



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
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NOV - 7 2011

Alicia Barnes, Commissioner
Department of Planning and Natural Resources
Government of the U.S. Virgin Islands
45 Estates Mars Hill, Frederiksted
St. Croix, Virgin Islands 00802

Dear Commissioner Barnes:

The U.S. Environmental Protection Agency (EPA) has an ongoing program of conducting evaluations of title V air permitting programs. As part of this program, staff from Region 2 conducted a review of the Virgin Islands' title V air permitting program on July 28, 2011 and in fact, we conducted similar reviews in 2003 and 2007. I want to thank you for the assistance and information the Department of Planning and Natural Resources (DPNR) staff provided during this evaluation. The purpose of this re-evaluation is to assess how much progress the Virgin Islands has made in implementing the program and whether deficiencies identified during the 2007 re-evaluation were resolved. These evaluations help EPA ensure that states and territories are implementing the permitting program in a manner consistent with federal requirements and it also provides information to managers in states and territories on how to improve their permitting programs.

While there has been progress in some areas since the July 2007 evaluation, in a few areas significant program improvements need the attention of you and your air managers. Below is a summary of our findings. EPA stands ready to work with you and your management team in developing DPNR's capabilities to implement the title V program that meets the federal clean air requirements.

Areas of Progress:

Permit Issuance/Permit Files: The DPNR issued HOVENSA's initial permit in July, 2010 and also issued one more initial and one renewal permit in the last four years. Further, we understand the DPNR is awaiting the outcome of enforcement actions for other facilities for which drafts of the permit are ready and DPNR is in the process of hiring a contractor to assist in developing the title V permits for the Bovoni and Anguilla landfills. We encourage you to expedite the permitting of these additional facilities as quickly as possible.

We found that all the title V permit files are properly tabbed and organized. The files contain critical documents received since 2007.

Permit Expertise: Pursuant to the commitment made after the 2007 evaluation, the DPNR provided comprehensive training to the staff on title V permit application reviews and permit writing. The staff also began self-learning and can now review permit applications, prepare permits and follow the permitting process for most facilities. To this end, the staff has prepared a limited number of renewal permits, and included the Statements of Basis that are necessary for public notice and review.

Areas Needing Improvement:

Permit Compliance: DPNR stated that its goal is to conduct a compliance inspection of a title V facility every 3-years and in some cases it conducts such inspections every 2-years. Since the Virgin Islands has a very limited number of title V facilities, a more frequent inspection program should be implemented. We believe the goal should be to inspect sources every calendar quarter.

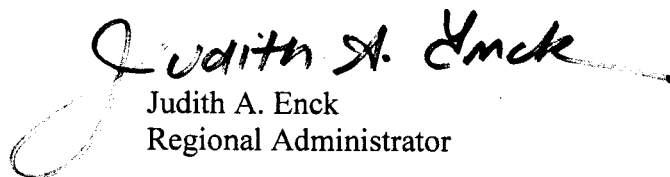
Permit Fees/Expenses: Although DPNR collects emission fees every year, its reports appear to indicate that most facilities pay fees late. For example, HOVENSA paid its 2006 fees on September 24, 2007, while the Virgin Islands Water and Power Authority paid its 2006 fees on January 6, 2008. It is also unclear from discussions with DPNR staff as to whether the Air Program or the Finance Department is responsible for initiating, following up and receiving the fees to ensure that every facility pays appropriate amount of fees in a timely fashion. There are no records of any fees paid by the owners of the landfills. EPA recommends that the DPNR conduct an internal assessment or audit of the title V revenue and expense allocations to ensure that the revenue is used primarily for the permitting and compliance activities for the title V facilities and those fees are collected on a timely basis and properly documented.

Public Access: The DPNR needs to provide the public access to the draft and final title V permits on the web. Please note that EPA had made this recommendation during the 2007 evaluation.

The enclosed report further details these issues. Please review this report and let us know within sixty days what actions the DPNR plans to take to improve the title V program.

Again I would like to thank you for the assistance DPNR staff provided during the audit and for your attention in resolving these issues. I also thank you for making improvements in portions of your program. If you have any questions please contact me or have your staff contact Steven Riva at (212) 637-4074.

