



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

Mary Ann Dolehanty, Director
Air Quality Division
Michigan Department of Environment, Great Lakes, and Energy
525 West Allegan Street
P.O. Box 30473
Lansing, MI 48909-7973

Dear Ms. Dolehanty:

I am pleased to transmit to you the final 2020 Michigan Title V Program Evaluation Report. The U.S. Environmental Protection Agency Region 5 staff had a virtual meeting with your staff and Chris Ethridge on October 22, 2020 to discuss the findings of our program evaluation. EPA appreciates the opportunity to discuss Michigan's air permit program with your staff.

Please see the enclosed report for further information regarding EPA's program evaluation findings, including program strengths and highlights as well as areas that both agencies will continue to focus on improving. We appreciate your staff's assistance and responsiveness during the program evaluation, and we look forward to continuing our cooperative working relationship.

If you have any questions, please contact me or YeChan Lim of my staff, at (312) 886-7259.

Sincerely,

**JOHN
MOONEY**

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John Mooney
Director
Air and Radiation Division

Enclosure



Review of Michigan Department of Environment, Great Lakes, and Energy’s Title V Permit Program

2020 Evaluation Final Report

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

April 6, 2021

Executive Summary

From December 2019 to May 2020, as part of its ongoing oversight of state and local Title V permit programs, EPA conducted monthly calls with Michigan Department of Environment, Great Lakes, and Energy's (EGLE) staff and managers to review preliminary responses to the Region 5 Questionnaire for Title V Program Evaluations. On October 22, 2020, EPA and EGLE staff met to discuss EPA's findings from the program evaluation.

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

EPA found that EGLE's permit development and issuance process is well-supported by guidance, permit application drafting tools, and comprehensive procedures. Additionally, EGLE's training and resources for permit writers is extensive and well-developed. EPA also identified several areas where EGLE has agreed to take additional steps, including identifying synthetic minor limits in the permit record, identifying the specific applicable test methods for federal standards, and documenting averaging times for emission limits.

Evaluation Findings

1. Introduction

EGLE's state 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 Michigan Administrative Rule 336.1216. EPA gave final full approval of Michigan's Renewable Operating Permit (ROP) program on December 10, 2003 (68 FR 63735).

EGLE and EPA participate in monthly calls to discuss pending Title V permitting and programmatic issues, share permitting information, and identify issues of potential concern. EPA staff collaborate with EGLE permit writers on individual permits as needed. As part of our oversight role, EPA periodically reviews draft Title V permits during the public comment period and works with EGLE staff to resolve issues raised by EPA in a timely manner. EGLE has worked closely with EPA to address concerns and to issue final permits that meet the requirements of the CAA and the Michigan state implementation plan.

2. Findings Related to the 2015 Evaluation

EPA last evaluated EGLE's Title V program on January 27-28, 2015 and issued a report summarizing its findings on October 20, 2015 (2015 Title V Report). While the 2015 Title V Report noted strengths in EGLE's implementation of the Title V program, it also identified areas needing improvement and provided specific recommendations for addressing those areas. As part of the 2020 program evaluation, EPA revisited each of our recommendations from the 2015 Title V Report to determine whether EGLE had made any progress on the identified issues.

A. Program Submittal Updates

Michigan submitted its revised Part 70 ROP program to EPA in 2010, with subsequent submittals in 2012 and 2013. In the 2013 submittal, Michigan identified additional upcoming regulatory changes. Since 2013, Michigan has made further updates to its program. In the 2015 Title V Report, EPA stated that the Agency will work with Michigan to address these changes and the process for updating Michigan's Title V program approval.

