

March 12, 2001

Bharat Mathur  
United States Environmental Protection Agency  
Air and Radiation Division  
77 W. Jackson Blvd.  
Chicago, Ill 60604

Dear Director Mathur:

Thank you for the opportunity to submit a petition on behalf of the Michigan Environmental Council in response to United States Environmental Protection Agency (USEPA) "Notice of Comment Period on Program Deficiencies" published in the Federal Register on December 11, 2000. This petition identifies a number of deficiencies in the manner that the Michigan Department of Environmental Quality is administering the Michigan's Title V program. We hope the agency will act promptly to bring Michigan's Title V program into compliance with federal requirements.

5 permits have been reviewed:

Permit #199600201—Monroe Power Plant—Detroit Edison  
Permit #199600133—J.R. Whiting Power Plant—Consumers Energy  
Permit #199600230 —Presque Isle Power Plant—Wisconsin Electric Power  
Permit #199600397—Viking Energy of Lincoln  
Permit #199600329—Viking Energy of McBain

We have identified six deficiencies associated with Title V permits here in Michigan:

1. Some general conditions do not meet federal requirements.
2. Permits often lack adequate monitoring, record keeping and reporting requirements.
3. Many citations lack sufficient specificity.
4. Requirements are not practically enforceable
5. Federal requirements are identified as state requirements.
6. The Michigan Title V program is under funded.

**General Conditions do not meet Federal Requirements:**

Every Title V permit in Michigan carries the same general conditions. Several of them do not meet federal requirements. Following is a list of the conditions, their flaws and the recommended actions to fix them.

*General Condition 4:*

“Any air cleaning device shall be installed, maintained, and operated in a satisfactory manner and in accordance with the Michigan Air Pollution Control rules and existing law.”

The condition does not define satisfactory and it does not specify which rules and existing laws will apply to this condition. The MDEQ must define “satisfactory” as well as specify which rules and laws apply to this condition.

*General Condition 5:*

“The department may require the owner or operator of any source of an air contaminant to conduct acceptable performance test, at the owner’s expense, in accordance with R 336.2001 and R 336.2003, under any of the conditions listed in R 336.2001(1).”

The MDEQ must specify in the permit under what conditions a performance test is required. The department must also define what constitutes an acceptable performance test.

*General Condition 8:*

“The permittee shall comply with all conditions of the RO permit. Any permit noncompliance constitutes a violation of ACT 451 of 1994, as amended, Part 55, (Air Pollution Control) and is grounds for enforcement action, for permit revocation and revision, or for denial of the renewal of the RO permit. All terms and conditions of this RO Permit that are designated as federally enforceable are enforceable by the Administrator of the EPA and by citizens under the provisions of the CAA. Any terms and conditions based on applicable requirements, which are designated as “state only”, are not enforceable by the EPA or citizens pursuant to the CAA.” (R 336.1213(1)(a))

This condition conflicts with 40 CFR 70.6(a)(6)(i). The condition should be amended to state that a violation of the permit is a violation of the Clean Air Act.

*General Condition 24:*

The definition of prompt in General Condition 24 is inadequate. The permit gives the source 6 months to report any deviations. 6 months is too long a period time to be considered prompt. In the Federal Register Notice proposing interim approval of Arizona’s Title V program (60 Fed Reg. 36083 (April, 1995), the USEPA states,

“The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten day is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting

requirement, given this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A).”

The requirement governing the prompt reporting of deviations should be amended to reflect Part 70 requirements.

*General Condition 26:*

The startup/shutdown and malfunction requirements outlined in this general condition do not conform with the 1999 EPA Memorandum entitled, *State Implementation Plans: Policy on Excess Emissions During Malfunction, Startup and Shutdown*. Dated September 20, 1999.

Permits carrying this flawed permit condition must be amended so that the permit condition reflects federal requirements.

*General Condition 32b and 32c:*

“The permit shield shall not apply to provisions incorporated into this permit through procedures for any of the following:

‘Administrative amendments made pursuant to R 336.1216(1)(a)(I-iv) until the changes have been approved by the department.’

“Administrative amendments made pursuant to r 336.1216(1)(a)(v) until the amendment has been approved by the department. R336.1216(1)(c)(iii)

This condition makes the permit shield apply to administrative amendments. This directly violates 40 CFR Part 70. The only circumstance under which a permit shield can apply to an administrative amendment is when an administrative amendment goes through a 30-day comment period. Michigan rules do not require an administrative amendment to undergo a 30-day comment period, therefore, the permit shield does not apply and the condition should be amended to remove the permit shield protection from administrative amendments.

*General Condition 36:*

The condition defines requirements for sources subject to section 112(r); however, it fails to specify whether the source receiving the permit is, in fact, subject to this permit condition. This condition is impermissibly vague and should be amended to make clear whether the source is or is not subject to the regulations stated.

**Inadequate Monitoring Requirements:**

40 CFR 70.6 (a)(3)(B) requires periodic monitoring sufficient to determine whether a source is complying with applicable requirements. Following is a description of inadequacies in the monitoring requirements.

*Particulate Matter Monitoring Requirements:*

None of the permits I reviewed included requirements for periodic stack testing for particulate matter. The permits often included requirements for a continuous opacity monitoring system. However, no provisions were included to correlate opacity readings with actual particulate matter emissions. The permits must include periodic stack testing for particulate matter at least annually.

*VOC Monitoring Requirements:*

The permits for the Viking Lincoln and Viking McBain plants contain inadequate monitoring and record keeping requirements. Table E-1.2.B.3 in the Viking McBain plant allows stack testing for VOCs to occur once every five years. The same requirement shows up in the Viking Lincoln permit. This violates the Part 70 requirement for periodic monitoring referenced above.

