UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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JUL - 1 2005

Mr. Carlos W. Lopez Freytes, Esq.
President, Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910-1488

Dear Mr. Lopez:

The purpose of this letter is to inform you of the results of our evaluation of the Puerto Rico Environmental Quality Board's (EQB's) Title V Program. As you know the Environmental Protection Agency has evaluated the Title V program from both a programmatic and a financial perspective. In September 2004, EPA completed a Title V Program evaluation which examined how the program was being implemented. In early 2001, EPA conducted a Title V Program evaluation from the financial perspective and as a result, on February 28, 2005, EQB submitted a Corrective Action Plan (CAP) for Fiscal Year 2005. To begin, I would like to thank the EQB staff for their assistance to EPA staff during the program evaluation and to compliment EQB in producing a CAP to address the FY 2005 projected deficit. Nevertheless, there are significant deficiencies and problems in both of these areas which require your attention. If EQB cannot address these deficiencies and correct these problems in a timely manner, it could lose its ability to issue permits under the federal Clean Air Act.

In September 2004, the EPA performed an evaluation of EQB's Title V Air Permitting program to ensure that states and territories are implementing the permitting program in a manner consistent with federal regulations and guidelines. Based on the review and discussions, we have found areas of successes and areas of deficiencies in the Title V Program implementation. The areas of successes include: i) EQB has actively encouraged the Small Business Program under the Title V Program, ii) Air Program's staff have a good understanding and knowledge regarding the permitting requirements as well as the federal and state air regulations, iii) the Permit Enforcement staff reviews every deviation and semi-annual compliance report and verifies compliance by reviewing all annual compliance certifications, and iv) EQB ensures that appropriate fees are collected from every Title V facility in a timely fashion. The areas of deficiencies disclosed that: i) EQB has issued permits to only about 50% of Title V facilities, and ii) all the permits that were issued lacked a "Statement of Basis" which is required by federal regulations.

The proposed FY 2005 CAP, developed as a result of financial evaluation of EQB's program, provides a solid blueprint for EQB to make appropriate modifications to the Title V financial program. These modifications will ensure conformance with federal requirements and assure the financial stability of the program. However, there are certain problems that need to be corrected.

My staff has reviewed the CAP and advised that the following items should be addressed and/or require further clarification for inclusion in the CAP: i) any programmatic impact that the reduction of staff may have, ii) ways to strengthen the internal control structure, and iii) a comparative analysis needs to be conducted between the budgeted revenue and expenses and the actual amounts recorded at Hacienda for the period ending 03/31/2005.

Enclosure I of this letter contains the details of our program evaluation and recommendations from the implementation perspective and Enclosure II of this letter includes a synopsis of all the issues that need further clarification for inclusion in the CAP.

EPA stands ready to work with your respective staff in developing strategies to correct the deficiencies in the Title V Program. However, EPA is concerned that if EQB does not address the deficiencies and correct the problems as noted in this letter, EPA would be required to take action under 40 CFR 70.10(b)(1) to address them. Such action would require the issuance of a Notice of Deficiency in the Federal Register and subsequently EPA may withdraw the Puerto Rico's Title V Program. However, EPA need not initiate action if the EQB demonstrates that it has made significant progress to address these issues. Therefore, I am asking that EQB submit an action plan within 60 days of the date of this letter. This action plan should contain milestones and commitments for issuing all remaining final permits within 12 months from the date of this letter with 40% issued within 6 months of this letter. In addition, the plan should contain a commitment to, and a description of, how EQB will ensure that all draft permits issued henceforth will contain a Statement of Basis consistent with EPA's permitting regulations and how and when all issues related to financial evaluation will be resolved. If Puerto Rico develops an acceptable plan and substantively meets the commitments contained in that plan, EPA will not take steps that could ultimately remove Puerto Rico's authority to issue permits required by the Title V of the Clean Air Act. Further, EQB should consider EPA's recommendations in the enclosed report while developing this action plan.

