UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OCT 0 2 2014

REPLY TO THE ATTENTION OF:

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

Dear ~~Mr. Smith~~: JEFF

I am pleased to transmit to you the final report of the Minnesota New Source Review (NSR) and Title V program evaluation that occurred on November 5-6, 2013. Representatives of the U.S. Environmental Protection Agency met with Minnesota Pollution Control Agency (MPCA) managers and staff to discuss MPCA's progress in implementing the NSR and Title V programs. The meeting was part of EPA's initiative to evaluate state permit program implementation.

The enclosed report highlights current permit program strengths, areas for improvements and recent program challenges. We appreciate MPCA's efforts to issue quality permits and improve its permit program. As the report reflects, we remain concerned with the magnitude of Minnesota's Title V backlog. While MPCA has explored methods to address impediments to issuing Title V permits, these efforts have not been effective to date. We must remain focused on addressing this issue. We will continue to work with MPCA to address NSR and Title V implementation issues as they arise.

If you have any questions, please contact Jennifer Darrow at (312) 886-6315.

Sincerely,

George T. Czerniak
Director
Air and Radiation Division

Enclosure

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2013 Review of Minnesota's New Source Review and Title V Permit Programs

I. Executive Summary

On November 5-6, 2013, the U.S. Environmental Protection Agency (EPA) conducted an on-site evaluation of the Minnesota New Source Review (NSR) and Title V permit programs. This evaluation is part of EPA's ongoing oversight of state and local NSR and Title V permit programs. As has been done with other program evaluations, EPA provided a questionnaire on various permit program implementation topics to Minnesota prior to the on-site meeting. This evaluation was based on Minnesota's response to items in the questionnaire.

Minnesota Pollution Control Agency's (MPCA) permitting rule, Minnesota Rules, Chapter 7007, combines the State's preconstruction and operating permit programs into a single permitting program. Thus, one permit is issued to authorize both construction and operation of a facility or a facility modification. The MPCA submitted its Title V operating permit program for approval on November 15, 1993 and EPA 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 construction 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, EPA 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 NSR requirements, (2) any conditions imposed to assure attainment, or (3) any conditions established to avoid being subject to NSR. In essence, MPCA's combined permit program works by labeling certain permit requirements as Title I conditions, and thus, using its Title I authorities, MPCA establishes 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 I conditions are carried over into the next Title V permit.

EPA previously conducted an on-site evaluation of Minnesota's NSR and Title V permit programs on July 28, 2008. The February 16, 2010, report for that program evaluation noted strengths and areas of improvement. Minnesota's strengths included increases in staffing, process improvements aimed at streamlining permit issuance and good availability of public information. The February 2010 report noted that compliance assurance monitoring (CAM) plans and incorporation of CAM requirements were inconsistent among permits reviewed. As part of this evaluation, EPA included follow up questions to the issue raised in the 2010 reports.

This report summarizes EPA's review and findings of Minnesota's NSR and Title V permit programs. The findings in this report are based on the answers given by MPCA to the questionnaire, the November 5-6, 2013, meeting with MPCA and EPA staff knowledge of the program from experience with reviewing MPCA permits.

II. Evaluation

A. Follow-up from previous evaluation

In 2003, as part of its oversight role, EPA 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 have been evaluated by Region 5 in 2003 and 2008. Program strengths and areas in need of improvement were identified in each evaluation. One of the items Region 5 identified as needing improvement in the 2008 evaluation was consistency in incorporating CAM plans into Title V permits. In response to the last program evaluation, MPCA stated that a new procedure was developed in their Delta system that prompted permit writers to identify CAM applicability or non-applicability. In addition, Region 5 provided MPCA with CAM training and examples of "good" CAM plans and permits that incorporate CAM rules. However, during the 2014 program evaluation, MPCA had difficulty identifying any new process or procedure they have employed to ensure CAM plan contents are consistently reviewed and incorporated into permits as appropriate.

B. Current Program Strengths

Good Permit Quality

EPA notes that MPCA employs a knowledgeable staff, makes sound permitting decisions, implements EPA guidance and policy and issues good quality permits, as a general rule. Despite turnover, MPCA staff typically have a good working knowledge of federal rules and EPA policy. Generally, MPCA writes good quality and thorough technical support documents (TSD) for draft permits. The TSD lays out the changes to the permit and potential emissions, discusses applicable rules and methods of limiting potential emissions and notes monitoring and recordkeeping requirements. However, based upon review of draft permits, EPA has noted some variability in the quality of TSDs. EPA recommends that MPCA ensure consistent quality in all TSDs. In particular, EPA recommends a focus on thorough discussions of regulatory applicability.

EPA has noted that MPCA's permit format can be difficult to follow, particularly for large, complicated sources. Generally, MPCA identifies groups of equipment subject to a common applicable requirement. The reader must look through several sections to determine what conditions apply to any single unit. In some permits the compliance procedures for a particular applicable requirement may be split among several sections of the permit. In some instances the permit fails to identify the section(s) of the permit that does contain the relevant compliance information. At a minimum EPA recommends that MPCA ensure that the permits direct the reader to the appropriate sections. EPA also recommends MPCA include an index at the front of the permit that identifies each unit and the sections that contain requirements applicable to that unit to assist the public and the facility in finding all the applicable requirements and the compliance procedures (recordkeeping, monitoring, etc.) associated with a given applicable requirement. MPCA's new Tempo permit system

database will address this issue with a cue for a Table of Contents. The migration from their current Delta database system to Tempo is scheduled for February 2015.

