



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

September 29, 2020

Gary Milbury
Permitting and Environmental Health Bureau Administrator
NH Department of Environmental Services
Air Resources Division
29 Hazen Drive
Concord, NH 03301

Dear Mr. Milbury:

Title V of the Clean Air Act, as amended in November of 1990, requires each state to develop and implement an operating permits program for stationary sources of air pollutants. As provided for in 40 CFR 70.10, and as a continued part of the EPA's obligation to oversee and review Title V programs, the EPA conducted a virtual program review of New Hampshire's Title V operating permit program on August 19, 2020.

Enclosed please find EPA's results from our recent review. We appreciate the time and effort in providing the State's responses to our inquiries prior to the evaluation. The EPA is pleased with New Hampshire's implementation and continued efforts in making improvements to the State's operating permit program. We are pleased the report that we did not find any deficiencies or areas for improvement during the program evaluation.

The EPA looks forward to continuing to work with you in implementing the Title V program. If you have any questions, please call me at (617) 918-1287 or Eric Wortman at (617) 918-1624.

Sincerely,

PATRICK BIRD
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BIRD
Date: 2020.09.29 13:30:21
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Patrick Bird, Manager
Air Permits, Toxics, and Indoor Programs Branch

Enclosure

2020 EPA Region 1 Title V Program Evaluation New Hampshire Department of Environmental Services

Participating in the program evaluation were:

Todd Moore, NHDES
Barbara Dorfschmidt, NHDES
Patrick Bird, US EPA Region 1
Eric Wortman, US EPA Region 1
Jessica Kilpatrick, USEPA Region 1
Undine Kipka, USEPA Region 1

The following sections contain New Hampshire's Department of Environmental Services (NHDES) responses to EPA questions received on July 31, 2020 and the addendum received on August 26, 2020. Where specific findings or commitments were made during the program review conducted on August 19, 2020, EPA has provided an additional response.¹

Resources & Internal Management Support

1. Has your agency re-organized or made changes to address Title V permit issuance since the last program evaluation?

NHDES response: While we continually adjust allocation of resources based upon workload, including Title V permit issuance workload, we have not reorganized or made other substantive changes to address Title V permit issuance since the last program evaluation.² The last program evaluation was completed in August 2014.

2. Has your agency made any revisions to their title V regulations since the last program evaluation?

NHDES response: No. NHDES has not made any revisions to its Title V regulations since the last program evaluation.

- a. If yes, have these revisions been submitted to EPA for approval?

NHDES response: Although NHDES has not made any revisions to its Title V regulations since the last program evaluation, NHDES has made several revisions to its Title V regulations since the last time the Title V program was approved by USEPA. NH's Title V program was approved by USEPA in 2001. NHDES sent several proposed amendments based upon changes to NH rules to USEPA after the 2001 Title V program approval.

¹ EPA conducted a virtual program review via a video-call due to the COVID-19 pandemic.

² The last program evaluation for New Hampshire was completed in August 2014. See letter from Ida E. McDonnell, Manager Air Permit, Toxics, and Indoor Programs Unit, USEPA Region I to Craig A. Wright, Director, NHDES Air Resources Division, dated August 25, 2014.

In June 2017, USEPA provided comments to NHDES regarding NH's Title V program. In September 2017, NHDES requested that USEPA withdraw from consideration the proposed amendments and informed USEPA that we would submit a comprehensive Title V program revision at a later date. NH has not yet submitted the proposed comprehensive Title V program revision to USEPA. Therefore, NH's current State rules do not exactly match those of the most current USEPA-approved Title V program.

EPA response: The EPA notes that there are minor discrepancies between NH's current State rules and the Title V operating permit program that was approved in 2001. In addition, the regulations at 40 CFR part 70 have undergone minor revisions since program approval in 2001. Upon further review of pending program submittals in 2017, EPA determined the packages were outdated and many of the state regulations and/or part 70 regulations had undergone subsequent updates since the program updates were submitted. As a result, NHDES withdrew the pending program submittals in 2017 until such time that a comprehensive package could be resubmitted to address all regulatory changes. Should NH decide to pursue an approval update for their Title V program, EPA would appreciate the opportunity to work with NH DES on a draft package for submittal.

