



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-3104

August 24, 2020

Corey Masuca, P.E., Ph.D.
Director, Air and Radiation Protection Division
Jefferson County Department of Health
1400 Sixth Avenue South
Birmingham, Alabama 35233

Dear Dr. Masuca:

This letter transmits the U.S. Environmental Protection Agency findings of our evaluation of the Jefferson County Department of Health's (JCDH) Title V Air Pollution Control Program. The purpose of the EPA's program evaluation is to address the ability of JCDH to carry out its responsibilities to implement the title V program and to also determine how our office can best assist JCDH in meeting this commitment. The program evaluation consisted of a review of staffing resources and internal management support, title V revenue and expenses, public participation, permit issuance rates, and issued permits. This information was gathered in fiscal year 2020 (FY20) through JCDH's response to survey questions, review of selected permit files, an on onsite visit, December 12-13, 2019, and review of permits issuance rates reported to the federal Title V Operating Permit System (TOPS data) through June of 2020.

Based on the EPA's evaluation of the materials described above, we have determined that the JCDH title V program is being implemented in accordance with the requirements set forth in 40 CFR part 70. The EPA commends JCDH for its timely issuance of title V permits and for taking actions to create an enhanced outreach and public participation program. Permit issuance and public participation are two cornerstones of the title V program. The EPA does have concern regarding the sustainability of JCDH's reliance on revenue generated solely through an emissions-based formula to collect adequate revenue to fully fund the title V program. Funding the program through a combination of fixed and emission-based revenue streams may alleviate concerns about adequate funding with decreasing emissions.

We thank you and your staff for the cooperation and hospitality throughout this process. If you have any questions or comments regarding this review, please do not hesitate to contact me at (404) 562-9141, Kelly Fortin, Acting Chief, Air Permits Section, at 404-562-9117, or Art Hofmeister of our program evaluation team at 404-562-9115. We look forward to our continued positive working relationship.

Sincerely,

GREGG

WORLEY

Gregg M. Worley

Acting Director

Air and Radiation Division

Digitally signed by GREGG
WORLEY
Date: 2020.08.24 11:52:06 -0400

Enclosure

**Title V Operating Permit Program Evaluation Findings
Jefferson County Department of Health (JCDH)
Air Pollution Control Program (APCP)
August 2020**

Background

In response to the recommendations of a 2002 Office of Inspector General (OIG) audit, the U.S. Environmental Protection Agency developed an action plan for performing program reviews of title V operating permit programs for each air pollution control agency beginning in fiscal year 2003. Following the initial reviews, the EPA committed to conduct ongoing periodic title V program reviews for state and local programs that have at least 20 title V major sources within their jurisdiction. In addition, at the request of the OIG, the EPA formally added a title V fee audit component in 2018. The EPA Region 4 oversees 8 state and 10 local air permitting authorities with title V operating permit programs and typically performs 2 to 4 title V program evaluations annually.

JCDH's initial title V program review was conducted in June 2005 and a subsequent review was conducted in June 2013. The purpose of these program evaluations is to identify good practices, document areas needing improvement, and learn how the EPA can help the permitting agencies improve their performance.

The JCDH program evaluation consisted of a review of staffing resources and internal management support, title V revenue and expenses, public participation, permit issuance rates, and issued permits. This information was gathered in FY20 through JCDH's response to the EPA's survey questions, review of selected permit files, an on onsite visit December 12-13, 2019, and permits issuance rates reported to the federal Title V Operating Permit System (TOPS data) through June of 2020. Findings from our review are listed below.

Staffing Resources and Internal Management Support

JCDH's APCP, within the Air and Radiation Protection Division of the Environmental Health Division, has jurisdiction over the permitting of air emission sources in Jefferson County, Alabama. APCP has five (5) full-time employees (FTEs) dedicated to title V permitting, including two very experienced title V permit writers. Enforcement and inspections to ensure compliance with issued permits are also performed by these five (5) FTEs.

The APCP reports that they have been able to minimize staff turnover through good pay, quality benefits, and a pleasant working environment. At the time of our onsite visit, the title V program had one vacancy, which the APCP plans to fill in FY21. The impacts of staff turnover and this vacant position have been minimized by having the senior staff focus primarily on the issuance of title V permits. When the APCP hires an additional permit writer, this current workplan is expected to remain in place while the new employee undergoes training to develop the skills needed to write effective title V permits.

Title V Revenue and Expenses

Permitting authorities are required by section 502(b)(3) of the Clean Air Act (CAA) to collect permit fees from sources subject to title V sufficient to cover all costs necessary to develop and administer their title V permit programs. Permitting agencies must collect part 70 fees that are sufficient to cover direct and indirect part 70 permit program costs. Accordingly, air agencies may need to revise fee schedules periodically to remain in compliance with the requirement that permit fees cover all part 70 permit program costs. Changes in costs over time may be due to many factors, including but not limited to: changes in the number of sources required to obtain part 70 permits, in emission rates of sources, and in the types of permitting actions being performed; promulgation of new emission standards; and minor source permitting requirements for CAA sections 111, 112, or 129 standards.

JCHD determines their title V fees based on their calculated billable tons of emissions and the required revenue needed to fully fund the title V program. The APCP does not use the presumptive minimum (with consumer price index increases) in determining their dollars-per-ton fee due to the steadily decreasing tons of billable emissions. Title V billable emissions dropped over 4000 tons from FY 2015 to FY 2016, representing a 19 percent decrease. A fee increase in FY 2019, from \$26.17 to \$67.16 (from the FY 2015 fee), was needed to fully fund the title V program for FY2019. For FY20, the indirect fees increased from 60.65% to 68% of salary and wages to address rising benefits costs.

