**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION III**
**1650 Arch Street**
**Philadelphia, Pennsylvania 19103-2029**

SEP 20 2017

Mr. George S. Aburn, Jr.
Director, Air and Radiation Management Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Dear Mr. Aburn:

Enclosed is the final report for the Title V program evaluation conducted by my staff on June 15, 2017 at your Baltimore office. I would like to thank you and your staff for the cooperation and support given to my staff in conducting the evaluation, and I look forward to our continued collaboration and success in the Title V program.

If you have any questions regarding the report, please do not hesitate to contact me at 215-814-2500, or have your staff contact Mr. David Talley of my staff at 215-814-2117, and talley.david@epa.gov.

Sincerely,

Cristina Fernandez, Director
Air Protection Division

cc: Ms. Karen Irons, MDE

# Maryland Title V Program Evaluation – June 15, 2017

## I. Introduction

On June 15, 2017, the U.S. Environmental Protection Agency (EPA) conducted an evaluation of Maryland's approved title V Operating Permits Program. Representatives from the Region III Air Protection Division, Office of Permits and State Programs travelled to the Baltimore, MD office of the Maryland Department of the Environment (MDE). Present from EPA were Linda Miller (Acting Associate Director of the Office of Permits and State Programs), David Talley, and Mary Cate Opila. Present from MDE were Karen Irons (Manager, Air Quality Permits Program) and David Mummert. Additionally, several MDE staff were present for portions of the evaluation, including William Paul, Justin Hsu, Suna Sariscak, and Marcellina Gurley. EPA thanks MDE for their hospitality and cooperation.

## II. Background

EPA granted final approval to MDE's title V program on January 15, 2003 (68 FR 1974). Title V program evaluations are part of EPA's routine oversight of State programs. In order to assess MDE's overall implementation of the program and to identify organizational strengths as well as areas in which some improvement could be made, EPA completed two prior evaluations: one in 2004, and a follow-up in 2008. In both prior evaluations, EPA discovered no significant program deficiencies.

## III. Evaluation

Prior evaluations (particularly the one in 2004) involved extensive file reviews, interviews with permitting staff, and a questionnaire completed by MDE in advance of the site visit. MDE's title V program is well established, with seasoned managers and permit writers. For this reason, and because EPA routinely reviews proposed title V permits prepared by MDE, no file reviews or individual staff interviews were conducted during the June 15, 2017 evaluation. Rather, the evaluation consisted primarily of a dialog between EPA and MDE staff. The dialog was focused by a list of questions which were provided to MDE on the day of the evaluation and which addressed a number of program specific issues.[1] The results of the discussions are outlined below.

### A. Title V Permit Preparation and Content

MDE was first asked to describe the mechanics of their process for permit issuance, from the receipt of an application to the issuance of a final permit. When an application is received, an

[1] See Appendix I

acknowledgement letter is sent to the applicant. The permit is assigned to an engineer through a supervisor. Each title V source has an assigned permit engineer who is responsible for both title V and New Source Review (NSR) permitting at the facility. The engineer's first action is to review the application for administrative completeness, and to issue a completeness determination letter. Once the application is deemed administratively complete, the engineer gathers inspection reports and emission certifications to verify the applicant's compliance status, and then begins drafting the fact sheet and permit. Draft permits and fact sheets undergo multiple levels of review. Once the engineer has prepared a draft, it is reviewed by their supervisor. From there it is reviewed by MDE's compliance staff, and finally by the facility. Once all revisions have been made to the draft as a result of the various reviews, the draft permit goes out for public review. MDE prepares a notice for the paper, notifies local elected officials, and publishes a notice on their website.[2] Additionally, a list of interested parties is maintained, and MDE notifies them as well. A docket is prepared and maintained at MDE and at a location nearby to the source. According to Ms. Irons and Mr. Mummert, most permits do not receive comments. Any comments that are received during the public review period come in to MDE through Shannon Heafey, who coordinates the public review process. Responding to public comments is a group effort, particularly when the response requires a revision to the permit. Once comments have been resolved the proposed permit is sent to EPA for 45-day review, after which the permit can be issued if EPA does not object. Issued permits are posted on MDE's website.[3]

