



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
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SEP 28 2018

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REPLY TO THE ATTENTION OF:

Jeff Smith
Director
Industrial Division
Minnesota Pollution Control Agency
520 Lafayette Road N
St. Paul, Minnesota 55155-4194

Dear Mr. Smith:

I am pleased to transmit to you the final Minnesota New Source Review (NSR) and Title V program evaluation report. The U.S. Environmental Protection Agency staff met with Minnesota Pollution Control Agency (MPCA) managers on May 8, 2018 in St. Paul, Minnesota, to discuss MPCA's NSR and Title V combined program implementation efforts. The meeting was part of EPA's initiative to evaluate state permit program implementation.

Please see the enclosed report for further information regarding EPA's program evaluation findings, including program strengths, follow-up issues, and MPCA's recommendations and concerns. We appreciate MPCA's assistance and responsiveness during the program evaluation.

If you have any questions, please contact Jennifer Darrow, of my staff, at (312) 886-6315.

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward Nam".

Edward Nam
Director
Air and Radiation Division

Enclosure



Review of Minnesota Pollution Control Agency's New Source Review and Title V Permit Programs

2018 Evaluation Final Report

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

September 28, 2018

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Executive Summary

On May 8, 2018, as part of its ongoing oversight of state and local New Source Review (NSR) and Title V permit programs, U.S. Environmental Protection Agency conducted an on-site evaluation of the Minnesota Pollution Control Agency's (MPCA) NSR and Title V permit programs. The on-site evaluation occurred at MPCA's St. Paul offices. This office is responsible for the drafting and issuance of all NSR and Title V permits in the state. EPA staff met with Jared Lafave, Steve Pak, Carolina Schutt, Don Smith, and Toni Volkmeier. Prior to the on-site evaluation, EPA provided MPCA with a questionnaire addressing various NSR and Title V permit program implementation topics and discussed the questions and answers in three separate conference calls, held on April 10, 2018, April 19, 2018 and April 26, 2018.

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

EPA found that MPCA is in the process of revising its state implementation plan (SIP) and Title V program for EPA approval, and that it has a good outreach program for environmental justice communities (EJ) communities, issues quality permits, and maintains a strong working relationship and communications with EPA. However, we identified some areas where improvements are needed. In particular, although MPCA has implemented some useful streamlining tactics to try to improve its permit issuance rates and to address its Title V backlog, MPCA should continue to make changes in its program to reduce Minnesota's Title V permit backlog. We have summarized these and other findings, as well as our recommendations, in Section 1.0 of this report.

1.0. Title V and NSR Program Evaluation

1.1. Introduction

Established as part of the 1977 Clean Air Act (CAA) Amendments, the NSR permitting program protects air quality when stationary sources of air pollution are newly built or modified. NSR permitting assures that new or modified industries are as clean as possible, and advances in pollution control occur concurrently with industrial expansion. A new major source or a major source making a major modification in areas that meet the National Ambient Air Quality Standards (NAAQS) must obtain a Prevention of Significant Deterioration (PSD) permit while new major sources or major sources making a major modification in areas that do not meet one or more of the NAAQS must obtain a Nonattainment NSR (NNSR) permit prior to construction. Smaller sources maybe required to obtain a minor source permit. The PSD rules apply in attainment or unclassifiable areas.

MPCA implements a SIP-approved NSR program, which consists of the PSD program for attainment areas and the NNSR program for nonattainment areas. EPA approved Minnesota's PSD program on September 26, 2017 at 82 Fed. Reg. 44,734. EPA approved Minnesota's NNSR regulations on April 28, 1994 at 59 Fed. Reg. 21,939.

Program Description – Minnesota's Combined Permit Program

MPCA's permitting rule, Minnesota Rules, Chapter 7007, combines the State's preconstruction and operating permit programs into a single permitting program. As such, one permit is issued to authorize both construction and operation of a facility or a facility modification.