Sincerely,


Judith A. Enck
Regional Administrator

Enclosures

The Environmental Protection Agency's (EPA) Re-evaluation of the United States Virgin Islands Department of Planning and Natural Resources' (DPNR) title V Program
July 28, 2011

Outline

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 - D. Fee/Finance Documents

**Virgin Islands Department of Planning and Natural Resources (DPNR)
2011 -title V Program Re-evaluation**

I. Introduction

As part of EPA's oversight responsibilities, EPA Region 2 staff conducted a program review and re-evaluation of the Virgin Islands' federally approved title V program. This re-evaluation was conducted by EPA Region 2 staff on July 28, 2011 and focused on the title V Program implementation in the last four years. EPA evaluated air permitting files, and conducted management and staff interviews. The Region has identified DPNR's areas of progress and the areas that need improvement. This report summarizes items discovered during EPA Region 2's review and evaluation of the Virgin Islands' approved title V program, which is administered and enforced by the DPNR. The Virgin Islands' program covers fourteen sources. The DPNR has issued initial permits to all eight sources that applied in late 1990s and early 2000s. The DPNR also worked on five permit renewal applications. The DPNR is currently working on two applications for the initial permits for the landfills and four applications for the synthetic minor permits.

Overview-

The purpose of this re-evaluation is to analyze how the VI Program is implemented and whether deficiencies discovered during the initial evaluation were corrected. In addition, the purpose of the Region's review was to determine whether the Virgin Islands is complying with the 40 C.F.R. Part 70 requirements and title V of the federal Clean Air Act ("the Act") with respect to administration and enforcement of Virgin Islands' approved title V program, or if not, is taking corrective action to do so. The Region reviewed and evaluated the Virgin Islands' administration and enforcement of the program against the requirements of 40 C.F.R. Part 70. The details of the review are included in this report. EPA's analysis is based on the discussions with the DPNR's management and staff and file/report reviews. As part of this evaluation the DPNR provided information related to files/permits, financial records and small business activities. EPA's re-evaluation preliminarily concludes that the DPNR's Small Business Program continues to meet its obligations while the core title V Program has shown progress in many areas. There are also some areas where improvements are needed. The following is Region 2's analyses of the Virgin Islands' title V program.

II. Focus of the Evaluation and possible outcome:

This program review focused on two questions:

- (1) Is the Virgin Islands administering its permitting program consistent with the requirements of 40 C.F.R. Part 70?

- (2) Is the Virgin Islands adequately enforcing its permitting program consistent with the requirements of 40 C.F.R. Part 70?

In terms of possible outcomes, the EPA may withdraw a state agency's (or in this case the Virgin Islands') program approval in whole or in part whenever the approved program no longer complies with the Federal requirements and the permitting authority fails to take corrective action. If EPA makes a formal deficiency determination, it publishes a Notice of Deficiency in the Federal Register, notifying the state of the determination and the corrective actions required. The state must correct the deficiency within eighteen (18) months or face the imposition of sanctions in accordance with section 502(i)(2) of the Act, 42 U.S.C. § 7661a(i)(2). EPA must withdraw the program approval and then promulgate a federal operating permits program if the state has failed to correct the deficiency pursuant to section 502(i)(4) of the Act within two years. It is not the Region's goal to implement this program in the Virgin Islands but to ensure that the DPNR issues all permits expeditiously, issues permits that meet all Virgin Islands and Federal requirements and enforces these permits.

III. Re-evaluation of Virgin Islands' title V Program

On July 28, 2011, staff from EPA Region 2's Division of Environmental Planning and Protection and the Caribbean Environmental Protection Division conducted an onsite review of VI's title V air permitting program. Prior to the onsite visit, regional staff reviewed in-house state agency documents and files, including public notices, and permits. The Region sent the agenda topics for the title V program review in advance to the DPNR.

VIDPNR- Organization

The Virgin Islands Department of Environmental Protection (VIDEP) is part of the VI Department of Planning and Natural Resources. The air related issues are handled by VIDEP's Air Quality Management and Air Pollution Control sections. The Air Pollution Control section is responsible for minor and major source permitting and enforcement whereas the Air Quality Management section is responsible for all the air monitoring activities on the island. The DPNR is headed by the Commissioner to whom the DEP Director reports. The Air Quality management (3 FTE) and the Air Pollution Control chiefs (6 FTE) report to the DEP Director.

VI title V Permitting Status

The Region evaluated DPNR's permitting status and expertise in evaluating title V air permit applications by reviewing information regarding the number of sources permitted, those which still need an initial title V permit and the training activities. The Region's review relied on information from the staff discussions, file reviews, the state's air permit chart and semi-annual input for the title V Operating Permits System. The DPNR has issued final title V permits to HOVENSA and St. Croix Renaissance. Based on this information, EPA concludes that the DPNR issued all initial title V permits for which the applications were submitted prior to 2005. The permitting process for the two landfills is continuing. The DPNR plans to hire a contractor to assist in drafting the landfill permits. The following Table lists all potential title V sources and the status of their applications.