According to Ms. Irons, MDE has implemented a number of process changes aimed at improving the overall efficiency of their program since EPA's 2008 evaluation. Templates have been created for fact sheets and permits. Standard operating procedures (SOPs) have been updated as necessary. Additionally, checklists for permit issuance have been created which identify milestones and their expected time frames. Among the most significant process improvements is MDE's increased utilization of their TEMPO database. Use of TEMPO was initially instituted in 2006. However, as permits have been issued over the years, the quality and quantity of data in TEMPO have improved. It is a multi-media database that houses compliance data such as emissions certifications and inspection reports as well as permits for each facility. Additionally, TEMPO has a work activity log which tracks permitting milestones. According to Ms. Irons, this has been particularly useful in allowing management to track the status of any individual permitting action.

In addition to the permit/fact sheet templates previously discussed, MDE has implemented a number of streamlining strategies to further improve the efficiency of their title V program. These include guidance documents for monitoring issues, a repository for frequent and routine comment responses, and, significantly, a "team approach," particularly for large or complicated sources. This involves multiple engineers being involved in the permit preparation and review, as well as compliance staff.

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[2] http://mde.maryland.gov/programs/Permits/AirManagementPermits/Pages/title5draftpermits.aspx
[3] http://mde.maryland.gov/programs/Permits/AirManagementPermits/Pages/title5_issued_permits.aspx

Training was the next topic of discussion. MDE's engineering staff is well tenured. However, as of June 15, 2017, there was one permit engineering vacancy in the program, and Mr. Mummert indicated that he would be retiring on June 30, 2017. This will create an additional vacancy as Ms. Sariscak would be acting in Mr. Mummert's place. MDE described their process for training new staff, as well as maintaining a level of expertise among their more senior engineers. Training for new engineers is typically one-on-one with a senior permit writer (frequently, Ms. Sariscak). The new engineers work through the Permit Manual on a step-by-step basis with their mentor during the development of at least one permit. Staff meetings are regularly held, and issues arising from the preparation of individual permits are discussed with the entire staff so that all can learn from challenging issues. Engineers are encouraged to go along on site visits with compliance staff, in order to become more familiar with their facilities. Finally, staff are encouraged to attend technical training as it becomes available (e.g. MARAMA training). Budget and travel constraints have not proven to be a considerable impediment to providing staff access to such training.

Having well trained and seasoned permitting staff is a benefit to MDE when it comes to assuring quality of their title V permits. In addition, the chain of permit review is intended to have the maximum number of people reviewing the permit, without creating any bottlenecks. Draft permits are written by the engineer, and then passed to the engineer's lead/supervisor, then to the compliance program, and finally to the division chief, before it is sent to the company. Bottlenecks are avoided by having senior management provide only cursory reviews of all but the most complicated permits.

**B. Monitoring**

EPA noted in our 2008 evaluation that most title V permits issued by MDE do not attract significant public interest. On the whole, this remains true. However, in the intervening years, several of MDE's more complicated and controversial sources have been the subject of increased scrutiny from environmental groups, resulting in a number of Petitions to Object being filed in accordance with section 505(b)(2) of the Clean Air Act (CAA). Monitoring adequacy is commonly raised as an issue in these petitions. Ms. Irons and Mr. Mummert were asked to describe their process for developing adequate monitoring requirements. According to Mr. Mummert, MDE's approach is to try to utilize EPA's rationale for monitoring in a given maximum achievable control technology (MACT) standard or new source performance (NSPS) standard. Additionally, the margin of compliance is evaluated, particularly for renewals. Also, the compliance program is consulted. They advise when monitoring, record keeping and reporting (MRR) requirements can be improved, and can provide additional expertise with regard to the tools necessary and/or available to demonstrate compliance with a given standard.

