

Sent 11/21/08

Mr. Mark N. Mauriello
Acting Commissioner
New Jersey Department of
Environmental Protection
401 E. State Street
Trenton, NJ 08625

Dear Commissioner Mauriello:

This is to apprise you of the results of EPA's routine audit of New Jersey's title V Operating Permits Program. The purpose of the audit is to evaluate New Jersey's implementation of the operating permits program to ensure New Jersey is implementing the program consistent with the requirements of the Clean Air Act and EPA's part 70 regulations which implement title V of the Clean Air Act.

EPA's audit focuses on the two major components of the New Jersey title V Operating Permits Program: ensuring that permits issued by New Jersey comply with applicable federal requirements and ensuring that revenues raised by the fee program are used appropriately.

We wish to thank your staff for their cooperation which has enabled my staff to complete this audit in a timely manner. The information New Jersey provided during the April 4, 2008 conference call, the April 7, 2008 on-site visit, and the comprehensive responses to our questionnaire and inquiries all contributed to the completion of the attached audit report.

Our audit shows that New Jersey has improved in many ways, including more timely approval of significant permit modifications, better quality permits with more consistent requirements, and more utilization of the general permit system. On the other hand, we also have recommendations for ways to improve New Jersey's title V Operating Permits Program. Please refer to the attached audit report for more detail.

Regarding the title V fee program, EPA has concluded that while constructing a year by year exact match between fees collected and program expenses is not practical, New Jersey may need to demonstrate, through a long term tracking of the two, that a long term balance is struck.

If you have any questions, please do not hesitate to call or have your staff contact Steven Riva at (212) 637-4074.

Sincerely yours,

Alan

Attachments

cc: William O'Sullivan
Director, Division of Air Quality
NJDEP

Bcc: John Preczewski, P.E.
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NJDEP

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**The Environmental Protection Agency's (EPA's) Review of the
New Jersey Department of Environmental Protection's (NJDEP's)
Title V Operating Permits Program**

November 21, 2008

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I. Introduction

The New Jersey Operating Permits Program was granted full approval on November 30, 2001 (66 FR 63168), pursuant to title V of the Clean Air Act (“CAA”) and its implementing regulations at 40 CFR part 70 (known as the “part 70 regulations”). In accordance with EPA’s oversight responsibilities in section 502(b)(3)(C)(i) of the CAA and 40 CFR §70.10, EPA Region 2 conducted its first audit of New Jersey’s title V fee program on March 4, 1999 and the permit program on June 22, 2005. The purpose of a fee audit is to determine whether the permitting authority is adequately administering or enforcing an approved fee program to ensure adequate funding for the NJ title V Operating Permits Program. *See* section 502(b)(3)(C)(i) of the CAA and 40 CFR §70.10(d). The purpose of a permit program audit is to determine whether the State program is being implemented the way it was approved. In addition, the audit will determine whether the State program has undergone any changes that may have resulted in a program that is not in compliance with the requirements of part 70. *See* 40 CFR §70.10(b) and (c).

The purpose of this audit is twofold. First, EPA needs to conduct a second fee audit to ascertain the compliance status of New Jersey’s title V fee program given that nine years have elapsed since the last one was completed. Second, EPA needs to review the permit program as a follow up to the 2005 audit, in which we noted, among other things, that some significant permit modifications were incorrectly processed as minor modifications.

This composite audit began with a January 31, 2008 letter to NJDEP that included a questionnaire requesting certain information and documentation to facilitate EPA’s effort. *See Attachment A*. Inquiries relating to the permit program focused on the permitting process for new permits and significant permit modifications; procedures for handling compliance issues that surface during the permitting process; impediments to timely processing of permits, renewals, or modifications; and follow-up actions on issues identified during or after the last audit. Those previously identified issues involved the statement of basis, credible evidence in an enforcement proceeding, CAM plan, deviation from permit limits, etc. Inquiries relating to the fee program focused on revenue and expenses from FY 2003 through 2007; a description of direct and indirect costs for title V program implementation; documentation of proper use of title V fees; and fee collection.

A telephone conference was held on April 4, 2008 between EPA Region 2 and NJDEP to go over the questionnaire that pertains to the fee inquiries. Region 2 staff visited NJDEP’s Trenton Office on April 7, 2008 to interview staff who work on title V operating permits in an effort to obtain preliminary responses to the questionnaire. *See Attachment B* for the list of participants.

This audit report is developed based on the responses received during the April 7, 2008, on-site visit, NJDEP’s official response to the questionnaire (letter dated July 31, 2008, *Attachment C*), NJDEP’s response to the fee surplus finding (letter dated September 12, 2008, *Attachment E*) and EPA’s review of select permits. This report is organized such

that the title V fee audit is discussed followed by discussions of the permit program audit and the select permit review.

II. Title V Fee Program Review Findings

Section 502(b)(3)(A) of the CAA requires each state to collect sufficient fees to cover the costs of the Operating Permits Program. Section 502(b)(3)(C)(iii) of the CAA and 40 CFR §70.9(a) and (d) further require that all fees collected be solely used to cover the direct and indirect costs of implementing the title V program.

