June 18, 2002

Mr. Adam Babich
Director
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118-6231

Dear Mr. Babich:

On May 22, 2000, the U.S. Environmental Protection Agency (EPA) promulgated a rulemaking that extended the Title V interim approval period for 86 Operating Permits Programs until December 1, 2001. The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group. In settling the litigation, EPA agreed to publish a notice in the Federal Register that would alert the public that they may bring to EPA's attention, alleged programmatic and/or implementation deficiencies in Title V programs. In addition, EPA agreed to publish a Notice of Deficiency when we determine that a deficiency exists, or notify the commenter in writing to explain our reasons for not making a finding of deficiency.

On March 12, 2001, the Tulane Environmental Law Clinic submitted comments, on behalf of the Louisiana Environmental Action Network and Albertha Hasten (collectively referred to as Commenters), alleging several deficiencies with respect to the Louisiana Title V program (Comment Letter). We have completed our review of those comments. We have reviewed your comments consistent with the permitting program requirements of the Clean Air Act ("Act") and our implementing regulations at Part 70 of Title 40 Code of Federal Regulations (40 CFR Part 70). We did not publish a Notice of Deficiency because we disagree that deficiencies exist, as you allege. As required by the settlement, our response, explaining our reasons for not making a finding of deficiency, is in the enclosure.

We will continue to monitor, through program reviews, the Louisiana Department of Environmental Quality's rules, implementation of the rules, and enforcement actions to assure that the program remains consistent with the Act and 40 CFR Part 70.

Thank you for your comments and your interest in the Louisiana Operating Permits Program. We look forward to working with you in the future. If you have any questions, please feel free to contact Mr. Daron Page at (214) 665-7222.

Sincerely yours,

/s/

Carl E. Edlund, P.E.
Director
Multimedia Planning and
Permitting Division

Enclosure

cc: Linda Levy
Louisiana Department of
Environmental Quality

cc: David Baron
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ENCLOSURE

Throughout this document, "we," "us," or "our" means EPA. Our analysis of the items in your Comment Letter is set forth below.

I. ACCESS TO DOCUMENTS

Comments

You claim that the public is being denied access to Title V permit applications, draft permits, and related permitting documents such as emission reduction credits (ERC) applications, citing six incidents to support your position. You claim that although the regulations call for public notice and access to documents, in reality the two are often not provided or provided in such an inadequate manner as to refute any chance of citizen participation. Comment Letter at 2 - 6.

EPA Response

We agree that access to information is a necessary prerequisite to meaningful public participation. As such, the proposed permit should be readily accessible to the public. The Louisiana Department of Environmental Quality's (LDEQ) regulations require that a public notice be given by advertisement in a local newspaper, in the official State journal, and to those on a mailing list. The regulations also require that the notice give the name of an LDEQ employee from whom additional information can be obtained.

We have discussed the records access issue with LDEQ. Under past practices, some citizens have had a problem finding all of the information relative to air permits. LDEQ has instituted new procedures that make the original documents available for public review in the 2nd Floor File Room much earlier than in the past. The documents now go to the file room immediately after leaving the Mail Processing Area.

The LDEQ has set up a public records review room at its Headquarters in Baton Rouge. The public is able to search, retrieve, view, and print records that have been scanned and stored electronically in the LDEQ Document Management System. In addition, paper copies of all material pertinent to a particular Title V Permit are made available for public viewing in this room at the start of the public comment period.

These procedures that the Louisiana Department of Environmental Quality has instituted should resolve your issues.

Thus, a notice of deficiency is not warranted. We will continue to oversee the Louisiana Title V Operating Permit Program to ensure the revised public participation procedures are being effectively implemented according to the intent of the regulatory requirements, and will recommend further changes to the LDEQ if needed.