In addition, the permits base emission totals on the emission factors derived from stack tests. The department will determine whether the source is meeting the emission limits based on these totals. As the stack tests occur so infrequently, the emission totals based on those stack tests would be continually out of date and therefore, unreliable. This condition would hinder the ability of citizens and the department to determine whether the source is staying within the emission limits in the permit. Consequently, this reporting requirement is unsatisfactory.

The department should require that stack tests for VOCs be performed at least once a year.

*Fugitive Dust Emissions:*

Although mention is made of fugitive dust emission monitoring requirement in most of the permits, the monitoring requirements are typically inadequate.

- Permit # 199600230 simply required non-certified visual inspections once a week. Table F-1.2 (III) (3)
- Permit #199600133 had no requirements whatsoever.
- Permit #199600201 simply states, “The coal handling system should be operated in a manner which will minimize the fugitive particle emissions.” Table F-01.2 (VI) (1)

This last permit does not include any requirements for monitoring and record keeping that would insure that this condition is met. Not only does this condition not meet the monitoring and record keeping requirements but it is also not practically enforceable either.

Coal-fired power plants typically have large coal piles on their premises. These piles can contribute significantly to particulate pollution as well as opacity problems in the area. All of the permits that contain fugitive emission requirements should contain provisions to ensure proper monitoring and record keeping. Inspections should be certified and made daily. The sources should also keep logs specifying the results of the inspections. The logs should be readily available for review by any citizen or the MDEQ.

### **Many Conditions Lack Sufficient Specificity:**

Many of the rules and regulations the permit cited referred to very general rules. Example of general citations include:

- 40 CFR 75: This citation is found in Permit #199600230, Table E-1.1 (III) (A) (2)
- 40 CFR 60 Subparts A and D. This citation is found in Permit #199600397 Table E-1.2 (III) (B) (2 & 3).

These are extremely long and complicated sections. It is difficult to find the specific part of these rules that apply to the permit condition.

*Use of General Permit to Install Rule instead of specific citation in New Source Review Permit:*

Many of the permit requirements cite to rule R 336.1201(3). This rule is the general permit to install rule. Examples include:

- The design requirements section on Title V permits for Permit # 199600210, 199600230 and 199600133).
- Monitoring requirements in the Viking McBain Permit (Permit # 199600329)
- Material Usage and Emission Limits section of the Viking Lincoln Permit. (Permit #199600397) Table E-1.2 (II) (A) (1 thru 6)

Simply citing the permit to install rule is not acceptable practice. The state must cite specifically to the permit.

### **Many Requirements are not Practically Enforceable:**

Permit conditions in Michigan Title V permits sometimes contain statements that violate the practical enforceability standard. Examples of the vague and non-enforceable conditions include:

- “The permittee shall calibrate, monitor and record SO<sub>2</sub> emissions on a continuous basis, with certified instrumentation, and in a manner acceptable to the Air Quality Division.” (Permit # 199600230) Table E-1.1 Section (III) (1)
- “Applicant shall monitor and record the opacity, exhaust gas flow rate and concentrations of sulfur dioxide and nitrogen oxides in the exhaust gas from No. 1 steam generating unit on a continuous basis in a manner and with instrumentation acceptable to the Air Quality Division.” (Permit # 199600133) Table E-01.2 Section (III) (1)
- “Each calendar day, the applicant shall calculate the total fuel burned for the previous 24-hour period for creosote treated wood fuel; for the pentachlorophenol treated wood fuel; for particle board/plywood fuel; and for tire derived fuel in a manner acceptable to the Air Quality Division.” (Permit # 199600397) Table E-1.2 (II) (A)(3)

I have mentioned other examples of permit conditions that are not practically enforceable in other sections of this comment letter.

These statements as well as similar ones occur throughout all the permits. By including this type of permit language, it is not possible for citizens to know what constitutes acceptable monitoring and record keeping requirements. These permit conditions are not practically enforceable. Permit language must be amended to properly specify the monitoring and record keeping requirements.

### **Federal Requirements are Identified as State Requirements :**

In Table E-1.2 (B) (3) (1) of Permit #199600397, the permit citation refers to R336.1901 which is a state only requirement. The condition also includes an asterisk, the way the Michigan Title V program identifies a state-only requirement. However, the permit condition includes monitoring requirements for VOCs, particulate matter and lead which are all criteria pollutants and therefore subject to federal, not state, monitoring requirements. A condition under which the source is subject to federal requirements should not be identified as a state requirement. This is particularly important as the monitoring specified in the condition does not meet federal requirements.

### **The Michigan Title V is Under Funded.**

The Michigan Office of the Auditor General issued a performance audit of “Fee Adequacy and Delegated Authority Within the Clean Air Division” in March 2000.

Michigan law requires the auditor general to conduct an audit every two years of the operating permit program required by Title V. Part of the audit includes a

recommendation regarding the sufficiency of fees required by the Michigan program to meet the minimum requirements of the Clean Air Act. According to the audit, fees will generate \$1.4 million less than the \$25 per ton charge adjusted for inflation provided by the Clean Air Act. The conclusion of the report stated:

“Because of the limited progress in issuing initial ROPs, uncertainty remains regarding the sufficiency of the statutory fees to meet the minimum requirements of the Clean Air Act.”

The permit section of the Michigan Department of Environmental Quality indicates that roughly 55% of the sources required to receive Title V permits have, in fact, received a final permit. This fact, combined with the fact that the program does not meet even the minimum requirements of the Clean Air Act, argues that the Michigan Title V program is under funded.

The Environmental Protection Agency must require statutory changes in the fee structure such that the Michigan Title V program is adequately funded.

Thank you for consideration of these comments.

Sincerely,

Isaac Elnecave  
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Michigan Environmental Council