UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 29 2009

Barry R. Stephens, P.E., Director
Division of Air Pollution Control
Tennessee Division of
Environment & Conservation
9th Floor L & C Annex
401 Church Street
Nashville, Tennessee 37243-1531

Dear Mr. Stephens:

This correspondence is being sent to provide you with a final copy of the U. S. Environmental Protection Agency (EPA) Region 4 report, which was completed as a result of the EPA title V program evaluation conducted on July 21 – 22, 2009, in Nashville, Tennessee (see Enclosure). The purpose of this program review was to evaluate the status and the ability of the Tennessee Division of Environment and Conservation, Division of Air Pollution Control (the Division) to carry out the duties and responsibilities required to effectively run the title V program, as well as find out how EPA can best assist the Division in meeting these commitments.

Overall, EPA believes that the quality of the permits produced by the Department is excellent and included all the components required under part 70. The report does note some specific areas for improvement. Specific areas noted within the report that must be improved include:

1) The need to develop a process which reduces and eventually eliminates the backlog of title V applications.
2) The need to develop a process in which the majority of these significant modifications are issued within nine months of the application submittal date.
3) The need to improve the content of the statement of basis.

We look forward to continuing to work closely with the Division to improve these aspects of the title V program. If you or your staff, have any questions regarding this report, please contact Randy Terry of the EPA Region 4 staff at (404) 562-9032.

Sincerely,

Carol L. Kemker

Carol L. Kemker
Acting Director
Air, Pesticides and Toxics
Management Division

Enclosure

Tennessee Division of Environment & Conservation, Division of Air Pollution Control (the Division)
Title V Program Review

The Tennessee Division of Environment and Conservation (TDEC), Division of Air Pollution Control (the Division) initial title V program review was conducted the week of December 5, 2005, in Nashville, Tennessee, and is kept on file at the Environmental Protection Agency (EPA) Region 4 office in Atlanta, Georgia. Based on the information gathered from the initial round of title V program evaluations and the implementation of new title V permit requirements, EPA committed to conduct a second round of title V program reviews, to be completed by the end of fiscal year 2010, for all state and local programs that have at least 20 title V major sources within their jurisdiction.

The second program evaluation of the Division's title V program was conducted July 21- 22, 2009, in Nashville, Tennessee. Prior to EPA's arrival the Division was provided with a list of seven title V sources to be reviewed for administrative content and an additional three sources that had submitted compliance assurance monitoring (CAM) plans that EPA planned to review as part of the program evaluation. An entrance interview between EPA and key staff of the Division was conducted, where EPA explained the details that Region 4 would be addressing during their office visit. The following parties attended the title V questionnaire discussion: Randy Terry (EPA Region 4), Sean Lakeman (EPA Region 4), Lacey Hardin (the Division), Randy Thompson (the Division), Eric Flowers (the Division) and John Trimmer (the Division).

Tennessee Title V Program Review

Program Review

TDEC's organizational structure for air permitting resides at the office in Nashville, Tennessee. All title V permits for the TDEC area are processed in the Nashville office. The Division's title V permitting jurisdiction covers all of Tennessee not covered under a local title V program. A separate program evaluation report will be written covering the Memphis-Shelby County title V program. Nashville-Davidson County, Chattanooga-Hamilton County, and Knox County title V programs all have less than 20 title V sources in their jurisdictions and were not subject to program evaluations for this round of evaluations. However, all three program areas did undergo program evaluations in 2005 and copies of these reports are on file at the EPA Region 4 office in Atlanta, Ga.

EPA's review of the Tennessee title V program focused on programmatic knowledge/ implementation, resources (both human and funding), public participation and file review.

EPA appreciates the Division's efforts to aid the evaluation process by providing an answered copy of the program review questionnaire for the meeting. For many questionnaire items, the answers provided by the Division are more detailed than indicated in the summary discussion below. A copy of the answered questionnaire from the Division will be on file at EPA Region 4 for reference.

Programmatic Knowledge/ Implementation

EPA and the Division held discussions on a variety of title V topics including adequacy of title V resources (staffing and capital), public participation, title V workload, compliance assurance monitoring (CAM) and renewal title V permits. It was apparent during these discussions that the Division staff had a thorough understanding of the regulations and requirements of 40 CFR part 70. In addition the Division discussed its organization plan and how succession planning is included within the organization plan. The Division is divided into three permitting programs with each program functioning independently with personnel assigned a variety of duties to cover all types of permits. This creates an information redundancy within the workforce in which permitting special emphasis areas are understood by multiple staff and helps to ensure that institutional knowledge remains consistent even as the permitting group experiences staff turnover.

