



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OCT 8 2009

Honorable Pedro Nieves, Esq.
Chairman, Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910-1488

Dear Chairman Nieves:

The U.S. Environmental Protection Agency (EPA) has an ongoing program of conducting periodic evaluations of the Clean Air Act title V permitting programs. As part of this program, staff from EPA Region 2 conducted an evaluation of Puerto Rico's title V program on May 13 and 14, 2009. I appreciate EQB staff's assistance and responsiveness during our evaluation. You may know that EPA had conducted an initial evaluation of Puerto Rico's program in September 2004. A major focus of this year's evaluation was to assess how much progress Puerto Rico has made since then in implementing the program. EPA's review shows that there has been progress in a few areas, but there is still a problem with issuing initial permits in a timely way. These continued delays are serious and warrant your immediate attention.

The areas where EQB has made progress include:

- The implementation of the Small Business Program;
- The increased expertise of EQB permitting staff;
- Appropriate program financing; and
- The development of the permitting web site.

The areas that need improvement include:

- Correcting the serious delays in issuing initial title V permits, all 70 of which should have been issued by December 1999; and
- Inclusion of a "Statement of Basis" for every future permit.

Based on discussions with EQB, EPA has concluded that the delay in the issuance of initial permits was primarily due to the permit writers' efforts being redirected to resolving permit reconsideration issues and to other priorities, such as working on waivers and minor permit revisions.

To address the identified program deficiencies, EPA recommends that EQB:

- Reexamine the permit reconsideration process to find ways to make it more efficient;
- Consider dividing its resources between permit issuance and reconsideration request processing; and

Hire a contractor to assist in the permit issuance process and in processing any future permit reconsideration requests, using the excess title V permitting fees.

You will find the details of our program evaluation and recommendations in the enclosure to this letter. The next step is for EQB to submit an action plan within 30 days of the date of this letter, containing EQB's commitment to issue the remaining permits by July 2010 (as discussed during this evaluation) and the steps, such as hiring a contractor and/or providing additional resources if necessary, to ensure that this commitment can be met.

I plan to discuss EQB's progress with you on a regular basis. Should you have any questions or wish to discuss these issues, please call me at (212) 637-5000 or have your staff contact Mr. Raymond Werner, Chief, Air Programs Branch, at (212) 637-3706.

Sincerely,



George Pavlou
Acting Regional Administrator

Enclosure

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The Environmental Protection Agency's Evaluation of the Puerto Rico Environmental Quality Board's (EQB) Title V Program

Date of audit: May 13/14, 2009

Outline

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- V. Recommendations
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 - C Small Business Program Yearly Report
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Puerto Rico Environmental Quality Board (EQB)

Title V Program Evaluation- May, 2009

I. Introduction

As part of EPA's oversight responsibilities, EPA Region 2 staff conducted a program review of Puerto Rico's federally approved title v program. In May 2009, EPA Region 2 staff evaluated air permitting and enforcement files, and interviewed Air Quality Area's management and staff. EPA also identified EQB program's successes and failures and hereby provides recommendations on ways to improve it. In part, this is also a reevaluation of EQB's program in that it examines progress since EPA's 2004 evaluation.

Puerto Rico's title v program covers about 70 sources and as of the date of this review, EQB has issued final permits to 46 sources. EPA looked carefully at the reasons EQB has not been able to meet its prior commitment to issue all 70 permits.

II. Summary of Finding

Overview-

The focus of the Region's review was to determine whether Puerto Rico 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 Puerto Rico's approved title v program, or if not, is taking corrective action to do so. The Region reviewed and evaluated Puerto Rico's administration and enforcement of the program against the requirements of 40 C.F.R. Part 70. The details of that review are included in this report. EPA's review is based on EQB's responses to the program/fee evaluation questionnaires, management/staff interviews, review of files and an examination of supporting documents. As part of this evaluation EQB provided information related to its reconsideration process rules, files/permits, financial records and small business activities.

During the review discussions EQB representatives expressed their belief that the title v program is beneficial to Puerto Rico. They indicated that the permitting process under this program has increased the source participation/interaction, has increased public awareness about emissions and their sources, has increased the funding for the permitting programs, has increased the expertise of the EQB staff and made available all applicable requirements in a single permitting document.