3. Are there any competing resource priorities for your "Title V" staff in issuing Title V permits?

NHDES response: Yes.

If yes, please describe.

NHDES response: Title V staff work on more than just Title V permits. They also work on other types of permits and actions for Title V sources. In addition, some staff who perform some Title V duties also perform some non-Title V duties. New Hampshire does not have a large enough universe of Title V sources to dedicate staff to solely working on Title V permits.

EPA response: EPA acknowledges the challenge of competing resource priorities with regard to the size of the NH's permit program and Title V universe. We note that it can be helpful to have staff working on non-Title V duties for cross-training purposes and to develop a better understanding of the requirements that may be incorporated into Title V permits. As discussed further below, NHDES has a plan in place to address their Title V permit backlog. EPA also acknowledges the State is facing a budget shortfall due to COVID-19, and has staff vacancies that are currently unable to be filled.

4. Overall, what is the biggest internal roadblock to permit issuance from the perspective of resources and internal management support?

NHDES response: As noted above, NH air permitting staff that work on Title V permits also perform other duties. The primary internal resource limitation that affects work on

Title V permits is competition with other priorities. Internal management considers Title V permit issuance goals together with goals of other issues when allocating resources.

5. How many Title V permit writers does the agency have on staff (number of FTE's)?

NHDES response: Approximately 2.

6. Do the permit writers work full-time on Title V?

NHDES response: No. See also response to 3. above.

a. If not, describe their other activities and what percentage of their time is spent on Title V permits.

NHDES response: See response to 3. above relative to other activities. NHDES does not specifically track time spent working on Title V permits and cannot conclusively answer this question. Based upon program supervisor's knowledge of workload, most staff spend less than 30% of their time working on Title V permits. Please note that some staff, not dedicated to Title V permit work, may occasionally work on Title V permits.

EPA response: NH has approximately 2 FTE for their Title V program, but those 2 FTE are split among multiple permit engineers. NHDES does not have any full-time staff that are solely dedicated to the Title V program.

7. Are you currently fully staffed?

NHDES response: No

EPA response: During the program evaluation, NHDES noted it cannot fill program vacancies because NHDES is currently under a hiring freeze. The State of New Hampshire is anticipating a reduction in revenue as a result of the COVID-19 pandemic.

8. How many title V permits are your permit writers responsible for?

NHDES response: The engineers typically have one Title V application assigned to them at a time. They also have other projects assigned at the same time.

EPA response: NHDES has 6 active renewal applications and 3 initial applications being processed. In addition, they process a lot of minor modifications. There are no pending significant modification applications. Under the State's permitting regulations, once a temporary permit issued for modification, then they can apply for minor modification to wrap the requirements into the Title V permit.

9. Please describe staff turnover (if applicable).

NHDES response: At the time of the last Title V program review in 2014, NHDES had three full time engineers and one program assistant working on both Title V permits and State permits. One of those engineers left the Division in 2105. In 2016, budgeting allowed us to fill this, as well as one other empty position. Then in 2019, we were able to fill another open position, bringing our staff up to five full time engineers and one program assistant.

a. How does this impact permit issuance?

NHDES response: Staff turnover impacts all operations associated with the position. Responsibilities for that position must either be curtailed or shared among other staff while the position is vacant and during the training period for the new staff person. This is not unique to Title V permit issuance. NHDES recognizes the overall impact of turnover and works to limit turnover and fill open positions as soon as practicable.

10. Is there anything that EPA can do to assist/improve your training?

a. If yes, please describe.