I appreciate EQB's efforts to address the issues associated with the Title V program in Puerto Rico and pledge that EPA will continue to provide support to assist in this process. If you have any questions or wish to discuss these issues, please call me at (212) 637-5000 or your staff may contact Mr. Raymond Werner, Chief, Air Programs Branch, at (212) 637-3706 if it's related to the Program Evaluation, or your staff may contact Mr. Rich Manna, Regional Comptroller, at (212) 637-3456 if it's related to the FY 2005 CAP.

Sincerely,

Kathleen Callahan

Kathleen C. Callahan
Acting Regional Administrator

Enclosures

cc: Angel Berrios, EQB w/
Evelyn Rodriguez, EQB w/
Leimarys Delgado, EQB w/

Enclosure I

Attachment I Audit Report

Attachment I-A Meeting Agenda/Participants

Attachment I- B Responses to EPA's Program Review Questionnaire

Attachment I- C Management/Staff Interviews

Attachment I- D Small Business Program Yearly Report

Attachment I- E Responses to EPA's Financial Review Questionnaire

Attachment I

The Environmental Protection Agency's (EPA) Review of the Puerto Rico Environmental Quality Board's (EQB) Title V Program

September 29/30, 2004

Outline

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Puerto Rico Environmental Quality Board (EQB)
Title V Program Review

I. Introduction

As part of EPA's oversight responsibilities, EPA Region 2 staff conducted a program review and evaluation of the Puerto Rico's federally approved Title V program. Following Agency guidance, EPA Region 2 staff, in September 2004, evaluated air permitting and enforcement files, and conducted management and staff interviews. The Region also identified EQB's program successes and failures. This report summarizes items discovered during EPA Region 2's review and evaluation of the Puerto Rico's approved Title V program, which is administered and enforced by the EQB. Puerto Rico's program covers about 55 sources. The EQB had issued permits to about half of the sources as of the date of this review. The EQB proposed to issue final permits for all remaining sources by the end of April 2005.

II. Summary of Finding

Overview-

The purpose of the Region's review was to determine whether the Puerto Rico is complying with the 40 C.F.R. Part 70 requirements and Title V of the federal Clean Air Act ("the Act") with respect to administration and enforcement of Puerto Rico's approved Title V program, or if not, is taking corrective action to do so. The Region reviewed and evaluated the Puerto Rico's administration and enforcement of the program against the requirements of 40 C.F.R. Part 70. The details of the review are included in this report. EPA's review is based on EQB's responses to the program/fee evaluation questionnaires, management interviews, file reviews and on-site discussions. As part of this evaluation the EQB provided information related to its rules, files/permits, financial records and small business activities. In response to EPA questions, the EQB listed increased source participation/interaction, emission awareness, adequate revenue collection and locating all applicable requirements in a single document as the primary benefits of this program. The following is Region 2's analyses of the Puerto Rico's Title V program.

Areas of Success-

1) Small Business Program: The EQB has actively encouraged this program under Title V. Specifically, in 2004 the EQB conducted 32 site visits, held one school conference and participated in 16 association meetings. This program also produces its own brochures and posters and makes them available in the EQB Library and Small Business Program's reception area.

2) Air Quality Area: The EQB's air program's current personnel have good understanding and knowledge about the permitting requirements and federal and state air regulations. They also expressed a strong interest in constantly learning about this field. The permit files were well

organized and the staff tracked and located any document easily.

3) Permit Enforcement: The EQB enforcement staff reviews every deviation and semi-annual compliance report and also verifies compliance by reviewing all annual compliance certifications. Further, EQB now plans to conduct a full compliance inspection of every permitted facility every year.