Pursuant to 40 CFR §70.10(c), it is EPA's responsibility to review periodically the State's implementation of the title V fee program to ensure that fees are collected and handled in conformance with section 502(b)(3)(A)-(B) of the CAA and 40 CFR §70.9. EPA's audit of the State's fee program involves making determinations that sufficient title V fees are collected to cover program costs, title V fees collected are used solely for the title V program, and activities are properly charged to the title V account.

In the State of New Jersey, responsibilities for billing and collecting title V fees are shared between the State Treasury and the NJDEP. Each facility subject to the New Jersey Operating Permits program pays a title V fee based on the amount of emissions the facility emits in accordance with New Jersey's Operating Permit Rule, N.J.A.C. 7:27-22.33. Emissions based fees are calculated based on the emissions reported on the facility's emissions statement submitted for the prior year. NJDEP calculates the amount of title V fees to be billed to the facility and sends the billing information to the State Treasury for annual billing and collection. Besides the emissions based fees, facilities also pay application processing fees for initial applications, significant permit modifications, and renewal applications. Each year, the State Treasury collects the title V fees and NJDEP receives an appropriation from the Treasury to cover the expenses of the title V program.

In 1999, EPA Region 2 conducted its first audit of New Jersey's title V fee program. It concluded that New Jersey was not collecting sufficient fees to cover the costs of the program. In fact, the State general fund was needed to make up a shortfall of about \$2 million dollars each year between 1996 and 1998. Our audit finding prompted legislative action which addressed the deficiency by increasing fees.

As part of the current audit, NJDEP submitted information that indicates there is an annual surplus remaining from the title V fees collected from affected sources. (See Table F1 of Attachment C). It amounts to \$2 to 3 million dollars a year from fiscal years 2003 through 2007. Since title V fees are intended to be used solely to cover the costs of implementing the title V program, NJDEP is accountable for the disposition of any surplus that is collected from the affected sources. Consequently, on August 13, 2008, EPA sent a letter to Dr. Ved Chaudhary, Assistant Commissioner, Management & Budget, NJDEP, inquiring about NJDEP's future plan for the surplus that has accumulated over the past five years. See Attachment D. A response to our letter was received on September 12, 2008 (Attachment E) which addressed a surplus not only for

fiscal years 2003 to 2007 but also 2008. While NJDEP acknowledges the surplus from fiscal years 2003 through 2008, New Jersey asserts that it would be offset by projected deficits in title V fee revenue for fiscal year 2009 and every year thereafter. No additional information was provided to substantiate this projection. Region 2 needs additional detail regarding the calculation of the projected future year surpluses and deficits (assumptions regarding future year emissions, changes in the universe of title V affected sources, assumptions regarding cost estimates in the future, etc.). Conceptually, EPA recognizes that costs and revenues can vary year to year and the use of surpluses in one year to cover deficits over a period of time is acceptable if the information is reasonably verifiable.

Based on a reasonable expectation of future year deficits, an approach to ascertain the collection and use of title V fees would be to establish a special account which clearly tracks surpluses and deficits that occur from year to year. All transactions to and from this account should be recorded and reported to EPA on an annual basis. Ideally, the special account should be created within the State Treasury where the title V fees are collected; however, EPA welcomes other ideas on how to track the collected title V fees. EPA encourages NJDEP to present any such alternatives in its response to this audit report. The title V fee program is an important component of this audit, EPA is committed to working with NJDEP to establish a mutually acceptable method of accounting that allows EPA to determine New Jersey's compliance with 40 CFR §70.9 and section 502(b)(3) of the Act.

III. Title V Permit Program Review Findings

Information considered in the program portion of this assessment includes NJDEP's response to a comprehensive questionnaire received from EPA, an on-site interview with the Bureau of Operating Permits (BOP) personnel, documents provided by NJDEP on the day of the visit, and draft/proposed permits of select facilities.

The questionnaire was a compilation of questions intended to focus on new issues that surfaced since the last audit. The permitting procedures for regular initial permits, modifications, and re-openings were discussed in detail. Questions were intended to clarify the procedures NJDEP follows when handling an application from a facility that is known to have compliance issues. Other questions were directed towards issues that were identified in the last audit. These included general permits (NJDEP has expressed much interest in developing more general permits for use in the NSR as well as title V programs); content and purpose of the statement of basis; timeliness in permit issuance for new permits, renewals, significant modifications, minor modifications, and administrative amendments; impediments or "roadblocks" to timely issuance of permits; tracking of permitting progress by management; and public notice methods.

The on-site visit included interviews with the permit evaluator supervisors, who are responsible for overseeing the quality of operating permits developed by permit evaluators. EPA also reviewed permits and permit files for the following facilities for

purposes of this audit: ConocoPhillips Bayway Refinery, Center Terminal, Gerdau Ameristeel, Dow Chemical, Trigen, and Alcan Packaging.