NHDES response: An informal meeting among NHDES staff – including permitting staff -- and USEPA staff where USEPA staff describe the Title V program from USEPA’s perspective. This may help NHDES permitting staff understand and appreciate some of the goals of Title V and help them recognize that people other than just their supervisors and the regulated sources value and rely on their work.

EPA response: NHDES has a system in place for people to work together as issues come up. The permit program is working towards rolling out guidance to engineers and staff on broader basis to assist inexperienced staff. The program also utilizes online training and NESCAUM trainings.

EPA noted that it is revamping content and its online learning platform through the Air Pollution Training Institute. In addition, EPA HQs is working with NESCAUM on different training course curriculums.

As a follow-up to our discussion, NHDES and EPA R1 agreed to arrange an informal meeting between agency staff to discuss various policies, issues, and expectations for the Title V program.

11. What was your Title V fee (dollars per ton) for FY 2018?

NHDES response: CY 2018 \$283.70

Note: Fee rates shown are for the calendar year (CY) noted. The fee payments are due to NHDES during the following State fiscal year (FY). For example, emissions during CY

2018 were subject to the rate of \$283.70/ton. Payment of those fees was due to NHDES by May 2019, which is within State FY2019 (July 2018-June 2019).

12. What is your Title V fee (dollars per ton) for FY 2019?

NHDES response: CY 2019 \$217.50

13. How do you track Title V expenses?

NHDES response: NHDES has one account dedicated to Title V. All Title V related revenue and expenses are tracked in this account and the account is not used for any non-Title V revenue or expenses.

14. How do you track Title V fee revenue?

NHDES response: See response to #13.

15. Annually what is your projected title V revenue for 2018 and 2019?

NHDES response:
2018 \$ 1,331,443.90
2019 \$ 2,807,266.91

Note: 2018 was an unusual year in terms of revenue due to the timing of payments for several high-emitting facilities between the years of 2017 and 2018, and a significant drop in emissions from the same facilities.

16. Have you noticed a trend in the amount of title V revenue collected?

NHDES response: Yes. Emissions, and resulting revenue, from high-emitting sources have decreased from historical levels. NHDES recognized this trend and made changes to its fee structure in 2018. The new fee structure became effective beginning with calendar year 2018 emissions.

An explanation of the current fee structure is available at:

<https://www.des.nh.gov/organization/divisions/air/cb/cmdps/eis/documents/determine-emission-fees.pdf>.

The fee requirements are established in New Hampshire Code of Administrative Rules Env-A 700, Permit Fee System, available at:

<https://www.des.nh.gov/organization/commissioner/legal/rules/documents/env-a700.pdf>.

EPA response: NHDES previously used an emission-based fee structure but switched to baseline fee plus actual emissions based fee structure in 2018. These changes were necessary to continue supporting the Title V program as revenue trends decreased.

17. Does your title V revenue cover all of your title V expenses?

NHDES response: Yes.

18. Are you able to roll over title V funds from one fiscal year to the next?

NHDES response: Yes.

19. Do you have title V funds that you currently carry over?

NHDES response: Yes.

a. If yes, what is the amount of the carryover funds?

NHDES response: \$705,838.52 (carrying into state FY 2021).

Permit Issuance

1. Does your program have a plan in place to reduce and eventually eliminate the Title V permit renewal backlog?

NHDES response: Yes. DES has successfully kept the permit renewal backlog from increasing by making sure new renewal applications are assigned to an engineer immediately upon receipt. Over the last year we have also started to work on applications that were put on hold over the years due to rule updates that were occurring. By the end of 2020, the renewal backlog should be down to just a couple of applications.

2. Please describe any additional comments on resources and internal management support or permit issuance.

Public Participation

1. On average, how much does it cost to publish a public notice in the newspaper (or state publication)?

NHDES response: \$~400 (newspaper publishing cost only – does not include NHDES cost to manage publication and invoicing)

2. On an annual basis how much is spent on public notices?

NHDES response: \$30,000-\$40,000 (newspaper publishing cost only – does not include NHDES cost to manage publication and invoicing)

EPA response: NHDES indicated that the cost for publishing in the newspaper is paid for by the source and is not part of emission-based fee. In addition, NHDES bills the permit applicant \$15 as public notice service fee.