The following is Region 2's analysis of the Puerto Rico's current title v program:

Areas of Success

1) Small Business Program: The EQB continues to encourage this program under title v. Although there is no formal Small Business Ombudsman, the program staff developed a web site, provided newspaper notices about the new rules, participated in seminars and issued Spanish language brochures.

2) Air Quality Area: The EQB's air program's permitting engineers have developed further expertise in the area of permitting requirements and in addressing applicants' concerns. EQB is currently drafting the permits based on the lessons learned during the reconsideration process. EQB has provided ample training opportunities over the years, including permit writing training provided by the California Air Resources Board staff.

3) Permit Enforcement: The EQB enforcement staff tracks and reviews every annual compliance certification, deviation and semi-annual report. Further, EQB conducts a full compliance inspection of every permitted facility every other year.

4) Fee Collection: The EQB ensures that appropriate fees are collected from every title v facility in a timely fashion. Currently, this program carries a \$ 4 million surplus.

5) Public Outreach- EQB developed a new web site on which it provides permits and other permit related information in Spanish and English and Small Business Program assistance material.

Areas Needing Improvement

1) Permit Issuance Rate: As of the date of this review, EQB has issued a total of 46 final title v permits out of 70 permit applications. EPA granted full approval to the Puerto Rico' Operating Permit Program on February 26, 1996 and the Clean Air Act requires that all permits be issued within three years of such an approval.

EPA expressed concern in its 2004 review that EQB had issued only about 35 final permits. Nonetheless, over the last five years, EQB finalized only 11 permits including reconsideration requests associated with these permits. No new draft permits were issued since the 2004 program evaluation and this decline in permit issuance rate is a serious concern. After the last evaluation EQB committed to issue all the permits by April 2005.

During the current evaluation, the Acting Division Director indicated that it was EQB's intent to issue all the remaining title v permits by July, 2010. Although all the requests for permit reconsideration have been addressed by early 2009 and all of EQB's staff have begun working on processing the remaining permits, EQB's proposal to issue all the remaining permits by July, 2010, may be overly ambitious unless there are fundamental changes to the program that address the chronic delays associated with requests for reconsideration.

2) Statement of Basis: In general, the permits that were issued were determined to be of good quality. However, all 46 permits lacked a "Statement of Basis" which is a part of the permit package that explains the applicability and the compliance obligations of a source in a plain text so that citizens may understand what is being done. A Statement of Basis is required by federal regulations.

EQB representatives stated during the evaluation that all the remaining permits that are being drafted will contain a "Statement of Basis".

III. Review Consideration

This program review focused on two questions:

1) Is Puerto Rico administering its permitting program consistent with the requirements of 40 C.F.R. Part 70?

2) Is Puerto Rico adequately enforcing its permitting program consistent with the requirements of 40 C.F.R. Part 70?

It is Region 2's intent to assist Puerto Rico identify problems in administering the title v program and to resolve them in a timely way. Ultimately, however, if Puerto Rico cannot administer or enforce its permitting program consistent with the requirements of 40 C.F.R. Part 70, EPA may have to exercise its authority to withdraw Puerto Rico's program approval in whole or in part.

The process for withdrawing the program would be for EPA to publish a Notice of Deficiency in the Federal Register, notifying Puerto Rico of the determination and the corrective actions required. Puerto Rico would have to 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).

If Puerto Rico is unable to correct the deficiencies within two years EPA must withdraw the program approval and then promulgate a federal operating permits program pursuant to Section 502(i)(4) of the Clean Air Act within two years. Under this option EPA would issue title v permits and enforce the title v program. Again it is not the Region's goal to implement this program in Puerto Rico but rather to ensure that the EQB issues permits that meet all Puerto Rico and Federal requirements as expeditiously as possible and also enforces these permits.

IV. Evaluation of Puerto Rico's Title V Program

On May 13 and 14, 2009, staff from the Division of Environmental Planning and Protection and the Caribbean Environmental Protection Division conducted an onsite review of Puerto Rico's title v air permitting program. During the onsite visit, regional staff reviewed permitting documents and files, including public notices, emission statements and fee receipts. The Region sent the agenda topics for the title v program review in advance to the EQB.

