



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

Mary Ann Dolehanty, Director
Air Quality Division
Michigan Department of Environment, Great Lakes, and Energy
525 West Allegan Street
P.O. Box 30473
Lansing, Michigan 48909-7973

Dear Ms. Dolehanty:

I am pleased to transmit to you the final 2020 Michigan Construction Permit Program Evaluation Report. The U.S. Environmental Protection Agency staff had a virtual meeting with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) air construction permit group on October 22, 2020 to discuss the findings of our program evaluation.

Please see the enclosed report for further information regarding EPA's program evaluation findings, including program strengths and highlights as well as areas that both agencies will continue to focus on improving. EPA appreciates the opportunity to discuss Michigan's air construction permit program with your staff, and your staff's assistance and responsiveness during the program evaluation. We look forward to continuing our cooperative working relationship on your air permit program.

If you have any questions, please contact me or Constantine Blathras of my staff, at (312) 886-0671.

Sincerely,

**JOHN
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Date: 2021.05.04
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John Mooney
Director
Air and Radiation Division

Enclosure



Review of Michigan Department of Environment, Great Lakes, and Energy's New Source Review Permit Program

2020 Evaluation Final Report

United States Environmental Protection Agency, Region 5

Air & Radiation Division

77 West Jackson Boulevard

Chicago, Illinois 60604

May 5, 2021

Executive Summary

During Fiscal Year (FY) 2020, EPA undertook a program evaluation of Michigan's Department of Environment, Great Lakes, and Energy (EGLE) New Source Review (NSR) Permit to Install (PTI) air permitting program. The purpose of the evaluation was to review permit issuance and the permitting process in Michigan, to review the status of the NSR State Implementation Plan (SIP), and to assess the quality of construction permits issued by EGLE. In a parallel evaluation process, EPA evaluated Michigan's Renewable Operating Permits Program (ROP) during FY2020, and the findings from that evaluation are in a separate report.¹

This final report summarizes EPA's findings and conclusions regarding EGLE's compliance with the statutory and regulatory requirements for air construction permits. The findings are based on EGLE's answers to the Region 5 Questionnaire for NSR Program Evaluation, EPA staff knowledge of the program through review of draft permits and Michigan's SIP, our discussion of EGLE's responses during the virtual face-to-face meeting, and follow up discussions regarding the responses. This program evaluation is not comprehensive in its scope and did not evaluate all facets of EGLE's implementation of its air permit construction program.

EPA found that EGLE's air construction permit program is well run and efficiently managed. In conjunction with the ROP program evaluation report, EPA identified several areas where EGLE has agreed to take additional steps. These areas include: identifying synthetic minor limits in the permit and permit record, identifying the specific applicable test methods for federal standards, and documenting averaging times for emission limits.

¹ See <https://www.epa.gov/caa-permitting/michigan-title-v-program-evaluation> (last visited April 15, 2021).

Evaluation Findings

I. Introduction

In 2003, as part of its oversight role, EPA began a five-year initiative to review the implementation of the NSR program by permitting authorities throughout the country. As part of that initiative, EPA conducted a review of EGLE's permit program in 2003, 2009 and 2014. From the previous evaluations, EGLE has worked to address any EPA concerns and identified areas of improvement. The previous evaluation reports can be found on the EPA Region 5 website. Region 5 developed a standard questionnaire for NSR program evaluations, which consists of questions on areas of concern including: 1) Follow up items from previous program evaluation reports; 2) Updates to the permitting process since the last program evaluation; 3) Preapplication activities, applications, and exemptions; 4) Permit development process; 5) Permit technical issues; 6) Program implementation; 7) State feedback, and 8) a permit file review. For FY 2018-2022, EPA included supplemental questions to the standard questionnaire related to federally enforceable state operating permits. This final report summarizes EPA's findings and conclusions regarding EGLE's compliance with the statutory and regulatory requirements for NSR permitting programs, based on the answers EGLE gave to the questionnaire, our discussion of EGLE's responses during the virtual face-to-face meeting, follow up discussions regarding responses, and EPA staff knowledge of the program from experience with reviewing EGLE permits and programs. However, this program evaluation is not comprehensive in its scope, and did not evaluate all facets of EGLE's implementation of the PTI program.

