

Bob Rogers, Manager  
Pollution Control Section  
Shelby County Health Department  
814 Jefferson Avenue, Suite 437  
Memphis, Tennessee 38105

Dear Mr. Rogers:

This correspondence is being sent to provide you with a final copy of the U. S. Environmental Protection Agency Region 4 report, which was completed as a result of the EPA title V program evaluation conducted on June 19, 2012, in Memphis, Tennessee (see Enclosure). The purpose of this program review was to evaluate the status and the ability of the Shelby County Health Department Pollution Control Section (the Department) to carry out the duties and responsibilities required to effectively run the title V program, as well as find out how the EPA can best assist the Department in meeting these commitments.

The EPA has conducted previous evaluations of the Memphis and Shelby County Health Department Pollution Control programs in 2006 and 2009. Based upon our review, the EPA has noted several areas of improvement from our previous evaluations, including an improved training program and a reduction in staff turnover. However, several areas of concern were also noted and are discussed in detail within the body of this report. The most significant area of concern is a reduction in the amount of title V revenue collected to operate the title V program, which has resulted in a reduction in title V staff and a growing backlog of title V permit applications. The EPA looks forward to working with the Department to resolve these areas of concern.

If you or your staff, have any questions regarding this report, please contact Randy Terry of the EPA Region 4 staff at (404) 562-9032.

Sincerely,

Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division

Enclosure

**Shelby County Health Department  
Pollution Control Section  
Title V Program Review**

The Memphis and Shelby County Health Department Pollution Control Section (the Department) initial program review was conducted on May 23 – May 25, 2006, in Memphis, Tennessee, and is kept on file at the U. S. Environmental Protection Agency (EPA) Region 4 office in Atlanta, Georgia. Based on the information gathered from the initial round of title V program evaluations and the implementation of new title V permit requirements, the EPA committed to conduct a second round of title V program reviews, by the end of fiscal year 2010, for all state and local programs that had at least 20 title V major sources within their jurisdiction.

The second program evaluation of the Memphis and Shelby County Health Department Pollution Control Section title V program was conducted June 30 - July 1, 2009, in Memphis, Tennessee. Prior to the EPA's arrival, the Department was provided with a list of seven title V sources, including three with compliance assurance monitoring (CAM) plans that the EPA planned to review as part of the program evaluation. The onsite evaluation consisted of a review of the permitting files, staff retention and training, permit issuance and title V fees. The following parties attended the title V questionnaire discussion: Randy Terry (EPA Region 4), Sean Lakeman (EPA Region 4), Yolanda Adams (EPA Region 4), Bill Smith (the Department) and Gregg Fortunato (the Department). This report was finalized on September 29, 2009 and is on file at the EPA Region 4 office.

Since the second program evaluation, the city of Memphis has withdrawn its funding of the title V program and the program has changed their name to the Shelby County Health Department. The EPA conducted a third program evaluation of the Department's title V program on June 19, 2012. This evaluation consisted of a review of the title V budgeting and accounting process, permit file review, public participation, and follow-up from previous evaluations. Department personnel in attendance included Bill Smith, Gregg Fortunato and James Holt. The EPA staff in attendance included Randy Terry, Art Hofmeister and Andrew Parks. Upon finalization, this report will be kept on file at the EPA Region 4 office.

## Shelby County Health Department Title V Program Review

### Executive Summary

The EPA has conducted two prior program evaluations and found several areas of concern, as detailed in the June 2009 program evaluation. The major areas of concern were, a staff with a high degree of turnover, a budget that required most new hires to have no experience, no formal method of training new employees and no way of ensuring programmatic consistency with regards to succession planning. In addition these concerns had led to a backlog of title V permit renewals and significant modification renewals.