4) Fee Collection: The EQB ensures that appropriate fees are collected from every Title V facility in a timely fashion

Areas of Concern-

1) Permit Issuance Rate: As of the date of this review, EQB had issued permits to only about 50% of Title V facilities. Although EQB has repeatedly assured EPA about its plan to issue all the permits, the issuance rate has declined over the years. While I applaud EQB's earlier rate of permit issuance, I must note that EPA granted full approval to the Puerto Rico' Operating Permit Program on February 26, 1996 and the Clean Air Act requires that all permits be issued within three years of that approval. The remaining permits need to be processed as quickly as possible.

2) Permits: In general, the permits were found to be of good quality, however, all the permits lacked a "Statement of Basis" which is a part of the permit package that explains the applicability and the compliance obligations of a source in a plain text so that citizens may understand what is being done. A Statement of Basis is required by federal regulations.

3) Fees: A preliminary financial assessment of the FY 2005 Title V Program was performed by the EPA's Financial Management Branch which indicated that a deficit of approximately $1 million will occur by the end of the fiscal year. Based on this assessment, EPA issued a letter, dated December 20, 2004, requiring EQB to prepare a Corrective Action Plan(CAP) in order to mitigate this deficit. EQB submitted their proposed CAP, dated February 28, 2005, which disclosed that they have realigned their program to conform with the federal requirements in order to operate as a self-sustained program. Basically, the proposed CAP projects that their revenues will cover their anticipated expenses for the fiscal year ending June 30, 2005.

III. Focus of the Evaluation and possible outcome:

This program review focused on two questions:

(1) Is the Puerto Rico administering its permitting program consistent with the requirements of 40 C.F.R. Part 70?
(2) Is the Puerto Rico adequately enforcing its permitting program consistent with the requirements of 40 C.F.R. Part 70?

In terms of possible outcomes, the EPA may withdraw a state agency's (or in this case the Puerto Rico's) program approval in whole or in part whenever the approved program no longer complies with the Federal requirements and the permitting authority fails to take corrective action. The Region identified two issues of sufficient significance that could lead to a determination of program deficiency. If EPA makes a formal deficiency determination, it

publishes an NOD in the Federal Register, notifying the state of the determination and the corrective actions required. The state must correct the deficiency within eighteen (18) months or face the imposition of sanctions in accordance with section 502(i)(2) of the Act, 42 U.S.C. § 7661a(i)(2). EPA must withdraw the program approval and then promulgate a federal operating permits program if the state has failed to correct the deficiency pursuant to Section 502(i)(4) of the Act within two years. It is not the Region's goal to implement this program in the Puerto Rico but to ensure that the EQB issues all permits expeditiously and issues permits that meet all Puerto Rico and Federal requirements. If, however, EPA withdraws program approval, EPA will issue Title V permits and enforce the Title V program. Moreover, EPA has the discretionary authority to apply the sanctions, withdraw program approval, and promulgate a federal program if the state has failed to take significant action within ninety (90) days, under Section 502(i)(1) of the Act and the implementing regulations found at 40 C.F.R. § 70.10(b)(2).

IV. Evaluation of Puerto Rico' Title V Program

A. Review and Evaluation of the EQB's Administration of the Title V Program

On September 29-30, 2004, staff from the Division of Environmental Planning and Protection and the Caribbean Environmental Protection Division conducted an onsite review of the EQB's Title V air permitting program. Prior to the onsite visit, regional staff reviewed in-house state agency documents and files, including public notices, and permits. The Region sent questionnaires for the Title V program review in advance to the EQB. These questionnaires were developed by the representatives from various EPA regions and Headquarters and are used nationally. See Appendix 1.

The review focused on the adequacy and appropriateness of the following five areas:

(1) Acting in a timely manner on applications for initial permits
(2) Issuing permits that are consistent with the requirements of 40 C.F.R. Part 70
(3) Complying with the public participation requirements of 40 C.F.R. Part 70
(4) Collecting, retaining, or allocating fee revenue consistent with the requirements of 40 C.F.R. Part 70
(5) Acting in a timely manner on renewals and revisions

(1) Acting in a timely manner on applications for initial permits

The Region evaluated EQB's timeliness in acting on Title V air permit applications by reviewing information regarding the number of sources permitted and those which still need an initial Title V permit. The Region's review relied on information from the state's air permit chart, quarterly input for the Title V Operating Permits System, and staff interviews. Based on this information, the EQB has a backlog in issuance of initial Title V permits. Puerto Rico began

this program with a potential Title V universe consisting of 50-60 sources[1].