The MPCA submitted its Title V operating permits program for approval on November 15, 1993, and EPA gave final full approval on Minnesota's operating permit program on December 4, 2001. In addition, on November 23, 1993, the MPCA submitted revised air permitting rules for approval as part of the SIP. These rules represent Minnesota's consolidated permitting regulations, which include provisions for operating permits for major sources pursuant to Title V of the CAA, construction permits for major new sources and major source modifications pursuant to Parts C and D of Title I, and operating and construction permits for minor sources and minor modifications. On May 2, 1995, EPA approved these revisions to Minnesota's combined permit program. Included in these rules are non-expiring, enforceable "Title I conditions", defined in Minnesota Rule 7007.0100 as (1) any conditions in a permit which are based on NSR requirements, (2) any conditions imposed to assure attainment, or (3) any conditions established to avoid being subject to NSR. In essence, MPCA's combined permit program works by labeling certain permit requirements as Title I conditions, and thus, using its Title I authorities, MPCA established a non-expiring and enforceable NSR permit term that is exclusively housed in a Title V permit that expires every 5 years. As such, these Title I conditions are carried over into the next Title V permit.

MPCA and EPA frequently discuss pending Title V and construction permits and programmatic permitting issues. During these interactions both agencies share permitting information, identify issues of potential concern, and discuss permit program issues. EPA staff collaborate with MPCA permit writers on individual permits as needed.

This report summarizes EPA's findings and conclusions from our review of MPCA's NSR and Title V program. The findings and conclusions in this report are based on MPCA's answers to the program evaluation questionnaire; EPA staff review of Title V permit files supplied by MPCA as part of the evaluation; EPA staff review of NSR permit files supplied by MPCA as part of the evaluation and EPA staff knowledge of MPCA's NSR program based on experience with reviewing MPCA's permits. This information was compared to the statutory and regulatory requirements for federal permitting programs as outlined in the questionnaire.

1.2. Follow-up from the 2013 Evaluation

In 2003, as part of its oversight role, EPA began an initiative to review the implementation of the Title V and NSR permit programs by permitting authorities throughout the country. MPCA's programs have been evaluated by EPA in 2003, 2008, and 2013. EPA last conducted an on-site evaluation of MPCA's NSR and Title V programs on November 5-6, 2013, and issued a report summarizing its findings on October 2, 2014. While the 2014 evaluation report noted strengths in MPCA's implementation of the Title V and NSR programs, it also identified areas needing improvement, and provided specific recommendations for addressing those areas. As part of the 2018 evaluation, we revisited our recommendations from the 2013 Title V and NSR Report to determine whether MPCA had made any progress on the identified issues. The following sections describe our 2018 findings relating to the 2013 Title V and NSR Report recommendations:

1.2.1 Compliance Assurance Monitoring (CAM) Plans

The 2014 program evaluation report recommended that MPCA review CAM applicability and implementation into their standard procedures. EPA asked that MPCA revisit its CAM process to ensure it was sufficient and stated that it would be targeting CAM plans in their permit review. Permit review over the last 5 years has not revealed any further issues in implementation of CAM in MPCA issues permits. Moreover, MPCA's technical training manual for permit writers provides links to all the latest EPA documents on CAM and periodic monitoring.

1.2.2 Permits Lack Specific Test Methods

At the time of the 2013 program evaluation, Minnesota permits did not specify test methods to determine compliance with a permit condition, outside of New Source Performance Standards (NSPS) or Maximum Achievable Control Technology (MACT)

language where test methods are referenced in the rule. EPA guidance on effective construction permit writing recommends including specifying test methods in a permit as a compliance monitoring method. Additionally, since MPCA implements a combined construction and operating permits program, the Title V permit must include all applicable requirements and ensure sufficient monitoring to demonstrate compliance. MPCA has addressed this finding by instructing its permit writers to specify test methods "while providing some room for adjustments based on the test plan evaluation".

1.2.3 Title V Permit Backlog

At the time of issuance of the 2014 evaluation report, MPCA had a 53.5% Title V Renewal permit backlog. MPCA's Title V permit backlog has been a recurring issue in each of EPA's previous program evaluations. Efforts taken by MPCA since the last program evaluation have not been effective at making a dramatic improvement in the backlog.

