UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

RECEIVED
DEC 21 2015
9652
AIR QUALITY MGT.

DEC 16 2015

Mr. Ali Mirzakhalili
Director, Division of Air Quality,
Delaware Department of Natural Resources and
Environmental Control
State Street Commons, Suite 6A
100 West State Street
Dover, Delaware 19904

Dear Mr. Mirzakhalili: Ali

Enclosed is the final report for the Title V program evaluation conducted by my staff on September 29, 2015 at your New Castle office. I would like to thank you and your staff for the cooperation and support given to my staff in conducting the evaluation, and I look forward to our continued collaboration and success in the Title V program.

If you have any questions regarding the report, please do not hesitate to contact me at 215-814-2500, or have your staff contact Mr. David Talley of my staff at 215-814-2117, and talley.david@epa.gov.

Sincerely,

David D. Arnold, Acting Director
Air Protection Division

cc: Mr. Paul Foster, DNREC

Delaware Title V Program Evaluation – September 29, 2015

I. Introduction

On September 29, 2015, the U.S. Environmental Protection Agency (EPA) conducted an evaluation of Delaware's approved title V Operating Permits Program. Representatives from Region III Air Protection Division, Office of Permits and State Programs travelled to the New Castle, DE office of the Delaware Department of Natural Resources and Environmental Control (DNREC). Present from EPA were David Campbell (Associate Director of the Office of Permits and State Programs), David Talley, Cathleen Kennedy, and Gerallyn Duke. Present from DNREC were Paul Foster (Environmental Program Manager), Joanna French, and Angela Marconi. The evaluation was conducted as a part of EPA's routine oversight of State permitting activities. EPA thanks DNREC for their hospitality and cooperation.

II. Background

EPA first approved DNREC's title V program on October 3, 2001.[1] Subsequent to that initial approval, EPA twice conducted title V program evaluations to assess DNREC's overall implementation of the program, and to identify organizational strengths, as well as areas in which some improvement could be made. Those evaluations were conducted in 2004 and 2007. In both instances, EPA discovered no significant program deficiencies, and generally expressed satisfaction with DNREC's implementation.

III. Evaluation

Because DNREC's title V program is well established, and because EPA routinely reviews proposed title V permits which are submitted to EPA during the course of their routine issuance, EPA did not conduct a file review during this current evaluation. Rather, the evaluation consisted primarily of a conversation between EPA and DNREC, centered around a number of questions which were provided to DNREC on the day of the evaluation.[2] The questions addressed a number of specific program issues, and the results of the discussions are outlined below.

A. Title V Permit Preparation and Content

As previously discussed, EPA routinely reviews proposed title V permits that are prepared by DNREC and submitted pursuant to 40 CFR 70.7(a)(v), and has been generally satisfied with their content. One challenge for any permitting authority is incorporating into the title V permit requirements which became applicable after the source submitted their original application. According to Mr. Foster, this has not been a significant issue in Delaware, particularly since

---

[1] *See* 66 FR 50321

[2] *See* Appendix I.

DNREC does not have a large backlog of unissued initial permits or permit renewals, and most older permits have been issued. Electric Generating Units (EGUs) generally present the greatest challenge. A number of aspects of DNREC's program contribute to ensuring that it won't be a problem in the future. First, all of DNREC's permitting engineers are licensed Professional Engineers (PEs). Additionally, DNREC's permitting engineers are also responsible for the compliance activities associated with their assigned facilities. This unique arrangement has been identified by EPA in past evaluations as a "best practice," and in this particular instance it serves DNREC well. As a result of being responsible for all of the permitting and compliance activities at a given facility, each engineer has an intimate and current knowledge of any changes that have been made at each, and therefore which requirements are applicable.

During the previous evaluation, EPA identified one potential opportunity for DNREC to improve the efficiency of its permitting process: concurrent review. At the time of the 2007 evaluation, DNREC was, in all cases, processing a draft permit for 30-day public review, and then submitting a proposed permit to EPA for 45-day review. This is referred to as *sequential* review. Because most title V permits are not controversial or contentious, many permitting authorities have adopted a *concurrent* review process, where a draft/proposed permit is processed and subject to public participation and EPA review at the same time. If no significant comments are received on the permit from any interested party and EPA does not object, the final permit can be issued at the end of EPA's 45-day review period. This can result in considerable time savings. Since the last evaluation, DNREC has implemented concurrent review, and it appears to be a meaningful process improvement.