Permitting Procedures in General

Permit applications received by New Jersey are given to the supervisors for assignment to a permit evaluator. The evaluator checks for administrative completeness using a check list. The completeness determination is a very important step in the permitting process. A complete application provides a "shield" to the source for operating without an approved title V permit. Following the completeness determination is the technical review to develop the draft permit that contains conditions necessary to assure compliance with all applicable requirements. Prior to soliciting public comment on the draft permit, New Jersey offers the facility an opportunity to review the pre-draft permit for 30 days. It provides the facility an opportunity to review and correct any information that may have resulted from miscommunication before the draft permit is finalized. The 30-day pre-draft review is not required by the part 70 regulations but has proven to be a valuable step in the process as evident from the decreasing number of petitions filed by facilities. This extra step adds an additional 30 days to the permit issuance timeline but eliminates unwarranted petitions. After the pre-draft permit review, the New Jersey rule offers a 30-day public review of the draft permit as required by part 70. Any public comments accepted would be incorporated into the proposed permit and forwarded to EPA for a 45-day review consistent with 40 CFR §70.8. If EPA does not object to the issuance of the permit during its 45-day review, New Jersey issues the part 70 permit in final during the 60-day petition period. A petition, if any, resulting in an EPA objection will occur after the final permit is issued by New Jersey. In such cases, EPA would modify, terminate, or revoke the issued part 70 permit. The entire permitting process should take NJDEP 18 months from the date of determination of administrative completeness to final action on an initial permit application.

In general, EPA finds New Jersey's permitting procedures consistent with part 70.

Permit Modifications

Significant Modifications. Applications for permit modifications are handled differently than applications for initial permits. Applications for permit modifications undergo both the preconstruction and part 70 reviews in what is called a merged process. Under such an approach, one application is submitted and reviewed under both programs. The application is first reviewed to determine if it is a significant modification by going through the list of "gatekeepers" provided in N.J.A.C. 7:27-22.24. Once the type of modification is determined, a completeness review is performed to determine if the application contains all of the information needed for further processing. After issuance of the administrative completeness determination, NJDEP starts the technical review. A pre-draft permit containing all applicable requirements is developed and again shared with the facility for a 30-day review. After incorporating accepted comments from the facility into the draft permit, a Pre-Construction Approval (PCA) is issued to the facility while a draft part 70 permit is issued for a 30-day public review. The PCA allows the

facility to start construction immediately if the modification is not subject to the Prevention of Significant Deterioration of Air Quality (PSD) regulations. Modifications subject to PSD cannot start construction until the final part 70 permit is issued. At the conclusion of the public comment period, New Jersey sends EPA the proposed permit for a 45-day review. If EPA does not object to the issuance of the permit, New Jersey issues the final permit.

One discrepancy between NJDEP's current practice (described to us during the April 7, 2008 on-site interview and in Figure 2 of the July 31, 2008 response (Attachment C)) and its rule provision as stipulated in N.J.A.C. 7:27-22.24(a) is the timing for commencement of construction of a significant modification. While the rule states, "[t]he permittee shall not make the change proposed in a significant modification of the operating permit until the Department has approved the significant modification," NJDEP issues a PCA to non-PSD affected projects to allow for commencement of construction even before the public comment period concludes on the draft part 70 permit. This practice is inconsistent with N.J.A.C. 7:27-22.24 and should be corrected. The PCA should not be issued until the public comment period has ended and the proposed permit is sent to EPA.

Minor Modifications. A streamlined process is followed for minor modifications. *See* N.J.A.C. 7:27-22.23. Applications for minor permit modifications undergo both the preconstruction and part 70 reviews in a merged process. The first step in processing a minor permit modification request is to determine whether the requested minor modification should instead be processed as a significant modification. If the facility submits a minor modification but DEP determines that the significant modification procedure is more appropriate, the facility will be notified of the change of process. However, this evaluation could be subjective. A mistake made in this determination could substantially impact the effectiveness of the permit. Because a minor modification is not required to undergo public review, its processing time is shortened substantially. Therefore, it is often the procedure preferred by facilities for handling permit modifications.

Consistent with part 70, New Jersey's rule does not allow a modification that triggers review under title I of the CAA to be processed as a minor modification. A facility can submit numerous minor modification requests and each is processed as a discrete change to the facility's permit. The fact that NJDEP does not provide a statement of basis for minor modifications makes it difficult to know if and how they are related to each other or to the facility as a whole. If a significant modification is mistakenly processed as a minor modification with no public review and no statement of basis to account for the factual basis for the minor modification determination, it is not easy for the mistake to be discovered. Permit conditions that are deleted due to an erroneous minor modification determination would be a "done deal" and run the risk of never re-appearing in the permit. A title V permit that underwent numerous minor modifications could look very different from the last time the public had a chance to review it.