1.3. 2018 Evaluation Findings

1.3.1. Permit Streamlining Efforts

MPCA noted several areas where streamlining tactics have been implemented. It has identified and is addressing bottlenecks in their permitting process. Some noteworthy streamlining efforts are highlighted below:

- a) On-line Permit Application Submittal – For Title V permit renewals and administrative modifications (changes such as ownership, facility name, etc.), sources are now able to submit their permit applications via on-line portal (regulatory service portal). Since the system will not allow final/complete application submission until all information is submitted, MPCA's electronic application submission system appears to be a good way to address the issue of incomplete permit applications. There are no plans at this time to expand the on-line system to construction permit applications. Although MPCA staff expressed interest in the idea, they stated that resource availability is restrictive.
- b) NESHAP and NSPS Permit References – MPCA utilizes TEMPO as a data management system designed to organize facility emissions data, as well as to facilitate air permit writing. TEMPO allows staff to incorporate templates of regulatory data into air permits. In the past, MPCA has rewritten the applicable NESHAP and NSPS provisions into TEMPO templates that permit writers use to input into construction and/or operating permits. Due to the number of existing rules and the consistent promulgation of new rules, getting the specific language into templates and then into every permit was time consuming and was cumbersome to the permit writer. For existing federal regulations that MPCA has standard language already entered in TEMPO, this language will be included in the body of the permit. For new regulations or regulations that MPCA does not have standard language already in TEMPO, the permit will include citations to the

applicable rule but the rule and specific citation language itself will be attached to the end of the permit. MPCA states that writing NESHAP and NSPS language into every permit can take a significant amount of time and this streamlining method has been helpful in increasing permit issuance rates for certain types of permits.

- c) Coordinator Positions – MPCA has employed two data coordinator positions to assist permit writers with TEMPO data entry. When MPCA migrated to the TEMPO database, one of the unexpected results was some facility-related data did not transfer to the new system. In addition, TEMPO now requires additional data that was not previously required in the old system to process the permit. Therefore, permit writers were overwhelmed with many hours of data entry in order to process permit applications. With some funding from an EPA multi-purpose grant, MPCA filled 2 full-time data coordinator positions. Their main purpose is to assist permit writers by allowing more time for technical work. The multi-purpose grants are not automatically renewable, and funding is set to expire at the end of the calendar year. MPCA still finds the need for this type of data entry work and has asked EPA to assist them in exploring other funding options that allow them to maintain these positions.
- d) Priority Permit Issuance Improvement Project - MPCA has implemented a team project to track and achieve steady progress in processing permit applications. The team's goal is to increase efficiency in the process and decrease issuance time, while maintaining good quality permits. The team consists of one supervisor and senior staff members who meet weekly with junior staff members who have been assigned priority projects. The team collaborates to identify and address issues that have arisen since the last meeting, with the goal of keeping the process moving forward. The team reviews what has been accomplished during the week and sets goals for the upcoming week. EPA sees this process tracking to be integral to improving MPCA's permit issuance rates.
- e) MPCA also has a team working on measures of the efficacy of these processes and streamlining improvements. They have established more prescriptive instructions for tracking staff milestones and standardizing milestone reports. Similarly, they are also tracking application processing times for industry sectors such as ethanol permits.

1.3.2. SIP and Title V Program Approval Updates

MPCA plans to submit updates to their SIP as well as a Title V program approval update. The SIP update will be submitted first and the program approval will follow later this calendar year. EPA has not approved revisions to the Minnesota construction permit program SIP or Title V permit program since the mid-1990s.