In June 2012, the EPA conducted a third program evaluation. Findings from the most recent evaluation are:

#### **Positives:**

- 1) The Department staff was able to complete 10 significant modifications to title V permits within the past year, reducing the number of significant modifications older than 18 months down to 2.
- 2) The Department has stabilized their staff turnover and is now in the process of gaining expertise in title V and reducing the backlog of permits.
- 3) The Department has formalized, in writing, their training plans to ensure consistency in training and has implemented a training program that utilizes training courses, mentors and on the job training. The Department is also finalizing a system in which they can track each employee with the training courses they need to take and have taken.
- 4) The Department's permits are well organized, easy to read, and practically enforceable.

#### **Areas of Concerns:**

- 1) The program has a backlog of 9 title V permit applications older than 18 months past title V permit expiration date. All of these applications were certified by the Department as being timely and complete, so they are extended and not expired. This indicates that almost 24% of all Shelby County title V permits are not being renewed within the regulatory timeframe.
- 2) The Department has consistently had a budgetary shortfall and will have exhausted their surplus funding by the end of the current fiscal year. Failure to approve a sufficient fee increase will significantly impact the viability of the title V program.
- 3) As a result of the dwindling funds, the Department has permanently eliminated one permit writing position in order to meet their annual budget. This is a concern because the Department was already having problems issuing title V renewals within the regulated timeframes.

## **Method for addressing these areas:**

- 1) The EPA has requested, and the Department has submitted, a timeline for issuance of these nine extended title V permits (see attachment). The timeline calls for all of the extended permits to be completed by the end of calendar year 2013. The Department has assigned each of the permits to a permit writer and has discussed the importance of getting these permits issued. The EPA is monitoring the issuance of these permits through the semiannual submission of the TOPs data from the permitting authority.
- 2) Based upon an internal review, the Department has submitted a request to the county to raise their dollars per ton fee to \$43. This amount will allow for sufficient funds to operate their title V program for FY13. However, future fee increases will be necessary as emissions are reduced. As a comparison, the part 70 presumptive minimum fee rate (\$/ton) effective for the FY13 is \$46.73. The EPA is monitoring the result of their request and will evaluate the Department's budget, on an ongoing basis, to ensure that the Department has adequate funding in the future to meet the requirements of part 70.
- 3) The EPA will monitor the productivity from Department staff, through the TOPs reports and quarterly updates to ensure the workload output is being maintained at a sufficient level to meet the requirements of part 70.

## **Program Review**

The Department's organizational structure for air permitting resides at the office in Memphis, Tennessee. All title V permits for the Shelby County area are processed in the Memphis office. A separate program evaluation report will be written covering the Tennessee Department of Environment and Conservation (TDEC) title V program.

The EPA's review of the Shelby County title V program focused on programmatic knowledge, implementation, resources (both staffing and capital), permit issuance, file review for designated facilities, and follow-up on concerns from previous program evaluations.

The EPA appreciates the Department's efforts to aid the evaluation process by providing an answered copy of the program review questionnaire prior to the meeting. For many questionnaire items, the answers provided by the Department are more detailed than indicated in the summary discussion below. Following the review, the Department submitted more detailed responses to several questions that arose during the evaluation. The answered questionnaire and the follow up responses from the Department will be on file at the EPA Region 4 for reference.

## **Programmatic Knowledge/ Implementation**

The EPA and the Department held discussions on a variety of title V topics including resources, (staffing and capital), public participation, title V workload, CAM plans, and initial and renewal title V permits. It was apparent during the discussions that the Department staff had a thorough understanding of the regulations and requirements of 40 CFR part 70. The Department staff was well versed in the history and procedures utilized by Shelby County.

## **Resources and Internal Management support**

The Department establishes its title V fee based on emissions weight. The Department's title V fee for 2012 was \$27.00 per ton. Additionally, the Department charges a title V permit fee of \$1000 annually or upon issuance of a new title V permit and a minimum emissions fee of \$1000, which must be approved by the County Commission and by the other municipalities prior to implementation. Title V revenue is processed and tracked within an account exclusively designated for title V. This system allows for financial reports for management oversight and accurately accounts for title V revenue as well as expenditures.