Resources and Internal Management support

The Division estimates that they fund 33.2 full time equivalent (FTE) positions for all title V direct permitting activities. At the time of the program evaluation the Division had 37 permit writers employed and seven vacancies within their permitting group. In addition, another position within the permitting group has been eliminated and an additional three positions have not yet been created. This reduction in staffing is significant and has had an impact on the Division's permit issuance numbers. In an effort to deal with the staffing turnover and to retain their experienced permit writers, TDEC instituted a salary increase for permit writers. At the

time of the evaluation, the increase had not had any effect in the Division's ability to retain their experienced staff.

The Division organization structure is divided into three permitting units (East, Middle and West). The East, Middle, and West permitting programs cover 91 counties in Tennessee. The permit writers in each program are responsible for a variety of duties for all types of permits, true minor, synthetic minor and title V permits. Inexperienced permit writers are classified as Environmental Protection Specialist (EPS) 1 and 3. All EPS positions are filled through an interview process. EPS 4s are responsible for more complex permits and have some supervisory responsibilities. EPS 5s are responsible for the most complex permits and supervise several EPS 3s and 4s. EPS 4s and 5s dedicate more than 50 percent of their time to title V issues. The Division employs three program managers who are classified as EPS 6 and one EPS 7 who serves as the chief permit writer and the Assistant Director.

Although the Division utilizes three regional permit groups, the sharing of technical knowledge and permit formats for similar types of permits facilitate the permitting process. Institutional knowledge and documents have been retained and training material has been stored as hard copies and on the shared network for all to access. This will allow for continued consistency as staff turnover occurs.

As a group, title V permit writers estimate their time allocation to be equally spent between title V and non-title V activities. The Division estimates that 20 percent of permit writers' time is spent directly working to issue title V permits. Other title V activities performed include review of fee information for companies paying based on actual emissions, title V regulatory development, conditional majors, and inspections. The remainder of time is dedicated to working on title V and maximum achievable control technology report review, new source review (NSR) permits, state implementation plan development, enforcement, and other assignments that may arise. In order to adequately track time spent on title V and non-title V activities, Division staff enter their time, associated with an activity code, into an electronic database on a weekly basis.

The Division establishes its title V fee based on emissions volume. For the Tennessee fiscal year 7/01/08 through 6/30/09, the title V fees were $28.50/ton based on allowable emissions or $39.00/ton based on actual emissions with a $7500 minimum annual fee. Each title V source has the option to pay based on actual or allowable emissions. Each source that opts to pay based on actual emissions must submit a form to the Division detailing their emissions. Permit writers are required to review these submissions for accuracy to ensure that each source is billed the appropriate amount. TDEC has a separate unit that is responsible for tracking all expenses and revenue. All title V revenue is tracked within a separate account.

Management is kept abreast of permit issuance with a tracking system that tracks all documents incoming and outgoing. Specifically each permit type is tracked and milestone dates for processing the actions are assigned within the tracking system. Additionally monthly and quarterly reports are generated on the status of specific projects. Staff meetings are also used to discuss ways to improve the current tracking system.

During the review, lack of manpower was cited as a major factor in delaying title V permit issuance. The manpower shortage was attributed to the Division having starting salaries for their engineers below the industry average. Division turnover has created delays in permit issuance, less overall continuity, and a loss of experience and familiarity in dealing with title V sources. This lack of manpower including the seven vacancies and four eliminated positions has resulted in a backlog of title V actions. Other factors cited as having an impact on permit issuance included construction permits, training and regulatory development.

The Division spends a great deal of time on peer-to-peer training for new employees and when possible offers internal training courses given by an experienced permit writer. In addition to internal training options, the Division also utilizes EPA training courses when possible. The Division has developed written documentation of their internal training practices and procedures in order to ensure uniformity in training of staff. In an effort to continue to maximize training opportunities, the Division has requested EPA to consider providing Air Pollution Training Institute courses more frequently and in more locations. Additionally, the Division is interested in the availability of EPA presenters for Division sponsored workshops.