II. ALLEGED ILLEGAL EMISSIONS

Comments

You commented that Louisiana repeatedly allows new sources of pollution to locate in a nonattainment area without the reductions required by Sections 173(a)(1)(A) and 182(c)(10) of the Act. You allege that is because Louisiana's emission banking system violates Federal law. You also claim that LDEQ has misrepresented the amounts of emission reduction credits in its bank to a State court. Comment Letter at 7 - 9.

EPA's Response

Louisiana's emission banking regulations were approved as meeting the requirements for Louisiana's State Implementation Plan (SIP) approval under part D and section 110 of the Act, effective August 2, 1999. 64 Fed. Reg. 35930, 35936 (July 2, 1999). Louisiana subsequently revised its emission reduction credit banking regulations, partly as a result of concerns EPA raised about the State's implementation of the bank, identified in an EPA Response to a Petition to Object to a Title V Permit. The Response emphasizes the Clean Air Act requirement that emission reduction credits used as offsets must be "surplus" of Federal and State requirements at the time they are generated as well as when they are used. 66 Fed. Reg. at 14580. The LDEQ adopted revisions to its banking rule as an emergency rule on December 20, 2001 and as a final rule on February 20, 2002, in order to correct any ambiguities concerning the need for emission reduction credits to be surplus at time of use. 28 La. Reg. 301. The State's new banking practices and newly revised rules should resolve the issues you raise. Thus, a notice of deficiency is not warranted. We will continue to oversee LDEQ's Title V Operating Permit Program to ensure the revised banking procedures are being effectively implemented according to the intent of the regulatory requirements, and will recommend further changes to the LDEQ if needed.

III. REPORTING OF PERMIT DEVIATIONS

Comments

You commented that Louisiana's regulations fail to require prompt reporting of permit deviations as required by 40 Code of Federal Regulations (C.F.R.) § 70.6(a)(3)(iii)(A), and instead allow discharges below certain reportable quantities not to be reported at all. Thus, as long as the facility does not exceed its reportable quantity each day, it is free to emit without contacting LDEQ at all. You contend that all deviations must be promptly reported no matter what their size. Comment Letter at 9 - 10.

EPA Response

40 C.F.R. § 70.6(a)(3)(iii)(A) requires that each permit require the facility to submit a report every six months which clearly identifies all instances of deviations. Section 70.6(a)(3)(iii)(B) specifies that each permit shall provide for "[p]rompt reporting of deviations from permit requirements ... , the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define 'prompt' in relation to the degree and type of deviation likely to occur and the applicable requirements." Accordingly, Part 70 provides the permitting authority with some discretion regarding the definition of prompt so long as the permitting authority defines prompt considering the elements specified in the regulation.

The LDEQ incorporates by reference the provisions of 40 C.F.R. § 70.6(a) in effect as of July 21, 1992. Louisiana Administrative Code (L.A.C.) 33:III.507.B.2. The LDEQ also requires that all permits include "compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit as required by 40 CFR 70.6(a)(3)." L.A.C. 33:III.507.H.1.

Louisiana's upset and unauthorized discharge regulations supplement the deviation reporting requirements. Louisiana requires "upsets" (EPA's definition of emergency) to be reported within two days. L.A.C. 33:III.507.J. An unauthorized discharge that causes an emergency condition must be reported no later than one hour after learning of the discharge. L.A.C. 33:I.3915.A.1. An unauthorized discharge which exceeds a reportable quantity but does not cause an emergency condition is to be reported within 24 hours. Since an unauthorized discharge by its very nature is

a deviation, 40 C.F.R. § 70.6(a)(3)(iii)(A) [incorporated by reference by L.A.C. 33:III.507.B.2] requires that any unauthorized discharge below a reportable quantity has to be reported every six months. Therefore, facilities with Title V permits in Louisiana must report unauthorized discharges below the reportable quantity every six months. 40 C.F.R. § 70.6(a)(3)(iii)(A) would also require that the upset reports and unauthorized discharge reports be included in the 6-month deviation report, although these reports could be incorporated by reference.