DNREC also implements a number of other measures which have improved the efficiency of their program. Title V review memos now include a list of all 5-year contemporaneous equipment and associated emissions changes as well as the facility-wide potential to emit (PTE) for all regulated pollutants. Additionally, each permit now has an appendix outlining the chronology of permitting actions. Also, inspection, permitting, and enforcement tracking files are now managed in a Sharepoint site. In addition to an electronic tracking system, Mr. Foster personally tracks all permits. Permits are drafted by engineers with varying levels of experience. Draft/proposed permits are all reviewed by either Ms. French or Ms. Marconi, and then again by Mr. Foster. This helps ensure the quality of draft/proposed permits. Employee performance evaluations include an assessment of timeliness of permit issuance.

A workforce development program is in place to ensure that new and existing employees receive the training and resources they need to perform their jobs. This includes an intranet desk reference with permit templates and model permits, as well as training plans/checklists for new and existing employees, and a "Learning Management System (LMS)" with electronic training resources. Additionally, new hires are paired with a more seasoned engineer for mentoring. EPA reviewed a number of these resources during the evaluation and commended DNREC for their content and detail. However, despite the availability of online resources, DNREC staff experience difficulty obtaining some necessary and beneficial training because of restrictions on out-of-state travel.

B. Monitoring

Federal and State regulations require that each title V permit contain monitoring sufficient to ensure compliance with all applicable requirements. DNREC was asked how this is accomplished. In most cases, "Regulation 2" permits contain monitoring provisions which DNREC has deemed adequate and are incorporated into title V permits as applicable requirements. With respect to older permits or rules in which the monitoring may no longer be presumptively adequate, DNREC will make a case-by-case determination. For example, if a source's emissions are within 80-90% of any standard, more robust monitoring is generally required. Compliance Assurance Monitoring (CAM) has not been an issue in Delaware – according to Mr. Foster, CAM did not really require anything of Delaware sources that wasn't already required by "Regulation 2" permits. In situations where the adequacy of a title V permit's monitoring requirements is in question, the permitting authority's record is crucial to defending its decisions. With this in mind, DNREC was asked if the rationale for each permit's monitoring scheme is outlined in the review memo. At least one permitting engineer was reported to be doing this on a routine basis, and DNREC management is considering requiring it as a standard operating procedure. Finally, startup/shutdown/malfunction (SSM) emissions and associated monitoring have been an issue nationally. EPA issued a final rulemaking[3] known as a "SIP Call" to address those State Implementation Plans (SIPs) which contained improper exclusions to emissions limitations during SSM periods. Delaware was included in this SIP Call. However, the SIP Call impacted few regulations, mostly pertaining to EGU's. Since continuous emission monitoring systems (CEMS) are required at Delaware's EGU's, monitoring during SSM is generally not a problem.

C. Public Participation and Outreach

Public participation is a crucial component of any well-functioning title V program. DNREC employs a number of methods for informing the public of opportunities to comment on draft title V permits. The information is published on DNREC's website. It is also published in a local newspaper. Additionally, DNREC maintains a distribution list of interested parties and sends out email notifications to all who have registered. Title V permits have not typically generated substantial public interest or controversy in Delaware, however if interest arises, DNREC has scheduled public hearings based on simple requests. Hearings are "testimony driven," and run by a hearing officer. Comments given at hearings are collected by the hearing officer and referred to DNREC for on-record response. DNREC also holds "community meetings," which are informational in nature, and not intended to generate on-record comments. They are simply a vehicle for keeping local residents informed. Parties interested in reviewing draft title V permits must do so in person – electronic files are not maintained on DNREC's website. Comments on draft permits may be submitted electronically, by mail, or in person in the case of a hearing.

---

[3] *See* 80 FR 33840

D. Permit Issuance

Prior to the meeting with DNREC, EPA reviewed DNREC's latest semi-annual title V permit data or TOPS report, which convered the period from January 1-June 30, 2015 (see Appendix II). Notably, in the first half of 2015, the report indicates that DNREC did not have a substantial number of backlogged renewal permits (i.e. permits which were expired, but had been extended past their expiration date). Further, the number reported for the first half of 2015 (7), represented a 50% reduction in the backlog from the second half of 2014. According to Mr. Foster, several factors contributed to this. First, the Delaware City Refinery permit was issued, which freed up significant resources. Second, a concerted effort was made to issue old permits. Ms. Marconi was recently brought onboard, which helped as well. Finally, some of the sources dropped out of major source status. Of the facilities remaining in the backlog, at least one (Fisker) is not likely ever to be issued, because they are not operating and are maintaining their title V permit for reasons unknown to DNREC. Some of the others have applications in house that are incomplete and need to be updated.