Public Participation

The Division utilizes the newspaper with the largest circulation in the area where the source is operating to give general public notice of impending title V permitting actions. The cost of publishing public notices in the newspaper has averaged between 350 and 600 dollars each and is paid for by the source. Title V sources are required to publish their own public notices and submit a tear sheet or copy of the notice from the paper to Division staff. As a secondary form of notification the Division also posts their public notices on the TDEC website. Each public notice contains the company information such as name and location, the type of source (what they do), and the location of the public depositories. The notice on the website also provides a link to the draft permit and the statement of basis. While the web notice is generally published prior to the print notice, the web notice does include language that details the date by which the print notice must be published.

Permit Issuance

The Division completed issuance of the initial round of title V permits in 2005. Over the last year, the Division has issued 10 significant modifications. One of the modifications was issued within nine months and seven others were issued within 18 months. Two of the significant modifications took longer than 18 months to issue and a backlog of 11 other significant modifications older than 18 months are remaining to be processed. The Division's backlog has increased since December 2008. 40 CFR § 70.7(e)(4)(ii) states that "the permitting authority shall design and implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application." TDEC should evaluate their goals and priorities and develop a plan in which the majority of these significant modifications are issued within nine months of the application submittal date.

Over the past year the Division received 44 renewal applications and issued 44 renewal title V permits. At the time of the program evaluation, the Division had over 100 title V renewal applications in-house to be processed including 58 which were older than 18 months. However,

each of the applications had been reviewed by the Division and determined to be submitted timely and complete. This determination allowed the sources to maintain their application shield until their new permit is issued. While the sources remain covered by their application shield and can operate under their existing permit, this is not a replacement for the issuance of a current title V permit. In addition, over the past year the Division has completed two title V permit applications for new issuance title V permits but has a backlog of 21 new title V applications waiting to be processed, which were submitted more than 18 months ago. 40 CFR § 70.7(a)(2) states that "... the permitting authority take final action on each permit application (including a request for permit modification or renewal) within 18 months..." The number of permits without action in the past 18 months has increased since the 2005 program review, resulting in a large backlog of needed permit activities. The Division should make these permit actions a priority and establish a process by which they begin to reduce this backlog. In addition, in order to avoid these occurrences in the future, the Division should evaluate their goals and priorities and develop a plan in which initial and renewal permits are issued within the 18 month timeframe as established in 40 CFR part 70.

File Review and CAM Plans

As a part of the evaluation, EPA reviewed the files of seven title V sources for administrative content. The purpose of this review was to determine the completeness of the file record and to evaluate the ease of access in finding the necessary documents within the file. The files initially evaluated during the review were incomplete and a number of basic components were absent from the file. After a brief discussion, Division staff provided supplemental files for review and most of the missing documents were found within the supplemental information. The ability to maintain files in an organized manner readily available for public review is a central focus of the public participation requirement of 40 CFR part 70. EPA encourages the Division to develop a better filing system that more readily accounts for and tracks various components of the title V permit file.

In addition, EPA reviewed the content of the statement of basis for these seven permits. In summary, each statement of basis needs to contain additional information, including, at a minimum, the following;

- Summary of emissions, emissions units, and control devices
- Explanations for applicability and non-applicability determinations (applicability "thought process")
- Justification for any "streamlining"
- Basis for periodic monitoring regime chosen, including appropriate calculations
- Basis for determining that emission units/operations are "insignificant activities"

The Division contends that most of the requested information is included within the details of their title V permits and that increasing the complexity of the statement of basis will adversely impact their efforts to reduce the backlog. EPA is aware of the additional burden which will result from increased attention to the statement of basis but believes that the benefits associated with an enhanced statement of basis only improves the title V process.

As a result of the Compliance Assurance Monitoring (CAM) plans not being required at the time of the initial program evaluation of the Division, EPA focused a portion of this evaluation on ensuring that the Division staff was well trained, had good understanding and was ensuring that the sources were submitting CAM plans in accordance with the requirements of 40 CFR part 64. As a part of this program evaluation, EPA conducted a detailed review of CAM plans from three title V permit applications. Each of these CAM plans was clear and met the requirements of 40 CFR part 64. EPA is comfortable the Division has a good overall understanding of these requirements and has done a good job in conveying these requirements to the sources. While the Division has a good understanding of CAM, they have indicated a desire for EPA specific training in this area.

Conclusion

At the conclusion of the onsite portion of the title V program review, Region 4 personnel met with Division officials to conduct an exit interview. During this exit interview Region 4 shared the findings of the review. Personnel in attendance from EPA Region 4 were Randy Terry and Sean Lakeman. Division officials in attendance included Barry Stephens, Lacey Hardin, Randy Thompson, Eric Flowers, and John Trimmer.