The renewal application process could provide an opportunity for NJDEP to take a fresh look at a facility in its up-to-date operation and confirm that all applicable requirements

are addressed. However, because New Jersey's rule only requires the facility to submit a renewal permit application that covers changes since the last minor or significant permit modification (changes that were processed as a 7-day notice change or changes to insignificant source operations that happened in the last 5 years), the renewal application does not provide a full view of the facility. As such, any errors made in a minor modification determination would just carry forward in the renewal permit. In addition, changes in the numbering of conditions from one permit to another may make it difficult to enforce these conditions.

Based on EPA's review of the permits selected for this audit, the lack of documentation for minor permit changes makes this aspect of New Jersey's Operating Permits Program vulnerable. EPA has seen permit conditions changed (emission limits deleted, emission limits increased, equipment size increased, etc.) from earlier to later versions of a permit with no information to justify the use of the minor permit modification procedure. Therefore, EPA strongly recommends that NJDEP update the statement of basis for the particular facility each time a change is made to the Compliance Plan Section of the permit regardless of the type of modification being processed. A copy of the statement of basis should be submitted to EPA with each proposed permit for EPA's 45-day review.

While EPA is aware that the lack of documentation does not necessarily reflect a flaw in the processing of minor permit modifications, the availability of documentation is necessary to justify NJDEP's decisions.

Permit Re-openings

According to the NJDEP staff, few re-openings of part 70 permits have taken place. Usually, this type of permit revision occurs when there are regulatory changes that affect permits with a remaining term of 3 years or more. For permits with a remaining term of less than 3 years, the regulatory changes are incorporated at the next minor or significant modification to the permit. Causes for re-opening include typographical errors found in the permit or omission of applicable requirements.

EPA finds New Jersey's permit re-openings to be consistent with part 70.

Consistency Assurance

The "e-finder" database is designed to help maintain consistency in permit development among various permit writers. See Attachment F. E-finder is a tutorial that guides the permit writer through each step of the permit application review process. It is also a repository of all form letters, checklists, public notice templates, past responses to comment documents, sign-off sheets, and process flow charts for various stages of permit review. Basically, it guides the permit evaluator from the administrative completeness review to issuance of the final operating permit. During the technical review step, the e-finder tutorial assists the permit writer by bringing forth applicable requirements from the SIP for selection and inclusion in the permit based on the type of facility being reviewed. The e-finder tutorial is very effective in ensuring consistency in permit writing and safeguarding against inadvertent omission of applicable requirements. In addition,

consistency is safeguarded via regular meetings between supervisors and their evaluators and among supervisors to discuss issues that are relevant to all permit writers. These meetings help to minimize inconsistencies among different evaluators within the Bureau of Operating Permits.

EPA finds New Jersey's current practice in assuring consistency in permit development well established and sound.

Compliance Issues

Before a draft part 70 permit is issued, the evaluator checks with state enforcement personnel to see if there are existing unresolved compliance issues with the subject facility. After identifying all compliance issues pertaining to the facility, the supervisor evaluates whether the compliance issues are severe enough to stop the permitting process or whether they can be resolved utilizing normal enforcement procedures such as an administrative consent order, thus allowing the permit process to continue. For compliance issues that are not "show-stoppers," a compliance schedule is included in the permit to bring the facility into compliance. In such cases, the draft permit is shared with the enforcement staff prior to issuance.

It is unclear to EPA what bases are considered by the supervisor in determining which type of compliance issues qualify as "show stoppers." In particular, EPA is interested in whether this evaluation is guided by policy from the NJDEP enforcement division or others. A more detailed description of how compliance issues are handled during a part 70 permitting process is needed to confirm that New Jersey's part 70 program is not jeopardized in any way when such issues arise during permit issuance. A copy of this information should be included in New Jersey's response to this audit report so that EPA can determine whether New Jersey properly allows the title V permitting process to proceed independent of the facility's existing compliance issues.

General Permits

NJDEP has completed issuance of its first general permit, the "Small Emitters General Air Permit." NJDEP has expressed interest in issuing more general permits for use in the Operating Permits Program; in particular, for equipment-based units such as emergency generators. The general permit goes through the same permitting process as a regular initial permit. The draft general permit is issued for a 30-day public review. Barring significant changes to the draft permit as a result of public comments, it is submitted to EPA as a proposed general permit for a 45-day review, consistent with the part 70 regulations for regular part 70 permits. If no objection from EPA is received, the final permit is issued and undergoes the 60-day "petition for EPA objection" period. Upon becoming effective, the final general permit is available for use by any part 70-affected facility. When an application for use of a particular general permit is received, the Equipment Inventory and Emission Unit Inventory Sections of the facility's part 70 permit are revised to include the emission unit covered by the general permit. For the Small Emitters General Air Permit, the allowable emissions of the small emitter will be

added to the Emissions Summary Section of the facility's part 70 permit, but no permit condition that pertains to the small emitter will be added to the Compliance Plan Section of the permit. This is because the small emitter, with its emission rates of all pollutants below the reporting threshold, qualifies as an exempt activity under New Jersey's Operating Permit Rule.