II. 2020 Evaluation Findings

This final report summarizes EPA's findings regarding EGLE's compliance with the statutory and regulatory requirements for the NSR program.

A. Program Strengths

EGLE continues to improve and expand its public outreach efforts for PTI permits in the public comment period. The EGLE "New Source Review Permits Open for Public Comment" web page provides a one-stop spot for the public to access important information about draft PTIs. This information includes a map showing the location of the source and nearby facilities and a button to submit comments. EGLE provides access to the pertinent permitting documents, including the proposed project summary, technical fact sheet, public notice, proposed permit terms and conditions, company letter, and interested party letter. Additionally, EGLE has provided translated versions of the interested party letter, interested party email language, proposed project summary and a statement on the Public Comment webpage, in languages, such as in Arabic and Spanish, to better communicate its actions with the respective impacted communities.

EGLE continues to meet its partnership obligation of providing Prevention of Significant Deterioration (PSD)/NSR permit applications to EPA during the permitting process. Additionally, EGLE works closely with Federal and non-Federal Class I land managers when a PSD application is within the notification area of nearby Class I lands. Upon issuance of PSD and NSR permits, EGLE has worked to expeditiously upload the permit information into EPA's Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate (RBLC) Clearinghouse website in order to provide other PSD applicants with up to date permit control technology limit information.

During the COVID-19 pandemic, EGLE has modified its public participation process by utilizing a "virtual public hearing" format during the public comment period. This modified process allows EGLE to continue issuing PTI permits while meeting the regulatory requirements of its SIP. EGLE has established a voicemail box for oral comments that the public can submit in lieu of attending the public hearing. EGLE has also extended the public comment periods for some draft permits beyond the required 30-day period to allow stakeholders an opportunity to review and better understand the proposed permitting actions.

B. Programmatic Review Items

EPA identified a few areas for follow-up as part of our review. The synthetic minor limits, test methods, and averaging times topics are also discussed in detail in the EGLE ROP Evaluation report as the issues and resolutions are similar for both permitting programs.

1. Synthetic Minor Limits

EPA originally raised its concerns with PTI permits having adequate and practically enforceable synthetic minor emission limits during the 2014 program evaluation. We note that synthetic minor permit conditions can sometimes be difficult to identify in more complex PTIs with multiple emission units or operating scenarios. EPA understands that EGLE's procedure is to include an analysis of the synthetic minor limit as part of the PTI Evalform document. EPA is appreciative of EGLE diligently assessing the synthetic minor status of a project. However, the public and EPA do not have access to the PTI Evalform document. EPA recommends that EGLE develop procedures for air construction permit writing staff to ensure that: 1) synthetic minor permit conditions are readily identifiable with underlying applicable requirements, 2) synthetic minor permit conditions are enforceable as a practical matter for purposes of limiting potential to emit, pursuant to EPA's June 13, 1989, guidance memorandum titled "Guidance on Limiting Potential To Emit In New Source Permitting", and 3) the PTI Evalform document includes supporting information regarding the synthetic minor limits. EGLE committed to include the basis for the synthetic minor limits in its PTI Evalform document and technical support document moving forward.

2. Test Methods

Some PTI permits only contain high level citations to applicable test methods citing the general appendix which contains the test methods for Parts 51, 60, 61 and 63. Although EGLE has developed additional stack test permit template language, PTI permits typically include only high-level citations to the stack test provisions in the federal regulations and do not identify the specific applicable test methods. In addition, the permit language sometimes includes broad director's discretion allowing for changes to federal test methods beyond that provided by federal delegations.

Generally referencing federal test methods that do not specifically identify the applicable test method may cause confusion regarding what test method the source can use to adequately demonstrate compliance with an applicable emission limitation. Identifying the test methods in the PTI permit also ensures that the facility, EPA, EGLE, and members of the public are all aware of the applicable test methods and how the facility will accurately account for its emissions and demonstrate compliance with the permit emission limits.

EGLE developed stack test permit template language to address these concerns with the specificity of stack test methodology in permits. As part of the program evaluation process, EGLE has committed to removing language regarding broad director's discretion in the PTI permit and reviewing test methodology to include the required test method cited in federal standards, where applicable.

