

Maya Rao, P.E. Chief
Office of Pollution Control
Air Division
Mississippi Department of
Environmental Quality
P.O. Box 10385
Jackson, Mississippi 39289-0385

Dear Ms Rao:

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 21, 2012, (see Enclosure). The purpose of this program review was to evaluate the status and the ability of the Mississippi Department of Environmental Quality (MDEQ) 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 MDEQ in meeting these commitments. The EPA found that the MDEQ is meeting the requirements of 40 CFR Part 70 and noted, as a highlight, the work the MDEQ has done with the environmental justice program.

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

Sincerely,

Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division

Enclosure

cc: Harry M. Wilson III, P.E. DEE, Chief
Environmental Permit Division

Mississippi Department of Environmental Quality Title V Program Review

Executive Summary

The initial Mississippi Department of Environmental Quality (MDEQ) title V program review was conducted September 13 - 14 and October 20 - 21, 2004, in Jackson, Mississippi 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 final report from this evaluation was issued on February 8, 2005, and is kept on file at the EPA Region 4 office.

The second program evaluation of the MDEQ title V program was conducted on June 9 – 10, 2008, in Jackson Mississippi. Prior to the EPA's arrival, MDEQ was provided with a list of eight title V sources, including three with compliance assurance monitoring (CAM) plans that the EPA planned to review as part of the program evaluation. An entrance interview between the EPA and key staff of the MDEQ was conducted, where the EPA explained the areas that Region 4 would be evaluating during their State office visit. The final report from this evaluation was issued on September 30, 2008, and is kept on file at the EPA Region 4 office.

The EPA conducted a third program evaluation of the MDEQ title V program on June 21, 2012. This evaluation consisted of a review of the title V budgeting and accounting process, permit file review, public participation, environmental justice and follow-up from previous evaluations. Highlights of the program evaluation include the timely issuance of title V permits resulting in no significant backlog of title V actions (title V applications in-house older than 18 months). At the time of the 2008 program evaluation, the MDEQ had a small backlog of 31 title V applications and since that time has reduced that number down to 12 title V applications. An additional highlight detailed is the depth of the MDEQ's environmental justice program and their utilization of their website as a resource in ensuring public awareness and involvement. Overall, the EPA believes that the MDEQ is meeting the requirements of 40 CFR Part 70. Upon finalization, this report will be kept on file at the EPA Region 4 office.

Program Review

The MDEQ's organizational structure for air permitting resides at the central office in Jackson. All title V permits are processed in the Jackson office.

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

The EPA appreciated MDEQ's efforts to aid the evaluation process by providing an answered copy of the program review questionnaire prior to the meeting. For many questionnaire items, the answers provided by the MDEQ are more detailed than indicated in the summary discussion below. The answered questionnaire from the MDEQ will be on file at EPA Region 4 for reference.

Programmatic Knowledge/Implementation

During discussions of the title V questionnaire and prior discussions, it was clear that the MDEQ senior staff has 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. The MDEQ has established a comprehensive written training program to ensure knowledge consistency throughout their organization. In addition to their staff training plans, the MDEQ has implemented a formal training program designed for succession planning. Implementation of training plans such as this will help ensure that not only programmatic knowledge is retained but also programmatic leadership and direction.

During the program evaluation, the MDEQ requested that the EPA conduct additional training courses in Mississippi for their staff. The MDEQ would like this training to include, but not be limited to, refresher courses for experienced staff as well as new staff employed within the past few years. The MDEQ also believes that training on the new MACTS and NSPS would be very beneficial but would like for it to be more interactive than just a webinar in which prepared slides are read. To gain a meaningful benefit, the MDEQ would like the courses and presenters to be prepared to discuss the complexities of the rule, any loop-holes, and any other potential controversial or overlooked aspects of the rules. More opportunities for round table discussion of challenges amongst the state/local agencies would be useful. In addition, training on common acceptable periodic monitoring would also be considered beneficial.

Resources

The MDEQ is organized into two divisions, the Environmental Permit Division (EPD) and the Environmental Compliance and Enforcement Division (ECED) and continues to utilize a multi-media approach to regulating and permitting title V facilities. The MDEQ also utilizes a single point of contact approach for the permitted community as well as the public. The divisions are divided into industrial sector branches based on SIC codes. Organizing the branches in this manner fosters title V expertise using the assistance of the Air Division, mentoring programs, and a formal training program. All MDEQ permit managers perform multi-media permitting and are not exclusive to writing title V permits.