Potential title V Source in the Virgin Islands	Status as of July 2011	Permit Renewal
Buccaneer Hotel	Final Permit--May 2003- May 2008 renewal application- May 2009- new application for a Synthetic Minor permit	
Wyndham Sugar Bay Resort	Final Permit- May 2003	Sept. 2009
VIWAPA St. Croix	Final Permit- December 2003- Draft Renewal Issued- Awaiting Compliance Schedule before issuing a Final Renewal Permit	
VIWAPA St. Thomas	Final Permit- December 2003- Draft Renewal Issued- Awaiting Compliance Schedule before issuing a Final Renewal Permit	
VIWAPA St. John	Final Permit- April 2005- Draft Renewal Permit going through Public Review	
DIVI Resorts	Final Permit- Apr 2005---Applied for a Synthetic Minor permit in Oct. 2010	
HOVENSA	Final Permit- July, 2010	July, 2015
Frenchmen's Reef Marriot	No longer a title V- Synthetic Minor Permit to be issued	
St. Croix Renaissance	Final Permit- Sept., 2010	Sept 2015
Bovoni Landfill- STT	Application Received Aug 2007- Contractor being hired to prepare permit	
Anguila landfill- STX	Application Received Aug 2007- Contractor being hired to prepare permit	
Ritz Carlton, STT	New application received Feb- 2011— Determined to be Incomplete Application	
Diagio, STX	Synthetic Minor application received Jan 2009- Currently Administrative Order and a Notice Of Violation issued	
Cruzon Viril, STX	Initial application Nov 2009- Reapplication Feb 2010- No longer modifying- plans to withdraw	

The DPNR needs to expedite hiring a contractor and preparing permits for the landfills.

VI title V Permit Files

EPA reviewed all the source files to determine if all the documents are available for the record. The files were organized chronologically and had tabbed section containing documents in order. The title V facility files contained critical documents received since 2007. The DPNR

provided access to many compliance certifications, Statements of Basis and other documents that EPA requested. It should be noted that the DPNR developed a filing/process chart for a title V facility and follows it up. This chart requires that all the permit related records be maintained in order and all the documentation should be on file for the review.

VI title V Staff- Permit Expertise

The title V Program is implemented by the Air Pollution Control section within the DEP. It also handles minor source permitting and all air enforcement activities. This section is headed by a Supervisor who oversees 6 staff members (3 in St. Croix and 3 in St. Thomas). There is an attorney who assists in enforcement matters. DPNR hired a contractor and provided a comprehensive permit application evaluation and permit writing training course to the staff members in the last four years. The staff also began self learning and developed permit writing skills. Based on the discussions and the review of the permit files, EPA believes that the staff members at the DPNR can now handle most title V permitting independently. To this effect, the DPNR issued one new initial permit, one renewal permit and is now ready to issue three more renewal permits. The DPNR is also now equipped to process three synthetic minor permits. EPA recommends that the staff should continue to be empowered and enhance their expertise in this area.

VI title V Enforcement

As part of EPA's oversight of the Virgin Islands' approved title V program, Region 2 also evaluated the DPNR's title V enforcement program. Note that a comprehensive review of the entire Enforcement Program was conducted by EPA in December 2006, however, the review for this report focuses only on the activities related to title V permits. Pursuant to the inspections and application reviews, the DPNR issued three Notices of Violations (NOV) and one Administrative Order (AO) to HOVENSA. Further, the DPNR also issued a NOV and an AO to Diagio, STX. The DPNR has now developed a checklist for the review of an Annual Compliance Certification. It now reviews all the Annual Compliance Certifications that were received and follows up with the facilities that failed to submit such a certification. The DPNR informed EPA during the discussions on the frequency of compliance inspections that the DPNR staff conducts a compliance inspection of a title V facility every three years. Since the Virgin Islands has a limited number of title V sources (of which the most are power generation sources), a more frequent, e.g., a quarterly inspection program should be implemented to ensure that the major sources on the islands continue to comply with the permit requirements.

VI title V Fees/Expenses

The Federal requirements regarding title V fee adequacy are found in 40 C.F.R. Part 70, section 70.9. The provisions in part 70 require that the state program require part 70 (aka title V) sources to pay a fee sufficient to cover the permit program costs (direct and indirect). Further, states can only use title V fee revenues for title V program costs. The purpose of this reevaluation was to verify that there were procedures still in place for the receipt, separation,

expenditure, and adequacy of the Virgin Islands' title V funds. EPA Region 2 conducted a preliminary review of the DPNR's title V fee structure to find out if there is any change since the 2007 evaluation. The fee structure is unchanged and remains at \$50 per ton since 2006. EPA Region 2 was able to verify that title V fees are being calculated in accordance with the DPNR title V fee regulation. The DPNR's invoices are maintained by company (facility), invoice number, and the total amount billed. The DPNR sends a letter to a source asking for fuel use and other relevant data. When the DPNR receives these data, it calculates the fees and sends out a remittance notice. However, EPA found that the fees from most of the facilities are not collected on a timely basis.