Additionally, 40 C.F.R. § 71.6(a)(3)(iii)(B) provides that for prompt reporting of deviations, the underlying applicable requirement applies. Where the underlying applicable requirement fails to address the time frame for reporting deviations, the report must be made within 24 hours for emissions of hazardous air pollutants (HAP) or toxic air pollutants (TAP) that continue for more than one hour in excess of permit limits, and within 48 hours for emissions of any regulated air pollutant other than HAPs or TAPs that continues for more than two hours in excess of permit requirements. For any other deviations, the report is submitted every six months.

Thus, Louisiana's unauthorized discharge regulations are very similar to the Part 71 provisions for prompt reporting of deviations. An unauthorized discharge that causes an emergency condition must be reported no later than one hour after learning of the discharge. L.A.C. 33:I.3915.A.1. An unauthorized discharge which exceeds a reportable quantity but does not cause an emergency condition is to be reported within 24 hours. The LDEQ based the reportable quantity list on the Clean Water Act and Comprehensive Environmental Response, Compensation, and Liability Act lists of reportable quantities of hazardous substances. L.A.C. 33:I.3931.A. Those unauthorized discharges which do not exceed a reportable quantity have to be reported every six months. Therefore, a regulatory deficiency does not exist, and a notice of deficiency is not warranted.

IV. ENFORCEMENT OF TITLE V REGULATIONS

Comments

You commented that Louisiana fails to enforce regulations which incorporate Title V requirements. First, you claim that Louisiana ignored its own regulatory guidelines by approving Exxon's ERCs which you claim were filed after the February 20, 1995, deadline. Second, you assert that during the permitting

process, LDEQ does not adequately monitor sites to assure compliance with the regulations. You allege that Dow began construction on its new Engage plant prior to the issuance of a permit. Third, you contend that LDEQ does not enforce the law. You claim that Motiva, in an admittedly "preventable" release, burned off more than 92,000 pounds of sulfur dioxide. However, LDEQ chose not to fine the plant and determined that no follow-up action was necessary. You also claim that of the 561 reported accidental releases at the Motiva plant between 1994 and 1998, three fines totaling $14,500 were assessed. However, of the incidents not fined, ten included flarings in which each released at least 50,000 pounds of sulfur dioxide into the air. Comment Letter at 10 - 12.

EPA Response

In your example where you allege that Dow began construction on its new Engage plant prior to the issuance of a permit, you state that a Dow representative, Mr. David Graham, went on record at the hearing by saying that they had begun ground clearing. The EPA memorandum titled "Construction Activities Prior to Issuance of a PSD Permit with Respect to 'Begin Actual Construction'" dated March 28, 1986, from Director, Stationary Source Compliance Division, to Mr. Robert R. DeSpain, lists certain activities that are not of a permanent nature and are allowed. The memorandum expressly lists ground clearing as an activity EPA does not consider to be of a permanent nature and therefore may be allowed prior to permit issuance. In addition, EPA Region 6 had a staff member present at the hearing. This person visited the proposed site and did not witness any illegal pre-construction activity associated with the project.

Regarding the Motiva example, in a Consent Decree entered on August 22, 2001, Motiva/Shell/Equilon agreed to address several issues including all flaring events at their refineries nationwide. EPA, Department of Justice, and several States including Louisiana were parties to the agreement. Flaring was addressed in the Consent Decree by requiring Root Cause Failure Analysis for all flaring incidents above 500 lbs. of sulfur dioxide in 24 hours. The analysis includes corrective action to avoid a repeat of flaring for the same root cause in the future. The Consent Decree has provisions for Stipulated Penalties for those flaring incidents that do not meet the definition of a true malfunction (sudden, infrequent and not easily preventable). Overall the company agreed to spend $400 million on additional pollution controls and paid a cash penalty of $9.5 million. In addition, the company has committed to spend over $1 million on community based projects in the State of Louisiana.