The Mississippi State fiscal year (FY) runs from July 1 to June 30. The EPD projects funding 15.00 title V full time equivalent (FTE) positions in FY 2013. This includes managerial and administrative staff. In order to track the time staff allocates to title V activities, the MDEQ utilizes an electronic time entry database. Each employee is required to maintain their electronic timesheet to reflect how their time is

spent. The timesheet allows for information to be included in one hour increments. These timesheets are printed on a monthly basis and approved by the designated managers. Title V work has specific time entry codes. All work done for title V is entered under the applicable code. Permits are primarily distributed based on SIC codes to Industrial Sector Branches of the Environmental Division.

The MDEQ utilizes a multi-media approach to permit writing which leads to a number of competing issues when discussing permitting priorities. EPD maintains an internal database which tracks the critical steps through the title V permitting process beginning with the receipt of the permit application and following through until the permit is issued as a final permit. Reports can be generated from the database to reflect the progress being made during the permit process. The MDEQ has noted that delays in title V permit issuance involve a variety of issues but typically fall into 6 categories:

1. Addition of newly regulated pollutants, particularly Greenhouse Gases, PM_{2.5} and condensable PM;
2. Newly promulgated applicable requirements, particularly new area source MACT standards and the widely applicable NSPS and MACT standards for engines;
3. Addressing ambiguity in many previously issued NSR and Title V permitting actions;
4. The vacature, and uncertainty, of applicable standards;
5. Enforcement concerns and actions that are ongoing;
6. The overall complexity of the sources being issued.

During the June 2008 program review, the MDEQ informed the EPA that a backlog of title V permitting actions had developed since the initial program evaluation. As of May 29, 2008, the MDEQ had 31 title V renewal applications in-house older than 18 months. During discussions on this issue, the MDEQ noted that they had already initiated multiple steps to eliminate the backlog and ensure that an adequate number of staff FTEs were dedicated to title V. Steps to address these issues included both short and long range plans. To address short term workload spikes, the MDEQ has the ability to utilize contract employees. To address the long range plan of increase workload, the MDEQ requested and received hiring authority to hire six new title V FTE positions.

As a part of the June 2012 program review, the permitting backlog issue was revisited to determine if the steps previously identified by the MDEQ were successful in reducing the title V permitting backlog. At the time of the June 2012 program evaluation, the MDEQ was fully staffed. Since the previous review, the MDEQ has not experienced significant staff turnover, in large part due to a career ladder that has been developed for the engineers and scientists. For the engineers on staff, the career ladder provides Engineers in Training with benchmark raises every sixth months for the first 42 months of employment. This has aided greatly in the retention of new hires. There are additional raises for those engineers that obtain their professional engineer license. This has aided in retention of experienced staff. In addition, there are raises for completion of an advanced degree or completion of certain continuing education training courses.

The MDEQ assesses title V fees for each title V major source based on either actual emissions for the previous calendar year, or allowable emissions applicable on September 1 (the date the fee is due). Annual emission reporting forms (AERF) and associated instructions are sent to each source annually allowing the source the opportunity to report its emissions and opt for the fee to be based on actual emissions. If an acceptable AERF is not submitted, the default basis for the fee is allowable emissions. The AERF is due by July 1st each year. The title V fee for FY12 is \$36. No fee increase is projected for FY13. Projected title V revenue for 2012 is expected to be approximately \$4,970,105.00.

Since 2008 the District has collected the following title V revenue:

FY2008 (July 1, 2007 – June 30, 2008) - \$4,876,492.00

FY2009 (July 1, 2008 – June 30, 2009) - \$6,461,552.00

FY2010 (July 1, 2009 – June 30, 2010) - \$5,021,071.00

FY2011 (July 1, 2010 – June 30, 2011) - \$4,457,888.00

The EPA also took a detailed look at the MDEQ budget and accounting practices for implementation of their title V program. During this review, the EPA observed that the MDEQ was adequately tracking all of their title V fees and using appropriate codes to separate title V expenditures from non-title V expenditures. The MDEQ also uses a separate account to house their title V funds which allows for a greater level of scrutiny when evaluating title V revenue and expenditures. Title V expenditures are tracked through divisional codes specific to the title V program. These codes are specifically assigned to each division performing some form of activity related to the title V program. These expenditures are also tracked by the categories of salary, fringe, travel, equipment, supplies, and indirect.

The MDEQ's Office of Administrative Services, Fee Section, tracks all title V fees revenue. As each source's payment comes in, the source is credited and the funds are posted into the title V account. The MDEQ's title V annual revenue is sufficient to cover all title V expenses and allows the program to be fully funded and carry a surplus from one fiscal year to the next. These surplus funds are used to fund the title V program during the period of time between the end of the fiscal year (June 30) and the date the title V fees are due from the sources for the next fiscal year (September 1). The State FY 2012 title V surplus fund balance is expected to be \$750,000.00. The carryover funds were used in determining the recommended dollars per ton rate. In the FY13 draft title V fee report, the balance is estimated to be reduced to approximately \$400,000.00 which would cover about one month's operational costs for the title V program.

