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REPLY TO THE ATTENTION OF:

Matthew Stuckey, Assistant Commissioner
Office of Air Quality
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue IGCN 1003
Indianapolis, Indiana 46204

Dear Mr. Stuckey:

I am pleased to transmit to you the final 2021 Indiana New Source Review and Title V Program Evaluation Report. The enclosed report provides information regarding the U.S. Environmental Protection Agency's program evaluation findings, including program strengths and highlights as well as areas that both agencies will continue to focus on improving. We also discussed these findings with Jenny Acker and Phil Perry of your staff during a conference call on November 3, 2021. We appreciate your assistance and responsiveness during the program evaluation as well as Jenny Acker's time and expertise, and we look forward to continuing our cooperative working relationship.

If you have any questions, please contact me or Genevieve Damico, Air Permits Section Supervisor, at (312) 353-4761.

Sincerely,

**JOHN
MOONEY**

John Mooney
Director
Air and Radiation Division

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Enclosure



Review of the Indiana Department of Environmental Management's New Source Review and Title V Permit Programs

2021 Evaluation Final Report

United States Environmental Protection Agency, Region 5
Air & Radiation Division
77 West Jackson Boulevard
Chicago, Illinois 60604

January 21, 2022

Executive Summary

From December 2020 to September 2021, as part of its ongoing oversight of state and local New Source Review (NSR) and Title V permit programs, EPA conducted a series of conference calls with the Indiana Department of Environmental Management's (IDEM's) staff and managers to review preliminary responses to the Region 5 Questionnaire for NSR and Title V Program Evaluations. On November 3, 2021, EPA and IDEM staff held a conference call to discuss EPA's findings from the program evaluation.

This final report summarizes EPA's findings regarding IDEM's compliance with the statutory and regulatory requirements for NSR and Title V permitting programs, based on IDEM's answers to the questionnaire, our discussion of IDEM's responses during the questionnaire conference calls, follow up discussions regarding IDEM's responses, and EPA staff knowledge of the program based on experience with reviewing IDEM's permits and programs. However, this program evaluation is not comprehensive in its scope and did not evaluate all facets of IDEM's implementation of its permit programs.

EPA found that IDEM's air permit program strengths include robust online public access to various types of supporting permit records and detailed technical support documents that clearly identify any changes to the current permit and that provide justification for IDEM's decisions. In addition, IDEM's permit development and issuance process is well-supported by permit drafting tools and resources, internal review procedures, and training for permit writers. We also acknowledge IDEM's achievement in maintaining a very low Title V permit renewal backlog of 1% – significantly lower than Region 5's backlog goal of less than 10%.

EPA also identified two areas where IDEM has agreed to work with EPA to address concerns: identifying a test method in the permit where the underlying applicable requirement does not specify one, and revisiting IDEM's concurrent and sequential permit review procedures to ensure they align with the requirements of EPA's 2020 Title V permit program revisions rule. EPA affirms its commitment to work with IDEM to address these issues.

Finally, EPA reviewed IDEM's Title V fee structure as part of this evaluation. IDEM reports that Title V revenue was sufficient to meet expenditures for state fiscal years 2015 through 2019, and that IDEM is evaluating potential future changes to its fee calculation methodology due to emission reductions at many large sources. EPA recommends that IDEM continue to manage and assess the Title V related fees and expenditures in the Title V Legal Fund to ensure that the Title V operating permit program is self-funded in accordance with 40 C.F.R. § 70.9.

Evaluation Findings

1. Introduction

IDEM's Part 70 operating permit program, which is established to meet the requirements of Title V of the Clean Air Act (CAA) and 40 C.F.R. Part 70, is found in 326 Indiana Administrative Code (IAC) 2-7. EPA granted final full approval of Indiana's Part 70 program on December 4, 2001 (66 FR 62969). IDEM also implements a Federally Enforceable State Operating Permit (FESOP) program at 326 IAC 2-8 which meets the requirements of CAA §§ 110 and 112(l). EPA approved Indiana's FESOP program on August 18, 1995 (60 FR 43008).

