

IMPLEMENTATION AGREEMENT
BETWEEN
THE MINNESOTA POLLUTION CONTROL AGENCY
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

AIR QUALITY CONSTRUCTION/OPERATING PERMITS PROGRAM

I. GENERAL

A. This implementation agreement (IA) defines policies, responsibilities, and procedures, pursuant to Parts 51, 52, 60, 61, 63, 70, 71, 72, 75 and 76 of Chapter I of Title 40 of the Code of Federal Regulations (Parts 51, 52, 60, 61, 63, 70, 71, 72, 75 and 76), by which the construction/operating permits program will be administered by both the Minnesota Pollution Control Agency (MPCA) and the United States Environmental Protection Agency (USEPA). Such agreement will be maintained consistent with the Clean Air Act (Act) and other existing regulations, notably the Minnesota State Implementation Plan (SIP). The provisions of this IA include strategies and priorities for all aspects of construction/operating permit issuance. Because USEPA has not approved MPCA's construction/operating permits program within the exterior boundaries of any Indian reservation, this IA does not address the implementation of the Title V program on Indian lands. Title V sources located within the exterior boundaries of Indian reservations in Minnesota will be subject to either the Federal construction/operating permits program, or to a tribal construction/operating permits program.

B. Nothing in this IA shall be construed to restrict in any way USEPA's authority to fulfill its oversight and enforcement responsibilities under the Act. Nothing in this IA shall be construed to contravene any provision of 40 CFR pts. 51, 52, 60, 61, 63, 70, 71, 72, 75 or 76. This IA is in addition to, and does not contravene any other agreements between USEPA and MPCA, such as the Delegation of Authority for the Prevention of Significant Deterioration, 40 CFR § 52.21; the Delegation of Authority for New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants; and the Memorandum of Understanding Concerning Enforcement of Significant Violators in Minnesota.

C. This agreement is entered into by the Manager, Permits Section, Air Quality Division, MPCA (hereinafter "MPCA") and the Branch Chief of the Air Programs Branch, USEPA Region 5 (hereinafter "USEPA").

D. This IA shall become effective upon signature by both parties. Any revisions or modifications to this

IA must be in writing and must be signed by MPCA and USEPA.

E. This IA shall remain in effect unless and until the MPCA or USEPA terminates the agreement for just cause after a thirty day notice period to the other party.

II. PROGRAM DEVELOPMENT

A. Each party is responsible for ensuring that its obligations under 40 CFR pts. 51, 52, 60, 61, 63, 70, 71, 72, 75 and 76 and Titles I and V of the Act are met. Both parties agree to maintain a high level of communication, cooperation, and coordination between their respective staffs to assure successful and effective administration of the construction/operating permits program.

B. USEPA will assess MPCA's administration of the construction/operating permits program for consistency with Title V, Title I, 40 CFR pts. 51, 52, 60, 61, 63, 70, 72, 75 and 76 and all other requirements of the Act. This assessment will be accomplished by USEPA review of information submitted by MPCA or any interested person, program audits, and permit overview. USEPA agrees to provide MPCA with advance notice of any audit. USEPA will timely notify MPCA of any concerns regarding MPCA's administration of the program, and will work with MPCA to reach resolution.

C. MPCA and USEPA agree that, in accordance with section 70.4(i), Title V operating permits program revisions become effective only upon approval by USEPA. Program revisions in this paragraph refers to changes in the Minnesota Rules that implement Title V. Nonsubstantial program revision approval may be made by a letter from USEPA to MPCA, but substantial program revisions must go through the public notice provisions specified in section 70.4(I). Changes in the Title V operating permit program implementation which do not alter the requirements of the State's approved program do not have to undergo USEPA approval; however, MPCA will notify USEPA of any such changes.

D. MPCA and USEPA agree to work together during the development and implementation of any significant changes to the State program to ensure that such changes will meet the requirements of the Clean Air Act.

E. MPCA has primary responsibility for:

1. Administering the program in accordance with 40 CFR pts. 51, 52, 60, 61, 63, 70, 72, 75 and 76, applicable State/local law, objectives of the Act, USEPA policies and guidance, any applicable more restrictive State regulations or policies, and this IA.

2. Making all statutory and regulatory changes to the approved Title V program necessitated by the interim program approval conditions. Making any other Title V program changes needed to maintain the approval status of the Title V permitting program.

3. Notifying USEPA in advance of any proposed substantial change in the Title V permitting program (i.e., permit program-related statutes, regulations, forms, resource levels, policies, permitting responsibilities), and submitting program revisions as necessary.

4. If requested by USEPA, providing an accounting which demonstrates how revenue from required permit fees was collected and spent by MPCA and demonstrating that the fee structure is adequate. If necessary, modifying the permit fee system to ensure that it continues to cover the costs of administering the program.

F. USEPA has primary responsibility for:

1. Developing a differential oversight system for assessing the State program. Consistent with this system, reviewing selected permits and providing effective oversight of the construction/operating permits program to ensure consistency with 40 CFR pts. 51, 52, 60, 61, 63, 70, 72, 75, 76 and this IA and to promote national consistency in implementation of the Act.

2. Providing ongoing technical and other assistance on permit matters as requested.

3. Informing MPCA in writing as soon as possible about new Federal regulations and any related litigation results or settlements, new Federal standards, the effect of these new requirements, policy memos and policy determinations and any action needed to be taken by MPCA.

4. Cooperating with MPCA by allowing appropriate flexibility when determining the most effective and expeditious means of implementing USEPA policies and guidance.

5. Reviewing, upon MPCA request, any draft documents which may revise or otherwise affect the State's construction/operating permits program, including: legislation and regulations, application and monitoring forms, and policy guidance.