B. Staff Report (Statement of Basis)

In the 2015 Title V Report, EPA recommended that Michigan provide training for staff and consider revising the ROP Staff Report Template and Instructions to ensure that the reports include more detailed, source specific information. As a result of the finding, EGLE updated the ROP Staff Report Template in August 2015 to include: a table to list hazardous air pollutant emissions that indicate the source of the emission calculations, operational paragraphs to describe if the source underwent or avoided prevention of significant deterioration (PSD) review for greenhouse gases, an optional paragraph to use if the source is subject to an area source Maximum Achievable Control Technology standard for which EGLE is not delegated authority, and optional language to add for Cross-State Air Pollution

Rule-subject sources. In addition, detailed Staff Report Template instructions were created and made available to staff in July 2016. EGLE has fully addressed this issue from the 2015 Title V Report.

3. 2020 Evaluation Findings

This final report summarizes EPA’s findings regarding EGLE’s compliance with the statutory and regulatory requirements for the Title V program. EPA’s findings are based on EGLE’s responses to the questionnaire, discussions of EGLE’s responses during the October 22, 2020 virtual meeting, follow up discussions regarding the responses, and EPA staff knowledge of the program from experience with reviewing EGLE permits and programs.

A. Fees

Michigan’s ROP fee program was reauthorized in November 2019 for fiscal years 2020-2023. The annual fees consist of a varying facility charge and a per ton emissions charge. To ensure that fees are sufficient, Michigan determines the program costs for the current year and factors in inflation, expected expenditure increases, and expected billable emissions for the time period covered by the reauthorization (typically four years) when developing the specific fee structure.

Annual air quality fees are collected from both Title V and non-Title V sources and tracked separately. Fees collected from Title V sources are used only for Title V activities. EGLE reported that the Title V portion of EGLE’s fee program generates revenue greater than the Part 70 presumptive minimum fee. EPA recommends that EGLE continue to account for Title V and non-Title V funding sources as well as Title V and non-Title V program activities to ensure that the Title V operating permit program is self-funded in accordance with 40 C.F.R. §70.9.

B. Permit File Review

EPA reviewed two permits as part of the program evaluation. In the first permit EPA evaluated the administrative record for an ROP illustrating how EGLE addresses community concerns, including how the permit process and permit content were considered. EGLE provided the permit record for a source that includes an ethylene oxide medical sterilizer. EPA found that: EGLE made off permit plans available to the public on its website; the permit documentation was thorough; and testing was added to verify emissions consistent with the industry sector.

In the second permit EPA evaluated how EGLE addresses monitoring, recordkeeping, and operational restrictions for synthetic minor limits. EGLE provided the permit record for an ROP issued to an automotive component manufacturer. EPA found that although the final ROP includes the synthetic minor limits, it was not clear which permit conditions ensure the limits are practically enforceable. The ROP technical review notes generally state that the source is subject to synthetic minor limits for hazardous air pollutants (HAPs) and volatile

organic compounds (VOCs). The staff report states that the source has taken HAP and VOC synthetic minor emission limits to ensure the source is an area source under Section 112 of the CAA and a minor source for PSD, respectively. The staff report does not discuss monitoring and recordkeeping associated with the synthetic minor limits. Permit to Install evaluation sheets were included in the record, but the reports do not specify which operational limits ensure the source's potential to emit remains below the major source threshold. Further discussion of synthetic minor limits is included in Section 3. E. below.

C. Permit Development and Issuance

EGLE's permit development and issuance process (including community and regulated community training and outreach, public notice and comment) is well-supported by guidance, permit application drafting tools, and comprehensive procedures. EGLE's extensive program documentation and updates to the pre-application meeting process, program outreach activities and webinars, initial and renewal application forms, and procedural guidance and training reflects a dynamic program that seeks ongoing improvement and statewide consistency and facilitates the permit issuance process.

EPA also acknowledges that, during the program evaluation, EGLE reviewed its public notice procedures for ROP administrative amendments pursuant to R 216(1)(a)(v), and now identifies these actions on EGLE's ROP Public Notice webpage in addition to posting them on the Permit to Install Public Notice webpage (the action includes a dual 30-day public comment period).

D. Training Resources for Permit Writers

EGLE's training and resources for permit writers is extensive and well developed, including ROP and Staff Report drafting instructions and templates, subject matter experts, comprehensive procedures and training, and peer review. EGLE also proactively uses the ROP permit issuance process to assess and determine stack testing frequency.