IDEM's NSR permitting program consists of its Prevention of Significant Deterioration (PSD) requirements at 326 IAC 2-2, nonattainment NSR requirements at 326 IAC 2-3, and minor NSR requirements at 326 IAC 2-7-10.5 and 326 IAC 2-8-11.1. Indiana's PSD program was established to meet the requirements of Part C of Title I of the CAA with state implementation plan (SIP) approval initially granted May 20, 2004 (69 FR 29071). Indiana's nonattainment NSR program, established to meet the requirements of Part D of Title I of the CAA, was most recently approved into the SIP on July 2, 2014 (79 FR 37646). Indiana's minor NSR program, established to meet the requirements of CAA § 110(a)(2)(C), was most recently approved into the SIP on March 16, 2015 (80 FR 13493).

IDEM and EPA participate in monthly calls to discuss pending permitting and programmatic issues, share permitting information, and identify issues of potential concern. EPA also collaborates with IDEM on specific permit program topics and individual permits as needed. As part of our oversight role, EPA periodically reviews draft permits during the public comment period and works with IDEM to resolve issues raised by EPA in a timely manner. IDEM has worked closely with EPA to address concerns and to issue final permits that are consistent with the CAA and the Indiana SIP.

2. Follow-up to the 2016 Evaluation Finding – Test Method Identification

EPA last evaluated IDEM's Title V program in fiscal year 2016 and issued a report summarizing its findings on August 4, 2016. While the 2016 report noted strengths in IDEM's implementation of the air permitting programs, EPA expressed concern that, in general, Indiana Title V permits do not specify a test method unless the underlying applicable requirement specifies one. EPA revisited this issue as part of the 2021 program evaluation to determine whether IDEM had made any progress in resolving EPA's concern.

As discussed in the 2016 report, several provisions in 40 C.F.R. Part 70 require test methods to be specified in Title V permits, even if the underlying applicable requirement does not require testing. 40 C.F.R. § 70.6(a)(3)(i)(B) requires periodic monitoring, including the use of test methods, sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit when the applicable requirement does not require periodic testing or monitoring. 40 C.F.R. § 70.6(c)(1) requires compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. 40 C.F.R. § 70.6(a)(3)(i)(A) requires each permit to include

all test methods required under any applicable testing requirement. Indiana's Title V program includes provisions that are consistent with the requirements of 40 C.F.R. § 70.6(a)(3)(i)(A) and (B) and 40 C.F.R. § 70.6(c)(1) at 326 IAC 2-7-5(3)(A)(i) and (ii) and 326 IAC 2-7-6(1), respectively. In response to our 2016 finding, IDEM committed to developing permit language that would address the test method identification issue while preserving some of the flexibility IDEM preferred in its permits. EPA committed to working with IDEM as it developed and implemented permit language to resolve this issue.

Following our 2016 evaluation, IDEM's air permits branch began internal discussion with IDEM's air compliance and enforcement branch to identify suitable language intended to address our finding. EPA requested and IDEM provided periodic progress updates during monthly air permit calls between June 2016 and January 2018. EPA also shared information regarding proposals addressing similar test method issues in other Region 5 states. In January 2018, IDEM and EPA ceased tracking progress of the test method identification issue without a negotiated resolution due to staff availability and resource concerns.

EPA recommends that IDEM develop language to specifically identify test methods within their Title V permits. We reiterate our previous finding that specifically identifying test methods in the permit consistent with 40 C.F.R. § 70.6(a)(3)(i)(A) and (B), 40 C.F.R. § 70.6(c)(1), 326 IAC 2-7-5(3)(A)(ii), and 326 IAC 2-7-6(1) ensures that the facility, EPA, IDEM, and members of the public know and understand in advance how compliance testing will be conducted.

3. 2021 Evaluation Findings

Below are EPA's findings related to the 2021 program evaluation, organized into four topics: 1) permit file review; 2) concurrent and sequential permit review procedures; 3) Title V permit fees; and 4) Title V backlog.

A. Permit File Review

EPA reviewed three permits as part of the program evaluation. A description of the permit file review is provided in the Appendix.

IDEM addressed comments received during the public comment period for all three permits. For the two permits with significant public interest, IDEM provided a public hearing and enhanced the public comment period by either lengthening the minimum 30-day comment period or providing a second comment period. IDEM also enhanced online access to permit records for one of the permits by updating online permit records (e.g., IDEM correspondence with the source) on a weekly basis and providing air dispersion modeling data to the public upon request.

