



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP - 9 2019

REPLY TO THE ATTENTION OF

Robert Hodanbosi  
Director  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
50 West Town Street Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216

Dear Mr. <sup>Bob</sup> Hodanbosi:

I am pleased to transmit to you the final Ohio New Source Review and Title V program evaluation report. The U.S. Environmental Protection Agency staff met with Ohio Environmental Protection Agency (OEPA) managers on May 20, 2019 in Columbus, Ohio, to discuss the findings of this program evaluation report. EPA appreciates the opportunity to discuss air permit program issues with OEPA.

Please see the enclosed report for further information regarding EPA's program evaluation findings, including program strengths and follow-up items. We appreciate OEPA's assistance and responsiveness during the program evaluation, and we look forward to continuing our positive working relationship.

If you have any questions, please contact me or Sam Portanova, of my staff, at (312) 886-3189.

Sincerely,

A handwritten signature in black ink, appearing to read "John Mooney".

John Mooney  
Acting Director  
Air and Radiation Division

Enclosure



# **Review of Ohio Environmental Protection Agency's New Source Review and Title V Programs**

## **2019 Evaluation Report**

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

September 2019

## **Executive Summary**

EPA has conducted an evaluation of the Ohio Environmental Protection Agency's (OEPA) New Source Review (NSR) and Title V permitting programs as part of ongoing oversight of state and local NSR and Title V programs. EPA provided OEPA with a questionnaire addressing various NSR and Title V program implementation topics. EPA and OEPA discussed the state's response in three conference calls, held on December 14, 2018, March 8, 2019, and April 12, 2019. As part of the program evaluation, OEPA also provided two construction permits and two Title V operating permits for EPA to review which included specific permitting issues identified in the questionnaire (file review). On May 20, 2019, EPA met with OEPA Central Office (CO) supervisors and staff in Columbus, Ohio, to discuss the findings of this program evaluation.

This final report summarizes EPA's findings and conclusions regarding OEPA's compliance with the statutory and regulatory requirements for NSR and Title V permitting programs, including several program strengths and opportunities for program improvements. These findings and conclusions are based on OEPA's answers to the questionnaire, our discussion of OEPA's responses during the conference calls and face-to-face meeting, follow up discussions regarding responses, the file review, and EPA staff knowledge of the program based on experience with reviewing OEPA's permits and programs. However, this program evaluation is not comprehensive in its scope and did not evaluate all facets of OEPA's implementation of its permit programs. EPA appreciates the opportunity to discuss air permit program issues with OEPA for this program evaluation. We believe the questionnaire responses and subsequent discussions were informative and productive. EPA will continue to work with OEPA to assure successful implementation of the air permit programs.

### **1. Findings Related to the 2013 Evaluation**

EPA last conducted an on-site evaluation of OEPA's NSR and Title V programs on March 19-20, 2013, and issued a report summarizing our findings on May 21, 2014 (2013 Program Evaluation Report). While the 2013 Program Evaluation Report noted strengths in OEPA's implementation of the NSR and Title V programs, it also identified areas needing improvement, and provided specific recommendations for addressing those areas. As part of the 2019 evaluation, we revisited our recommendations from the 2013 Program Evaluation Report to determine whether OEPA had made progress on the identified issues. The following sections describe our findings relating to the 2013 Program Evaluation Report recommendations.

#### **1.1 Title V Backlog Reduction**

OEPA has made significant progress in reducing its Title V permits backlog. In 2012, OEPA had over 200 Title V renewal permits that were backlogged and that number has been reduced to less than 25 at the time of this report. The current backlog represents less than 10% of all Title V permits in the state. To help accomplish this reduction, OEPA reassigned permits among the district offices (DO) and local air agencies (LAA) to more

evenly distribute the permit staff workload. OEPA also holds monthly calls with each DO and LAA to discuss the status of late permits and assist in resolving issues. OEPA believes the backlog reduction effort will allow it to maintain a low backlog when the next wave of Title V permits come up for renewal.

## **1.2 Statement of Basis**

OEPA and EPA staff initiated an effort in late 2018 to update and improve the state's Title V permit statement of basis. The purpose of this effort is to assure that the statement of basis document serves as a useful resource for both permit reviewers and permit writers. OEPA and EPA have agreed on several revisions to the statement of basis template and internal staff instructions. When implemented, these changes will better highlight key decision-making provisions such as monitoring requirements and single source determinations, as well as important background information such as past permitting actions and enforcement issues. We expect these updates to be finalized in summer 2019.