Since 2008 the Department has collected the following title V revenue:

FY2008 (July 1, 2007 – June 30, 2008) - \$750,276.00  
FY2009 (July 1, 2008 – June 30, 2009) - \$667,169.00  
FY2010 (July 1, 2009 – June 30, 2010) - \$640,986.00  
FY2011 (July 1, 2010 – June 30, 2011) - \$619,307.00

Projected title V revenue for 2012 is expected to be approximately \$584,431.00. Revenue from title V sources has decreased over 22% since FY 2008. Title V revenue is no longer sufficient to cover title V expenses and the Department has had to utilize surplus funds built up prior to 2008 to partially cover expenses within the title V program over the past few years. Heading into FY 2012 the Department surplus funds had been reduced to slightly less than \$267,000.00 and was forecast to be exhausted by the end of 2013. In order to increase title V revenue, the Department has planned for a title V fee increase for FY 2013 to \$43.00 per ton. This amount will allow for sufficient funds to operate their title V program for FY 2013. At this time, the fee increase is undergoing the approval process and has not been implemented. Failure to approve a sufficient fee increase will bring into question the viability of the Shelby County title V program. As a comparison, the part 70 presumptive minimum fee rate (\$/ton) effective for FY 2013 is \$46.73. The EPA is monitoring the result of the fee request and will evaluate the Shelby County budget on an ongoing basis to ensure that the Department has adequate funding in the future to meet the requirements of part 70.

The Department currently staffs 5.95 title V full time equivalent (FTE) positions and is budgeted to employ 6.8 FTEs. Since the last program evaluation, the Department has undergone some staffing changes. At the time of the June 2012 program evaluation, the Department had one vacant position due to retirement and another engineering position permanently removed from the branch. The Department anticipates filling the remaining vacant position; however the last six position openings, dating back to 2007, have taken 10 months on average to fill. In addition, only one of those six position hires had any permitting experience.

The Department is organized as a "one stop shop" in which the title V staff is responsible for title V and synthetic minor permits, compliance assistance, inspections, complaints, enforcement and other non-title V activities. These other non-title V actions consist of local ordinance complaints such as dust and odor, legal actions, responding to articles regarding environmental issues and other activities. In order to adequately track time spent on title V and non-title V activities, Department supervisors review each permit writer's workload regularly and adjust their workload to remain within the annual budgeted percentages of title V and non-title V work. Permits are typically distributed based on the type of source, engineering expertise and current workload. On occasion, sources will be temporarily reassigned when

one of the permit writers has the ability to take on additional work. This is done in order to assist in getting the permit issued. The Department's permit writers generally have a workload of six to eight title V permits per permit writer, although this number varies based on the complexity of the permit and the number of title V applications in-house at a given time. Title V permit writers are also responsible for between 12 – 27 synthetic minor permits.

Management is kept abreast of permit issuance with a tracking system that tracks all documents incoming and outgoing. Specifically, each permit type is tracked and milestone dates for processing the actions are assigned within the tracking system. Additionally, monthly and quarterly reports are generated on the status of specific projects.

During the review, the Department management expressed that the problems with staff turnover, previously discussed in the round two program evaluation report, have for the most part ceased and the Department has been working to build up its staff knowledge base, which is expected to result in a reduction in the overall title V permit backlog in the upcoming years. The lone remaining staffing issue is the permanent removal of one title V position in response to the overall decrease in title V revenue. Other issues cited, which contribute to a delay in permit issuance, were a delay in the time it takes to fill vacancies, the staff becoming familiar with the electronic filing system, and the transition as the Department works towards standardizing and updating the computer hardware and software. Overall, the Department believes that they have in place a quality group of engineers, who as they gain the technical experience of title V permit issuance, should reduce the backlog.