EPA received a Title V petition to object to one of the permits, which EPA denied. EPA also received an untimely request to object to one of the other permits. The untimeliness of the

request illustrated a general concern with the potential for confusion over the timing of the Title V petition period.

EPA encourages permitting authorities to provide information to the public or interested stakeholders regarding the start and end dates for the proposed permit review by EPA. The end date for EPA's review is important to members of the public who might be interested in submitting petitions to object to EPA. The permit file review identified an opportunity for improving how IDEM provides notification for the start and end dates of the EPA proposed permit review period. As a result of our discussions, IDEM added language to their Notice of Decision template documents that directs the public to where they can find the start and end dates of the EPA proposed permit review period on the IDEM website.

Section 3.B and the Appendix include further discussion of the 45-day EPA proposed permit review period, as it relates to IDEM's concurrent and sequential permit review procedures.

Based on the permit file review and additional experience reviewing IDEM permits, IDEM's permit program strengths include the following:

- IDEM provides comprehensive and easily accessible permit records online, including application materials, technical support documents, previous permits, compliance inspection reports, and stack test reports.
- IDEM also provides detailed technical support documents that include potential to emit emissions calculations, document decision making rationale, and document responses to comments.
- In addition, IDEM's use of bold/strikeout in the technical support document to clearly identify changes to permit language is recognized as a best practice.
- IDEM's permit development and issuance process is well-supported by permit drafting tools and resources, internal review procedures, and training for permit writers.

B. Concurrent and Sequential Permit Review Procedures

In 2020, EPA issued final revisions to the petition provisions of the Title V permitting Program.¹ Among other things, the rule clarifies the commencement of the EPA 45-day review period. It also codifies procedures related to concurrent and sequential review processes.

EPA identifies the need to revisit the existing Review Protocol entered between EPA Region 5 and IDEM² on May 16, 2006, as well as IDEM's implementing rules at 326 IAC 2-7-18, to ensure they align with the requirements of the 2020 Title V permit program revisions. We appreciate IDEM's willingness to work with EPA on this issue.

C. Title V Permit Fees

¹ Final rule: Revisions to the Permitting Provisions of the Title V Permitting Program. 85 FR 6436 (Feb. 5, 2020). <https://www.govinfo.gov/content/pkg/FR-2020-02-05/pdf/2020-01099.pdf>

² Review protocol available online at https://www.epa.gov/sites/production/files/2017-11/documents/indiana_title_v_permit_review_protocol.pdf.

IDEM's Title V fee schedule is based upon a combination of annual base fees and actual emissions fees, with additional fixed fees for specific permit actions and regulatory analyses. The fee assessment is capped for the largest sources, and the cap is higher in serious or severe ozone nonattainment areas. There are also additional fees for coke oven batteries and municipal solid waste incinerators.

In 2019, the state increased its Title V fee assessments across the board by 27%. IDEM states that the total fees collected exceed the Part 70 presumptive minimum, and that Title V revenue was sufficient to meet expenditures for state fiscal years 2015 through 2019, due in part to cost cutting measures, a reduction in staff, and the 2019 fee increase. IDEM also notes that the Department is evaluating potential changes to its fee calculation methodology because emission reductions at many large sources may render the current fee structure unsustainable.

To ensure that Title V fees collected are solely used for appropriate direct and indirect Title V permit and program activities, IDEM maintains a Title V Legal Fund to track revenue and expenses. IDEM also conducts an annual fund analysis to establish the spending plan for the next fiscal year and to determine if fees need to be increased to assure adequate funding.

EPA recommends that IDEM continue to manage and assess the Title V related fees and expenditures in the Title V Legal Fund to ensure that the Title V operating permit program is self-funded in accordance with 40 C.F.R. § 70.9.

