March 12, 2001

VIA FACSIMILE AND FIRST CLASS MAIL

Bharat Mathur
Director, Air and Radiation Division
EPA Region V
77 W. Jackson Boulevard
Chicago, IL 60604

Re: Comments on Michigan=s Title V Permit Program

Dear Mr. Mathur,

The National Wildlife Federation (NWF) submits these comments on Michigan's Operating Permits Program, to which the United States Environmental Protection Agency (EPA) granted final interim approval on January 10, 1997. 62 Fed. Reg. 1387 (1997). NWF represents four million members and supporters devoted to protecting wildlife, people and wild places. From our Great Lakes office in Ann Arbor, Michigan, we pursue NWF's mission in and for the Great Lakes basin. Because we recognize that air pollution contributes significantly to the degradation of water quality and ecosystems in the Great Lakes, we take a strong interest in ensuring that harmful industrial emissions are minimized as much as possible.

NWF urges the EPA to require the Michigan Department of Environmental Quality (MDEQ) to correct the deficiencies outlined below pursuant to authority granted to EPA by 40 C.F.R. §§ 70.4(i) and 70.10(b) before giving final approval to Michigan's Title V permit program. The problems in the Michigan program are significant and substantially contribute harmful air pollution in the region.

1) <u>Start-up/Shutdown/Malfunction (SSM) Exemption</u>

EPA's final interim approval noted deficiencies in Michigan's SSM provisions. 62 Fed. Reg. at 1390. It is our understanding that Michigan has not yet revised its SSM rules to address EPA's concerns. Without such revisions, EPA should refuse to give Michigan's rules final approval.

The only affirmative defense for excess emissions that is allowed in the federal Title V regulations

is the emergency defense outlined in 40 C.F.R. § 70.6(g). 61 Fed. Reg. 32,391 (1996). An emergency is defined as "any situation arising from sudden and reasonably unforeseeable events beyond the control of the source…." 40 C.F.R. § 70.6(g)(1). Michigan's SSM rules provide a far broader affirmative defense than allowed by the emergency defense as they extend to violations incurred as a result of abnormal conditions, start-up, shutdown and malfunction. MICH. ADMIN. CODE r. 336.1912 (2000). Under Michigan's rules, excessive emissions are not prohibited if caused by a malfunction, MICH. ADMIN. CODE r. 336.1913 (2000), or by start-up or shutdown of a source, process, or process equipment. MICH. ADMIN. CODE r. 336.1914 (2000). Thus, Michigan provides an affirmative defense for malfunction, start-up or shutdown whereas the federal regulations provide such a defense only for unforeseeable emergencies.

EPA should insist that Michigan narrow its SSM rules so that they are consistent with the federal rule.

This deficiency is not corrected by the fact that Michigan regulations require that facilities submit a written plan detailing how they plan to minimize emissions during normal start-ups and shutdowns. MICH. ADMIN. CODE r. 336.1914(4)(c). This requirement cannot compensate for the fact that Michigan creates a broad defense for excess emissions during start-up, shutdown and malfunction as opposed to the emergency defense allowed by the federal regulations as outlined above.[1]

2) <u>Permit Issuance and Program Fees</u>

1 Furthermore, NWF questions whether the planning requirement is actually being incorporated into the permits issued. For example, the final permit issued to Wisconsin Electric Power Company, Presque Isle Power Plant (WEPCO) (SRN: B4261/Permit number: 199600230) contains no requirement for a written emissions minimization plan for start-ups and shutdowns. Emissions during start-ups and shutdowns are frequent at this facility, as boilers are shut down when the demand for electricity drops. While NWF does not concede that enforcement of this regulation would be sufficient to comply with the EPA's regulations regarding excess emissions, we do feel that the MDEQ's failure to enforce even this weaker regulation is a further indication of the inadequacy of Michigan's program.

MDEQ is in violation of 42 U.S.C. §7661b(c) because it has failed to issue a Title V permit to each facility required to operate under such a permit within three years of receiving interim approval for its Operating Permits Program. EPA granted final interim approval for Michigan over four years ago on January 10, 1997. 62 Fed. Reg. 1387 (1997). Therefore, EPA has the authority to withdraw program approval under 40 C.F.R. § 70.11(c)(1)(ii)(A), which provides that the Administrator may withdraw program approval for "failure to issue permits." NWF urges the EPA to exercise this authority unless Michigan increases its fees as discussed below to ensure that the remaining permit applications are addressed within the next year. In any event, EPA should not approve a program like Michigan's that is in violation of this critical statutory deadline.