3. Averaging Times

EPA commented on draft PTI permits that either did not have averaging times for a specific permit emission limit or had an averaging time (such as one-hour averaging time) which was not applicable with the permitted emission limit. In response to EPA's concerns, EGLE made changes in its internal guidance to address emission limit averaging times and associated compliance monitoring, permitted emission limits and standards. However, EPA noted a few cases where the standard averaging time in the guidance appeared to be inappropriate. For example, there appeared to be a disconnect between the limit and the permitted averaging time, such as a process weight rate limit (lb/ton, lb/MMBtu) with hourly averaging. EGLE reviewed the permit files and determined that the hourly averaging time was used appropriately but agreed that the permit record could have provided more detailed information. As part of this program evaluation process, EGLE has committed to better documenting in its PTI Evalform document the justification for choosing emission limit averaging times and updated an internal guidance document to state that each averaging time will be determined on a case-by-case basis.

4. Flexible Permit Initiative

Michigan EGLE has been implementing a flexible permit initiative (FPI) with the auto assembly sector. This program provides a facility-wide cap on the VOC emissions in tons per year and a VOC pounds per job limit. Furthermore, under the FPI, the permittee would be allowed to make modifications and operational changes to the facility without requiring an air construction permit as long as the facility remains below its FPI permitted limits, remains an auto coating and assembly facility, meets all other applicable requirements in the permit, and the change does not constitute a Prevention of Significant Deterioration Major Source or modification. The FPI also contains a permit condition which prohibits the reconstruction of the automobile assembly plant. EPA and EGLE continue to discuss and gain a better understanding of how FPI and the federal permitting regulations support one another.

III. EGLE Concerns, Recommendations, and Suggestions

EGLE shared the following comments with EPA. EPA appreciates the feedback and is committed to working with EGLE to address its concerns and recommendations below.

A. BACT/LAER Determinations

EGLE expressed concerns about national inconsistencies on both BACT/LAER determinations and whether minor sources consume increment. One specific source of inconsistencies continues to be within the automotive industry, where Michigan still appears to issue permits with lower limits than those in other states. Other areas of inconsistency are permitting of natural gas combustion turbines and natural gas and diesel-fired combustion engines.

EPA agrees that BACT/LAER determinations should be consistent among industries. EPA will continue to work with EGLE to address areas of PSD permitting, such as a BACT analysis, where inconsistent application of the regulatory requirements may occur. As the BACT analysis is a top-down, case-by-case analysis, there may be instances where due to particular source-specific circumstances, a BACT determination may appear to be more stringent than another. EPA will continue to require that permitting authorities submit PSD and NSR BACT and LAER permit information into EPA's RBLC Clearinghouse in a timely manner for use by permitting authorities during their permitting actions in order to facilitate a consistent level of BACT determinations. EPA is working to gather information about how other states in Region 5, as well as nationally, are handling minor source modeling for PSD increment and will share that information with EGLE in the future.

B. Applicability Determinations

When questions of applicability of federal regulations, such as New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants (NSPS and NESHAP) require consultation with EPA, EGLE expressed some frustration when responses

are not received in a timely manner. While EGLE notes that there has been improvement in response times, this is not always the case.

EPA understands that timeliness in these matters is important and strives to continually improve. EPA has recently developed new procedures for responding to NSPS and NESHAP applicability determination requests from sources.² EPA has implemented a web-based tracking system for these determination requests and endeavors to respond within 30 days of receipt of such request. As EPA continues to work on improving response times, we welcome feedback from EGLE.

C. Modeling

EGLE requests further national guidance for determining nearby source modeled emission rates consistent with 40 C.F.R. Part 51, Appendix W, Table 8-2. Table 8-2 states that the operating level used to determine nearby source modeled emission rates should be temporally representative. However, Appendix W does not define “temporally representative” or explain how a temporally representative operating level should be determined.

EPA appreciates EGLE’s request for further guidance on the application of Table 8-2. This concern is being discussed nationally. In the short term, we continue our commitment to work with EGLE to resolve questions about the application of Table 8-2 as part of specific analyses.

² See “EPA Process Manual for Responding to Requests Concerning Applicability and Compliance Requirements of Certain Clean Air Act Stationary Source Programs” (July 2020), available at https://www.epa.gov/sites/production/files/2020-07/documents/111-112-129_process_manual.pdf.