No other examples of alleged failure to adequately monitor sites or enforce the law were provided. In the December 11, 2000, Federal Register notice, prospective commenters were told that "[f]or implementation deficiencies, identify the relevant regulatory or statutory provision that is not properly being implemented and provide the bases for the claim that the permitting authority is not properly implementing that portion of the program. For example, if you assert that permits are being issued in a manner inconsistent with an element of the program, identify specific permits that you believe were incorrectly issued and the ways in which you believe those permits to be deficient." 65 Fed. Reg. at 77377. Accordingly, a notice of deficiency is not warranted.

As for the Exxon example in your comment, please see our response II concerning the State's implementation of its bank.

V. COMPLIANCE CERTIFICATIONS

Comments

You commented that LDEQ has failed to require a signature certifying compliance, as required by L.A.C. 33:III.507 and 517. As an example, you refer to a Dow Chemical permit application in which a compliance certification form was allegedly not signed, but LDEQ proposed to issue the permit anyway. Comment Letter at 12.

EPA Response

The case cited for Dow was corrected since the signed certificate was submitted to LDEQ before LDEQ proposed to approve the permit. When copies were originally made, however, a copy of the unsigned certificate was mistakenly put in the public files. Since LDEQ had the signed certification, it went ahead and proposed approval of the permit. No other examples were provided of where LDEQ allegedly issued a permit without a signed compliance certification. In addition, we have reviewed nine permit applications in the Region 6 office all of which had the required, signed, compliance certification form. Accordingly, a notice of deficiency is not warranted.

VI. CONTINGENCY MEASURES

Comments

You commented that LDEQ failed to implement its contingency measures (confiscation of the emission reduction credit bank) when it failed to attain the one-hour ozone standards by the required date of November 1999. Comment Letter at 12 - 13.

EPA Response

We solicited comments on alleged deficiencies in Title V programs, not alleged deficiencies in attaining national air quality standards. 65 *Fed. Reg.* at 77377. The implementation of contingency measures relates solely to attainment of air quality standards, and therefore comments concerning the implementation of contingency measures are beyond the scope of our December 11, 2000, *Federal Register* notice. Accordingly, this is not a Title V deficiency. Since this is a SIP only matter, we are addressing this in separate Federal Register notices.

VII. EXEMPTIONS

Comments

You allege that LDEQ has illegally exempted facilities from compliance, citing a DOW ERC application as an example. Dow applied to bank the emissions made from complying with the marine vapor recovery rule (MVRR). Comment Letter at 13 - 14.

EPA Response

As of June 14, 2002, LDEQ has not made a final determination regarding the ERC application. As the application is still pending, we decline to comment further on this specific example.[1] Louisiana's MVRR and emission banking regulations are both part of Louisiana's SIP.[2] We will continue to oversee LDEQ's implementation of these regulations. No other examples of alleged illegal exemptions from compliance were provided.

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[1]LEAN has also raised this same issue in its pending petition to object to the Dow Chemical permit, and the Agency will review this issue in responding to the petition.

[2]61 *Fed. Reg.* 54737 (October 22, 1996); 64 *Fed. Reg.* 35930 (July 2, 1999).

In the December 11, 2000, Federal Register notice, prospective commenters were told that "[f]or implementation deficiencies, identify the relevant regulatory or statutory provision that is not properly being implemented and provide the bases for the claim that the permitting authority is not properly implementing that portion of the program. For example, if you assert that permits are being issued in a manner inconsistent with an element of the program, identify specific permits that you believe were incorrectly issued and the ways in which you believe those permits to be deficient." 65 Fed. Reg. at 77377. Accordingly, a notice of deficiency is not warranted.