Here are some examples:

Wyndham Hotel-

CY 2006 Fees \$6450.00---Paid July 5, 2007—VI Finance Post Date May 25, 2008---FY 2008 Revenue Expense Summary has no Receipt entry for May, 2008.

VIWAPA-

CY 2006 Fees \$228,850—Paid December 19, 2007—VI Finance Post Date January, 16, 2008- Revenue Expense Summary has Receipt entry for January, 2008

CY 2008 Fees \$248,816—Paid February 18, 2010—VI Finance Entry March 1, 2010- VIWAPA Letter stating that the fees sent is dated July 6, 2009.

HOVENSA-

CY 2006 Fees \$895,650—Paid September 12, 2007- VI Finance Post Date October 7, 2007— Revenue Expense Summary—FY 2008—has no such entry for October, 2007

Based on the discussions EPA believes that the DPNR needs to clarify whether the DPNR's Air Program or the Finance Division is responsible for ensuring that the fees are paid on time. The VI sources pay the fees at different times during the year. Please note that EPA, under Part 71, requires that the sources pay the calendar year emission fees by March 31 of the following calendar year. Further, EPA does not see a need for a two-step process to collect the fees. A title V facility should be able to estimate the emissions and submit the fees at the same time. EPA had raised this process issue during the 2007 evaluation. EPA suggests that the DPNR review EPA's part 71 fee forms for any guidance on how a one step process is feasible and streamlines the process.

The DPNR provided Accounts Receivable/Expenditure listings for fiscal year FY2008 through 2010. In order to test VIDPNR's efficiencies and compliance in administering the title V Program, an internal financial audit is recommended.

VI Small Business Program

The Small Business Environmental Assistance Program (SBEAP) is headed by the VI Small Business Ombudsman recently appointed by the Governor. This program has five

staff members that cover all the islands. They are actively engaged in providing the services in the areas of administration, environmental compliance, rule development liaison via workshops and on-site assessment to about 2500 small businesses on the three Islands. The staff member goes on compliance assistance visits every other day. A compliance assistance evaluation report is prepared after every site visit. The program has found that most facilities the staff members visit consistently fail to follow-up on the advice it receives from the program.

The SBEAP has a budget of about \$450,000 and is entirely funded by the title V program. EPA notes that the SBEAP budget was found to be around \$200,000 during the 2007 evaluation. It appears to meet the the Clean Air Act requirements, however, the DPNR should confirm if this cost is appropriate. The SBEAP develops and maintains a database of about 2500 small businesses on the islands. The program holds a yearly Small Business Assistance Week on each island. The SBEAP also has a web site and keeps updating the site to provide regular information. Based on the discussions and information SBEAP provided during this re-evaluation, EPA notes that in FY 2010, the SBEAP conducted 174 compliance assistance site visits, participated and made presentations at six conferences, held a Small Business Week event and distributed hundreds of brochures and leaflets to the business community.

IV. Recommendations

It is essential for the management to continue to work for the success of this Program and to implement the accountability procedures. In order to bring the Program to a better implementation level, EPA would like that the DPNR develop an action plan which includes:

- Although, the DPNR staff has gained experience in preparing title V permits, DPNR should continue to take further steps on empowering the DPNR staff with technical expertise to handle multiple types of sources (self-learning, on-the-job training, sister-state assistance, internet courses, outside permit training etc.).
- Although, DPNR has begun issuing renewal permits and has issued a final permit to HOVENSA, a schedule for the issuance of the other renewal permits and the remaining initial title V permits for the landfills should be developed.
- In order to assure compliance with the title V permit conditions, the DPNR should conduct more frequent inspections. Therefore, a detailed permit compliance/inspection schedule should be developed.
- The permit fees are not paid on a timely basis and as such the fee collection process appears to be the problem. Therefore, a streamlined permit fee collection procedure, fee collection schedule needs to be developed.
- In order to ensure that the title V program is run with fiscal prudence, the DPNR should conduct an internal audit of the title V Program's revenue, expenses and the output activities.
- The title V permits and related information should be accessible to the public via internet. Therefore, a timeline to complete DPNR's web site enhancement to make all the title V permits available on line should be developed.