PREQB- Organization-Air Quality Area

The Air Quality Area is part of Puerto Rico's Environmental Quality Board. The

air related issues are handled by Air Quality Area's Permitting, Air Toxics and Enforcement Divisions. The Permitting Division has six full time and two part time permit writers and they are responsible for minor and major source permitting. The Air Quality Area's Director reports to the Environmental Quality Board. The Air Quality Area Director has estimated that 10 full time permit writers are needed for the title v program.

Puerto Rico title v Permitting Status

The Region evaluated EQB'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 initial title v permits and the training activities initiated to ensure sufficient staff expertise. The Region's review relied on information from Puerto Rico's re-evaluation report, air permit chart, semi-annual input to EPA's title v Operating Permits System data base and discussions with staff. Based on this information, EPA concludes that the PREQB continues to have a serious backlog in issuance of initial title v permits.

Puerto Rico began this program with a potential title v permit universe consisting of 50-60 sources. The EQB subsequently eliminated some sources because they had either shut down or obtained synthetic minor status. As of the issuance of EPA's first evaluation report in late 2004, Puerto Rico had issued about half of the final permits and was working on finalizing about a dozen draft permits. There were no new draft permits issued after the 2004 evaluation. In the last five years, EQB permit writers mainly worked on requests to reconsider 16 final permits that were issued in 2004/5. During the evaluation, EPA learned that the delay in the issuance of initial permits was caused due to having the permit writers' efforts tied up in the permit reconsideration process and working on other priorities such as waivers and minor permit revisions.

In Puerto Rico it appeared that a typical title v permit reconsideration request contains about 10 to 100 issues and each request takes an average of 500 days to bring to resolution. Puerto Rico's rule also allows a requester in such a request to include new issues that were never brought up before in the permitting process. In the last five years, EQB processed 16 such requests.

In 2004, EQB allowed the sources to request reconsideration of all permit related issues after a draft permit was issued but before a final one was issued. Since this was holding up the issuance of initial permits, after EPA's 2004 evaluation, EQB changed the rule and asked that the sources request reconsideration of permit conditions after final permits were issued. Further, instead of EQB's Examining Officer resolving the issues, the change required a Judge to decide on the reconsideration requests. As such when Puerto Rico changed the reconsideration process from "after the draft permit" phase to "after the final permit" phase, the delay actually increased. EPA also found that EQB was not successful in improving this process and expediting the issuance of the remaining initial title v permits. EQB recently cleared the backlog of reconsideration requests and has begun working on the remaining initial permits.

PREQB title v Staff

The title v program is implemented by the Permitting Division within the Air Quality Area. It also handles minor source permitting related activities for these title v permittees. This Division is headed by the Chief who oversees 6 permanent staff members in the Santurce Office. There is an attorney who assists in permitting matters. EQB has provided a comprehensive permit writing training to all the staff members. This training was provided by the permit writers from the California Air Resources Board. EQB also provided training in the areas of air pollution related activities for the pharmaceutical industry, refineries, power plants, landfills etc. The staff has good knowledge of the Clean Air Act requirements and has now developed an expertise in writing title v permits that should minimize the issues that the permittees had with the earlier permits.

Puerto Rico title v Enforcement

As part of EPA's oversight of Puerto Rico's approved title v program, Region 2 also evaluated the EQB's title v enforcement program. The EQB informed us that it conducts a bi-annual full compliance inspection of every title v source. It also reviews every annual compliance certification and malfunction report. The EQB also tracks the submission of the annual compliance certification and follows up with a source that does not submit a timely report. EPA reviewed the files of Bacardi, EcoElectrica, Schering-Plough and PREPA, San Juan facilities. All the files were well organized and contained most annual compliance certifications. EQB will need to ensure that the copies of the annual certifications submitted to the EQB's Regional offices should also be on the file in the central office. Further, any inaccuracy in permit numbering, as was found in the case of the EcoElectrica permit, should be corrected.

Puerto Rico 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 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 evaluation was to verify that there were procedures still in place to receive these fees, keep them separate from other funds, disburse the fees for valid expenses, and to provide adequate fiscal oversight of Puerto Rico's title v funds. All specific answers and documentation were provided either during the onsite review or when additional requests were made.