VIII. PERMIT APPLICATIONS

Comments

You commented that LDEQ does not consider or omits the compliance history when it issues a permit. You also allege that LDEQ allows incomplete permit applications. You cite two examples in support of your allegations. You first claim that when Honeywell applied for a Part 70 permit modification for a plant in Geismar, Louisiana, it omitted a hydrogen fluoride (HF) facility when it listed proposed emissions. You contend that this facility should have been included in the application in order to determine whether prevention of significant deterioration (PSD) or nonattainment new source review (NNSR) apply to the modification. Because of this omission, Honeywell also omitted the compliance history of the plant, and thus LDEQ was unable to take into account all of Honeywell's past noncompliance when evaluating the permit. Your second example involves Exxon's new polypropylene facility. You assert that Exxon did not provide, and LDEQ did not require, a compliance history, in accordance with Section 173(a)(3) of the Act. Comment Letter at 14 - 16.

EPA Response

You allege that Honeywell omitted its HF facility from a Part 70 permit modification application. However, our review of Honeywell's Part 70 permit application reveals that this information was included. A part of the permit application entitled "History of Permitted Emissions" lists the emissions of each of the plants at the facility, including the HF plant.[3]

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[3]Part 70 Permit Application, Fluorocarbon Plants, Honeywell, (continued...)

You also contend Honeywell should have included a compliance history of its plant. However, as shown below, PSD or NNSR would not apply. Therefore, any compliance history was not required under section 173 of the CAA since it was a minor modification to a minor source.

When a minor source makes a physical change or change in method of operation that is by itself a major source, that physical or operational change constitutes a major stationary source that is subject to PSD review.[4] For example, assume an existing plant emits 40 tons per year (TPY) of particulate matter, which is both its potential to emit and permitted allowable rate. Also assume that the physical change (modification) will increase the source's potential to emit particulate matter by 110 TPY. Since the existing plant is a minor source, and the change itself results in an emission increase greater than the major source threshold (100 TPY), that change is subject to PSD review.[5]

Now assume that the physical change will increase the source's potential to emit particulate matter by 65 TPY. Since the plant itself is a minor source, and the increase is not major by itself, neither the minor source nor the change itself is subject to PSD review. However, the source's potential to emit after the change will exceed the 100 TPY major source threshold, so <u>future</u> modifications will be scrutinized under the netting provisions (*i.e.*, definition of net emissions increase).[6]

In this case, prior to the modification, the Geismar plant was a minor source under PSD and NNSR.[7] This is true even when

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[3](...continued)
Geismar Plant, Geismar, LA (September 2000) (Honeywell Part 70 Application).

[4]The same analysis would apply to NNSR. *See* 40 C.F.R. § 51.165(a)(1)(iv)(A)(2).

[5]In this example, we are using the 100 TPY limit threshold, rather than the 250 TPY threshold. *See* 42 U.S.C. § 7479(1).

[6]These examples were taken from EPA's Draft *New Source Review Workshop Manual* (October 1990).

[7]Operating Permit, Geismar Plant, Honeywell International, Inc., Permit No. 0180-00003-VO, Air Permits Briefing Sheet at
(continued...)

you include the HF plant.[8] The increases from the modifications were less than the major source threshold.[9] Therefore, since the plant itself is a minor source, and the increase is not major by itself, neither the minor source nor the change itself is subject to PSD or NNSR. However, the Geismar plant, as now modified, is a major source, and therefore, any future significant modifications to it would require a NNSR or PSD permit and the compliance history. *See* 40 C.F.R. § 51.165(a)(1)(iv)(A)(2); 40 C.F.R. § 51.166(b)(1)(i)(*c*); 40 C.F.R. § 52.21(b)(1)(i)(*c*); L.A.C. 33:III.509.B (Definition of major stationary source).

The other example for the alleged lack of compliance histories in permit applications provided in your comment letter (Exxon) relates to compliance documentation under section 173(a)(3) of the Act, as implemented in L.A.C. 33:III.504.D.1. This issue was addressed by the Louisiana Courts. No other examples of incomplete permit applications or lack of compliance histories were provided. 65 Fed. Reg. at 77377. Accordingly, a notice of deficiency is not warranted.

