

(AR-18J)

November 27, 2001

Andy Buchsbaum
Water Quality Project Manager
National Wildlife Federation
Great Lakes Natural Resource Center
506 East Liberty Street
Ann Arbor, Michigan 48104

Dear Mr. Buchsbaum:

Thank you for your March 12, 2001, letter regarding the National Wildlife Federation's comments on Michigan's Clean Air Act title V operating permit program. Your comments were submitted in response to the United States Environmental Protection Agency's (USEPA's) Notice of Comment Period on operating permit program deficiencies, published in the Federal Register on December 11, 2000. Pursuant to the settlement agreement discussed in that notice, USEPA will publish notices of program deficiencies for individual operating permit programs, based on the issues raised that USEPA agrees are deficiencies, and will also respond to other concerns that USEPA does not agree are deficiencies.

We reviewed the issues that you raised in your March 12, 2001, letter and determined that these issues do not indicate any program deficiencies in Michigan's title V operating permit program. However, the Michigan Department of Environmental Quality has given USEPA a written commitment to issue all remaining permits to demonstrate that the state has taken significant action to increase its permit issuance rate. USEPA's response to each of your program concerns is enclosed.

For your information, USEPA Region 5 will post all the Region 5 response letters on the Internet at <http://yosemite.epa.gov/r5/ardcorre.nsf/Title+V+Program+Comments>. USEPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. USEPA will also be posting all response letters on the national USEPA website, and the Agency will publish a Federal Register notice of the availability of those response letters.

We appreciate your interest and efforts in ensuring that Michigan's title V operating permit program meets all federal requirements. If you have any questions regarding our analysis, please contact Beth Valenziano at (312) 886-2703.

Sincerely yours,

/s/

Bharat Mathur, Director
Air and Radiation Division

Enclosures

cc: Dennis Drake, Chief
Air Quality Division
Michigan Department of Environmental Quality

Enclosure
USEPA's Response to National Wildlife Federation's Comments on
Michigan's Title V Operating Permit Program

1. *Comment: state's startup, shutdown, and malfunction (SSM) regulations provide an affirmative defense that is broader than the emergency defense in 40 C.F.R. § 70.6(g).*

This is an interim approval issue that the state has corrected by rescinding its SSM rules. See USEPA's proposed full approval of Michigan's part 70 program, 66 Fed. Reg. 54737, published October 30, 2001. As noted in USEPA's December 11, 2000 notice of public comment period, USEPA did not solicit comments on interim approval deficiencies because USEPA has already identified such deficiencies and permitting authorities have taken action to correct them in order to avoid imposition of the federal permitting program on December 1, 2001.

2. *Comment: commenter expressed concern that the state is not requiring written emissions minimization plans for SSM, pursuant to the state's SSM regulations, and cites Wisconsin Electric Power Company's Presque Isle permit, SRN B4261.*

As discussed above, USEPA took issue with Michigan's SSM regulation in the final interim approval. In response, the state rescinded its SSM rules to correct the interim approval issue. With respect to this specific concern, however, USEPA notes that Michigan's SSM regulations only required written emission minimization plans if the source sought an affirmative defense under the rules; it was not mandatory. According to MDEQ, the Presque Isle facility had never sought an affirmative defense under the state's SSM rules.

3. *Comment: Michigan has failed to issue all the initial title V permits within 3 years of receiving interim approval. MDEQ has only issued 55% of the permits. Michigan does not have sufficient fees because it did not meet the statutory deadline for issuing permits. MDEQ does not have sufficient resources or staff to complete the permitting process. USEPA should withdraw program approval unless Michigan increases fees to ensure that the remaining permits are issued within the next year.*

MDEQ has made significant progress in issuing title V operating permits, and as of November 2001, has issued 68% of the initial permits. However, a number of permitting authorities, including MDEQ, have not issued permits at the rate required by the Clean Air Act. For many permitting

authorities, because of the sheer number of permits that remain to be issued, USEPA believes that a period of up to two years will be needed for the permitting authority to be in full compliance with permit issuance requirements of the Clean Air Act. If the permitting authority has submitted a commitment to issue all of the permits by December 1, 2003, USEPA interprets that the permitting authority has taken "significant action" to correct the problem and thus USEPA does not consider the permit issuance rate to be a deficiency at this time. An acceptable commitment must establish semiannual milestones for permit issuance, providing that a proportional number of the outstanding permits will be issued during each 6-month period leading to issuance of all outstanding permits. All outstanding permits must be issued as expeditiously as practicable, but no later than December 1, 2003. USEPA will monitor the permitting authority's compliance with its commitment by performing semi-annual evaluations. As long as the permitting authority issues permits consistent with its semi-annual milestones, USEPA will continue to consider that the permitting authority has taken "significant action" such that a notice of deficiency is not warranted. If the permitting authority fails to meet its milestones, USEPA will issue a Notice of Deficiency (NOD) and determine the appropriate time to provide for the state to issue the outstanding permits.