Renewal Permits and File Review

As of May 11, 2012, the MDEQ had 45 renewal applications in house ready to be processed. At the time of the June 2008, program evaluation, the MDEQ noted the buildup of the permitting backlog and began implementing several measures to reduce the size of the backlog, including the hiring of additional staff and the use of contract employees. As a result of implementing these measures, the MDEQ has reduced their permitting backlog from 38 applications older than 18 months as of June 2007, to 31 applications as of June 2008. Since then, the MDEQ has continued to aggressively attack this backlog and now have only 12 backlog title V applications remaining. Continued implementation of these measures should allow the MDEQ to continue to reduce and eventually eliminate their backlog. Reasons for the backlog include the vacature of various maximum achievable control technology (MACT) standards such as the boiler MACT and sources that continue to explore ways of making their facilities more flexible to maintain their competitiveness in the open market. This flexibility means that the MDEQ is receiving more New Source Review (NSR) actions which, in many cases, slow down the renewal process of the title V permit. Facilities want these new projects included in the title V permit and want a permit shield for the project. In order to do this, rather than proceeding via the significant modification procedures, many of these modifications are grouped together and handled during the renewal process, which often results in slowing down the permitting process. In addition, incorporating the new greenhouse gas standards has significantly delayed the issuance of title V permits.

Permit Terms and Conditions

The EPA conducted a detailed review of 10 MDEQ title V permits as part of the program evaluation. The permit files selected included a cross section of sources across several industry sectors. During the permits review, the EPA noted that the MDEQ's permits are well organized, easy to read and practically enforceable. The use of summary tables within the permits provides a good snapshot of all applicable requirements contained in the permit. The statement of basis continues to be a well organized document which includes critical information such as applicability determinations (CAM, prevention of significant deterioration, MACT), non-applicability of requirements that could potentially apply, details of modifications, and documentation of monitoring decisions.

Public Participation/ Environmental Justice

Title V public participation requirements mandate that public notices be published in a newspaper of general circulation and that the permit applications, draft permits, statement of basis, and all relevant supporting materials be made available for review by interested parties. The MDEQ exceeds public participation requirements by providing access to all public notices along with the draft permit and "information relative" on their web page's access tool, enSearch Online at opc.deq.state.ms.us/ensearch as well as in the local newspaper. Additionally, the MDEQ publishes a monthly listing of all permit applications received (thus providing early public notice) including title V applications in the major regional newspapers of the State. This step is provided to allow for additional opportunities for the public to have input early in the permitting process. This information is also available through enSearch Online. The average cost of publishing a public notice in the newspaper is \$80.00 - \$120.00. The MDEQ budgets approximately \$1000.00 a month for publication of public notices. For public hearings, the MDEQ also publishes an online listing for each hearing, containing the location, date and time in addition to any relevant documents – including, but not limited to Draft Permit, Permit Review summary, and Fact Sheet.

In February 1997, the MDEQ completed an environmental comparative risk assessment of 23 issue areas. A public advisory committee comprising of 21 organizations representing environmental concern, businesses, industry, local governments, agriculture, public health, academia, and environmental equity interests worked with the MDEQ over two years to determine what the environmental issues in the state were, where they are and how serious they are. The MDEQ and the PAC then developed goals and strategies for minimizing the impacts associated with these areas. From this report a list was developed of actions the MDEQ should take to minimize equity problem in the future. These actions include:

1. The MDEQ should provide for public comment by developing criteria that provide all segments of a community with an opportunity to participate in the public comment process;
2. The MDEQ should provide appropriate public education to communities during the initial phase of the permitting process;
3. The MDEQ should provide information to the general public, local governments and the corporate and small business community by preparing a document which will give information on how to inform and involve communities during the permitting process for a proposed manufacturing or waste disposal facility. The information should include suggestions regarding,
 - a. Public participation strategies,
 - b. A study of projected local employment opportunities, and
 - c. The MDEQ permit application process;

4. The MDEQ should work closely with, and at least annually meet with, all appropriate state and federal agencies to coordinate programs, initiatives, and strategies for those issue areas that involve shared responsibility or environmental impacts.
5. The MDEQ should, in its hazardous and solid waste permit application process, make the submittal of a company's financial disclosure information and past compliance record a priority in order to provide the public with complete and current information;
6. The MDEQ should identify a staff person in the Environmental Resource Center to serve as the focal point for responding to environmental equity issues. In addition, the Center should assure consistency, due process, and equal protection within the MDEQ by providing internal training, internal monitoring/investigations, outreach activities, and other responsibilities as designated by the Executive Director.
7. The MDEQ should collect spatial data (latitude and longitude) on the locations of the facilities;
8. Within five years, the MDEQ should develop a plan to integrate environmental equity activities into a Community-Industry Relations Program which will provide information and assistance to both industries and communities in addressing and resolving issues of common concern.