- **Recommendation:** The EPA recommends that the JCDH consider alternative methods of funding the title V permitting program that are not solely tied to annual emissions. A base administrative fee or an application fee, combined with an emissions rate fee, are options used by other permitting authorities in our region. This approach also captures the workload needed for reviewing applications and drafting permits that may be subsequently withdrawn. The EPA recommends that APCP continue to track permitted facilities' projected emissions totals so that APCP has the necessary time to determine an appropriate dollars-per-ton fee rate for the following fiscal year.

Public Participation

Title V public participation procedures apply to initial permit issuance, significant permit modifications, and permit renewals. Adequate public participation procedures (see 40 CFR 70.7(h)) must provide for public notice, including an opportunity for public comment and public hearing on the draft permit, permit modification, or renewal. Draft permit actions may now be noticed on a website and through email (e-notice). The permitting authority must keep a record of the public comments and respond to the significant issues raised during the public participation process.

The JCDH has not adopted the federal e-notice rule (which allows for online publications to be the official notification method for public notices) due to a county regulatory requirement in place that requires them to utilize newspapers as the primary source of notification for all public notices. However, the APCP does publish all public notices on its website as a secondary method for notifying the public of any upcoming permitting actions. They have also implemented an email list to ensure that members of the public who would like to receive information are given 30 days' notice prior to a public meeting or proposed permitting action. Draft permits and permit applications are also made available online for the duration of the comment period. In addition to multiple methods of public notification, the APCP has a well-developed, enhanced outreach strategy that (when combined with its public notice process) ensures that communities know that they have an opportunity to provide input.

North Birmingham, within the jurisdiction of JCDH, has an active Environmental Justice (EJ) community. JCDH has worked to ensure that affected communities are part of the permitting process. On their website, JCDH has two videos, entitled *The Proof is in the Permit*, in which they explain the permitting process and how members of the public can participate. Their decisions to plan public meetings involving industry and the affected communities have reportedly allowed both the community to provide input and have their concerns addressed and provides industry with an opportunity to be a “good neighbor.” In addition, JCDH has developed, in coordination with the EPA’s External Civil Rights Compliance Office, an agreement on how they will handle EJ issues in the future.

Permit Issuance

Jefferson County is in attainment for all National Ambient Air Quality Standards (NAAQS) and APCP issues both construction and operating (both major and minor, Prevention of Significant Deterioration and Title V) permits. Regulatory information for these permitting programs, as well as a list of all current Title V Major Source Operating Permits issued by JCDH are available to the public and can be found on the JCDH website. Jefferson County currently has 24 facilities subject to the title V operating permit program and issues approximately 6 title V renewal and initial permits per year.

As part of the program evaluation, the EPA reviewed JCDH’s title V program permit issuance rate to ensure that APCP has been consistent in renewing title V permit on the required 5-year cycle. Ensuring that title V permits are renewed and subject to public review every five years is an important aspect of every title V program. Delayed permit issuance reduces the ability of the public to review and provide comments on a permit and can result in a delay in the incorporation of new applicable requirements.

At the time of our site visit, JCDH had a very commendable 100 percent timely issuance rate, *i.e.*, **no permitting actions were in a backlogged status**. Due to COVID-19 and concerns with public involvement, JCDH temporarily halted issuing Title V permit renewals. As of July 27, 2020, JCDH resumed issuing permits with the plan to put them out for public notice and conduct virtual hearings as needed.

Selected Permit Files Reviewed

As part of the program evaluation, the EPA reviewed the files of eight targeted, preselected permitting actions issued by the APCP. The EPA reviewed each permit for consistency with title V program requirements. Additionally, we reviewed each source file to ensure that they were administratively complete. Overall, the APCP’s permits were found to be well-written. Generally, the statements of basis are very thorough and provide detailed insight into the rationale behind the permit limits, monitoring, historical revisions of the facility and any exemptions allowed within the permit.

The EPA did note, however, that several of the source files provided for review did not include all relevant permitting documents. To varying extent, such items as applications, statements of basis, and/or draft/proposed/final permits were omitted. In each instance, any missing documents were readily produced by the APCP permitting staff upon request. JCHD is currently developing an in-house electronic file management system that will address this issue, which JCDH plans to roll out by the end of 2020. It is the EPA’s understanding that this system will store all relevant permitting documents in one convenient “location” and in such a manner that will prove user-friendly by incorporating multi-faceted search features.

Conclusion

Based on the files reviewed, title V survey results, TOPS data, fee documents and site visit conducted December 13, 2019, the EPA concludes that JCDH has an excellent grasp of the requirements of title V and is continually working to find impactful ways to increase their staff's ability to meet the varied requirements of title V. Reviews of JCDH permits noted that they are well-written, thorough and detailed, providing the factual basis for the decisions made regarding the permit. JCHD is commended also for timely permit issuance and community outreach. The EPA recommends that JCDH consider alternative methods of funding the title V permitting program that are not solely tied to annual emissions. In addition, the EPA supports JCHD's development of an electronic file management system for the storage and easy retrieval of APCP's permit documents.

The EPA Region 4 is committed to continuing to provide any needed assistance with respect to EJ-sensitive permitting matters in the North Birmingham area. The EPA Region 4 is also committed to assisting JCDH with any requested information or training opportunities. The EPA Region 4 will continue to provide prompt feedback to JCDH regarding any rule/guidance interpretation inquiries and any general/specific permitting questions raised, and to keep JCDH informed of any future agency actions that may have an impact on its permitting program.