



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2  
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**OCT - 6 2017**

Honorable Tania Vázquez Rivera  
Chairwoman, Puerto Rico Environmental Quality Board  
1372 Ponce De Leon Ave.  
San Juan, Puerto Rico 00926

Dear Chairwoman Vázquez:

The EPA conducts periodic evaluations of the Clean Air Act (CAA) Title V permitting programs as part of its oversight responsibilities. On June 7, 2017, the EPA Region 2 staff conducted such a review of Puerto Rico's Title V program. The EPA previously evaluated Puerto Rico's program in September 2004, May 2009 and August 2013. The focus of this year's evaluation was to assess Puerto Rico's progress in implementing the program and in addressing issues and concerns that were identified in the August 2013 Title V program review.

Enclosed are the results of the EPA's June 7, 2017 program evaluation. To summarize our findings, Puerto Rico has made noticeable progress in resolving one of the previously identified major issues: the delayed issuance of the initial Title V permits. During the last four years, Puerto Rico issued 14 of the 17 outstanding initial permits. During the program evaluation EQB staff indicated that the three remaining initial permits involve compliance issues and that they plan to resolve those issues within a year. The EPA advised Puerto Rico that the remaining initial permits must be issued expeditiously and that the 19 pending permit renewals must be issued in a timely manner.

Puerto Rico continues to maintain the progress made in earlier years in addressing the following:

- Providing a "Statement of Basis" with every Title V permit
- Providing the necessary training to the permitting staff
- Tracking and reviewing compliance certifications and conducting inspections
- Collecting permit fees in a timely manner
- Maintaining the web site to provide permit related information to the public.

Since the last audit, Puerto Rico has developed an Emissions Trend Report showing the emission reductions for the Title V sources. It has come to the EPA's attention that Puerto Rico's Small Business Program has not reported any compliance assistance related activity since 2010. Puerto Rico should address the recent inactivity and indicate how it will implement the program in the upcoming years.

The EPA's evaluation concluded that there continues to be a surplus of funds within Puerto Rico's Title V program. As discussed in the enclosed findings, Title V revenues must be utilized solely to cover Title V program costs. As required by CAA § 502(b)(3)(C)(iii), any fee required to be collected by Puerto Rico "shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program." 40 C.F.R. §70.9(a) also explicitly requires the state program to ensure that any fee required "will be used solely for permit program costs." In the EPA's 2013 program evaluation report,

the EPA asked Puerto Rico to conduct an internal financial audit and report the findings in its response to the audit report. However, to date, such an internal financial audit is still not scheduled. The EPA reiterates the need for Puerto Rico (or a hired contractor) to conduct an internal financial audit of Puerto Rico's Title V fund to ensure that the Title V fee revenues are solely dedicated to the Title V program. Failure to utilize the Title V fee revenues properly is a violation of CAA § 502(b)(3)(C)(iii) and 40 C.F.R. § 70.9(a).

While an updated action plan along with a schedule indicating how the Environmental Quality Board (EQB) plans to address the issues identified in this audit would help Puerto Rico to improve the implementation of its Title V program, the EPA is aware of other more urgent priorities that are demanding the attention of EQB as it is dealing with the aftermath of Hurricanes Irma and Maria. My staff will be in contact with your staff to discuss a schedule for the submission of an action plan. The EPA Region 2 is committed to working with EQB to resolve the issues identified in the attached report. We wish to thank your staff for their cooperation during our audit. Should you have any questions or wish to discuss these issues, please call me at (212) 637-5000 or have your staff contact Mr. Richard Ruvo, Chief of our Air Programs Branch, at (212) 637-4014.

Sincerely,



Catherine R. McCabe

Acting Regional Administrator

Enclosures

cc: Lisbeth San Miguel Rivera, EQB  
Leimarys Delgado, EQB  
Luis Sierra, EQB

# **The Environmental Protection Agency's Evaluation of the Puerto Rico Environmental Quality Board's Title V Program**

**Date of Audit: June 7, 2017**

## **Outline**

- I. Introduction
- II. Summary of Findings
- III. Evaluation of Puerto Rico's Title V Program
- IV. Review Considerations
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- VI. Attachments

# **Puerto Rico Environmental Quality Board**

## **Title V Program Evaluation - June 7, 2017**

### **I. Introduction**

Pursuant to its oversight responsibilities, the EPA conducts periodic evaluations of a state's Clean Air Act (CAA) Title V Operating Permit Program ("Title V program") to determine whether the state's program is being implemented consistent with the requirements of Title V of the CAA, the EPA regulations implementing the statute, and the approved State Operating Permit Program.

