



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

MAY 21 2014

REPLY TO THE ATTENTION OF:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
50 West Town Street
Suite 700
P.O. Box 1049
Columbus, Ohio 43216

Dear Mr. Hodanbosi: *Bob*

I am pleased to transmit to you the final report of the Ohio New Source Review (NSR) and Title V program evaluation that took place on March 19-20, 2013. Representatives of the U.S. Environmental Protection Agency met with Ohio Environmental Protection Agency (OEPA) managers and staff to discuss OEPA'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 EPA concerns from the 2005 program evaluation report that have been resolved, current permit program strengths, areas for improvements, and recent permit program challenges. We appreciate OEPA's efforts to issue timely permits and improve its permit program. We will continue to work with OEPA to address NSR and Title V implementation issues.

If you have any questions, please contact Charmagne Ackerman, of my staff, at (312) 886-0448.

Sincerely,

A handwritten signature in black ink, appearing to read "George T. Czerniak".

George T. Czerniak
Director
Air and Radiation Division

Enclosure

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

I. Executive Summary

On March 19-20, 2013, the U.S. Environmental Protection Agency (EPA) conducted an on-site evaluation of the Ohio Environmental Protection Agency's (OEPA) New Source Review (NSR) construction and Title V operating permit programs. This evaluation is part of the EPA's ongoing oversight of state and local NSR and Title V permit programs.¹ The EPA provided a questionnaire to the OEPA on various permit program implementation topics prior to the on-site meeting such as Title V permit backlog, statement of basis, file organization, and other topics. The discussion during the on-site evaluation was based on the OEPA's response to the questionnaire.

The OEPA implements a State Implementation Plan (SIP)-approved NSR program which consists of the prevention of significant deterioration (PSD) program in attainment areas and the nonattainment NSR (NNSR) program in nonattainment areas. The EPA approved Ohio's PSD program on October 10, 2001. The EPA approved Ohio's NNSR regulations on January 10, 2003. The EPA approved revisions to the PSD and NNSR rules on February 25, 2010, to incorporate NSR Reform provisions. The OEPA implements an operating permit program under Title V of the Clean Air Act. The EPA published approval of the OEPA's Title V program on August 15, 1995.

The EPA previously conducted an on-site evaluation of Ohio's NSR and Title V permit programs on May 23-25, 2005. The January 24, 2006 and October 19, 2006, reports for that program evaluation noted strengths and areas for improvement. Ohio's strengths included public participation, a permit tracking system and continued effort to improve permitting process. The areas for improvement included entering determinations to the RACT/BACT/LAER Clearinghouse (RBLC), identification of changes made in permit modifications, and providing responses to comments. As part of the 2013 evaluation, the EPA included follow-up questions to the issues raised in the 2006 reports.

This report summarizes the EPA's review and findings of Ohio's NSR and Title V permit programs. The findings in this report are based on the responses to the questionnaire, information from the March 19-20, 2013 meeting with the OEPA, and observations from reviewing the OEPA permits and conducting oversight activities.

¹ The evaluation focused on several aspects of the NSR and Title V programs and should not be taken as a comprehensive assessment of the programs.

II. Evaluation

A. Follow-up from 2005 program evaluation report

The EPA identified the following issues as areas for improvement in the 2005 program evaluation report. The EPA and Ohio revisited these issues in the 2013 program evaluation. The discussion of the current status of the resolution of the issues identified in the report are grouped in two categories; Resolved and Improvement Needed. The EPA considers the concerns listed under “Resolved” to be fully addressed. The OEPA has made notable improvements in addressing concerns discussed under “Improvement Needed,” but the EPA has identified that work to resolve the issue is ongoing.

i. Resolved

Notice of Sources Near Canada

Per the “1991 Canada – United States Air Quality Agreement,” the U.S. and Canada committed to notify each other of proposed sources within 100 kilometers of the U.S.- Canada border. In order to follow the terms of the agreement, the EPA must be aware of these sources. The 2005 program evaluation noted inconsistencies in the OEPA’s notification to the EPA. Subsequently, the OEPA has provided consistent and timely notification of such sources to the EPA.

Class I Impacts Analyses

The EPA highlighted that impacts on Class I areas should not be dismissed merely because a proposed source is greater than 100 kilometers from a Class I area. The OEPA has only performed two Class I analyses since 2005. In those analyses, rather than use a 100 kilometer threshold, the OEPA uses a mathematical formula recommended by the Federal Land Managers’ Air Quality Related Values Workgroup.