E. Compliance

According to DNREC, compliance issues have not contributed significantly to delays in permit issuance. Facilities which are out of compliance with existing permit terms are issued renewals with compliance schedules. In situations where a consent decree (CD) has been issued, terms of the CD are written into a Regulation 2 permit, and then rolled into the title V.

F. Implementation Agreement

Subsequent to EPA's initial approval of Delaware's title V program, EPA and DNREC worked out an "implementation agreement," which spelled out EPA's and DNREC's responsibilities and expectations for the cooperative implementation of title V in Delaware. More recently, EPA revisited the agreement in an effort to improve and update the agreement. EPA and DNREC discussed an updated draft during the evaluation, and agreed in principal to the majority of the elements of the revised agreement. A few areas were highlighted for additional revision. EPA pledged to resolve any outstanding issues and work with DNREC to get upper management approval from both agencies so that the agreement can be fully executed.

G. Title V Fees

Title V revenues have been decreasing nationwide because of tighter emission controls and/or sources closing. Additionally, many States still rely on the presumptively approvable minimum fee structure (plus minor increases tied to the Consumer Price Index) that were established in the original title V regulations. On October 20, 2014, EPA's Office of Inspector General (OIG) issued a report, calling for increased EPA oversight of States' title V revenues.[4] DNREC has been proactive in maintaining adequate title V revenue to sustain its title V program. Delaware statute established the Title V Operating Permit Program Advisory Committee, which performs an annual review to ensure that adequate title V fees are collected to sustain the program. The

---

[4] *Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues;* Report No. 15-P-0006; October 20, 2014.

Committee's 2014 report is attached to this report as Appendix III. Delaware title V sources are charged a "base fee," which is calculated based on the number of hours spent by DNREC staff working on title V related activities for that specific source. In addition, sources are charged a "user fee," which is based on their emissions. According to Mr. Foster, title V revenues are currently sufficient to fund the program. This is supported by the data in the 2014 report. However, the Committee did recommend that DNREC hire a consultant to identify and evaluate potential efficiency improvements. EPA supports this recommendation.

DNREC's Division of Air Quality (DAQ) has been allocated a maximum of 65 full time equivalent (FTE) positions, with a hiring cap of 63 employees. Current staffing levels are at roughly 86% of the allocated FTE's, with 13 permitting engineers. Staffing levels are not currently an impediment to processing title V permits in a timely manner. DNREC engineers appear to have all of the training and resources they need in order to perform their duties. However, as previously noted, it is difficult for DNREC engineers to attend beneficial training if it involves out of State travel. This is due to General Fund limitations rather than issues related to title V revenue. Given the number and complexity of new Federal rules, training is vital if State permitting staff are to maintain a current knowledge base. Towards that end, EPA recommends that DNREC staff receive as much training as possible.

IV. Conclusions

EPA again thanks DNREC for their hospitality and cooperation in conducting this evaluation. No notable deficiencies were identified during the evaluation, and EPA remains highly confident in DNREC's implementation of their title V program.

A. Best Practices

EPA commends DNREC for their workforce development program. The electronic resources reviewed during the evaluation were clear, well organized, and complete, and are no doubt a valuable asset for new and seasoned employees alike. Additionally, EPA supports the changes that DNREC has made to their review memos, namely the inclusion of 5-year contemporaneous changes, facility-wide PTE, and the chronology of permitting actions. These will provide clarity not only for DNREC's permitting engineers, but for EPA permit reviewers as well. EPA also strongly supports DNREC's efforts to include a monitoring rationale in review memos as standard operating procedure. DNREC's title V fee structure is also a particular program strength. By revisiting fees regularly, and by incorporating the two-pronged approach which includes not just emissions based fees but workload based fees as well, DNREC has managed to reduce the impact that the general trend of diminishing emissions has had on other permitting authorities nationwide. Finally, EPA commends DNREC for reducing their backlog, and for making timeliness a priority, and for implementing a concurrent review process.

B. Suggestions

EPA recommends that the barriers to out-of-state travel be removed, so that DNREC's engineers have access to as much training as possible. EPA also recommends that DNREC consider

posting draft/proposed permits online, to provide the public with greater access to the title V process.

C. Follow-up

EPA will work with DNREC to finalize and execute the revised title V implementation agreement.