On June 7 and 8, 2017, the EPA Region 2 Clean Air and Sustainability Division and Caribbean Environmental Protection Division staff, by phone and in person, conducted the 4<sup>th</sup> program evaluation of the Puerto Rico Environmental Quality Board's (EQB's) implementation of Puerto Rico's Title V program, which was approved by the EPA in 1996.<sup>1</sup> Previous program evaluations were conducted by the EPA in September 2004, May 2009, and August 2013. The focus of this year's evaluation was to assess Puerto Rico's implementation of its approved Title V program and the progress made in resolving issues that were identified in the August 2013 program audit. The EPA's evaluation was based on EQB's responses to the program and fee evaluation questionnaires; EQB's Air Quality Area management and staff interviews; review of permit files; and an examination of supporting documents. The details of the review are included in this report.

The EPA is requesting that EQB submit an action plan, identifying corrective measures that are being taken or will be taken to address the issues and concerns raised in this report.

### **II. Summary of Findings**

#### Addressing Issues Raised in Prior Audits

Timely issuance of permits and statements of basis are issues that the EPA brought to Puerto Rico's attention in previous evaluations. EQB has addressed the lack of Statement of Basis issue by preparing and issuing, with each permit, a Statement of Basis that sets forth the factual and legal basis for the permit conditions. EQB has committed to continue to perform this task. With regard to timely issuance of permits, improvement in the permit issuance rate is still needed. To date, EQB has issued 14 of the 17 delinquent initial permits identified in the EPA's 2013 program audit. Although most initial permits have been issued, EQB must expedite the issuance of the remaining three initial permits. During the program evaluation EQB staff stated that they would issue the remaining three initial permits within a year from this audit.

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<sup>1</sup> 61 FR 7073 (Feb. 26, 1996)

The EPA also informed Puerto Rico in its 2013 evaluation, and now reiterates, that the Clean Air Act requires that Title V fee revenue needs to be spent only on Title V related activities.

#### Continued Implementation

**Air Quality Area:** The permitting engineers of EQB's Air Quality Area continue their training activities as scheduled and maintain expertise in permit writing and in addressing applicants' concerns.

**Permit Enforcement:** The EQB enforcement staff tracks and reviews every annual compliance certification, deviation and semi-annual report. EQB conducts a full compliance inspection of each permitted facility every other year.

**Fee Collection:** The EQB ensures that appropriate fees are collected from every Title V facility in a timely fashion. Currently, this program carries \$ 2.71 million in surplus funds.

**Public Outreach:** The EQB maintains a website on which it posts permits and other permit related information in both Spanish and English.

#### Areas of Concern

**Permit Issuance Rate:** As of the date of this review, Puerto Rico has not yet issued initial permits to three sources whose applications have been pending for more than five years. During this program evaluation, EQB staff committed to issuing the remaining three initial permits within a year. As discussed in detail below, in response to this program evaluation, EQB should address its plan for timely issuance of initial and renewal permits.

**Small Business Program:** Although it was an active and successful program in the last decade, the Small Business Program did not report any activity during the last eight years. In response to this program evaluation, EQB should address why there has been no activity during the last eight years and its plan for reactivating the Small Business Program.

**Title V Fees:** As detailed below, in response to this program evaluation, EQB should conduct an internal financial audit to ensure that Title V fees be used solely for direct and indirect permit program costs and submit to EPA an annual accounting report of Title V revenue and expenditure for the prior year.

### **III. Evaluation of Puerto Rico's Title V Program**

#### EQB Organization-Air Quality Area

The Air Quality Area of EQB is responsible for air related matters including the Title V program which is handled by the Permitting, Air Toxics and Enforcement Division ("Permitting Division"). The Permitting Division is headed by the Chief who handles major/minor source permitting and asbestos abatement activities. The Permitting Division Chief oversees six permanent permit writers in the San Juan Office five of whom focus on the Title V program and one on the minor source permitting program. Due to a reduction in staff at the Air Toxics Division, the permitting staff also reviews and develops the permitting requirements for implementation of the air toxics rules. EQB plans to separate minor source permitting and air toxics from the Permitting Division and hire additional engineers and administrative staff to fill the two vacant positions. One EQB attorney is designated to handle Title V permitting related issues.

### PREQB Title V Staff

All staff members at EQB receive comprehensive permit writing training. In addition, the permitting staff traveled to Oregon and California for trainings related to Stationary Engine Emissions Compliance and Landfill Engineering Design evaluation. The staff also continues to participate in the EPA's webinars on regulations for Boilers, Incinerators and Reciprocating Internal Combustion Engines (RICE). The staff has a good knowledge of the Clean Air Act requirements and has developed expertise in writing Title V permits. The attachment to this report provides data on the training activities over the last four years.