In general, EPA concurs with New Jersey's general permit issuance procedures for small emissions units such as those described above. However, EPA reserves judgment on other categories of general permits that NJDEP may consider in the future and will comment on each of those general permits on a case-by-case basis. EPA notes that N.J.A.C. 7:27-22.14(b) allows NJDEP to issue a general permit to an entire facility, a permitting idea not envisioned by the part 70 regulations, which are intended to streamline the permitting process for numerous similar sources at a facility rather than for the whole facility. *See* 40 CFR §70.6(d). EPA will review and comment on the approvability of such a general permit and the appropriateness of using the general permit issuance procedures for it when one is developed by the NJDEP.

Statement of Basis

NJDEP provides a statement of basis for initial permits and significant permit modifications. While referencing the requirements for periodic monitoring, recordkeeping, and reporting authorized under its Operating Permit Rule and the Compliance Assurance Monitoring (CAM) Rule of 40 CFR part 64, the statement of basis has not been used to provide justification for monitoring decisions such as no monitoring or the selection of one monitoring option over another. The statement of basis was identified as an area that needed improvement in EPA's last audit. In response to EPA's audit finding, NJDEP developed a statement of basis boilerplate as a way to remind the permit evaluator of the additional information that needs to be included in this document. *See Attachment G*. Basically, the boilerplate makes available to the permit evaluator sample paragraphs from which to choose and further develop to describe the source operation and identify the origin of monitoring requirements for the facility being reviewed.

By identifying the origin of its regulatory authority for the monitoring requirements, NJDEP's improved statement of basis provides the legal basis for the relevant permit conditions. However, it still falls short of meeting all of the requirements of 40 CFR §70.7(a)(5), which states that the statement of basis should "set forth the legal and factual basis for the draft permit conditions." It is EPA's assessment that NJDEP still needs to work on providing the factual basis for draft permit conditions.

An example of what can be done to improve this area is to provide in the statement of basis justification for requiring no monitoring or a specific gap-filling monitoring, selecting one monitoring option over another, allowing alternate operating scenarios, etc. In addition, documenting the changes that are being approved for the facility with the corresponding changes to the permit conditions that reflect new or deleted applicable requirements (as discussed above under "Minor Modifications") is another example of

establishing the factual basis for the permit conditions. In other words, the statement of basis must provide both the legal and factual basis for any action NJDEP takes that would result in a change in the Compliance Plan Section of the permit.

The statement of basis has been identified as an issue in both the 2005 audit and the current audit. EPA has discussed in full detail in this report its recommendations on how to improve this document. Therefore, EPA anticipates that all future statements of basis submitted by NJDEP will serve their purpose as stipulated in 40 CFR §70.7(a)(5). An improved statement of basis helps clear up any confusion about the permit, and thus reduces the potential for petitions.

Credible Evidence

The acceptance of credible evidence was raised as an issue at the national level shortly after we completed the 2005 audit. NJDEP was asked at that time to confirm that it accepts credible evidence in an enforcement proceeding. During the on-site visit for this audit, the Bureau of Operating Permits staff confirmed that NJDEP has not changed its course concerning the use of credible evidence and that it is consistent with EPA's guidance in this regard.

Compliance Assurance Monitoring

CAM plans are required to be included in applications for initial permits, significant modifications, and renewal permits. These plans are reviewed during the technical review step to ensure conformance with 40 CFR part 64. After technical review, they are incorporated into the Compliance Plan Section of the permit with the other permit conditions. EPA concurs with this procedure.

Timeliness in Permit Issuance

New Jersey has already issued all of the part 70 permits that were part of the "initial batch" of part 70 permits. Currently, most of the part 70 permit applications New Jersey receives are for permit modifications, renewals, and new facilities. NJDEP's policy is to process permit modifications that involve capital investment projects, installation of control devices, business expansion, and installation of new equipment first; followed by new permits and permit renewals. NJDEP indicated that permit modifications have been processed in a timely manner 90% of the time, whereas, 40% of the renewals have experienced delays in processing due to competing resources for permit modifications. NJDEP needs to develop strategies to improve the rate of permit issuance for renewals.

Impediments to Permit Issuance

Appeals by the permittees themselves top the list of impediments to timely permit issuance. To address this, NJDEP began holding pre-application meetings with applicants to resolve issues early for major projects and significant modifications in an effort to

minimize misunderstandings that could result in an appeal. Monthly progress meetings are also scheduled with the applicant and have proved to be useful in resolving issues.

Another factor that contributes to delays in permit issuance is the additional time needed to review facilities' requests for an alternative emission limit (AEL) which must be done on a case-by-case basis. To avoid an objection from EPA on such determinations, it is New Jersey's practice to seek EPA's review and approval on all AEL requests prior to permit issuance. On some occasions, permit issuance delays have been attributed to delays in receiving a response from EPA on an AEL request. NJDEP has indicated during the on-site visit that it would be helpful to shorten EPA's review time on these requests. EPA plans to hold a telephone conference with NJDEP to explore ways to quicken EPA's turnaround time.