Good Response to Public Comments

EPA finds that MPCA is adept and thorough in their response to comments that are received from interested parties. MPCA responds to every comment received. A process is in place to respond to comments and involves, at least, the permit writer and section supervisor and can involve very high level management. Similar comments are grouped and a summary 'response to comments' document is drafted and distributed to each commenter. The response to comments is included in the technical support document of the final permit.

When EPA comments on a draft permit, MPCA provides a response prior to the permit being finalized. MPCA typically resolves the issues to EPA's satisfaction and the permit is modified, where appropriate.

Good Communication with EPA

From monthly conference calls to specific issues that arise, MPCA consistently maintains good communication with EPA counterparts. MPCA also involves EPA at the appropriate times when policy or guidance assistance is required.

MPCA is currently undergoing significant rule changes in an Omnibus Rulemaking in the draft stages. MPCA has engaged EPA permitting staff in reviewing draft rule language and EPA appreciates the opportunity to review rule changes and the willingness to collaborate in development of rule language that satisfies the interest and policies of both agencies.

Environmental Justice (EJ) Incorporated into Permitting Process

MPCA has been implementing an enhanced public participation process in EJ communities. MPCA has an established process for determining whether a source permit may impact an EJ community. Because parties outside the Agency do not currently have access to EPA's EJ toolkit, MPCA routinely contacts Region 5 staff to begin the process. If a source is located in an area that may have EJ concerns, MPCA begins the enhanced public participation process. MPCA has outreach materials available in several languages and often holds public meetings in EJ communities. In a specific EJ geographic community in Minneapolis, MPCA is also required to conduct a cumulative risk impacts analysis for each permit proposed.

C. Areas of Improvement

Title V Permit Backlog

As of June 30, 2014, 53.5% of MPCA's Title V permits were backlogged, the second largest backlog in the nation. The permit issuance deadline of 18 months is a requirement of the Clean Air Act, and an improvement in the reduction MPCA's Title V backlog is a priority for EPA. Minnesota's Title V permit issuance has been a

recurring issue in each of Region 5's previous program evaluations. Although streamlining efforts by MPCA have been implemented and noted in previous evaluations, none have been effective at making a dramatic improvement in the Title V permit backlog. As part of this evaluation, MPCA has indicated that their priority is issuing construction permits.

MCPA agreed to make Title V permit backlog a Joint Priority in the 2013 Environmental Partnership Performance Agreement (EnPPA). The Joint Priority extends through 2017 and includes specific approaches to reduce the permit backlog.

One of the commitments of the Joint Priority is for MPCA to maintain a minimum number of full-time employees (FTE) to processing Title V permit actions. In addition to responding to staff turnover, new permit writers have been hired as part of an expansion of total permit writers. Currently, seven FTEs are dedicated to Title V permitting. Most of the Title V permit writers are assigned to one permitting unit. MPCA, as part of this evaluation, told EPA that it is focusing its hiring for permit writers on staffing the operating permit program.

Another approach identified in the Joint Priority to improve permit program efficiency focused on backlog reduction is to select a few permit processing impediments per year to investigate possible solutions. EPA and MPCA have been working together this year to identify and resolve two such permitting impediments.

Permits Lack Specific Test Methods

At the time of the on-site visit, Minnesota permits did not specify test methods to determine compliance with a permit condition, outside of New Source Performance Standards (NSPS) or Maximum Achievable Control Technology (MACT) language where test methods are referenced in the rule. EPA guidance on effective construction permit writing recommends including specifying test methods in a permit as a compliance monitoring method. Additionally, since MPCA implements a combined construction and operating permits program, the Title V permit must include all applicable requirements and ensure sufficient monitoring to demonstrate compliance. Since the on-site visit, MPCA has instructed their permit writers to specify test methods "while providing some room for adjustments based on the test plan evaluation".

D. State commentary/Noteworthy Issues

Increased Communication from AECAB for NSPS and MACT determinations

MPCA has asked for notification from ARD's Enforcement and Compliance Assurance Branch (AECAB) when NSPS and MACT determinations are submitted by Permittees and received by Region 5. They would also like to be notified when final determinations are issued. Region 5 agrees and commits to satisfy this request.

More EJ Guidance

MPCA has reiterated the request for more formal guidance on EJ implementation. EPA is currently developing tools to assist permit writers with EJ analysis and implementation. We expect these documents will be available in 2015.

III. Findings and Recommendations

MPCA has made efforts to address some concerns raised in EPA's 2010 program evaluation reports. Specifically, additional staff training and Delta system applicability prompts were instituted for previous concerns with incorporation of CAM into permits. At the time of the on-site visit, MPCA could not point to any real process changes that had been implemented to ensure CAM requirements are satisfied, especially in regard to incorporation of specific indicators and performance criteria. However, MPCA has stated that review of CAM applicability and CAM implementation is part of their standard procedures. EPA asks that MPCA revisit their CAM process to ensure it is sufficient, and EPA will be targeting permits with CAM requirements for review.

EPA commends MPCA on issuing good quality permits and responses to comments, maintaining open communication channels with EPA and instituting an effective environmental justice process for the air permitting program.

EPA has identified the following areas for improvement:
MPCA must prioritize a reduction in their Title V permit backlog. Minnesota currently holds the second highest Title V backlog in the nation. Minnesota's backlog has been a recurring issue in previous program evaluations and MPCA's attempts to address it have not been successful. EPA will continue to work with MPCA through its EnPPA Joint Priority efforts, but it is imperative that MPCA make the necessary changes in its program to improve Title V permit issuance.

EPA would also like MPCA to ensure, as part of its internal quality assurance measures, that specific reference test methods are included in its permits as a way to monitor compliance with emissions limitations.