Maximum Achievable Control Technology (MACT) Incorporation

The EPA highlighted that the OEPA specifically incorporate only the applicable sections of a MACT rule rather than cite to or attach the rule as a whole. The OEPA has since provided the appropriate level of detail when incorporating MACT standard requirements into permits by putting specific applicable MACT requirements into permits. The OEPA has changed its process to include the specific sections of the MACT that it has determined to be applicable to the source.

Human Resources

In the 2005 evaluation, the EPA highlighted the OEPA’s need for additional staff in order to administer its programs. At the time of the report, the OEPA was in the process of interviewing candidates for new positions. The OEPA reports that retaining sufficient staff remains a challenge due to a decrease in Title V fees collected. The OEPA has since been able to train additional staff and improve its performance.

Providing Timely Applications

The EPA noted that the OEPA needed to provide timelier copies of permit applications, particularly for construction projects obtaining a major NSR, synthetic minor, or netting permit, which are located within 100 kilometers of the U.S. - Canada border, or are of significant public interest. Sometimes these applications were not made available until after the public comment period has started. In recent years, the OEPA has improved performance by providing applications in advance of the public comment periods. Per its Environmental Performance Partnership Agreement (EnPPA) with the EPA, the OEPA is required to send the EPA the applications for PSD, major NNSR, and netting permits.

Timely Updates to the RBLC Which Aids in Consistent Permitting Across the Country

In the 2005 program evaluation, the EPA noted that the OEPA needed to enter data into the RBLC in a timely manner. Subsequently, Ohio designated an employee to update the RBLC on a consistent quarterly basis. Now the RBLC is updated regularly.

Routine Maintenance, Repair and Replacement (RMRR)

When considering the frequency factor in a RMRR evaluation, the EPA expects that the OEPA refer to the emission unit's history rather than that of similar units at the same facility or at other facilities in the same industry. The EPA recommended that the OEPA work closely with Region 5 regarding RMRR analyses. The EPA is not aware of any RMRR analyses done by Ohio since the 2005 evaluation.

ii. Improvement Needed

Permit Modifications

In the 2005 program evaluation, the EPA expressed concern that the OEPA's permit modifications were often unclear about what was being modified. This concern has led to requests from the EPA for clarification on a number of the OEPA's draft permits. Although most permits drafted after the 2005 program evaluation clarify the modifications in the Permit Strategy Write-Up documents (for NSR permits) or the Statements of Basis (for Title V permits), there are still a limited number of recently drafted permits with this issue. (See Section C for more information.)

Title V Backlog

In January 2011, 54 percent of the OEPA's Title V renewal permits were backlogged. The OEPA has taken steps to reduce its backlog by implementing internal goals to eliminate their backlog by 2014. These internal measures meet or exceed the goals set by Region 5 for states' backlog reduction. The OEPA has made significant strides in reducing its backlog while processing new applications for Title V renewal permits in a timely manner so that they do not contribute to the backlog. However, the OEPA has yet to address some of the larger sources of air pollution, most notably power plant and refinery permit renewals. According to the OEPA, this backlog is primarily caused by the appeals process, a roadblock that is starting to clear. Several of the appeals have been resolved. The remaining appeals are based on similar grounds and are expected to be resolved more quickly now that a path toward resolving them has been established. The OEPA is expecting to be able to issue these complex permits in 2014.

Statement of Basis

During the 2005 program audit, the EPA identified problems with the Statements of Basis for the OEPA's Title V permits related to inconsistent quality and insufficient justification for the lack of periodic monitoring requirements. The EPA continues to comment on the lack of calculations, origin of emission factors, and other information in some Title V permits. To help the OEPA's Title V permits comply with 40 C.F.R. § 70.7(a)(5), the OEPA has offered to develop guidelines for permit writers that will define the minimum level of information necessary in Statements of Basis and ensure that all offices consistently comply with the guidelines.