The EQB subsequently revised the universe of sources and as of October 1, 2004, PR had 60 potential Title V sources, including 6 landfills. It was noted at the time of this review that the EQB had issued 28 initial Title V permits while 32 permits remained to be issued. Its 47% permit issuance rate was well below the national average of 70%. It should be noted that EQB has revised its permit issuance schedule over the years and extended the deadline now to April, 2005. Nationally, most of the permitting authorities committed and completed the initial Title V permit issuance by December 2003. The EQB's estimated completion date is beyond this range.

In addition, Title V permits must be renewed every five years. The EQB has already begun to receive its first permit renewal applications. EQB has no plan as to how this renewal process will be completed in a timely fashion. Note that the delay in issuing Title V permits at facilities can adversely affect compliance monitoring efforts as well as surveillance and enforcement activities.

The EQB has nine staff members for the air program which is comparable with other state agencies with similar types and quantity of sources. They also handle minor source permitting activities. There is a separate compliance division. Unlike most states these staff members have no New Source Review responsibilities and can dedicate more of their time to processing Title V permits. Based upon EPA review and evaluation of EQB's implementation of timely issuance of permitting activities required under the regulation, the Region believes that a lack of management continuity, priority and direction is a probable cause for 47% permit issuance rate. Upon inquiry, the EQB stated that they have difficulty in retaining trained managers and staff because the EQB has a low salary structure. The Board needs to address this issue regardless of the cause.

(2) Issuing permits that are consistent with the requirements of 40 C.F.R. Part 70

The Region reviewed about twenty final and draft permits proposed by EQB since January 2001. This number represents approximately 80% of the Title V initial major source permits proposed since January 2001. Each permit was reviewed for consistency with the Title V air permit regulations (40 C.F.R. Part 70) using the written questionnaire referenced previously. The Federal requirements regarding permit content are outlined in 40 C.F.R. Part 70.4. Each permit was reviewed for consistency with these Part 70 requirements. The majority of the Part 70 requirements related to permit content were found in the general conditions of EQB's permits. Of the permits reviewed, there were a few concerns relating to Part 70 permit requirements.

One of the major concern deals with the lack of preparation of the statement of basis.

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[1]Information in this section regarding the Title V universe in Puerto Rico was obtained from the EQB Title V air permitting staff. This information is provided by EQB to the Region on a quarterly basis and is inputted into the Title V Operating Permits System.

During the discussions, EQB staff suggested that all permit files have staff notes that could be used to prepare a Statement of Basis. EQB should begin preparing a Statement of Basis for all the remaining permits and once that task is completed it should prepare and record a Statement of Basis for all the permits that have been issued. These Statements of Basis will be useful at the time of permit renewal. The other concerns related to opacity monitoring and tracking of fuel use which EQB addressed in a timely manner.

(3) Complying with the public participation requirements of 40 C.F.R. Part 70

The Federal Title V regulations require all permit actions, except minor permit modifications, provide for adequate public notice. The Puerto Rico has adopted provisions regarding public notice in Puerto Rico's Regulation for the Control of Atmospheric Pollution, Rule 609(a). This regulation requires that the permitting authority publish a public notice for all applications pertaining to a Part 70 source. This notice must include the opportunity for public comment and a hearing on the draft permit. The notice must be published in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice as well as any other method necessary to assure adequate notice to the affected public. The EQB meets this requirement and provides a minimum of 30 days for public comment and is required to give notice of any public hearing at least 30 days in advance of the hearing. EQB generally holds a public hearing for every draft permit. It should be noted that EQB should address all legitimate issues raised and act on any timely information provided during the public participation process to ensure that the final permits include all relevant applicable requirements.