In addition to developing appropriate monitoring requirements, it is equally important that each permit record clearly spells out those requirements and contains the permitting authority's rationale for the MRR requirements selected. According to Mr. Mummert and Ms. Irons, MDE is striving to improve the clarity and completeness of their fact sheets, particularly as they pertain to monitoring requirements (including Compliance Assurance Monitoring (CAM)). The goal is to include discussion of the rationale for the selected MRR requirements in each fact sheet, with the focus being on the more complex sources. EPA commends MDE's efforts to improve their permitting record and acknowledges that these efforts have recently resulted in some permits and

fact sheets with improved clarity, particularly as it pertains to MRR requirements. We would encourage MDE to continue these efforts, as this is one area which presents MDE with an opportunity for growth, particularly in light of the loss of Mr. Mummert's expertise due to retirement.

### C. Public Participation and Outreach

As previously discussed, MDE's public participation activities are coordinated by Ms. Shannon Heafey of the Technical Support Division. While most permits do not typically generate much public input, the ones that do tend to generate considerable interest and input. Hearings are held upon request. When comments on a draft permit are received, MDE works to create a response document, which is forwarded to EPA with a proposed permit. It has been MDE's practice to provide commenters with the comment response document at the same time the final permit is issued. EPA recommended that it be provided to commenters at the time the proposed permit is submitted to EPA, so that commenters can consider MDE's response when deciding whether or not to petition EPA to object to the permit.

### D. Permit Issuance

At the time of the evaluation, MDE had only 5 permits that were administratively extended/backlogged.[4] Of those, most were delayed due to circumstances beyond MDE's control. For example, the Holcim Cement Company permit was held due to compliance issues (a Consent Decree with EPA), as well as the complexity of the facility and the number of stack tests required to demonstrate compliance with the limits in the NSR permit. According to Ms. Irons, title V permits and NSR permits are a priority. While compliance issues can be a delaying factor, it is rare.

### E. Resources and Management Support

At the time of the evaluation, MDE had one vacancy with an additional one looming because of Mr. Mummert's pending retirement. Ms. Irons hoped to fill those positions as soon as possible. Salary has historically been a complicating factor in attracting qualified applicants. Fortunately, the remainder of MDE's staff is experienced. Although the vacancies and subsequent training period of any new engineers will present a challenge, it does not appear that MDE's program has suffered from a lack of human resources, as indicated by the low number of backlogged permits. Even with budget issues, staff access to adequate training has not been an issue, according to Ms. Irons.

### F. Title V Fees

Finally, title V fees were discussed. Nationwide, decreasing emissions have impacted the title V fees collected by permitting authorities. MDE is not immune to this trend. In an effort to bring more title V revenue in, MDE has removed the fee cap on emissions, and instituted a $5000 base

[4] A copy of MDE's most recent Semiannual Title V Permit Data Report is attached as Appendix II

fee in addition to a "per ton" fee. EPA did not note any program deficiencies related to a lack of title V fees. However, a full title V fee audit was not conducted at this time. EPA has plans to do so at a later date, as part of our routine program oversight.

## IV. Conclusions

EPA again thanks MDE for their hospitality and cooperation during this evaluation. No notable deficiencies were identified during this evaluation. EPA remains confident in MDE's ability to implement a well-run title V program.

### A. Best Practices

EPA commends MDE for the increased utilization of their TEMPO database. The capability to house, track, and access all of the relevant permitting data in one location has undoubtedly contributed greatly to the overall efficiency of the program. Additional best practices include the draft review by compliance staff, the development of templates, and the development and drafting of the permit manual.

### B. Suggestions

While EPA commends MDE's recent efforts to include a monitoring rationale in the fact sheet, we note that the clarity of monitoring requirements and the overall permit record still present an opportunity for additional growth. Additionally, while we appreciate the compilation of frequent public comments and responses as a means to improve efficiency, we caution against overdependence on its use. Public comments are growing increasingly sophisticated and nuanced, and the reliance upon predetermined responses risks failing to be fully responsive to a commenter's issue.

# Appendix I

**Maryland Title V Program Evaluation – Focus Areas for Discussion**

**Title V Permit Preparation and Content**

1. Please describe your process for permit issuance, from receipt of an application to final issuance.

2. Please describe any efforts MDE has made since EPA's last program evaluation (2008) to improve the efficiency of its internal processes for issuing title V permits: Revisions of internal procedures and policies, SOPs etc.

3. Please describe your tracking system. Have there been any updates? How does it contribute to the efficiency of your title V program?