Communication

The EPA expressed concerns with the lack of communication of several permitting issues, such as notifying the EPA of permits with significant public interest and rule changes. In the 2005 program evaluation, the EPA noted that the OEPA needed to provide the EPA with timelier response-to-comments documents for sources with significant public interest. This remains an issue for permits without significant public interest as well. Since 2005, the OEPA has shown improvement by providing responses to the EPA's comments in advance of final permit issuance in most cases, but there have been a few recent instances where the OEPA has not done so. Examples of issuing final permits before comments were resolved include Metokote Corp. Plant No. 9 (P0085510, drafted November 6, 2012) and Metokote Corp. Plant No. 9 (P0111496, drafted November 6, 2012), where the OEPA issued a final Title V permit without responding to comments that were sent by the EPA. The OEPA is strongly advised to send the EPA its responses to comments on NSR permits prior to issuing a final permit. For proposed Title V permits, the EPA considers response-to-comment documents necessary for adequate review pursuant to 40 C.F.R. § 70.8 (c)(1) and (c)(3). Without the documented responses to comments, proposed Title V permits, particularly controversial ones, may not contain all the information necessary to conduct an adequate review. Where the EPA understands that it is the OEPA's current policy to respond to the EPA's comments on NSR permits before the final permit is issued and to respond to all other comments received from interested parties for draft NSR permits, the OEPA should remain vigilant in implementing the policy.

Documenting Changes Made in a Permit Modification

In the 2005 Program Evaluation, the EPA noted that the OEPA needed to more clearly identify the changes made in permit modifications. The public notice and permit record should be clear as to what in the permit is being changed to allow the public and the EPA to identify, thoroughly review, and provide thoughtful and informed comments on the changes in the applicable sections of the permits. The specific permit modifications should be more clearly identified in the Statement of Basis for Title V permits as well as the Permit Strategy Write-Up documents for installation permits. Recent examples in which the EPA commented on the lack of clarity in identifying permit modifications include Duke Energy Washington (P0110193, drafted February 11, 2013) and Metokote Corp. Plant No. 9 (P0085510, drafted November 6, 2012). The OEPA management has communicated this concern with its permit writers but needs to continue to be vigilant about the issue.

B. Current Program Strengths

Aggressive Title V Permit Issuance Rates to Address Backlog

In 2011, the OEPA had a backlog of 312 Title V permits, as reported in Title V Operating Permit System. At that time, the OEPA established internal goals to help reduce the backlog of both Title V and non-Title V renewal operating permits. At the same time, the EPA established goals for Ohio and other Region 5 states to reduce their Title V renewal backlogs. The OEPA internal goals set July 2014 as the deadline for having zero backlog of all renewal permits. In order to meet both the EPA and the OEPA goals, the OEPA set six-month milestones for each District Office and Local Air Agency (DO/LAA). The OEPA implemented a new program to train additional Central Office staff to work on minor source permits so that the DO/LAA permitting staff could focus on issuing Title V permits. By the end of 2012, 18 staff were involved in the program and working at least one day per week on permits and over 200 permits applications were resolved (issued, withdrawn or routed to the DO/LAA for later processing).

As of the end of 2012, the OEPA has processed 146 renewal Title V permits and 1317 renewal non-Title V permits while keeping up with installation permits. The OEPA has met each of the six-month internal goals and both of the annual Title V renewal the EPA goals. The OEPA has been prioritizing facilities that it knows will stay open over those that are believed to be shutting down.

Using Technology to Streamline the Permit Process and Provide Transparency to the Public

The OEPA maintains most regulated facility data in its electronic information management system, Stars2. Stars2 is used by the OEPA staff and is available as read-only to the EPA staff. The OEPA also has online software that is used by the regulated community to submit applications and reports into Stars2. From that, site facilities can view permits and see the progress being made in permit development. The OEPA maintains documents generated after 2008 on Stars2 such as permit-to-install and permit-to-operate documents, public comments and responses, permit applications and related attachments, annual emission reporting, enforcement documents, compliance documents, and site evaluations. A project to scan documents generated prior to 2008 is currently underway.

Stars2 allows the OEPA to maintain the same structure and outline for all permit types. This allows for an easy transition from permit-to-install to permit-to-operate. Stars2 houses the data in one place providing the OEPA staff with one repository for all information about a facility, giving a holistic understanding and view of the regulated operations at the facility and improving efficiency in permitting and compliance oversight.

The feedback that OEPA has received on its Stars2 system has been mostly positive. When permits are issued at any stage of development (draft, preliminary proposed, proposed or final) they are published to the public web page. In addition to that effort, OEPA is in the process of making all documents pertaining to a regulated entity available on the web. The first phase of that project is to get any non-compliance related documents available on the public web page. The project was initiated in January 2011 and is ongoing. Since the non-compliance related documents were made available online, some facilities have indicated a desire to make the rest of

the public information available on the web as well in order to give a more complete record of the compliance information.