EPA Region 2's Air Program conducted a preliminary review of the Puerto Rico's title v fee structure to find out if there is any change since the 2004 evaluation. The one major point to note is that the fee structure has not changed i.e., the fee remains at \$37 per ton since 2003. The 2008-09 federal presumptive fee is at \$ 43.75 per ton. EPA Region 2 was able to verify that title v fees are being calculated in accordance with the

Puerto Rico title v fee regulation. The EQB maintains facility specific invoices, receipts, the amount billed and the amount collected information for accountability. The Air Quality Area sends a list of facilities with their permit number, actual emissions in tons and the amount of fee to be invoiced to the Finance Division. The Finance Division then sends an invoice to every source asking to pay the amount billed. Generally, all the facilities pay the fees due on time. The EQB provided Accounts Receivable/Expenditure listings for the fiscal years FY 2006, 2007 and 2008 and other financial data for the title v program. Puerto Rico has instituted new tracking and documentation procedures since 2004 to address the EPA Inspector General's financial audit's concerns. A summary of annual revenue and expenses for the title v program for the last 3 years was also provided. Currently, PREQB carries a \$ 4 million surplus in its title v account.

Puerto Rico Small Business Program

The EQB has actively encouraged this program under title v. Currently, this program has only one staff member and there is no formal Small Business Ombudsman. In 2008 this program staff conducted 21 site visits, held 117 compliance assistance meetings and participated in 33 association conferences. This program also continues to produce its own brochures and posters in Spanish and makes them available in the EQB Library and Small Business Program's reception area. Recently, the Small Business Program provided Factsheets on Dry Cleaning, Gasoline Dispensing and Paint Stripping rules on its web site.

V. Recommendations

EPA's primary recommendation is that the management of EQB needs to prepare an Action plan for issuing the remaining permits with a commitment to a realistic date for their completion and with provisions for accountability and for addressing those factors which have caused delays and problems to date. The senior management of EPA and EQB would review the progress it has made and any other issues at the regularly scheduled meetings.

The other recommendations include:

1) EQB should consider hiring a contractor to assist in the review and processing of the remaining 24 permit applications given the difficulty in issuing permits in a timely manner.

2) Although, all the requests for reconsideration have now been resolved, if in the future the workload due to permit reconsideration requests increases, EQB should also consider allocating half of the staff resources exclusively to permit processing and the other half to work on any reconsideration requests. Such an allocation of resources will ensue that the permit issuance process continues.

3) Although, Puerto Rico charges permitting fee of \$37 per ton since 2003, the program has accumulated about \$ 4 million surplus (average annual fee revenue \$ 2

million). EQB should consider ways to use these funds to improve the permit issuance program including increasing staff resources, providing additional training for staff, and contracting out work. An internal financial audit is also recommended.

4) EQB needs to include a "Statement of Basis" on all future permits.

5) Although not an EPA requirement, it is recommended that EQB develop a pollutant specific emission trend report based on the actual emissions data and the potential to emit data for all the title v sources. Such a report will provide a clearer picture of how the emissions have changed due to the implementation of this permitting program and help EQB in determining future policy for further emission reductions.

FINAL AGENDA

Puerto Rico Title V Program Evaluation May 13-14, 2009

May 13, 2009

- 9-9.30 Kick-off meeting: EQB Air Chief/Staff-EPA
- 12 Program Review Questions/Answers/Discussion: EQB Air Chief/Staff
- 1.30- 3 EQB Title V Finance-EPA discussions/Q/A-fees/expenses
- 3.0-4.00 Permit and File Reviews- EPA

May 14, 2009

- PR Small Business Program-EPA discussion
- 10-11 Discussions with the EQB Air Director
- 1-12 EQB Air Chief/Staff-EPA-Program/Permit/Enforcement
- Closing Session- Continued Interviews if needed
- 2-3 File Reviews-if-needed -EPA

Note: We will need copies of the documents, e.g., EQB states that it publishes a public notice every time- we will need a copy of such a notice for this review. EQB may wish to bring any files that may be at other EQB locations.



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Office of the Governor
Environmental Quality Board

Air Quality Area

TITLE V PROGRAM EVALUATION – FINANCE DISCUSSION

MAY 13, 2009

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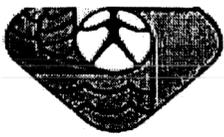
Air Quality Area

TITLE V PROGRAM EVALUATION

MAY 13, 2009

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Air Quality Area

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MAY 14, 2009

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Environmental Quality Board

Air Quality Area

TITLE V PROGRAM EVALUATION – SMALL BUSINESS

MAY 14, 2009

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