

Sean Alteri, Acting Director
Division for Air Quality
Department for Environmental Protection
200 Fair Oaks Lane, 1st Floor
Frankfort, Kentucky 40601-1134

Dear Mr. Alteri:

This correspondence is being sent to provide you with a final copy of the U.S. Environmental Protection Agency Region 4 report, which was completed as a result of the EPA Title V program evaluation conducted on June 4-5, 2013 (see Enclosure). The purpose of this program review was to evaluate the status and the ability of the Kentucky Department for Environmental Protection, Division for Air Quality (DAQ) to carry out the duties and responsibilities required to effectively run the Title V program, as well as find out how the EPA can best assist the DAQ in meeting these commitments. The EPA found that the DAQ is meeting the requirements of 40 CFR Part 70 and looks forward to continuing to work with DAQ.

If you or your staff have any questions regarding this report, please do not hesitate to contact Randy Terry of the EPA Region 4 staff at (404) 562-9032.

Sincerely,

Jeaneanne M. Gettle
Acting Director
Air, Pesticides, and Toxics
Management Division

Enclosure

Kentucky Department for Environmental Protection
Division for Air Quality
Title V Program Review

The Kentucky Department for Environmental Protection, Division for Air Quality (DAQ), initial program review was conducted the dates of March 10, 14, and 16, 2005, in Frankfort, Kentucky and is kept on file at the U.S. Environmental Protection Agency Region 4 office in Atlanta, Georgia. Based on the information gathered from the title V program evaluations and the implementation of new title V permit requirements, the EPA committed to conduct a second round of title V program reviews for all state and local programs that had at least 20 title V major sources within their jurisdiction by the end of FY 2010.

The second program evaluation of the Kentucky DAQ title V program was conducted on November 17 - 18, 2008, in Frankfort, Kentucky. Based on the findings of the initial program evaluation, the EPA focused the second round evaluation on permit issuance, resources, staffing and implementation of compliance assurance monitoring (CAM). The EPA did not review any permits as part of this program evaluation. The following parties attended the title V questionnaire discussion: Randy Terry (EPA Region 4), Art Hofmeister (EPA Region 4), and Ralph Gosney (DAQ). The final report was issued on August 19, 2009, and is on file at the EPA Region 4 office in Atlanta, Georgia.

The EPA conducted a third program evaluation of the Kentucky DAQ's title V program on June 4, 2013. This evaluation consisted of a review of the title V budgeting and accounting process, permit file review, public participation, and follow-up from previous evaluations. The DAQ personnel in attendance included Rick Sheweka, Jim Morse, Michael Kennedy, Nina Hockensmith, Andrea Smith and Joy Moll. The EPA staff in attendance included Randy Terry and Art Hofmeister. Upon finalization, this report will be kept on file at the EPA Region 4 office.

Kentucky DAQ Title V Program Review

Program Review

The DAQ's organizational structure for air permitting resides at the main office in Frankfort, Kentucky. All title V permits for the Commonwealth of Kentucky are processed in the Frankfort Central office. The DAQ's title V permitting jurisdiction covers all of Kentucky with the exception of Jefferson County, Kentucky. The Louisville Metro Air Pollution Control District (LMAPCD) operates the permitting agency covering Jefferson County. A separate program evaluation report was written covering the LMAPCD title V program.

The EPA's review of the Kentucky title V program focused on programmatic knowledge/implementation, resources (both human and capital), and permit issuance.

The EPA appreciates the DAQ's efforts to aid the evaluation process by providing an answered copy of the program review questionnaire as a part of the meeting. For many questionnaire items, the answers provided by the DAQ are more detailed than indicated in the summary discussion below. Following the review, the DAQ submitted additional information in response to several questions that arose during the evaluation. The answered questionnaire and the follow up responses from the DAQ will be on file at the EPA Region 4 for reference.

Executive Summary

Background: The EPA has conducted two prior program evaluations. In the initial evaluation the EPA found several areas of concern, which were detailed in the 2005 program evaluation. The major areas of concern were, a staff with a high degree of turnover, a budget that required most new hires to have no experience, no formal method of training new employees and no way of ensuring programmatic consistency with regards to succession planning. In addition, these concerns had led to a backlog of 43 initial title V permits.

The second program evaluation conducted in 2009 found that staff turnover, while still high, had been reduced due to the implementation of a salary increase. In addition, the DAQ required its permit writers to attend a comprehensive training program to ensure knowledge consistency throughout the organization and had developed an employee manual for new and existing employees covering all aspects of permitting. The backlog of initial title V applications had been reduced to one.

In June 2013, the EPA conducted a third program evaluation. The following is a summary of the findings from the most recent evaluation:

Positives:

- 1) The DAQ staff was able to complete 11 significant modifications to title V permits within the past year, reducing the number of significant modifications older than 18 months down to 1.
- 2) The DAQ's budget process is well organized, easily followed and very thorough. The discussion with the DAQ staff regarding the establishment of the annual budget reflected that the staff has a great understanding of the overall budget process and clearly identifies title V revenue and expenses from non title V revenue, such as 105 grant monies, and expenses.