IX. EMERGENCIES

Comments

You allege that in a Title V permit issued to Exxon Chemical Americas, LDEQ allowed emissions released during startup and shutdown to not be included in the permit totals. You contend that these emissions, referenced as "authorized discharges", were characterized as being "very small emissions" and "predictable, expected, periodic, and quantifiable". You assert that while they may be characterized as "small", this is not guaranteed. To require certain limits on a plant's emissions on one hand, and then allow known emissions to not be included on the other does not comply with the Act. Comment Letter at 16.

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[7](...continued)
2 - 3 (March 23, 2001) (Honeywell Operating Permit).

[8]*See* Honeywell Part 70 Permit Application, History of Permitted Emissions.

[9]Honeywell Operating Permit, Air Permits Briefing Sheet at 2.

EPA Response

General Condition No. XVII of the Exxon Permit (Exhibit P of your Comment Letter) sets forth the requirements for certain small emissions to be considered authorized discharges. These emissions are known as "insignificant activities", as set forth in L.A.C. 33:III.501.B.5.A. Louisiana's insignificant activities list was approved by EPA when EPA approved Louisiana's Title V program. 60 *Fed. Reg.* 47296 (September 12, 1995). The insignificant activities set forth in the Exxon Permit are based on L.A.C. 33:III.501.B.5.A.7 and 8 (emissions from laboratory equipment/vents and noncommercial water washing of empty drums). The total emissions from these insignificant activities is 97.63 pounds/year (0.049 TPY).[10] The emissions allowed in general condition XVII as provided in your Exhibit P are consistent with the approved insignificant activities list and accordingly a notice of deficiency is not warranted.

X. STATEMENT OF BASIS

Comments

You commented that LDEQ is required to prepare a statement of basis for every draft permit and cited 40 CFR Part 71.11. You also commented that LDEQ fails to include the five findings required by courts of Louisiana in its statement of basis when it approves a permit. You allege that LDEQ only gives general non-detailed findings as its reason for approval. Comment Letter at 16 - 17.

EPA Response

Louisiana's statement of basis requirement is set forth in L.A.C. 33:III.531.A.4, and is consistent with 40 C.F.R. § 70.7(a)(5). The regulation you cited, 40 C.F.R. 71.11, applies to Part 71 programs only, and is not applicable here because Louisiana has an approved Part 70 program.

In addition, EPA believes that you may be confusing the

[10] Operating Permit, Polypropylene Unit, Baton Rouge Polyolefins Plant, Exxon Chemical Americas, Inc., Baton Rouge, Louisiana, Permit No. 2581-VO, Air Quality Data Sheet, p. 3 (November 24, 1998). The Air Quality Data Sheet is labeled "Page 1", but it is actually the third of three Air Quality Data Sheets labeled "Page 1".

operating permits statement of basis requirement of L.A.C. 33:III.531.A.4 and 40 C.F.R. § 70.7(a)(5) with the pre-construction permits' alternative sites analysis Basis for Decision required under L.A.C. 33:III.504.D.7 and section 173(a)(5) of the Federal CAA. In implementing this alternative sites analysis pre-construction permit requirement, LDEQ considers a set of criteria known as the *IT Requirements* (named for a State court decision involving the IT Corporation).[11]

On October 10, 1997, EPA approved the State of Louisiana's NNSR program. In so doing, EPA found that L.A.C. 33:III.504.D.7 was consistent with Section 173(a)(5). 62 *Fed. Reg.* 52948, 52949 (October 10, 1997).[12] In its Response to the Borden Chemical, Inc. Title V Petition, EPA re-analyzed the State-codified *IT Requirements* and the Act's requirements [42 U.S.C. § 7503(a)(5) and L.A.C. 33:III.504.D.7] in the specific case of Borden, and again, EPA found that the framework that LDEQ employed in implementing the alternative sites analysis would satisfy the Act's requirements. *In the Matter of Borden Chemical, Inc.*, Petition No. 6-01-1 at 37 - 38 (EPA Administrator - December 22, 2000). Furthermore, the alternative sites analysis (*IT* analysis) is required when the *final permit* is issued, not when the *proposed permit* is issued. *In the Matter of Rubicon, Inc.*, 670 So. 2d 475, 483 (La. App. 1 Cir. 1996).[13] Therefore, the statement of basis and the alternative sites analysis are two separate documents. Accordingly, the absence of an alternative sites analysis from the statement of basis is not a deficiency.