4. Please describe any streamlining strategies employed in permit preparation.

5. How are permit writers trained to prepare good permits and SOBs?

6. Please describe your process for quality assurance of title V permits.

**Monitoring**

1. Please describe your process for developing adequate monitoring requirements.

2. Do your statements of basis (Fact Sheets) include a rationale for the monitoring associated with each applicable requirement?

3. Please describe your process for supplementing monitoring in instances where the existing monitoring scheme is not sufficient to demonstrate compliance with the applicable requirement.

4. Are there any lingering issues with your sources and CAM?

**Public Participation and Outreach**

1. Please describe your process for public participation from receipt of an application to final permit issuance.

2. When are hearings held? How do you decide whether or not to hold a hearing?

3. Do you maintain a list of interested parties who are notified of various permitting milestones?

4. How do you respond to public comments? Are commenters notified of final permit/RTC issuance and provided with a copy of your RTC?

**Permit Issuance**

1. According to your most recent TOPS report, MDE's renewal backlog is relatively small: there are currently 5 renewal permits which are administratively extended (down from 7 during the previous reporting period). How was this accomplished? What factors cause the delays? What factors prevent the remaining permits from being issued?

2. How are significant permit mods incorporated into existing title V permits?

3. Do any of the following impact your ability to issue timely title V permits (initial or renewal)?
    a. SIP gap/backlog
    b. Pending revisions to underlying NSR/PSD permits
    c. Compliance/enforcement issues
    d. EPA rulemaking
    e. Lack of EPA guidance
    f. Competing internal priorities

**Compliance**

1. How often do compliance issues impact the timeliness of your title V actions.

2. How are compliance issues resolved prior to permit issuance?

**Resources and Internal Management Support**

1. Please describe your current staffing levels. Are current levels sufficient in relation to the permitting workload?

2. Do new and current permit writers have access to adequate training?

# Appendix II

# Region 5 Semiannual Title V Permit Data Report

This information request is authorized pursuant to the Information Collection Request for Part 70 Operating Permit Regulations, EPA Number 1587.06, OMB Number 2060-0243; April 2004.

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|---|---|---|
| **Permitting Authority:** | MARYLAND DEPARTMENT OF THE ENVIRONMENT | |
| **Report Date:** | July 2017 | |
| **Reporting Period:** | ☒January 01 – June 30, 2017<br>*Report due July 31* | ☐July 01 – December 31, 2017<br>*Report due January 31* |

| Data Element | Reported Value | Information |
|---|---|---|
| **1. Outstanding Permit Issuance** | a) Number of final actions:<br>n/a | • Total final actions on Permitting Authority-specific permit issuance commitments (i.e., agreements by the Permitting Authority to complete action on initial permits within a specified time-frame, such as agreements related to the 2001 citizen comments).<br>• If the Permitting Authority does not have a commitment, enter "not applicable" in 1(a) and 1(b). |
| | b) Total commitment universe:<br>n/a | |
| | c) Date commitment completed (if applicable):<br>n/a | |
| **2. Total Current Part 70 Source Universe and Permit Universe** | a) Number of active part 70 sources that have obtained part 70 permits, plus the number of active part 70 sources that have not yet obtained part 70 permits:<br>118 | • The total current part 70 source universe includes all sources subject to the Permitting Authority's part 70 program applicability requirements (i.e., provisions comparable to §70.3).<br>• In 2.a), count all active sources that either have obtained or will obtain a part 70 permit. EPA expects that this data will be primarily based on the Permitting Authority's application and permit tracking information. If, however, the Permitting Authority is aware of part 70 sources that are not yet captured by application or permit information, count those sources as well.<br>• Do not count sources that are no longer subject to part 70, such as sources that have shut down, or become natural minors or synthetic minors, and do not have an active part 70 permit.<br>• Do not double count sources included in 2.b). |