3. What information do you post on your website during the public notice period?

NHDES response: All public notices are posted on the NHDES calendar on our website. Draft documents are also available for review through NHDES OneStop data system.

EPA response: EPA noted that 40 CFR Part 70 was recently amended to allow for electronic notice of draft permits. NH DES indicated that they intend to update the state regulations at ENV-600 to allow for e-notice the next time the rules are amended. NH DES is trying to move toward more electronic communication.

4. Do you reach out to specific communities (e.g., environmental justice communities) beyond the standard public notification processes?

NHDES response: NHDES currently does not have an education and outreach person. It is currently left to the permit engineer to determine if the permitting action may impact and EJ community.

5. What is your opinion on the most effective avenues for public notice?

NHDES response: NHDES believes that modern electronic communication tools including posting on NHDES's website and postings on NHDES's social media (e.g. Facebook, Twitter) are becoming more effective than traditional (e.g., newspaper) notices. NHDES maintains that direct notice to host municipalities is still important, although email may be easier and just as effective as traditional methods of mailing hard copies of notices and draft permits. Emails and notices with links to where interested parties can obtain additional information are easier for recipients to forward or distribute to others than hard copies.

6. Do you provide notices in languages besides English?

NHDES response: Not in general. In one situation, where a public hearing was being noticed for a Title V facility in a community that was identified to have a number of potentially non-English speaking residents, the hearing notice and hearing presentation was translated into Spanish.

The Air Permit Program has identified communication with non-English speaking communities as an area for improvement, not only for its program, but for many other programs with NHDES. Our Air Toxics Program lead (and head of the NHDES Environmental Health Program) involved with implementing Environmental Justice issues for the Air Resources Division has elevated this issue to NHDES Senior

Leadership Team (Commissioner and Division Directors) to further develop Department-wide policy. Addressing this issue at the Department level will help ensure consistency and ensure that necessary resources can be provided. See Section IV below for further elaboration.

b. If yes, please list the languages.

See response above.

Environmental Justice Resources

1. How is the permitting authority considering and addressing EJ issues in permitting actions?

NHDES response: NHDES has convened a committee to address EJ and Title VI issues across the department. In recognition of the changing demographics in New Hampshire, NHDES has re-committed to strengthening and expanding the current Nondiscrimination program to be inclusive of all citizens in the state by meeting, and exceeding if possible, the minimum elements of a Nondiscrimination Program as outlined in EPA's "Procedural Safeguards Checklist for Recipients."

Once the committee has completed its charge, all Standard Operating Procedures, forms and information will be made available to all NHDES personnel on the department intranet. NHDES personnel will be trained in the use of these EJ and non-discrimination materials, and refresher video's will be made available.

EPA response: NHDES stated that the entire Department is evaluating how it notices rules and permits for EJ areas. EPA has a number of resources and guidance documents available to assist with the incorporation of EJ consideration into the permitting process.

2. List any specific examples where the permit decision or permit process was substantively altered in order to address EJ concerns. For each example, please specify how the permit decision was altered to address EJ concerns. (Examples might include extending the length of the public comment period, a decision to hold a public hearing, or enhancements to permit terms and conditions.)

NHDES response: None

Incorporation of MACT Requirements into Permits

1. How does the permitting authority incorporate MACT requirements into the permit?

a. Describe the permitting authority's MACT permit content structure and approach for both major and area source standards.

NHDES response: NHDES attempts to include all applicable requirements, including MACT requirements, for which NH is the implementing authority, into Title V (and all other) air permits. NHDES attempts to strike a balance between straight IBR (e.g. “Comply with MACT Subpart ___”) and repeating the full text of the applicable rule. Permit engineers attempt to distill and summarize all parts of applicable requirements that, based upon NHDES’s knowledge of the facility, the facility is likely to encounter during the permit term. NHDES provides citations with each permit condition so that the source and other interested parties can further research the basis of the requirement if additional detail is required to determine required actions or assess compliance.