### Puerto Rico Title V Permitting Issuance and Status

The Region reviewed Puerto Rico's re-evaluation report, air permit chart, and semi-annual reports to the EPA's Title V permitting data tracking system to determine the timeliness of EQB's Title V permit issuance effort. Although EQB is making progress in improving its permit issuance rate, EQB still has difficulty meeting the 18-month timeframe for issuing initial permits, renewal permits and modified permits, as required by 40 C.F.R. § 70.7(a)(2) and Puerto Rico Regulation for the Control of the Atmospheric Pollution (RCAP) Rule 605(a)(4).<sup>2</sup> The attachment to this report provides the data on major and minor source permitting activities over the last four years.

Puerto Rico began this program with a potential universe of 70 Title V sources. The EQB subsequently eliminated some sources from the Title V universe because they either shutdown or obtained synthetic minor status. As of this evaluation, Puerto Rico reported a total of 46 active Title V sources. The EPA expressed concerns in its 2004, 2009 and 2013 program evaluations that EQB's permit issuance rate was low. After the program audit in 2009, the EQB committed to issuing all the remaining initial permits by July 2010 but failed to meet this commitment. During the 2013 evaluation, EQB committed to issuing all the remaining initial permits by December 2015. EQB finalized 14 initial and five renewal permits but three initial permits, all of which have been pending for more than five years, remain to be issued and one permit is being evaluated to determine

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<sup>2</sup> The three-year period after program approval for initial permit issuance has expired. 40 CFR § 70.4(b)(11)(ii) and RCAP Rule 605(a)(2).

whether it qualifies as a synthetic minor.

During the 2017 evaluation, EQB advised the EPA that the delay in the issuance of the remaining three initial permits was due to source non-compliance issues and discrepancies between the emission limits in the construction permits and those in the Title V permit applications. Puerto Rico also informed the EPA that sources' failure to provide timely updates to their applications and supplemental information requested by the EQB permit writers also caused delay in permit issuance. The EQB staff indicated that they would issue the remaining three initial permits within one year from this audit and would timely process 19 active Title V permit renewal applications that are currently in house. EQB indicated that it expects to receive an additional 13 renewal applications in the next two years.

In response to this audit, EQB needs to substantiate its commitment to process the pending applications by submitting an action plan to show how it will fulfill this commitment. The EPA suggests an analysis estimating the number of hours needed to develop one draft renewal permit, on average, including the time needed for public comment and the EPA review. This would enable EQB to project the time it would need to process the pending renewal applications with the existing staff. This exercise will enable EQB to assess its progress and to evaluate options, including additional hiring, to expedite permit issuance.

#### **IV. Review Consideration**

The purpose of the EPA's program review is to determine whether Puerto Rico is administering and enforcing its Operating Permits Program as approved by the EPA and consistent with the requirements of the CAA and 40 C.F.R. Part 70. It is Region 2's intent to help Puerto Rico identify problems that hinder its administration of the Title V program and resolve them in a timely manner. The EQB's tardiness in issuing all initial Title V permits was identified in the last two program audits. Pursuant to 40 C.F.R. § 70.4(b)(11), all initial permits whose applications were due within one year of the effective date of the program, are to be issued within three years of program approval. Nonetheless, despite the EPA's efforts to facilitate EQB's review and issuance of the initial permits, to date EQB still has three initial permit applications pending.

If Puerto Rico is unable to administer or enforce its permitting program consistent with the requirements of CAA § 502(i) and 40 C.F.R. Part 70, the EPA would exercise its authority to withdraw Puerto Rico's program approval in whole or in part. The process for withdrawing program approval is stipulated in 40 C.F.R. § 70.10(b). The EPA would need to determine, pursuant to 40 C.F.R. § 70.10(c), that the State is inadequately implementing its Operating Permits Program. The EPA's determination would identify the basis for program withdrawal and the corrective actions needed to resolve the issues and avert the withdrawal action. A Notice of Deficiency would be published in the Federal Register announcing the EPA's action and providing the public an opportunity to comment. The State would have 18 months to correct the deficiencies before the imposition of sanctions in accordance with CAA § 502(i)(2). Two years from the date of

publication of the Notice of Deficiency, the EPA would withdraw program approval if the State has not corrected the deficiencies. The EPA would then promulgate, administer and enforce a federal operating permits program in the State pursuant to CAA § 502(i)(4). Under this scenario, the EPA would collect the Title V fees, issue the Title V permits, and enforce the Title V program. Again, it is not the Region's goal to withdraw program approval from Puerto Rico. The EPA desires to work closely with EQB to ensure that EQB issues Title V permits that meet all Puerto Rico and federal requirements as expeditiously as possible and enforces those permits.