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| **Total Current Part 70 Source Universe and Permit Universe (Continued)** | b) Number of part 70 sources that have applied to obtain a synthetic minor restriction in lieu of a part 70 permit, and the part 70 program's permit application due dates for those sources have passed:<br><br>0 | • Element 2.b) is intended to capture the universe of part 70 sources that are seeking synthetic minor restrictions in lieu of part 70 permits, but haven't received those restrictions before becoming subject to the part 70 program's permit application requirements. If the part 70 applications don't readily identify sources seeking such restrictions, the Permitting Authority may include those sources in 2.a), and need not break them out here. However, EPA expects Permitting Authorities to consider pending synthetic minor requests not addressed in part 70 applications to calculate this portion of the part 70 source universe.<br><br>• Count sources that currently meet the part 70 program's applicability requirements, their part 70 application due dates have passed, and they have requested but not yet received synthetic minor restrictions in lieu of a part 70 permit (or permit renewal).<br><br>• Also count active sources whose synthetic minor restrictions have expired (i.e., no synthetic minor restrictions are currently in place, even though they may be eligible for such restrictions) and are past their part 70 program's application due date.<br><br>• Do not count sources that have active synthetic minor restrictions and are no longer subject to part 70.<br><br>• Do not double count sources included in 2(a). |
| | c) Total number of current part 70 sources (a+b):<br><br>118 | |
| | d) *For permitting authorities that issue multiple part 70 permits to a single source:* total number of active part 70 permits issued, plus part 70 permits applied for:<br><br>n/a | • For Permitting Authorities that issue multiple part 70 permits to a single source, and these permits are issued and tracked separately, report the total permit universe, including # of active part 70 permits issued (element 3 below), plus permits applied for (based on pending applications). This information is for correlating data when the Permitting Authority's part 70 permit universe may be greater than the part 70 source universe.<br><br>• For Permitting Authorities that do not issue multiple permits to a single source, or for those that issue and track multiple permits issued to a source on a source-wide basis, enter "not applicable" in 2.d). |

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| **3. Total Active Part 70 Permits** | Total number of active part 70 permits:<br><br>116 | • This element includes all active initial and renewal part 70 permits issued by the permitting authority. Do not count inactive permits, i.e., permits that are no longer in effect due to source shutdown, synthetic minor restrictions, etc. Note: the procedures for rendering part 70 permits no longer effective may vary, depending on the part 70 program.<br>• Do not count both initial and renewal permits (or prior renewal and current renewal permits) issued to the same source; i.e., do not double count.<br>• Count permits that have been extended (see 6.b. below), but do not count permits that have expired, or have been voided, revoked, etc.<br>• Count each source covered by a general permit separately for this data element. If a single source has several general permits and/or source specific permits, refer to the information for permitting authorities that issue multiple part 70 permits to a single source.<br>• For permitting authorities that issue multiple part 70 permits to a single source and included information in element 2(d), count each permitted portion of the source separately for this element. This distinction is for correlating this data element with the permit universe information in element #2(d). |
| **4. Timeliness of Initial Permits (PART element)** | a) Total number of initial part 70 permits issued during 6 month reporting period:<br><br>0 | • This data element tracks the initial part 70 permits issued as final (e.g., not draft or proposed) during the 6 month reporting period covered by this report, and whether they were issued within 18 months of receipt of an administratively complete application.<br>• For TOPS purposes, initial permits are permits that are issued to any source that has become subject to part 70 for the first time, or any source that comes back into the part 70 program after a period of not being subject.<br>• If no initial permits were issued during the 6 month reporting period, report "zero" in 4(a), and "not applicable" in 4(b). |
| | b) Number of initial part 70 permits finalized during 6 month reporting period that were issued within 18 months:<br><br>0 | • Start the 18-month clock on the submittal date of an administratively complete application. For purposes of this data element, do not stop or restart the 18 month clock for additional information submitted after the application is deemed administratively complete.<br>• For permitting authorities that issue multiple part 70 permits to a single source and included information in 2(d), count each permitted portion of the source separately for this element. This distinction is for determining individual permit timeliness. |