The EPA's access to the Stars2 system has been helpful in reviewing draft and proposed permits. The EPA appreciates that the OEPA has an internal system containing the redline/strikeout versions of the permits which show the permit changes.

The OEPA has requested that the EPA accept the annual compliance certifications that are electronically submitted to the OEPA as fulfillment of 40 C.F.R. § 70.6(c)(5)(iv), which requires that all annual compliance certifications be submitted to the EPA as well as the permitting authority. The OEPA requested this to ease the reporting burden of the facilities. Since the facilities are already submitting the annual compliance certifications electronically via the OEPA's Air Services program and the EPA can access portions of them via Stars2, the burden on facilities could be lessened by allowing the electronic submission to qualify as the required submission to the EPA. In a December 10, 2013 letter to the OEPA, the EPA granted the request, finding that the OEPA's electronic systems complied with the Cross-Media Electronic Reporting Rule and would satisfy the requirements of 40 C.F.R. § 70.6(c)(5)(iv) by allowing the EPA access to the submitted certifications.

Implementation of NOx as an Ozone Precursor

The OEPA includes NOx as a precursor to the secondary formation of ambient concentrations of ozone and includes the potential impacts in the required ozone NAAQS impact analysis as required by the 8-hour ozone implementation phase 2 rule (November 29, 2005; 70 FR 71612).

C. Areas for Improvement

Communication

There are several areas where the EPA and the OEPA should be working to improve communication which will in turn improve our effectiveness.

- **Public Interest:** Per the EnPPA, the OEPA should consistently notify the EPA of upcoming permits for controversial sources. Where the OEPA does try to let the EPA know of controversial sources, a few have fallen through the cracks. For example, final permits were recently issued to two sources for Vadxx that were similar to a source that recently generated much public interest.
- **Applications:** The OEPA agreed to send the EPA permit applications of PSD, major nonattainment NSR, and netting sources in advance of public comment periods. The OEPA does follow this agreement most of the time, but several times a year the EPA must ask for this information which limits the limited time we have to review permits.
- **Rulemakings:** The EPA is available for review and consultation when the OEPA's rules are being revised and the OEPA may send the EPA the draft rule revisions early in the process to ensure that the rules can be reviewed for approvability. With the EPA's early involvement, both parties can put forth a collaborative effort and identify potential issues early in the long approval process.

The OEPA has already implemented a standard format for our monthly calls that covers all of these areas and will hopefully spark the DO/LAA to remember to raise these issues directly with the EPA as well.

The OEPA stated in its response to the questionnaire that during the Title V proposed permit stage, “[The OEPA] may determine that [the] EPA's suggested revisions are inconsistent with the law.” In subsequent communications, the OEPA clarified that this was not meant to imply that the OEPA had the authority to make legal judgments that the EPA’s revisions were inconsistent with federal regulations. We understand that the OEPA meant that possible inconsistencies between the EPA’s suggestions and federal regulations would be noted and discussed with the EPA before final permit issuance. The OEPA should be vigilant in following this procedure to ensure that comments are resolved prior to permit issuance.

Consistency Among District and Local Offices

The EPA has observed that there are inconsistencies among the district offices with the documentation included in the permit record for Title V. Notably, the Statement of Basis adequacy varies between the district offices. For example, the EPA found problems with the Statements of Basis in the Title V permits for Independence Recycling (P0096140, drafted January 14, 2013) and Owens Corning (P0108721, drafted June 6, 2012). By contrast, the Statement of Basis for Linde Gas North America, LLC (P0110395, drafted July 8, 2013), adequately documented and justified the permit’s terms and conditions. The permit records must be well documented at the time of proposal. A well documented permit record can provide information to the EPA and the public to resolve issues and possibly avoid petitions.

The only measures the OEPA has in place to ensure consistency among Statements of Basis are the December 20, 2001 letter from Stephen Rothblatt to Robert Hodanbosi and the Statement of Basis instructions. Developing and implementing procedures such as internal guidance, training, and review will help ensure the quality of Statements of Basis is consistent throughout the State. The OEPA has offered to develop internal guidance.

Refinery and Power Plant Title V Permits

The OEPA has made a concerted effort to issue the backlogged utility and refinery Title V permits. The OEPA held multiple meetings with the Ohio Attorney General’s Office to discuss the permits that were held up in the permitting process because of permit appeals. The OEPA proceeded to resolve the appeal issues so that the permits could be issued, addressing issues, such as the mercury rule, that were common to all of the appeals. This effort resulted in the recent issuance of two utility Title V permits with plans to soon issue a third utility permit. The issuance of these utility Title V permits should streamline the issuance of future utility Title V permits.