- 3) The DAQ's use of the TEMPO database system is an excellent tool that aids in ensuring that management and staff remain constantly vigilant of impending due dates for title V actions, such as renewal permits and synthetic minors.
- 4) Based on review of several title V permits, the DAQ's permits are well organized, easy to read and practically enforceable.

Areas of Concerns:

- 1) The program has a backlog of 11 title V permit applications older than 18 months past the title V in house permit expiration date. All of these applications were certified by the DAQ as being timely and complete, so they are extended and not expired, as outlined in 40 CFR part 70.
- 2) The DAQ received only 36 title V renewals in the past year but has a total of 269 active title V sources. This would lead to 233 permits to be issued in the next 4 years, or 56 per year. In addition, there are 73 title V renewal applications already inhouse awaiting issuance. Title V permit issuance must remain a point of emphasis or the backlog could steadily increase in future years.
- 3) As a result of the constant turnover of the DAQ permit writers, (approximately 20% in the past year) the concern over permit issuance as well as other title V activities remains constant.

Method for addressing these areas:

The DAQ has presented to the EPA a spreadsheet for issuance of these 11 extended title V permits. The timeline shows that 7 of the extended permits will be completed within 60 days. The remaining four are in various stages of completion but should be issued within the next six months. The EPA will monitor the issuance of these permits through the semiannual submission of the title V operating permits (TOPs) data from DAQ. In addition the TOPs reports will be monitored to ensure the title V permit issuance output is being maintained at a sufficient level to prevent the buildup of a permitting backlog.

Programmatic Knowledge/ Implementation

During discussions of the title V questionnaire and prior discussions, it was clear that DAQ senior staff have a thorough knowledge and understanding of title V program requirements. Facilitation of that knowledge throughout the staff is important to continue to produce high quality permits that are clear and practically enforceable. Concern is noted that the DAQ continues to experience a significant amount of turnover within their permit review branch. Within the past 12 months the branch has lost 8 staff members, which is approximately a 20% staff turnover rate and a three year turnover rate of 46% (or 18 staff members). One aspect which may play a considerable role in turnover is their starting salary scale. As a point of comparison, at the Alabama Department of Environmental Management, which has a similarly sized title V staff, permit writers have a starting salary approximately 75% higher than the starting salary for a DAQ permit writer. Even within the state, the permit writers for the LMAPCD have approximately an 80% higher starting salary.

The DAQ requires its permit writers to attend a comprehensive training program to ensure knowledge consistency throughout their organization. In addition, the DAQ works with the EPA, the LMAPCD and other agencies to provided quality training of a relevant nature to as many DAQ employees as possible.

In addition to staff training plans, the DAQ has implemented a work force development/succession planning structure for all employees. The DAQ management has implemented a cross training program that ensures all jobs can be done by two or more persons in an effort to be prepared for eventual staff attrition. In addition, the DAQ has initiated a detailed log documenting best work practices. The DAQ has also created a detailed employee manual for new and existing employees covering all aspects of permit work.

Resources

The DAQ permit engineers divide their time between title V and non-title V permitting, allocating two-thirds of their time to title V activities and associated construction permits and one third to state originated permits. Construction permits remain the top priority for the DAQ and as such it has an occasional impact on the title V permit issuance rate. The DAQ currently funds 39 title V positions and at the time of the evaluation still had 3 vacancies. In order to track the time staff allocates to title V activities, the DAQ requires each individual to detail title V and non-title V activities within a tracking software program. These entries must be completed every two weeks. Supervisors and managers review these entries and make workload allocation adjustments as necessary to ensure that time is posted to the appropriate funds.

The DAQ establishes its title V fee based on the EPA presumptive minimum fee. Title V revenue is tracked by receipt in an automated database and expenses are tracked by notations on timesheets. Funds are received and deposited into separate accounts and funds are withdrawn based on necessary expenditures. The DAQ's accounting procedures allow for the individual tracking of both title V and non-title V expenses.

At the time of the 2009 program evaluation, one issue that concerned the DAQ management was the steady decline in billable tons of emissions for the title V program. This decline had been a slow decrease over the years and the program has been able to compensate for this with the annual increase in the title V presumptive minimum, but the decrease in income had started to concern DAQ managers about their ability to fully-fund the title V program.

From 2009 - 2011 the DAQ collected the following title V revenue:

FY2009 - \$9,881,913.00
FY2010 - \$9,276,342.00
FY2011 - \$8,455,384.00

From FY 2009 – FY 2011, the DAQ's title V fee increased slightly less than two percent from \$43.75 per ton to \$44.48. Over that same time frame their title V revenue collected decreased by almost 15 percent, due to a reduction in billable tons of emissions.