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| **5. Total Outstanding Initial Part 70 Applications** | The number of active initial part 70 applications older than 18 months:<br><br>0 | • This element tracks <u>all</u> active, administratively complete <u>initial</u> part 70 permit applications that the permitting authority has not taken final action on within 18 months of receipt of the administratively complete application. Do not stop or restart the 18 month clock for additional information submitted after the application is deemed administratively complete.<br>• For TOPS purposes, initial part 70 applications are applications for sources that are subject to title V for the first time, or for any source that comes back into the title V program after a period of not being subject. Do <u>not</u> include renewal applications.<br>• Include all current outstanding initial applications, including those that may also be tracked in data element #1.<br>• Do <u>not</u> count initial applications the Permitting Authority has taken final action on. |
| **6. Outstanding Renewal Permit Actions** | a) Total number of expired permits for active part 70 sources:<br><br>0 | • This data element tracks the total number of expired permits for active part 70 sources. Part 70 permits expire after 5 years if the sources do not submit timely and complete renewal applications, or if they have lost their application shield by not timely responding to additional requests for information.<br>• Include expired permits that have been addressed through consent orders or other enforcement mechanisms. Expired permits can be further addressed in the "Additional Information" element.<br>• Do <u>not</u> include permits that have expired because the source is no longer subject to Title V; i.e., they have shutdown or have received synthetic minor restrictions.<br>• For permitting authorities that issue multiple part 70 permits to a single source and included information in 2(d), count each expired permit separately. |

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| **Outstanding Renewal Permit Actions (continued)** | b) Total number of active permits with terms extended past 5 years:<br><br>5 | • This data element tracks the total number of active permits that have been extended past the original 5 year permit term. Part 70 permits or permit conditions are extended beyond the original 5 year term when sources submit a timely and complete renewal application (and any timely and complete additional information requested by the permitting authority), but the permitting authority has not yet issued a renewal permit.<br><br>• Count all extended permits, including extended permits for sources that submitted timely and complete renewal applications within the last 18 months. Pending applications that are less than 18 months old can be further addressed in the "Additional Information' element.<br><br>• Do not include inactive extended permits, i.e., when a subsequent permit renewal has been issued or a source is no longer subject to part 70.<br><br>• Do not include "expired part 70 permits" that have been addressed through consent orders or other enforcement mechanisms. Count expired permits in 6(a).<br><br>• For permitting authorities that issue multiple part 70 permits to a single source and included information in 2(d), count each extended permit separately. |
| **7. Timeliness of Significant Modifications (PART element - a and b only)** | a) Total number of significant modifications issued during 6 month reporting period:<br><br>0 | • This data element tracks the number of significant modifications issued as final (e.g., not draft or proposed) during the 6 month reporting period. It also tracks the number of those modifications that were issued within 18 months of receipt of an administratively complete significant modification application, and also the number that were issued within 9 months. Note that 7(c) is a subset of 7(b).<br><br>• If no significant modifications were issued during the 6 month reporting period, report "zero" in 7(a) and "not applicable" in 7(b) and 7(c).<br><br>• Start the application clock on the submittal date of an administratively complete significant modification application. Do not restart the clock for additional information submissions. |
| | b) Number of significant modifications finalized during 6 month reporting period that were issued within 18 months:<br><br>0 | |
| | c) Number of significant modifications finalized during 6 month reporting period that were issued within 9 months:<br><br>0 | |

| | | |
|---|---|---|
| **8. Outstanding Significant Permit Modifications** | Total number of active significant modification applications older than 18 months:<br><br>0 | • This element tracks all active, administratively complete significant permit modification applications that the permitting authority has not taken final action on within 18 months of receipt of the administratively complete application.<br><br>• Do not stop or restart the 18 month clock for additional information submitted after the application is deemed administratively complete.<br><br>• Do not count significant modification applications the Permitting Authority has taken final action on. |
| **9. Comments and Additional Information** | | • Permitting authorities may provide any additional information in this section. For example, a permitting authority may address data changes, data management issues, general permits, multiple permits issued to single stationary sources, synthetic minor information, additional relevant data, etc. |
| **10. Outstanding Minor Permit Modifications (Region 5 data element)** | Total number of active minor modification applications older than 90 days: | • This element tracks all active, administratively complete minor permit modification applications that the permitting authority has not taken final action on within 90 days of receipt of the administratively complete application.<br><br>• Do not stop or restart the 90 day clock for additional information submitted after the application is deemed administratively complete.<br><br>• Do not count minor modification applications the Permitting Authority has taken final action on. |