D. Title V Backlog

Indiana continues to manage the smallest Title V permit renewal backlog in Region 5. Pursuant to Indiana's July 2021 Title V Operating Permit System (TOPS) Report, EPA acknowledges IDEM's achievement in maintaining a very low Title V permit renewal backlog of 1%, which is significantly lower than Region 5's backlog goal of less than 10%. During Indiana's program evaluation process, EPA worked with IDEM as well as the other Region 5 permitting authorities to ensure that comparable TOPS data is reported for all programs. EPA recognizes IDEM's responsiveness in addressing these consistency efforts, as reflected in their July 2021 TOPS report.

4. IDEM Concerns, Recommendations, and Suggestions

IDEM shared the following comments with EPA. EPA welcomes the feedback and is committed to working with IDEM to address their concerns and recommendations below.

A. Compliance Assurance Monitoring Training

IDEM recommended that EPA develop training on Compliance Assurance Monitoring (CAM), 40 C.F.R. Part 64. The training would be intended for permit writing staff and would address common misunderstandings and errors related to CAM in permitting.

EPA is developing updated national training courses on a variety of air permitting topics, and we have relayed IDEM's request to the respective team. EPA will begin work on a new national CAM e-learning course in fiscal year 2022.

B. Program Evaluation Scheduling

IDEM noted that the program evaluation questionnaire review process was distributed over multiple short meetings over several months, instead of a few longer sessions, which helped the state more effectively manage its workload.

As part of our oversight role, EPA is committed to conducting the program evaluation in an effective manner, while also accommodating the permitting authority's regular workload and schedules.

C. Program Evaluation Consistency

IDEM recommended that future NSR and Title V Program Evaluations by Region 5 be based on a national process and set of national evaluation criteria for all states and not just those states in Region 5. IDEM believes this would ensure national consistency in the assessment of Indiana's NSR and Title V Programs and avoid any disproportionate or subjective review of each state's program. IDEM also noted that EPA's oversight of states' compliance and enforcement programs under the CAA, Clean Water Act, and Resource Conservation and Recovery Act has been evaluated in the same objective manner using a national process and set of criteria outlined in the State Review Framework since 2004 (see <https://www.epa.gov/compliance/state-review-framework>). IDEM recommended that Region 5 engage EPA Headquarters to establish a national permit program review process and set of national evaluation criteria for all states before the next round of reviews.

We acknowledge the importance of establishing a level of consistency in the evaluation criteria, while also tailoring each evaluation to assess specific topics that are relevant to each state. We thank IDEM for their feedback and will relay IDEM's recommendation to EPA Headquarters for their consideration.

D. EPA Program Updates via Periodic State Consistency Messaging

IDEM highlighted that EPA provides periodic summaries of recent EPA Title V petition orders and air permitting-related federal court decisions. The summaries are relevant to their work and they do not consistently receive this type of information through other channels.

EPA provides these summaries as part of our efforts to deliver timely and consistent common messaging to our regional permitting authorities. We are pleased to hear the information is useful to IDEM.

**Review of the Indiana Department of Environmental
Management's New Source Review and Title V Permit
Programs**

**2021 Evaluation Final Report
Appendix**

Appendix - Permit File Review

EPA reviewed three permits as part of the program evaluation. The reviews focused on 1) the administrative records illustrating how IDEM addresses community concerns, including how the permit process and permit content were considered; and 2) monitoring, recordkeeping, and operational restrictions for synthetic minor limits.

1. The first permit record was for a Title V significant permit modification for a source that manufactures liquid coatings and dispersions. The purpose of the permit was to: 1) establish synthetic minor hazardous air pollutant (HAP) limits to become an area source for HAPs, in accordance with EPA's January 25, 2018 guidance memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act"; 2) update source-specific volatile organic compound (VOC) emission factors, resulting in a change from synthetic minor VOC PSD status to minor source status and non-applicability of CAM; and 3) route two existing emission units to an existing oxidizer for VOC and HAP control, with the option to control a third unit.

Only EPA submitted comments on the draft permit during the 30-day public comment period. EPA's comments related to ambiguous language and practical enforceability of various permit conditions including synthetic minor limits. IDEM provided responses in the proposed permit to justify its decisions and strengthen the permit record and made several revisions to the permit to resolve the concerns.

2. The second permit record was for a combined initial Title V permit and major PSD permit to construct a new facility that would directly convert coal into liquid fuels via hydrogenation.