MDEQ submitted a commitment and a schedule to USEPA providing that MDEQ will issue 20% of the remaining permits by June 1, 2002, 50% by December 1, 2002, 70% by June 1, 2003, and 100% by December 1, 2003. These milestones reflect a proportional rate of permit issuance for each semiannual period. A copy of the permitting authority's commitment is enclosed. This commitment demonstrates that MDEQ has taken significant action to correct its permit issuance rates, and therefore an NOD is not warranted at this time. As stated above, however, USEPA will continue to monitor MDEQ's permit issuance progress on a semi-annual basis, in accordance with MDEQ's permit issuance commitments, to ensure that the state continues to take significant action to issue the remaining operating permits.

The commenter also correlates permit issuance delays to the sufficiency of permit fees. Fees are only one potential component of why states did not meet the permit issuance deadline. MDEQ's initial title V program submittal demonstrated that the state's title V fee program is sufficient. However, USEPA will review and act on the state's revised fee program as a part of MDEQ's revised title V program submittal, dated June 1, 2001 and updated

September 20, 2001. USEPA also notes that Michigan's September submittal includes information regarding the state's recently updated fee authority.

4. *Comment: MDEQ's compliance certification rules and forms do not require deviations and exceedances to be specifically identified in the compliance certification. Instead, the certification requirements include a general reference to any deviations that have been reported. The deviations should be identified in the compliance certification. MDEQ's rules also do not require compliance certifications with permit applications.*

Michigan's rules are consistent with 40 C.F.R. § 70.6(c)(5)(iii), and do require the certification to identify previously reported deviations. Michigan Rule 213(4)(c)(i) and (ii) requires that sources identify in the compliance certification each term or condition of the permit that is the basis for certification, and the compliance status of the stationary source with respect to each identified term or condition. MDEQ's compliance certification form, EQP-5736, and the form instructions clearly require sources to submit deviation reports with the compliance certification for any deviation from permit terms, regardless of whether the source had previously reported the deviation. MDEQ's deviation report form, EQP-5737, requires a description of the deviation, when it occurred, if it had been previously reported, the reason for the deviation, and the corrective action taken.

Regarding requirements for permit applications, this is an interim approval issue that the state has corrected to receive full approval. See USEPA's proposed full approval of Michigan's part 70 program, 66 Fed. Reg. 54737, published October 30, 2001. As noted in USEPA's December 11, 2000 notice of public comment period, USEPA has already identified interim approval deficiencies and permitting authorities have taken action to correct them to avoid imposition of the federal permitting program on December 1, 2001. USEPA does note that, although the state's original rules did not clearly contain such requirements, MDEQ nonetheless applied those rules to require permit applications to include compliance certifications.

5. *Comment: pollution control plans do not have to be finalized before the permit is public noticed, denying the public the chance to review and comment on that portion of the permit before it becomes final. Commenter cites a permit issued to*

Wisconsin Electric Power Company's Presque Isle facility that included a fugitive dust plan in the final permit but not the draft permit.

According to MDEQ, the draft permit that went out to public comment included references to the not yet submitted fugitive dust control plan. MDEQ received two comments regarding the absence of the plan in the draft permit. At the public hearing for this source, MDEQ explained that the control plan would include requirements that were already incorporated into the material handling and fly ash handling sections of the permit (tables F-1.1 and F-1.2). Once the facility submitted the control plan, MDEQ proposed the permit to USEPA and subsequently finalized it.

Although the permit includes detailed fugitive dust requirements, the fugitive dust control plan subsequently added to the proposed permit (Appendix 10) is different in structure and scope. MDEQ reviewed the situation, and reopened the permit to provide for public notice of the fugitive dust control plan in Appendix 10. The public comment period ran from August 13 through September 12, 2001.

USEPA believes that this is a source specific situation that does not warrant a state program notice of deficiency. MDEQ also agrees that the draft permits must be complete before they are public noticed, and has detailed public participation procedures to ensure that the requirements of 40 C.F.R. § 70.7(h) are met.