Region 2 permitting staff requested and reviewed the permit files for six Title V applications for which draft permits had been issued and had gone through the public comment period to assure that adequate information was available in the file room for review by the public. This number represents 21% of the draft Title V permits that went through the public comment period at the time of program review. We also reviewed copies of the public notices for the draft permits where available. Region 2 determined that files were complete and documents were organized in an orderly manner and that copies of the public notices were available in all cases. The Region's review of the air permit files included a review of the draft permit, final permit (if applicable), and the permit application. This review indicated that files are well organized. Although the EQB provides an opportunity, there has not been public participation in the permit process to date and typically the EQB concludes a public hearing with only the permit applicant in attendance.

EPA Region 2 staff relied on help from the permitting staff to locate the needed information. The EQB staff was extremely helpful in locating information when Region 2 staff asked for specific document. The staff made good efforts in locating documents whenever they could. Based upon EPA review and evaluation of EQB's implementation of public notices, hearing procedures, and source files, Region 2 concludes that file maintenance is very good and commendable.

(4) Collecting, retaining, or allocating fee revenue consistent with the requirements of 40 C.F.R. Part 70

The Federal requirements regarding Title V fee adequacy are found in 40 C.F.R. Part 70 section 70.9. The provisions in Part 70 require that the state program require Part 70 sources to pay a fee sufficient to cover the permit program costs (direct and indirect). Further, states can only use Title V fee revenues for Title V program costs. In March 2001, EPA and the Office of Inspector General for Audit conducted a joint survey of EQB in lieu of an audit, which revealed that EQB had many deficiencies and an acceptable financial management system was not in place. As a result of this survey, the Title V Program was identified as a serious deficiency. Currently, EQB is in the process in addressing the issues by submitting two comprehensive CAPs. The first CAP, for FY 2005, was received by EPA on February 2005. The second CAP, for FY's 1996-2004, is currently under review by EPA.

Since EQB is addressing the past financial issue commencing from FY 1996, EPA Region 2 limited its review to ensuring that the fees are collected from all Title V sources regularly. The EPA Region 2 had also sent a list of questions and specific documentation required in advance of the on-site review. The purpose was to verify that there were procedures in place for the receipt, separation, expenditure, and adequacy of the Puerto Rico's Title V funds. All answers and documentation were provided either during the onsite review or when additional requests were made. EPA Region 2's Finance Division is also following up separately on financial details of this program.

EPA Region 2 was able to verify that Title V fees are being calculated in accordance with the EQB Title V fee regulation (@ $37/ton). The EQB's invoices are maintained by company (facility), invoice number, and the total amount billed. The EQB sends an invoice annually to each company and identifies the company's Title V fee. The invoices are prepared based on previous year's emission data. The EQB provided sample invoices to Region 2 for review. Region 2 was able to calculate the air maintenance fees and determined that the fees agree with amounts billed. The EQB does not charge any other fee to a Title V facility. Most companies choose to submit one check for the total amount of fees in the invoice. Payments are received and recorded by facility name and invoice number. The EQB does not charge any late fee and some facilities are consistently late in paying the fees.

EQB's revenue collection system can produce a report that lists the Title V fees received from each company or the total amount of Title V fees received annually from all companies. The system also can produce a report listing companies that have paid their required Title V fee, and also identify who has failed to pay the annual Title V fee. Thus, the current fee evaluation did not find any additional concerns related to Title V finances.

(5) Acting in a timely manner on any applications for permit renewals

EPA Region 2 identified a serious concern that the Puerto Rico is not in a position to act

in a timely way on Title V permit renewals. Although, renewal requests have just began to come in, EPA is concerned that the renewal process may also be delayed if the EQB does not take steps now to manage and control the processing time for permit renewal.