IDEM made several enhancements to the public participation process for the permit action in consideration of substantial public interest. These included lengthening the public comment period to 47 days, holding a public hearing, and enhancing online accessibility to permit records for the public. The latter included updating online permit records (e.g., IDEM correspondence with the source) on a weekly basis and providing air dispersion modeling data to the public upon request.

Following the comment period, IDEM submitted the proposed permit and supporting documentation for EPA review, including 338 pages of comments (including EPA comments) and IDEM's responses. The public submitted comments on a broad range of topics, including air quality concerns, noise and odor, zoning, air monitoring, emission factor and calculation methodologies, air quality modeling, rule applicability, monitoring and recordkeeping, BACT analysis, fugitive emissions, and public participation requirements. EPA did not object to the proposed permit, and IDEM issued the final permit shortly after the EPA review period.³

³ Citizen groups also filed a state petition for review to Indiana's Office of Environmental Adjudication (OEA). *See Riverview*, 2020 OEA 31 (19-A-J-5073). OEA denied the petition, finding that the petitioners failed to present substantial evidence to meet their burden of showing that IDEM improperly issued the permit. The decision has been appealed to the Marion County Superior Court (Case Numbers 49D13-2101-PL-001844 and 49D13-2101-PL-001599).

EPA received a Title V petition to object to the permit from citizen groups, with claims related to insufficient monitoring and reporting, NESHAP rule applicability, incomplete information in the application to issue the permit, and public participation requirements. EPA denied the petition in full. The reasons for denial included the failure to address existing permit terms and explain why they are insufficient to assure compliance; failure to provide sufficient technical basis to support claims that question IDEM's conclusions; and failure to demonstrate that the lack of information during the public comment period violated Title V requirements, deprived the public of the opportunity to meaningfully participate in the process, or resulted in a flaw in the permit.

3. The third permit record was a Title V renewal for a heat recovery coal carbonization facility located at an integrated steel mill.

The permit contained several PSD and nonattainment NSR synthetic minor limits intended to avoid the applicability of major NSR requirements. The final permit includes conditions identifying these limits, as well as the associated monitoring, recordkeeping, and reporting requirements. Monitoring, testing, and recordkeeping conditions were revised as a result of comments received from both EPA and the public to improve their enforceability.

IDEM held two draft permit public comment periods in response to the significant public interest in this permit action. After the first 30-day public comment period, IDEM re-noticed the draft permit for an additional 38-day period. The re-noticed permit and permit record addressed comments received during the first comment period. IDEM also held a public hearing on the re-noticed permit, which occurred five days before the end of the second public comment period in order to provide the public additional time to submit comments following the completion of the public hearing.

EPA received a request to object to the issuance of the permit. The request was received after the first draft permit public comment period ended but before the second, re-noticed draft permit public comment period began. EPA responded by indicating that the request was not a valid petition because it was submitted before the proposed permit was submitted to EPA for its 45-day review. EPA offered to inform the requestor when the proposed permit was submitted to EPA to clarify when a petition may be timely submitted.

The premature submittal of the request to object appears to be the result of the second public comment period as well as confusion regarding the beginning and end dates of the proposed permit periods. This created an opportunity for improving how IDEM identifies the start and end dates of the EPA proposed permit review period. As a result of our discussions, IDEM added language to their Notice of Decision template documents that directs the public to where they can find the start and end dates of the EPA proposed permit review period on the IDEM website.

Another reason for potential confusion regarding the beginning and end dates of the proposed permit period may stem from IDEM's procedures for concurrent and sequential 30-day draft permit public review and 45-day proposed permit EPA review. Concurrent and sequential

review is addressed in IDEM's regulations at 326 IAC 2-7-18 and in the May 16, 2006 Review Protocol entered between EPA Region 5 and IDEM. IDEM's rules and the Review Protocol outline different scenarios regarding how and when the draft and proposed permit review periods can overlap, based on whether comments are submitted and whether comments result in changes to the permit. It may not always be readily apparent to the public which scenario applies to any given permit. In addition, revisions to 40 C.F.R. Part 70 now include requirements for concurrent and sequential review. To ensure that IDEM's permit review process is transparent to the public and meets the revised federal rule, EPA identifies the need to revisit the Review Protocol and 326 IAC 2-7-18.