Since then, the MDEQ has developed an Office of Community Engagement, which defines environmental justice based on the principle that all people should be protected from environmental pollution and have the right to a clean and healthy environment. Environmental Justice is the protection of the health of the people of Mississippi and its environment, equity in the administration of the State's environmental programs, and the provision of adequate opportunities for meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations, and policies.

A number of conditions are considered in determining if a community meets the conditions to be an environmental justice community, however the MDEQ does not currently officially designate "EJ communities." This is not to say that Mississippi does not have minority or low income communities that are considered "EJ communities," but to clarify that the MDEQ has noted several limitations associated with labeling communities as EJ because of a specific demographic attribute. First, sometimes these attributes can be arbitrary in nature. While certain attributes tend to be clearly defined, such as the poverty level, others such as percent minority are often defined primarily in terms relative to regional demographics. Another limitation is that thresholds fail to convey intensity. Applying a threshold pass/fail test to identify an EJ community based on "percent of households in poverty," reduces a community to either being above the threshold and is an EJ community or being below the threshold and is not an EJ community. This has the potential for minimizing the importance of communities that fall under a threshold and over emphasizing the importance of those that fall about a threshold.

The MDEQ's approach is to evaluate the potential impact on a community when proposed permit applications are received, while simultaneously identifying those areas that have been impacted by existing sites in order to prevent further impacts. Of the facilities that were identified only one was operating under a title V permit. That facility is currently planning on closing down operations. Nineteen other non-title V related facilities were identified as having historical or potential future EJ concerns. Many of these facilities have also gone out of business. Any new permitting action at these facilities requires coordination with the Office of Community Engagement. After coordination with the Office of Community Engagement, the facility may be designated as requiring additional community engagement to ensure that due process and equal protection are provided.

The majority of MDEQ permit writers have received formal EJ training. In 2002, the EJ Coordinator was responsible for developing and implementing an EJ strategy for the Office of Pollution Control. In 2003, the strategy was finalized and Cultural Diversity training was provided to all staff and public participation/public hearing training provided to permitting staff. In 2008, the MDEQ coordinated with the EPA Region 4 staff to train over 80 staff members from the permitting, compliance and enforcement, field services, and groundwater assessment and remediation divisions. In spring 2012, the Office of Community Engagement began working with the agency's Training Committee to create required EJ training for the entire agency. At this time the formal training has not been completed, however significant informal training and guidance has been provided to permitting staff to raise awareness of EJ concerns.

MDEQ permit writers have also received guidance to ensure that they use the project awareness checklist (PAC) which includes a section for community engagement. The PAC includes questions that must be answered to help the permit writer determine if additional community engagement or EJ concerns need to be addressed. The project awareness checklist allows each permit writer to affirmatively determine if a potential project will involve EJ concerns.

In addition, there are certain facilities "targeted" for additional community engagement because of historical EJ issues. The MDEQ has inserted a visual reminder into their enSite database to identify these facilities for their permit writers. When retrieving a facility's information from the database, if a green bull's-eye is imprinted on the facilities main page, the permit writer is required to coordinate that review with the Office of Community Engagement. Permit writers also utilize data from EPA's mapping and demographics tool, EJ View, which allows them to determine demographic information for the area surrounding any facility.

The MDEQ staff has gained experience working with EJ issues. Over the last few years, more issues have surfaced concerning proposed sites where applications have been received and review by permitting staff has commenced. In the most recent cases, the agency has taken steps to communicate with the residents of impacted areas through community engagement meetings held in the local community and smaller face to face meetings with local government officials. One of the successes in addressing an EJ issue has been working closely with local government to proactively provide information to their constituents. The MDEQ has been successful in finding ways to get all interested parties to come to the table and reach agreements. There have been several instances in which communities have expressed concern with the issuance of air permits. In both cases the MDEQ took additional measures to determine the impacts of the air emissions through modeling these sources. The MDEQ has also worked with the EPA Region 4 to obtain grants to perform toxics monitoring to resolve some community concerns.

Conclusion

Overall, the EPA believes that the MDEQ is meeting the federal requirements of the title V program and looks forward to continuing to work with the MDEQ in the future.