As a result of this decrease, beginning in 2011, the DAQ began to submit annual justifications so that their title V dollars per ton fee could exceed the presumptive minimum. For FY 2012, the DAQ

provided a justification analysis in order to exceed the presumptive minimum amount of \$47.11. The DAQ title V fee for FY2012 was increased to \$52.87 and resulted in a title V fee collection total of \$10,614,330.00.

The DAQ does not maintain surplus title V funding from one fiscal year to the next. Any funds not spent in one fiscal year are considered part of the funding for the next year and the title V fees are adjusted accordingly.

Another issue the DAQ discussed was the amount of time that they spend reviewing applications and drafting permits for sources that later decide that they no longer desire to be a title V source. These expenses are absorbed by the title V program but the facility that submits the applications does not incur a fee placing a strain on the resources of the DAQ title V program. Some programs address this issue by charging an application fee to potential title V sources when they submit an application. This application fee covers any potential expenses the title V program covers in the event that a source decides at a later date that they no longer wish to be included into the title V program by accepting limits as a synthetic minor or any other reasons.

Renewal Permits

As of June 6, 2013, the DAQ had 73 renewal applications in house ready to be processed. Of those renewal applications submitted, all were deemed timely and complete. At the time of the program evaluation, 11 of the renewal permit applications had been in house for longer than 18 months, which constitutes a backlog. Most of the backlog consists of very large complex chemical producing sources which are subject to very complex regulations. In an effort to issue these permits and eliminate the backlog, the DAQ management is constantly monitoring progress on these permits and providing instruction to the permit writers. Since the initial program evaluation, the DAQ has made considerable improvement in minimizing permit backlog. It was noted in previous program evaluation reports that the DAQ had a backlog of 43 initial title V permit applications and had reduced that backlog number down to one outstanding initial permit application and five renewal title V applications.

The EPA noted to the DAQ, a general concern about the current issuance rate of title V applications. As noted above, the DAQ currently has 73 renewal applications in house. From June 2012 to June 2013, the DAQ received 36 title V renewals and issued 54 renewals. Kentucky has a total of 269 active title V sources. Based on these numbers, it's clear that over the next four years, barring a reduction in title V sources, the DAQ will receive 233 title V renewal applications to be issued, or 56 per year. With their turnover rate and current work output, title V permit issuance must remain a point of emphasis or the backlog could steadily increase in future years. The EPA will monitor the productivity from the DAQ staff, through the semi-annual TOPs reports to ensure the title V permit issuance output is being maintained at a sufficient level to prevent the buildup of a permitting backlog.

For the second round of title V applications, DAQ has not revised their title V application to prompt the sources to include CAM plans to address any potential CAM requirements. The DAQ management has been providing hands on training to their permit writers on understanding CAM implementation and applicability. On the occasions that a source is not required to submit a CAM plan, a justification for CAM non-applicability is included within the permit's statement of basis.

Permit Reviews

A list of eight prospective permitting actions to be reviewed was provided to DAQ permitting branch staff approximately one week prior to the EPA's visit. The list focused on permitting actions that were currently within the EPA's 45-day review period so as to provide the added benefit of being able to count any reviews conducted toward the agency's goals for targeted permit reviews. Additionally, to obtain a sampling of permitting actions, the list included federally-enforceable state operating permits, significant title V permit revisions, title V permit renewals, and initial title V permits.

Four (4) of the requested permitting actions were given cursory reviews. All four pertained to sources that emit greenhouse gases (GHGs). The only significant issue that was observed with respect to the proposed permitting documents (*i.e.*, statement of basis, executive summary, application summary form, and permit) related to the level of detail to which GHG emissions were quantified. The level of detail ranged from simply listing the amount of carbon dioxide (CO₂) emitted to providing a very specific breakdown of GHG emissions, including CO₂, carbon dioxide-equivalent (CO₂e), and CO₂e components (*e.g.*, methane, nitrous oxide, etc.). Obviously, the EPA prefers the latter degree of level of detail and, thus, subsequently provided the DAQ permitting management with a written comment to that effect (see email to Rick Shewekah from Art Hofmeister dated June 7, 2013).

Conclusion

At the conclusion of the onsite portion of the title V program review, Region 4 personnel met with DAQ officials to conduct an exit interview. During this exit interview Region 4 shared the findings of the review. Personnel in attendance from EPA Region 4 were Randy Terry and Art Hofmeister. The DAQ officials in attendance included Rick Sheweka, Jim Morse, Michael Kennedy, Nina Hockensmith, Andrea Smith and Joy Moll.

Overall, the EPA believes that the DAQ is meeting the requirements set forth for operation of a title V program. However the EPA does have concern about the assurance of the DAQ having adequate resources to continue to meet these requirements. The EPA looks forward to continuing the working relationship with the DAQ in the future.