1.3.3. EJ Communities Outreach

The MPCA air permit section is currently piloting a draft checklist of process steps for air permits in EJ areas. Some of the process steps include facility screening using MPCA's own screening tool, researching other sources of local pollution, and gathering community demographic data and community concerns. The MPCA has also committed to improving and enhancing communication and engagement around permitting activities to give community members an opportunity to be meaningfully involved in air permit related decisions in their neighborhoods. This includes informing the public much earlier in the process (when the permit application is received, or earlier, when possible), using plain language, translating when applicable, using more diverse sources of communication such as local newspapers and newsletters, and holding public meetings in places and at times that are more accessible. This also includes encouraging facilities to improve and increase their own engagement with their surrounding communities. MPCA also has a subgroup that has identified a set of deliverables needed for broader implementation of this process and has begun work on building these products, including resource tools to share with communities, additional staff training on EJ issues and interactions, website development for early community engagement and a community engagement plan template

1.3.4. Permit Quality

MPCA employs a knowledgeable staff, implements EPA guidance and issues quality permits. Despite steady turnover, MPCA staff typically have a good working knowledge of federal rules and EPA policy, utilizing senior staff as resources for new staff. Typically, MPCA writes quality and thorough technical support documents (TSD) for draft permits. The TSD explains changes to the permit and potential emissions, discusses applicable rules and methods of limiting potential emissions and notes monitoring and recordkeeping requirements. However, it has been noted through routine permit review and also during the permit review portion of the program evaluation that at times the TSD doesn't always thoroughly explain certain permit decisions, such as "netting" demonstrations. Although EPA typically concurs with the permitting determinations, it can require a telephone call to the permit writer to fully understand the rationale supporting the specific permit action.

1.3.5. Communication/Relationship with EPA

From monthly conference calls to specific issues that arise, MPCA consistently maintains good communication with EPA counterparts. MPCA also involves EPA at the appropriate times when policy or guidance assistance is required.

At the time of the last program evaluation, MPCA was working on a significant Omnibus Rulemaking. MPCA is currently undergoing a SIP language clean up that will be submitted to EPA soon. EPA permitting staff has been engaged in reviewing draft rule language, and EPA continues to appreciate the opportunity to review rule

changes and the willingness to collaborate in development of rule language that satisfies the interest and policies of both agencies.

1.3.6. Title V Program Implementation

As in previous program evaluations, MPCA continues to struggle with reducing its Title V permit backlog. Recommended state Title V permit program backlog targets should be at or below 10%. As of the date of this report, MPCA's backlog of Title V renewal permits was approximately 50%. The permit issuance deadline of 18 months is a CAA requirement, and improvement to MPCA's Title V permit backlog is a priority for EPA.

MPCA states that the TEMPO system came with an extensive learning curve. Additionally, the TEMPO migration occurred during a natural Part 70 five-year renewal cycle. MPCA is optimistic that TEMPO-related obstacles are behind them and its assets and advantages will soon be realized.

Since the last program evaluation, EPA and MPCA have been working together under a Joint Priority to improve issuance rates of Title V permit backlog. One of the streamlining efforts the two agencies have been collaborating on involves two separate pilot projects aimed at establishing a protocol for EPA assistance with updated data and information gathering and/or writing backlogged permits. Once the second pilot project is completed, MPCA will assess its successes and failures and compile a protocol to be used in future permit writing assistance projects.

As part of this program evaluation, EPA touched on MPCA's Title V fee program. Based on MPCA's responses to EPA's questions about Title V collected fees and program costs, along with 2016 and 2017 budget data found at <https://www.pca.state.mn.us/sites/default/files/leg-sy15-08.pdf>, it is likely that Minnesota collects sufficient Title V fees pursuant to 40 C.F.R. § 70.9. However, despite collecting what seems to be appropriate fees, MPCA's Title V backlog remains significant. At this time, EPA does not have enough information to assess whether resources are a significant factor in the backlog. Given that MPCA does not have a mechanism in place to compare the fees collected to program costs, EPA recommends that MPCA implement a financial tracking system to demonstrate that Title V fees are being utilized to resource the Title V program. EPA has recently reissued guidance¹ that clarifies what activities may be covered by Title V fees that will be informative in this endeavor.

¹ https://www.epa.gov/sites/production/files/2018-03/documents/fee_eval_2018.pdf