Other time-consuming tasks that have contributed to permit issuance delays include repeated telephone inquiries from consultants calling to find out the requirements for significant or minor modifications. Such consultations impact the evaluator's normal workload. In particular, such consultations are sometimes misused and turned into "consultant-generated controversies" (consultants trying to impress their clients by presenting unacceptable scenarios or options), further delaying the permitting process. Another factor contributing to delays in reviewing renewal applications is the unavailability of the renewal application in electronic format.

In general, EPA believes that developing an electronic renewal application form, streamlining responses to consultant inquiries, and expediting EPA responses on AEL requests are areas that can be worked on to minimize impediments to permit issuance. EPA will work with New Jersey to find ways to improve these areas of concern.

Management Tracking

NJDEP management is kept up-to-date on title V activities through weekly meetings with the Section Chief and Supervisors. Individual staff permit writers brief the supervisor weekly on progress made on each permit application. Supervisors meet with all permit writers (staff) as a group biweekly to share/discuss issues of common interest and provide a forum to address them in a consistent manner. All Section Chiefs from the program and enforcement meet with upper management monthly to provide updates on permit issuance. Some of the tools used by NJDEP management include graphs and charts to show permit issuance progress (Attachment H). One of the most effective tools utilized by upper management is the "Evaluator Report." It provides a listing of supervisors followed by his/her permit evaluators and all the permit actions assigned to each individual evaluator. This report also provides the number of days allotted to each action and the number of days elapsed since assignment. This is a very effective management tool for tracking progress on each permit action. Upper management is also given graphs to show the number of activities completed by the Bureau of Operating Permits in a 2-year span. See Attachment H.

EPA finds NJDEP's management tracking strategies effective and impressive. NJDEP does an excellent job of monitoring its progress in permit issuance.

Deviations

Each permit contains provisions that clearly define when an excursion or deviation occurs. These provisions also include actions that must be taken by the facility when a deviation occurs. Deviations are required to be reported in a timely manner as stipulated in N.J.A.C. 7:27-22.19(g), consistent with 40 CFR §71.6(a)(3)(iii)(B).

Permit Renewal

New Jersey uses a computer program that tracks permit expiration dates and generates renewal reminder notices to the facilities. A renewal permit application submitted in a timely manner allows the facility to continue operation under the application shield until the renewal permit is issued.

Facilities are not required to submit renewal applications that address every single emission units; only those unrecorded changes that were made using the 7-day notice change procedures or changes to insignificant source operations made during the last five years are addressed in the renewal permit application. N.J.A.C.7:27-22.30(d)(1) requires that a summary of all changes made to the permit through administrative amendments, minor modifications or significant modifications during the past five years be included in the application. However, New Jersey's rule does not further define the detail that must be included in this summary. In practice, the renewal permit is issued by incorporating unrecorded changes for the last five years into the last modified version of the permit (via the minor or significant modification procedures). Any additional changes that the facility seeks to have processed at the time of renewal are also incorporated in the renewal permit.

The advantage of reviewing only changes from the last modified permit (be it minor or significant) in a renewal application is that it requires only a fraction of the review time compared with that needed for a comprehensive initial permit application. However, the disadvantage is that mistakes made in previous modifications could go undetected when the permit is up for renewal. This is of particular concern in instances where NJDEP does not provide public review for a minor modification because it is considered uncontroversial or not of interest to the public.

A facility that has an initial permit issued with all applicable requirements can potentially end up with a permit with fewer requirements during the 5-year permit term due to changes that were processed erroneously. EPA believes changes to the renewal application content can help prevent this from happening. Therefore, EPA suggests two ways to improve the content of the renewal application. For one, NJDEP can expand the summary of changes that accompanies the renewal application to include more detail on each physical change that took place in the past five years with a list of the corresponding permit conditions that were deleted, added, or changed. Alternatively, NJDEP can

require the facility to submit a renewal application that addresses all emissions units operating at the facility at the time of renewal. Under this option, the facility would "take a snap shot" of all emission units at the facility at the time of renewal and present them in the renewal application with their desirable operating scenarios and emission limits. This would enable NJDEP to review the renewal application as if it were being submitted the first time, making determinations on what requirements would apply to the facility based on current information in the application. Since facilities make numerous changes to the permit post initial permit issuance, it is important to provide the permitting authority a full view of the operation of the facility every five years to maintain permit accuracy. Either option would allow NJDEP to salvage permit conditions that may have been deleted or changed in error during a previous permit modification process. The quality and enforceability of operating permits should not suffer as a trade-off for shorter processing times for renewals.

EPA is open to further discussion with NJDEP on this particular issue to ensure that New Jersey's title V Operating Permits Program will continue to comply with the requirements of the part 70 regulations and the mandates of the CAA.

