Standards or major or minor new source preconstruction review requirements. The permit may be subject to reopening to include a compliance plan and schedule addressing any past or ongoing noncompliance with those provisions for any affected emission units.”*

5. Permit term FG-BLR\_9&16-19 IV Monitoring/Recordkeeping 5 and 6 includes general statements and references sections of 40 C.F.R. Part 64 as the underlying applicable requirement. These requirements, as included in the permit, do not include all of the full language of provisions the referenced sections of Part 64. MDEQ must include the full Part 64 requirements. In addition, the permit should include any specific actions necessary during the excursion of the electrostatic precipitator.

Thank you for your consideration. If you have any questions or concerns regarding these comments, please contact Genevieve Damico of my staff at (312) 353-4761.

Sincerely,



Pamela Blakley  
Chief  
Air Permits Section

cc: Teresa Seidel, MDEQ Air Quality Division