## **1.3 Consistency and Communications with District Offices and Local Air Agencies**

The 2013 Program Evaluation Report recommended that OEPA continue to improve the consistency of implementation of the air permitting programs among the DO/LAA. OEPA uses multiple processes to promote consistency in permit content and quality, which begins with training of staff. In addition to training, the DO/LAA supervisor, followed by CO staff for larger permits, review permits prior to final issuance. To ensure the transfer of information between offices, OEPA holds monthly calls between CO and each DO/LAA to discuss common issues and provide guidance. Additionally, OEPA conducts quarterly Permitting and Enforcement Workshops in which staff discuss permit process issues, including scheduled updates to Engineering Guides.

Regarding communications with Region 5, EPA and OEPA have monthly conference calls to share information. At these calls, EPA informs the DO/LAA and CO of EPA's national actions and activities, and EPA receives updates from OEPA on current and upcoming permitting projects. More recently, DO/LAA report-outs have been added to the monthly EPA and OEPA conference calls to highlight the activities of two offices each month.

## **1.4 Compliance Assurance Monitoring (CAM)**

In the 2013 Program Evaluation, EPA found that OEPA needed to ensure that all necessary components of the CAM rule were incorporated into all Title V permits for facilities with units subject to CAM. OEPA has since identified and developed resources for permit writers to support the need to satisfy CAM when developing monitoring conditions in a permit. To promote consistency (and for cases in which CAM is being established for the first time), OEPA developed a spreadsheet that can assist permit writers in establishing appropriate CAM. The spreadsheet is arranged to provide examples of control equipment type and pollutant specific emission units with links to issued Title V permits.

## **2. 2019 Evaluation Findings**

### **2.1 Community Outreach Activities**

OEPA uses a variety of approaches to encourage public participation in the permitting process by informing the community about upcoming permitting actions and providing opportunities for public input.

In addition to public notices, OEPA also holds public meetings for permitting actions that it anticipates will have public interest and maintains a mailing list for local members of the public who have stated their interest in receiving information about OEPA issues and upcoming actions. OEPA uses the mailing list to issue citizen advisories, weeks in advance of a hearing, to allow for early community engagement. OEPA informs the press of upcoming actions through press releases.

OEPA's commitment to community engagement in permitting decisions extends through the public hearing process. OEPA holds information sessions prior to hearings to inform the community about a project and the permitting process, and it also provides a response to comments document, which addresses all comments or questions received during the public hearing and comment period.

### **2.2 Resources for Permit Writers**

OEPA develops and provides extensive resources for permit writers including guidance documents, Engineering Guides, recorded training webinars, live training sessions, mentorship opportunities with senior staff, and additional online resources. OEPA has established a process to ensure that it regularly updates Engineering Guides, which provide operation and maintenance guidelines for air pollution control equipment. As a result of these efforts, 20 guides have been revised and 3 new guides have been added since the 2013 program evaluation. Permit writers also have access to other resources such as a permit wizard to identify the appropriate permit for a facility; a Find Resources webpage to search for guidance; and the Stars System, which contains permit templates, Title V Statement of Basis templates with instructions, and built-in guidance and permit procedures.

### **2.3 Reduction in Permits Under Appeal**

After completing the initial round of Title V permits in 2004, OEPA had a very large number of permits under appeal (87 installation permits and 69 Title V permits). Subsequently, OEPA implemented a program to resolve as many appeals as possible, so it could process Title V permit renewals. The program included regular contact with the State Attorney General's Office, grouping of appeals by source category or reason for appeal, and resolving groups of permits with like appeals simultaneously. This program successfully reduced the number of appealed permits to 14 installation permits and 9 Title V permits currently under appeal. OEPA has made it a regular practice to work closely with permittees to resolve issues during the permitting process to minimize appeals from being filed in the first place.

## 2.4 RACT/BACT/LAER Clearinghouse (RBLC) Entries Backlog

Due to staffing issues, OEPA had not entered data in the RBLC over the last few years, which resulted in approximately 25 permitting actions not being entered in the clearinghouse in accordance with a Section 105 commitment. In early 2019, OEPA hired a staff person to add all backlogged entries to the RBLC and to keep up with entries for subsequent permits. As of April 2019, OEPA reports that entry of all backlogged items to the RBLC has been completed. EPA considers this issue resolved.