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[11]*Save Ourselves, Inc., et al. v. The Louisiana Environmental Control Commission and the Louisiana Department of Natural Resources*, 452 So.2d 1152 (La. 1984).

[12]L.A.C. 33:III.504.D.7 provides that "as a condition for issuing a permit to construct a major stationary source or major modification in a nonattainment area, the public record must contain an analysis, provided by the applicant, of alternate sites, sizes, production processes, and environmental control techniques and demonstrate that the benefits of locating the source in a nonattainment area significantly outweigh the environmental and social costs imposed."

[13]For example, the *Rubicon* decision requires, as part of the *IT* analysis, for LDEQ to respond to public comments. 670 So.2d at 483. The response to comments is issued when the final permit is issued, not when the proposed permit is sent out for public comment.

No other examples of alleged inadequate statements of basis were provided. In the December 11, 2000, *Federal Register* notice, prospective commenters were told that "[f]or implementation deficiencies, identify the relevant regulatory or statutory provision that is not properly being implemented and provide the bases for the claim that the permitting authority is not properly implementing that portion of the program. For example, if you assert that permits are being issued in a manner inconsistent with an element of the program, identify specific permits that you believe were incorrectly issued and the ways in which you believe those permits to be deficient." 65 *Fed. Reg.* at 77377. Accordingly, a notice of deficiency is not warranted.

However, we are aware of the need for improvement of statements of basis in Louisiana. We have discussed the need to improve the statement of basis for permits in Louisiana with LDEQ and they have committed to work with EPA staff to make this information more understandable for the public.

The regulatory basis for a statement of basis (statement) is found in 40 C.F.R. § 70.7(a)(5) which requires that each draft permit must be accompanied by "a statement that sets forth the legal and factual basis for the draft permit conditions."

Part of discussions with LDEQ will include an interpretation presented in a recent Title V petition response. The EPA set forth the following concerning the requirements for a statement of basis:

> The statement of basis is not a part of the permit itself. It may, and often times must be, a separate document which is to be sent to EPA and to interested persons upon request. This requirement for the statement of basis is not contained in 40 CFR § 70.6 which sets forth the required contents of the permit. In fact, 40 CFR § 70.6(a) requires that the permit contain all the explanation that ordinarily would be necessary to determine whether the permit conditions have been accurately expressed. For example, the permit must contain the references to the applicable statutory or regulatory provisions forming the legal basis of the applicable requirements on which the conditions are based. 40 CFR § 70.6(a)(1)(i).
>
> A statement of basis ought to contain a brief description of the origin or basis for each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight

elements that EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from simply a straight recitation of requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring requirements that are not otherwise required or are intended to fill in monitoring gaps in existing rules, especially the State Implementation Plan rules. The statement of basis should draw attention to items that would be the highest priority for EPA or any other person to review because they represent new conditions rather then mere recitation of applicable requirements. In a December 22, 2000, Order responding to petition for objection to the Fort James Camas Mill permit, EPA interpreted 40 CFR § 70.7(a)(5) to require that the rationale for selected monitoring method be documented in the permit record. In the Matter of Fort James Camas Mill ("Fort James"), Petition No. X-1999-1, at page 8 (December 22, 2000) (available on line at: http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/fort_james_decision1999.pdf).

In the Matter of The Albert Einstein College of Medicine of Yeshiva University, Petition No. II-2000-01 at 11 (EPA Administrator, January 16, 2002).

We will continue to oversee LDEQ's Title V Operating Permit Program to ensure future statements of basis are written in less technical terms and therefore are more understandable to a lay person. We will recommend further changes to the LDEQ if needed.