Compliance Assurance Monitoring (CAM)

The EPA reviewed the following Title V permits as part of this evaluation for proper terms and conditions required by the Compliance Assistance Monitoring (CAM) Rule, 40 C.F.R. Part 64:

1. University of Toledo; Facility ID: 0448010247; Permit Number: P0088114; Issuance date: December 12, 2012.

2. Jewel Acquisition, LLC. - Louisville Facility; Facility ID: 1576000378; Permit Number: P0107325; July 3, 2012.

3. Pro-Tec Coating Company; Facility ID: 0369000025; Permit Number: P0087443; October 16, 2008.

All three permits provide indicators, indicator ranges, and the means or devices to be used to measure the indicators as required by 40 C.F.R. § 64.6(c)(1). The permits define excursions and exceedances as required by 40 C.F.R. § 64.6(c)(2). Data point collection is either continuous or done in sufficient intervals as required by 40 C.F.R. § 64.7(c). The permits require proper maintenance, including maintaining necessary parts for equipment repairs per 40 C.F.R. § 64.7(b). The permits require that the emissions units be returned to normal operation when excursions or exceedances are detected.

However, none of the permits include performance criteria as required by 40 C.F.R. § 64.6(c)(1). Performance criteria include procedures to verify data representativeness, verification of the monitoring equipment's operational status, and quality assurance and quality control for the monitoring equipment. Furthermore, while the permits for Jewel Acquisition and Pro-Tec Coating Company include recordkeeping and reporting terms for the indicators, the University of Toledo permit does not. 40 C.F.R. § 64.9(b)(1) requires the source to maintain records of all CAM monitoring data, not just of the data indicating excursions and corrective actions. Without records of all such data, the source will not be able to demonstrate compliance during all times of operation.

Additionally, the permit for Jewel Acquisition requires pressure drop indicators for the source's baghouses, but not bag leak detectors. The EPA has repeatedly commented on the need to couple pressure drop indicators with bag leak detection systems. (For example, Owens Corning, P0108721, drafted June 6, 2012.) Pressure drop monitoring alone is not an adequate compliance method and should be coupled with another monitoring approach such as daily visible emission checks or bag leak detectors. Otherwise, the source may fail to comply with the CAM rule's monitoring design criteria per 40 C.F.R. § 64.3(a).

Given the inconsistencies the EPA found between these three permits, the OEPA should follow up with permit writers through means such as training on CAM implementation or a refresher on the expectations of the CAM Rule.

D. Feedback for the EPA

Fine Particulate (PM_{2.5}) Significant Impact Levels (SILs)

During the review, the OEPA indicated that they will follow the EPA's guidance regarding the vacated PM_{2.5} SILs. The OEPA indicated that it would like the EPA to make a PM_{2.5} screening tool available so that sources do not have to conduct both modeling and preconstruction monitoring, which is impractical.

III. Findings and Recommendations

The OEPA has made efforts to address some concerns raised in the EPA's 2005 program evaluation reports. Specifically, the OEPA has improved its process to input data into the RBLC, incorporations of MACT conditions, notification for sources near Canada, and Class I impact analysis consideration.

The EPA commends the OEPA on its Title V permit backlog reduction. The OEPA has trained additional staff to process nonmajor permits so senior staff can focus on processing Title V permits. The OEPA's internal file organization database, Stars2, houses permit files in a single central area which improves efficiency.

The OEPA needs to improve communication with the EPA regarding permits of interest, rule revisions and responses to comments. The OEPA has already implemented a standard format for our monthly calls that covers all of these areas and will hopefully spark the DO/LAA to remember to raise these issues directly with the EPA as well. The EPA is also committed to working with the OEPA on fostering a more communicative working dynamic.

The EPA is asking the OEPA to continue to improve the implementation of the air permitting programs consistently among the district and local offices. The OEPA is divided into fourteen district and local offices, which can lead to permitting challenges. The EPA is available to provide support to the OEPA while working through those challenges.

The EPA reviewed three Title V permits for proper terms and conditions required by the CAM Rule. The EPA identified that all three permits were missing performance criteria as required under 40 C.F.R. § 64.6(c)(1). The OEPA must ensure that all necessary components of the CAM Rule are incorporated into all Title V permits.