## 2.5 Testing Requirements in Permits

As part of the program evaluation, OEPA and EPA discussed permit conditions that address emissions testing requirements. To assist permit writers in developing these permit conditions, OEPA has developed an engineering guide (EG) #16<sup>1</sup>, which provides detailed discussion of emissions testing for different permit types and actions, including recommended testing frequencies based on various factors. Even with EG #16, permit writers still must make a case-by-case determination when developing specific permit conditions for testing. It is not uncommon to see permit language that states testing will be conducted only by request, for example, “if required, [particulate emissions] shall be determined according to Test Methods 1 - 5, as set forth in ...” EPA has raised a concern about the use of “if required” language in permit emissions testing conditions and whether the language may be applied inappropriately at times. OEPA provided context for when the “if required” language is used: it is used mainly as a compliance determination for Best Available Technology limits and for small sources for which emissions can be reasonably estimated. However, EPA noted that we have seen the language applied in several permits that include an emissions limit which is close to the major source threshold. In these cases, the permit may need to require periodic emissions testing to ensure that the source does not exceed the limit. OEPA and EPA will continue discussions on how to better guide the use of the “if required” language.

## 2.6 Supplemental Plans

During conference call discussions, OEPA noted that it includes requirements from supplemental plans in permit terms and conditions with enough detail to ensure that the plan’s requirements are practically enforceable. However, EPA identified instances when details necessary for assuring compliance have been excluded from permits and has provided comments recommending the addition of those details. Relevant details from supplemental plans (e.g., baghouse pressure drop readings) that are used for compliance purposes should be included in the permit itself in order to improve the enforceability of the plan requirements. OEPA and EPA will work to assure that permit terms and conditions include an appropriate amount of detail when supplemental plans are referenced in a permit.

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<sup>1</sup> <https://www.epa.ohio.gov/Portals/27/engineer/eguides/guide16.pdf?ver=2018-02-06-124232-503>

## 2.7 Greenhouse Gas (GHG) Provisions in Permitting Rules

EPA has not approved OEPA's 2011 Prevention of Significant Deterioration (PSD) provisions for GHG emissions into the SIP primarily due to concerns with the auto-rescission clause that would invalidate the SIP and permit terms. OEPA has since withdrawn its request to act on the auto-rescission clause and EPA will act on the remainder of the 2011 PSD provisions for GHG emissions.

## 2.8 Title V Fees

Ohio has been proactive in ensuring that there is sufficient funding to support its Title V program. An independent accountant reviews Title V collections and expenditures every two years to ensure that fees collected from Title V sources can cover the costs associated with administering the program. OEPA is currently meeting its obligation to fund its Title V program. However, OEPA stated that its current funding and staffing levels are nearing the minimum it needs to administer its Title V program and it is exploring options for maintaining a sufficiently funded program. The 2014 EPA Office of Inspector General Report reviewed EPA oversight of States' Title V fees and expressed concern that OEPA may use solid waste tipping fees to supplement Title V funding.<sup>2</sup> OEPA clarified as part of this evaluation that solid waste tipping fees are not used to supplement Title V program funding, but that they are used to support other programs within the division. Only funds collected from the annual Title V emission fees are used to fund Title V work.

## 2.9 File Review Findings

As part of this program evaluation, OEPA identified four permits for EPA to review. The permit-to-install for Airstream, Inc. (permit number P0124614) issued on August 3, 2018, included a determination of whether two nearby facilities should be considered part of the same source. In reviewing the permit documentation, EPA found that the permit strategy write-up for the permit did not discuss OEPA's determination for the two facilities. To promote clarity and transparency, EPA recommends that OEPA include the rationale for such determinations in subsequent permits.

The permit-to-install for Duke Energy Washington, LLC, Washington Energy Facility (permit number P0119625) issued on February 4, 2016, included an example showing how OEPA addresses the demand growth exclusion under 40 C.F.R. § 52.21(b)(41)(ii)(c). In reviewing the permit documentation, EPA found that the permit strategy write-up for the permit did not include a discussion of OEPA's approach to addressing the demand growth exclusion. To promote clarity, EPA recommends that OEPA discuss its process for addressing notable issues such as the demand growth exclusion in the permit strategy write-up for subsequent permits.

EPA did not identify any concerns with the two other permits that OEPA provided for the file review portion of the program evaluation.

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<sup>2</sup> <https://www.epa.gov/sites/production/files/2015-09/documents/20141020-15-p-0006.pdf>