Public Process

Currently, public notices are provided on the NJDEP web page and published in one newspaper of general circulation. The public notice provides information such as the name and address of the owner or operator and the facility location; type of permit action (initial, significant modification or renewal); proposed changes to air contaminant allowable emission rates; information concerning the Emission Offsets Rule as it applies to the facility; the facility's compliance status and compliance schedules (if applicable); the NJDEP contact for the subject facility; an opportunity for public comment; and procedures for requesting a public hearing. See Attachment I. The mailing list includes the Mayor of the affected municipality, neighboring states that are located within 50 miles of the facility or 50 miles of New Jersey's border, anyone who has expressed an interest to NJDEP on air permitting matters, etc.

EPA finds New Jersey's public notice procedure appropriate and consistent with part 70.

IV. Selected Permits Review

Of the six permits EPA reviewed for purposes of this audit, two permits were found to have issues that were somewhat different from those seen in permits we reviewed in the past. In sum, EPA finds periodic monitoring an area that still needs improvement.

ConocoPhilips Refinery Permit

In the ConocoPhilips Refinery permit, EPA found a couple of minor modifications that should have been processed as significant modifications. EPA also found changes were made to subsequent versions of the permit without any documentation. There was no explanation in the statement of basis as to why the permit included changes that were not the subject of the minor modification being requested. Examples of this type of change include deletion of permit conditions, increasing heat input of process heaters by as much

as 100 MMBtu/hr, changing sampling frequency from every 8 hours to every 12 hours, eliminating a 500 hr/yr operational limit from certain heaters, etc. In addition, some of the emission limits were revised based on stack test data with no additional review being done. When the permit was revised, the statement of basis did not explain how the new limits were established and failed to indicate whether additional requirements were triggered and incorporated into the permit to allow for the higher emission rate.

The audit review performed on ConocoPhillips also revealed that many of the periodic monitoring requirements imposed consist of just one initial stack test with no periodic monitoring to determine compliance with permit limitations or standards. No justification was provided in the statement of basis for the lack of such monitoring. In response to EPA's inquiry, New Jersey alluded to the anticipated construction of a new sulfuric acid plant as one reason not to require more frequent monitoring and on another occasion indicated that New Jersey might consider more frequent monitoring in the future. It is unclear whether the periodic monitoring decisions made in the ConocoPhillips permit were subjective; the lack of discussions of these decisions in the statement of basis complicates the review.

During the last audit, EPA had similar concerns on periodic monitoring requirements (e.g., no periodic monitoring required or simply no monitoring required) but most of the concerns were resolved with an explanation from NJDEP. EPA had recommended that NJDEP include such explanation or justification in the statement of basis to eliminate ambiguity on the permit. However, our review of the ConocoPhillips permit suggests that NJDEP did not follow our previous recommendations. The statement of basis for ConocoPhillips fails to provide the explanation EPA seeks to justify what appears to be inadequate periodic monitoring. Periodic monitoring to assure source compliance with all applicable requirements is a core element of the Operating Permits Program mandated by title V of the CAA. *See* section 504(b)-(c) of the CAA. Inadequate periodic monitoring undermines the title V program; therefore, EPA reiterates to NJDEP that it is crucial to the success of the New Jersey Operating Permits Program that each permit is issued with adequate periodic monitoring or justified otherwise in the statement of basis.

Gerdau Ameristeel Permit

EPA finds the lack of monitoring for opacity a problem in this permit. The lack of an explanation in the statement of basis to describe how the maximum emission limits for the subject pollutants were determined is also an issue. NJDEP should use the statement of basis to explain whether an emission factor or extrapolation method was used to account for stack testing emissions at higher than minimum throughput conditions.

V. Other Issues

The New Jersey Operating Permit Rule at N.J.A.C. 7:27-22.33(b) and (c) contains language that allows for supersession of the NSR permit upon issuance of the part 70 permit. It is EPA's position that part 70 permits may not supersede, void, replace, or otherwise eliminate the independent terms and conditions of SIP-approved permits. This issue was identified in a March 29, 2000, letter to William O'Sullivan, Administrator, Air

Quality Permitting Program, NJDEP. As expressed in EPA's letter, it is EPA's understanding of N.J.A.C.7:27-22.33(b) and (c) that the terms and conditions of all preconstruction permits and operating certificates issued pursuant to N.J.A.C. 7:27-8 are included within the title V permit and they are enforced through the title V permit, rather than through the subchapter 8 permit or certificate of the SIP-approved permit program. In the March 2000 letter, we stated that NJDEP ought to submit a written opinion from the New Jersey Attorney General to EPA to confirm EPA's understanding of N.J.A.C. 7:27-22.33(b) and (c). Subsequent to the March 2000 letter, NJDEP informed EPA orally that it would prefer to delete the word "supersede" or "supersession" from N.J.A.C. 7:27-22.33(b) and (c) in a future rule revision.