E. Synthetic Minor Limits

Synthetic minor permit conditions can be difficult to identify in ROPs (See Section 3. B. above). EGLE and EPA have discussed that synthetic minor limits are generally established in the PTI permit program and will be addressed during the PTI permitting process. Where EGLE finds that the ROP implementing regulations allows them to improve the enforceability of dated applicable requirements, they will do so. EPA will continue to review draft ROP permits during the public comment period to ensure that PTI conditions are being effectively incorporated in the ROP, with the understanding that Michigan's program does not allow the state to change certain PTI conditions in an ROP.

F. Test Methods

EPA has previously commented on ROPs that permits should specifically identify the test methods that the source will use to demonstrate compliance with each emission limit. (See 40

C.F.R. § 70.6.) EGLE developed additional stack test permit template language to address these concerns with the specificity of stack test methodology in permits. However, permits typically included only high-level citations to the stack test provisions in the federal regulations and did not identify the specific applicable test methods. In addition, the permit language included broad director’s discretion allowing for changes to test methods beyond that provided by federal delegations.

As part of the program evaluation process, EGLE has committed to removing language regarding broad director’s discretion in the PTI permit and reviewing test methodology to include the required test method cited in federal standards, where applicable.

G. Averaging Times

EPA has previously commented on the lack of emission limit averaging times. EGLE responded with guidance to permit writers that had, in some cases, been misinterpreted as a default to a one-hour averaging time. EPA has observed that emission limits and averaging times may not agree, such as when an instantaneous lb/ton or lb/MMBTU limit is incorporated into the ROP with hourly averaging. As part of this program evaluation process, EGLE has committed to improved documentation for emission limit averaging times.

H. Title V Backlog

EGLE acknowledges that additional efforts are needed to manage the Title V permit renewal backlog and is actively taking steps to reduce the backlog while also addressing the renewal application cycle. As of July 30, 2020, 104 active ROPs had permit terms extended past the standard 5-year term. Of those 104 extended permits, 53 had renewal applications in house longer than 18 months. EPA recommends that EGLE continue its existing efforts to reduce the backlog and offers support with any assistance opportunities.

I. Source Specific Plans

EGLE updated its procedures in December 2018 to ensure that source-specific plans required by the ROP, such as operation and maintenance plans, are publicly available throughout the term of the ROP. EPA’s file review of permits issued after December 2018 indicates that most, but not all, plans are publicly available. EGLE has already taken steps to improve availability of these plans, including outreach to District Office supervisors and office staff regarding the posting procedures. An ROP workgroup also considered enhancements and clarifications to the existing procedures, resulting in updated instructions to several sections of the ROP Manual.

4. EGLE Concerns, Recommendations, and Suggestions

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

A. EPA Comments

EGLE noted concerns with recurring EPA comments on issues discussed in Section 3. E., 3. F., and 3. G. of the report, which adds significant additional work to program staff. There have also been concerns about EPA permit comments being too vague and not well supported by information, guidance, and examples. EPA will continue to work with EGLE to address these issues and will make efforts to provide comments that can be addressed through the ROP process.

B. Permitting and Enforcement Coordination

EGLE recommends that EPA improve the communication and coordination with Permitting and Enforcement when consent decrees include permitting actions. A recent EPA Consent Agreement and Final Order required permitting actions, with little to no communication with any state Title V or NSR contacts. EGLE also expressed concern about the delay of some Title V permits due to lengthy EPA enforcement actions. EPA will continue to work with EGLE on addressing this issue and both agencies will work to better communicate internally between their permitting and enforcement programs.

C. Trainings

EGLE recommends EPA provide more national trainings on complex and widely applicable MACTs. EGLE also noted that guidance or training regarding the correlation between the boiler MACT and the natural gas transmissions and storage MACT would be helpful. EPA is willing to provide training and will work with EGLE to identify opportunities.