#### Puerto Rico Title V Enforcement

As part of the EPA's oversight of Puerto Rico's approved Title V program, Region 2 also evaluated the EQB's Title V enforcement program. The EQB informed us that it conducts a bi-annual full compliance inspection of every Title V source. It reviews every annual compliance certification and deviation report. The EQB also tracks the submission of the annual compliance certification and follows up with sources that did not submit a timely report. EQB has four inspectors and there is one vacant position. EQB conducts 10 to 14 Title V facility inspections in a year. The EPA reviewed the files of Lilly Del Caribe, PREPA Palo Seco, Buckeye Caribbean Terminals, Fenwal International Inc., and El Coqui Landfill. Each of the files was well organized and complete. Further, each of the files contained annual compliance certifications and inspection reports. In general, these sources reported that they were in compliance. The attachment to this report provides the data on inspection activities over the last four years.

EQB has developed an Emissions Trend Report which shows that the overall emissions from 2008 to 2016 have dropped from 80,408 tons to 58,888 tons.

#### Puerto Rico Title V Fees/Expenses

Section 502(b)(3) of the CAA and 40 C.F.R. § 70.9 require each state to collect adequate Title V fees from affected sources to fund the direct and indirect costs of implementing the state's Title V program. Further, states can only use Title V fee revenues to cover Title V program costs. The purpose of this evaluation was to verify that procedures are still in place to receive these fees, keep them separate from other funds, disburse the fees for valid expenses and to provide adequate fiscal oversight of Puerto Rico's Title V funds. During this audit, the EPA Region 2 Air Program Branch conducted a preliminary review of Puerto Rico's Title V fee structure to determine whether there has been any change since the 2013 evaluation.

It is noted that the fee structure has not changed and the fee rate has remained at \$37 per ton since 2003. The 2016-17 federal presumptive permitting fee is \$48.88 per ton. The EPA Region 2 verified that Title V fees are being calculated in accordance with the Puerto Rico Title V fee regulation. For accountability, the EQB retains facility specific invoices, receipts, the amount billed and the amount collected as part of its record. The Air Quality Area sends a list of facilities, with their permit numbers, actual emissions in tons and the fees to be invoiced, to the Finance Division. The Finance Division then

sends an invoice to every source. Generally, the facilities pay their fees on time.

EQB provided an Accounts Receivable/Expenditure summary for the fiscal years (FY) 1996 to 2016. This summary indicates that PREQB currently carries a \$2.71 million surplus in its Title V account. The Air Quality Area, however, reported that the Title V fee revenue becomes part of the general Puerto Rico revenue; the surplus available in the Title V program is carried over to Puerto Rico's general budget. The EPA informed Puerto Rico in its 2013 evaluation, and now reiterates, that the Title V fee revenue needs to be spent only on Title V related activities and that an internal financial audit should be conducted detailing the use of Title V fees. Puerto Rico has not conducted any financial audit to date. Surplus Title V funds, when available, may be used for activities such as automated fee processing, on-line submittal by facilities, auto-review of the annual compliance certifications, and software for developing standard permit conditions.

#### Puerto Rico Small Business Program

CAA § 507 requires that a State provide compliance assistance to small businesses. In the past, Puerto Rico actively carried out compliance assistance activities under the Title V program. During the audit EQB indicated that the Small Business Program has not been a priority in the last few years and currently there is no employee assigned to this program. No activity is reported under this program.

#### **V. Recommendations**

The EPA recommends that the EQB management prepare an Action Plan for issuing the remaining initial permits and renewal permits. The Action Plan should include a commitment to a realistic date for issuance of the pending initial and renewal permits. The Plan should identify and address those factors contributing to the delays and should include specific provisions for accountability.

The EPA reiterates that the EQB must handle its Title V related finances pursuant to the requirements of the CAA. Section 502(b)(3)(C)(iii) of the CAA and 40 C.F.R. § 70.9(b) require that Title V revenue can only be used for Title V program costs. It appears, based on conversation with EQB staff, that the Title V funds are made part of the general budget. The EPA, therefore, requests that an internal financial audit be conducted to ensure compliance with CAA § 502(b)(3), 40 C.F.R. § 70.9(b) and the requirements of Puerto Rico's approved Title V program, specifically Puerto Rico Regulation for the Control of the Atmospheric Pollution (RCAP) Rule 610. The EPA requests that EQB submit to the EPA, within one year of the close of each fiscal year, an annual accounting report indicating Title V revenue and expenditure for the previous fiscal year. The EPA also notes that the Title V program carries a surplus of approximately \$2.71 million. The Title V program's surplus funds must be used solely to support the Title V program. This may include, for example, using the surplus to hire or reassign additional staff to the Title V program or buying suitable technologies/software for processing fees, compliance certifications, and permits.

The EPA asks that EQB detail in its Action Plan the steps it will take to reactivate its Small Business Program consistent with the requirements of the CAA, its implementing regulations and Puerto Rico's approved Title V program.