The Department spends a great deal of time on peer-to-peer training for new employees and, when possible, offers formal training courses. In an effort to improve performance for new staff, the Department has made changes within their training program to reduce the time needed for new staff to gain sufficient proficiency to begin issuing title V permits. However, the Department's travel and training budget has been significantly restricted by county policy, making it difficult to attend training away from the Shelby County area. Due to this restriction, the Department has requested the EPA to consider providing more training in Memphis or nearby.

### **Permit Issuance**

Loss of experienced personnel in air permitting and delays in new hiring has impacted the completion and issuance of Title V renewals. With new employees having no experience, they must become familiar with the source and its operation before they can begin working on issuing permits. Additionally, they must become familiar with the regulations and how permits are developed and issued.

For fiscal year 2012, the Department completed three title V renewals and 10 significant modifications. The slow processing of renewal applications has led to the Department having a total of 13 permit applications in house waiting to be permitted and has created a backlog of 9 title V renewal permit applications older than 18 months. Each of the applications were reviewed and determined to be submitted timely and complete, which has allowed the sources to maintain their application shield until their new permit is issued. During discussions, the Department agreed to make these renewal permits a priority and establish a process by which they begin to reduce this backlog. A timeline has been submitted to the EPA detailing when each permit in the backlog would be issued.

## **File Review**

As a part of the evaluation, the EPA reviewed the files of seven title V sources for administrative content. The purpose of this review was to determine the completeness of the file record and to evaluate the ease of access in finding the necessary documents within the file. The files evaluated during the review were generally complete. In each instance that information was absent from the files, the permit writer was able to retrieve the information from on site. In addition, the EPA conducted a detailed review of four Department title V permits as part of the program evaluation. The permit files selected included a cross section of sources across several industry sectors including energy, timber, and chemical. During the permits review, the EPA noted that the Department's permits are well organized, easy to read, and practically enforceable.

## **Follow up from Previous Program Evaluations**

During the June 2009 program evaluation, a concern was noted by the EPA of the Department having limited file storage space and inadequate server space. Subsequently, the Department has made several modifications to improve the lack of space. The Department has added several free standing file cabinets to provide more space for physical storage and the server deficiencies in the county operated network system have been greatly improved to the point that lack of server space is no longer an issue.

Another concern noted by the EPA was the lack of a formalized training program for new and existing employees. Following the June 2009 evaluation, the Department developed an internal training manual that outlines their process and references several different training tools that can be used as a guide. In addition, the Department focuses on utilizing senior permit writers as mentors for their new personnel and is implementing an electronic training program which will be able to keep track of the training courses completed by individual permit writers.

## **Conclusion**

The backlog of title V renewal applications is a cause for concern and needs to remain a priority until it is eliminated. The Department established a process to eliminate this backlog in title V renewal permits and submitted a timeline to the EPA for completion of these permits. (See enclosed timeline). The EPA will continue to monitor renewal permit issuance during the semiannual title V operating permits reports and regular updates to ensure that the backlog of title V applications is being reduced. There is also ongoing concern over the Department's title V revenue and its impact on the overall effectiveness of the title V program. The EPA is aware that the Department is proactively requesting a fee increase, which is still pending. The EPA will continue to monitor the Department's title V fees to ensure that adequate funding is provided in order to meet the requirements of part 70. Additionally, the EPA is concerned about the reduction of title V staff and its impact on the Department's ability to meet the federal requirements of the title V program. The EPA will monitor the productivity from Department staff, through the Title V Operating Permits data reports and regular updates, to ensure the workload output is being maintained at a sufficient level as required under part 70. The EPA looks forward to continuing to work with the Department to address these concerns in the future.

<b>Facility</b>	<b>Permit Renewal Expected Completion Date</b>
DuPont	June 2013
Jordan	June 2013
Allen Fossil Plant (TVA)	August 2013
Buckeye Cellulose	August 2013
NUCOR Steel Corporation	August 2013 (draft permit)
Carrier	December 2013
PMC Biogenix (Crompton)	December 2013
Penn-A-Kem (Penn Specialty)	December 2013 (draft permit)
Cargill	December 2013 ( draft permit)