B. Review and Evaluation of the EQB's Enforcement of the Title V Program

As part of EPA's oversight of Puerto Rico's approved Title V program, Region 2 evaluated the EQB's Title V enforcement program. The review focused on the following three areas:

1) the EQB's enforcement staff's involvement in the permitting area;
2) the EQB's needs for training; and
3) the EQB's inspection and monitoring activities of sources subject to Title V program requirements.

Currently, the EQB enforcement staff gets involved minimally in the Title V permitting process. EPA recommends that the enforcement staff needs to review all future permits and provide input from the enforcement perspective. The EQB indicated that the permitting and enforcement staff needs training in new trends in compliance inspections of pharmaceutical and refinery processes. The EQB compliance staff reviews every deviation, malfunction report and also verifies the accuracy of every annual compliance certification. There are 28 facilities that currently have Title V permits for which the EQB staff conducts a full compliance inspection on a biannual basis. In FY 2005, EQB plans to conduct full compliance inspection of every permitted facility.

C. Review and Evaluation of the Puerto Rico's Small Business Program

The Small Business Program (SBP) is run by two full time employees and is actively engaged in providing many services to more than 5000 small businesses on the island. The SBP has a budget of about $ 182,000 and is entirely funded by the Title V program. The SBP develops and maintains a database of about 90% of small businesses on the island. The staff conducts on-site visits to provide technical assistance. For example, the SBP visited 22 facilities last year and provided technical assistance for compliance. The SBP provided 28 training sessions, 232 orientations, closed 22 cases and received 33 visitors to the office in 2004. The SBP, however, does not have any web site where it can provide regular information. Thus, based on the EPA discussions and the review of the yearly reports, Puerto Rico's Small Business Program can be considered a success.

V. Recommendations

1) The EQB needs to resolve the following issues in order to streamline and expedite permit issuance-

a) Permitting Process: It was observed that a long delay in the process occurs after a draft permit is issued. The EQB's process requires that the subsequent processing of the draft permit be done by the Examining Office, the Attorney's Office and the Board. The program staff has little control over this process. This has created a bottleneck and as such a coordinated approach is very much needed at this processing step.

b) Staff Turnover: Since the approval of EQB's Title V Program, six Division Directors and twenty one technical personnel have either left or were replaced. Although, the EQB has introduced retention bonus as an incentive, its impact on staff turnover is unclear. EQB needs to review this issue and take steps to resolve it on a long term basis.

c) Facility Responses: In spite of many requests from the permitting staff, many sources fail to provide updated process information on a timely basis. EQB should take enforcement actions against such facilities to ensure that the information requests are complied with.

d) Permit Translation: EQB should consider hiring a contractor or regular employees to handle the permit translation tasks. All draft, proposed and final permits should be translated into English.

e) Further, the program staff should be provided opportunity for regular training on air permitting related issues.

2) EQB needs to provide a Statement of Basis for all initial draft permits that will henceforth be issued. At the time of permit renewal, EQB must develop a Statement of Basis for all the permits. EQB may use permit writer's notes and sample Statement of Basis from permits issued by other states to develop these Statements for the PR permits.

3) EQB has developed a Title V CAP for FY 2005 which need some clarifications. Once those clarifications have been made, EQB needs to expeditiously implement this CAP so the program can conform with the federal requirements and its financial stability can be assured.

4) EPA found that there is virtually no public participation in EQB's Title V permitting process. This is contrary to what EPA has found in its PSD permitting process. EQB provides a public notice inviting public participation. However, the EQB needs to ensure that the permit related information is easily available and is also understandable. Therefore, EQB is advised to take the following steps to encourage public's participation in the permitting process.

a) EQB should prepare a list of interested environmental and non-governmental organizations. All draft permits and related documents should be sent to these interested parties.

b) A EQB web portal for air permitting program should be created and all draft, proposed and final permits be made available on the internet.

c) EQB should conduct a training for the public on how to review a Title V permit.