- b. How does the permitting authority make clear which compliance option the source is using?

NHDES response: When multiple options are possible and only a limited subset are selected/included in the permit, NHDES documents the reason for the selection in the associated application review summary (i.e. “Statement of Basis”)

- c. What process does the permitting authority have for incorporating new or revised MACT requirements into permits?

NHDES response: Under Env-A 609.19, *Permit Reopenings for Cause*, there are requirements for the state to reopen and revise a Title V Operating permit if additional applicable requirements are adopted after the issuance of the permit.

EPA response: EPA believes that NH uses an appropriate level of detail when incorporating MACT requirements into Title V permits. In addition, NH keeps delegations are kept up-to-date and complete through a straightforward delegation mechanism.

State Feedback

Opportunity for the permitting authority to raise any issues and concerns

1. What concerns does the permitting authority have with the national program that are not addressed elsewhere in the program evaluation?

NHDES response: The current system of States establishing and then seeking approval for programs (e.g. Title V program) allows States to craft programs that meet their individual needs and USEPA the ability to ensure federal requirements are upheld. While this system provides flexibility for the States, there will always be a gap between when a State establishes a new/amended rule or program and when the program is approved by USEPA. This inherent disconnect between State rules and programs and USEPA-approved rules and programs adds complexity and confusion regarding applicable requirements. Historical efforts to address the disconnect have focused on the States and

USEPA attempting to work quickly to develop approved programs. However, the current system is such that, even if the States and USEPA moved as quickly as possible, there will always be disconnects between State and USEPA-approved plans when either party initiates a change. NH would be open to discussing alternative methods of USEPA oversight of State programs to help reduce or eliminate discrepancies between State and USEPA-approved programs, including but not limited to Title V.

EPA response: NHDES noted that this is not a specific critique to Region 1, but more of a broad issue between federal and state regulatory programs. The EPA acknowledges NH's comment and will work to make the process as efficient as possible.

2. What issues, if any, are affecting the Title V program in your state right now that you consider particularly important?

NHDES response: We do not currently have any unique or pressing issues affecting our Title V program.

3. What recommendations does the permitting authority have for EPA regarding the implementation or oversight of the national Title V program?

NHDES response: NHDES does not have a proposed solution to the disconnect noted in #1, but would be open to discussing options with USEPA.

4. What are the permitting authority's Title V program priorities?

NHDES response: Improving the quality and consistency of NH's Title V permits and basis documentation.

5. What can EPA do to help foster a successful Title V program in your state?

NHDES response: NHDES enjoys a robust partnership with our EPA New England colleagues. We have encountered a number of unique situations at Title V sources over the years where guidance was needed, and they have consistently provided the necessary assistance. While we appreciate everyone's assistance, Patrick Bird and Susan Lancey in particular have been exceptional partners in working with our Air Permitting, Air Toxics, and State Implementation Plan programs over the past several years.

We believe we have good communications with EPA New England, and that they generally provide us the necessary flexibility to effectively administer our Title V program. While we do not have any specific suggestions at this time, we believe that our current relationship with EPA New England affords us the ability to discuss potential opportunities to make program improvements (by either NHDES or EPA) as they are presented.

EPA response: EPA Region 1 also appreciates the collaborative partnership with NHDES. We look forward to assisting the NHDES in the future permitting and rulemaking efforts,

as well as providing training and guidance to the program whenever possible. We would like to thank NHDES for an informative discussion during the program evaluation, and we are open to any feedback from NHDES and how we can improve the Title V program evaluation process.

The EPA concluded its evaluation of NHDES's Title V permit program. EPA did not find any deficiencies or areas for improvement during the program evaluation.