The supersession language is still in N.J.A.C. 7:27-22.33(b) and (c) despite the fact that subchapter 22 has already undergone a few revisions since the March 2000 letter. NJDEP is reminded of the importance of correcting this language to eliminate any potential conflict with the CAA mandates and EPA and State implementation of the Act. EPA requests that NJDEP provide a response regarding its planned course of action to address this concern.

VI. Summary of Audit Findings and Action Items

Title V Program Elements	Remarks	Action Needed
Title V Fee Program	<p>New Jersey's Surplus of about \$14 million dollars from FY 2003 – 2007 is expected to be offset by deficits projected for 2009 and thereafter.</p> <p>Absent a designated fund for title V fee revenue, it is difficult for EPA to fulfill its oversight obligations.</p>	<p>NJDEP submits basis for deficit projections for FY 2009 and onward.</p> <p>NJDEP must designate a special account in the State Treasury to keep track of all title V transactions or propose other methods of accounting that would produce the same result for tracking purposes.</p>
Permitting Procedures in General	<p>New Jersey's permitting procedures are consistent with the part 70 regulations in general. New Jersey's effort to maintain a dialogue with the facility during permit development and providing the facility a 30-day pre-draft permit review has proven to be a wise decision as evident in a reduction of petitions filed by facilities.</p>	None
Permit Modifications	<p>1) Significant Modifications. N.J.A.C. 7:27-22.24(a) does not allow construction until final approval is issued. However, in practice, NJDEP issues a "pre-construction approval" to allow a non-PSD affected source to start construction before the draft part 70 permit is issued (see Figure 2 of the July 31, 2008 response). New Jersey's current practice is in conflict with its rule. NJDEP must rectify this inconsistency.</p>	<p>NJDEP must not issue a pre-construction approval to allow construction until the public comment period is ended and the proposed permit is sent to EPA for review.</p>

	2) Minor Modifications. EPA's review of selected permits shows some minor modifications should have been processed as significant modifications.	NJDEP should document in the statement of basis all changes that were made to the permit in order to provide a full view of all the minor and significant modifications that occurred at the facility.
Permit Re-openings	New Jersey has not exercised its authority to re-open title V permits that often. When permits were re-opened, the causes for re-openings were consistent with part 70.	None
Consistency Assurance	The e-finder permit development tool is exceptional in ensuring the inclusion of all applicable requirements in the permit while maintaining consistency in permit writing among different permit evaluators.	None
Compliance Issues	By consulting with its Enforcement staff before developing the draft title V permit conditions, NJDEP understands the importance of using the title V permit to ensure compliance with all applicable requirements by subject sources.	NJDEP must submit a description of the bases it uses to determine which types of compliance issues would cause a permit application to be held in abeyance and which types of compliance issues would not.
General Permits	The 1 st general permit issued under the New Jersey Operating Permit Rule was of good quality and consistent with the part 70 regulations. EPA supports NJDEP's intention to develop more general permits in an effort to streamline the part 70 process.	None
Statement of Basis	It is inadequate to merely state the authority for gap-filling monitoring in the statement of basis. The statement of basis must provide both the legal and factual bases for permit	NJDEP needs to document in the statement of basis all monitoring decisions as well as all changes to the Compliance Plan Section of the permit regardless of

	conditions.	which permit modification procedure was used to handle the changes.
Credible Evidence	EPA is pleased to confirm that NJDEP continues to adhere to EPA guidance by accepting credible evidence in enforcement cases.	None
CAM	NJDEP has done well adhering to 40 CFR 64 in implementing CAM requirements within its title V program.	None
Timeliness in Permit Issuance	Renewal permit applications experience delays of up to 40%.	Backlogs in processing renewal applications need to be reduced.
Impediments to Permit Issuance	Non-electronic renewal applications, response to consultant inquiries, delayed EPA response on AEL requests, etc. all contribute to delays in permit issuance.	EPA will work with NJDEP to minimize or eliminate these impediments.
Management Tracking	NJDEP supervisors and managers use exceptional management tracking tools to monitor progress in permit issuance.	None
Deviations	New Jersey's rule provisions are consistent with 40 CFR §71.6(a)(3)(iii)(B).	None
Permit Renewal	The renewal process which takes the latest modified version of the permit and adds to it all unrecorded changes from the 7-day notice change procedure and changes to insignificant source operations does not provide NJDEP a mechanism to evaluate the facility as a whole every 5 years to ensure permit accuracy.	Renewal application content should be revised to ensure that the renewal permit is issued with all applicable requirements pertaining to the current operation of the facility
Public Process	NJDEP has done well providing necessary information on public notices to allow for timely public review of part 70 permits. NJDEP also updates its mailing list periodically to include all interested parties.	None

Supersession	N.J.A.C. 7:27-22.33(b) and (c) contain language that allows for supersession of the NSR permit upon issuance of the part 70 permit.	NJDEP must remove the word supersession from N.J.A.C. 7:27-22.33(b) and (c) to eliminate any ambiguity in the relationship between the NSR permit and the part 70 permit.
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