The federal regulations require state agencies to charge Part 70 sources fees that are "sufficient to cover the permit program costs." 40 C.F.R. § 70.9(a). Because the statutory deadline for issuing permits in Michigan has passed and all Michigan facilities do not yet have Title V permits, it is clear that Michigan is not charging sufficient fees to meet program costs. From the figures available on MDEQ's website, NWF calculates that a substantial number of Michigan facilities that are required to have Title V permits do not yet have them. (NWF counted 527 total facilities, 290 of which have final permits, which indicates that MDEQ has issued only 55 percent of the necessary permits). This significant number of facilities without permits indicates that MDEQ does not have sufficient resources or staff to complete the permitting process. If MDEQ were charging adequate fees and using them for Title V permitting, it is likely that the permitting process could have been completed by the statutory deadline.

In contrast to the figures available on MDEQ's website, a report issued by MDEQ's Air Quality Division states that most facilities will have received their initial permits by fiscal year 2002 (which begins on October 1, 2001). Air Quality Division, Michigan Department of Environmental Quality, A Review of Michigan's Current and Future Anticipated Title V Program Activities (2000) at 8 [hereinafter Report]. Given the figures obtained from MDEQ's website, NWF questions how MDEQ plans to accomplish this goal without an increase in funding and the addition of more staff. Yet the report indicates that MDEQ anticipates cutting the number of full time staff positions responsible for issuing initial permits and opt-outs by 27.6 positions. Report at 8. In addition, MDEQ lists an anticipated 2002 Title V program cost of $13,400,571 (cost in 1998 dollars), Report at 41, as compared to the 1998 estimated actual cost of the Title V program in 1998 of $12,503,765. Report at 37. While these figures indicate an overall increase in funding for Michigan's Title V program, there is no indication that these fees are sufficient to cover the costs of the program, particularly given that the initial permitting process appears far from complete and the statutory deadline has already passed.

NWF urges EPA to require MDEQ to charge sufficient fees to meet the costs of completing the permitting process without further delay.

3) Required Contents of Certification of Compliance

EPA regulations require that the compliance certifications filled out by Part 70 sources contain the facility=s compliance status, including identification of each deviation from the terms and conditions of the facility=s permit and any exceedances that occurred. 40 C.F.R. § 70.6(c)(5)(iii)(C). Including deviations and exceedances on the compliance certifications allows both EPA and citizens to easily determine whether the facility is out of compliance, in what ways, and the seriousness of the violations.

Michigan=s program provides that the facility shall certify that the source is in compliance with all terms and conditions in the permit, except for any deviations from compliance that are or have been reported to MDEQ. MICH. ADMIN. CODE r. 336.1213(4)(c) (1996). There is no mention, however, of a requirement that deviations and exceedances be specifically identified in the compliance certifications as required by 40 C.F.R. § 70.6(c)(5)(iii)(C). Presumably the facility could simply certify that they are in compliance except for deviations that have been reported without listing these deviations on the certification. Because this information is not required by the Michigan rules, compliance monitoring is more difficult for EPA and citizens.
An additional problem with Michigan's current rules is that they do not require facilities to submit a compliance certification with their permit applications. The federal regulations require that state programs include certifications of compliance as a necessary component of all permit applications. 40 C.F.R. § 70.5(c)(9)(i). NWF understands that MDEQ has proposed a change in the regulations to address this problem. Final approval of Michigan's program should not be granted until this proposed change in the regulations has been adopted.

4) Inclusion of pollution control plans in draft permits

MDEQ issues permits that require pollution control plans with enforceable provisions, yet these plans do not have to be finalized by the time the permit is put on public notice. This practice denies the public the chance to review and comment on that portion of the permit before it becomes final.

One example of this problem is the permit that MDEQ issued to WEPCO. WEPCO's proposed permit referred to a fugitive dust plan, but a copy of that plan was not included with the proposed permit. The final permit did contain such a plan (Permit Number: 199600230, Appendix 10/Fugitive Dust Minimization Plan). Fugitive coal dust is the most common complaint that residents in the area make about the WEPCO facility to MDEQ. By failing to require that a control plan be submitted with WEPCO's proposed permit, MDEQ denied citizens the opportunity to have input on an issue that was of great concern to them.

EPA should require MDEQ to compile all portions of a facility's proposed permit, including any pollution control plans, prior to beginning the period of public comment on the permit. A requirement such as this would ensure that concerned citizens are able to have input on all issues covered by the permit.

Thank you for the opportunity to comment on Michigan's Operating Permits Program. Please contact Jane Reyer with any questions at 218-387-3377.

Sincerely,

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