6. Expeditiously reviewing and taking action on all program revisions submitted by MPCA and to the extent possible, utilize the direct final approval approach.

7. Stating in the Federal Register notice approving MPCA's program revisions that the revisions to the MPCA's program are effective on the Federal level retroactive to the date the modifications were effective in the state of Minnesota (provided that Federal rules and policy allow for such).

III. PROGRAM IMPLEMENTATION

A. USEPA agrees to inform MPCA as soon as possible about new Federal standards, implementation information and related Federal policies and guidance. MPCA agrees to distribute any such guidance to MPCA permit program staff.

B. Both USEPA and MPCA will maintain a list of contact persons involved with implementation of the permits program.

C. USEPA and MPCA agree to participate in conference calls as needed to discuss program implementation. Either party may call meetings to review construction/operating permitting procedures, resolve problems, and discuss concerns regarding program implementation, including source specific permit issues. USEPA and MPCA agree that staff and lower level management will informally work

together to resolve any issues, and will only elevate issues to higher level management if resolution cannot be reached or if complex issues are involved that may set regional or national precedent.

D. MPCA and USEPA each agree to notify the other as early as possible of any problems either party anticipates with any permit or permit application such as anticipated public controversy, complex equivalency or trading provisions, regional precedent, national precedent, etc. MPCA staff will notify USEPA staff who will ensure that the proper team of USEPA staff is assigned to work on the issue with the MPCA. If the MPCA is aware that a regional or national precedent is involved, an MPCA supervisor will contact Robert Miller, or his equivalent, to ask who the appropriate USEPA team members are. If the MPCA fails to recognize something may be of national or regional precedent, USEPA staff will expeditiously notify their supervisor and that supervisor will notify the MPCA of the issue and who the USEPA team members are.

E. MPCA and USEPA agree to expeditiously work together to resolve any USEPA concerns with specific draft or proposed permits. MPCA and USEPA will attempt to reach resolution first through informal communication between staff and lower management levels, and will elevate issues to higher level management and formal objection procedures (or formal comments on draft permits) only if resolution cannot be reached or if complex issues are involved that may set regional or national precedent. If there is ever a concern about priorities, staff should discuss these with their supervisor and the MPCA and USEPA supervisors will reach an agreement on the priority order of issues. MPCA and USEPA agree to work together during the draft permit stage with the intention of resolving any issues prior to USEPA's formal 45 day review period.

F. MPCA and USEPA agree to confer on and develop a list of appropriate pollution prevention activities which can be implemented through the permits program. This would consist of examples of pollution prevention measures that sources could adopt; the list being used to provide stimulus to sources to devise measures specific to their facilities. Also, this effort would include listing approaches that the permitting authority could take during program implementation to encourage sources to adopt pollution prevention measures (e.g., reduced permit fees for sources adopting pollution prevention measures).

G. USEPA and MPCA agree to work together to determine which applications and draft permits may have particular national (e.g., section 112(g) case-by-case MACT determinations) or regional interest. By October 1 of each year, USEPA will provide MPCA with a list of the types of permits for which they would like earlier notification of commencement of permitting activities. Such applications and draft permits shall be made available to USEPA prior to the beginning of the public comment period. MPCA agrees to make these documents available in accordance with section IV of this IA. USEPA agrees to expeditiously comment on such permits. Upon request, USEPA will work with MPCA early in the drafting process to develop the permit to help ensure unnecessary delays.

H. USEPA and MPCA agree to work together to determine the sources located on Indian lands for which USEPA or the tribes must assume permitting responsibility under the Title V program.

I. MPCA and USEPA agree on the following procedures regarding the concurrent processing of Phase I

and Phase II acid rain permit revisions:

1. USEPA will have the lead in processing permit revisions to the Phase I permits previously issued by USEPA. MPCA will not issue permits that contain any Phase I requirements.
2. MPCA will incorporate Phase II requirements into the Title V permits issued on or before December 31, 1997, excluding the Acid Rain Program nitrogen oxides limits. The Phase II requirements will be included in the permit alongside other applicable requirements. The Title V permits will also contain a separate section that specifically addresses acid rain requirements by attaching the Phase II application to the permit. The permits will be sent to USEPA for review and issued in accordance with 40 CFR § 72.73, State Issuance of Phase II Permits.
3. As is required by 40 CFR § 72.73(b)(2), not later than January 1, 1999, the State permitting authority shall reopen the Acid Rain permits to add the Acid Rain Program nitrogen oxides limits.
4. MPCA will process all permit amendment requests for Phase II permits in accordance with 40 CFR pt. 72, subp. H. Those amendments will be sent to USEPA for review as required by 40 CFR § 52.80 unless the amendment is determined to be an administrative one approved in accordance with 40 CFR § 72.83.

J. MPCA agrees to do the following:

1. Maintain an adequate file (accessible for USEPA audit) for each permittee in accordance with Section IV of this IA.
2. Notify USEPA when significant variations occur in the transition schedule for issuing permits during the first three years of the program.
3. After the initial transition period, include the following in all draft Part 70 permit public notices:
 - a. All notice provisions specified in 40 CFR § 70.7(h)(2); and
 - b. A statement outlining citizen's appeal rights to the Administrator, specified in 40 CFR § 70.8(d).
4. If any permit is modified as a result of any administrative or court action, make the permit available to USEPA with the changes identified. Note: USEPA's 45 day review period applies.
5. Commence the USEPA's 45 day review period on a proposed Title V permit on the latest date of availability of the following documents: the permit application or application summary form, the proposed permit, and any written refusal to accept an affected State's recommendations. The latest date of availability shall be determined automatically as the date that all the documentation is available on DELTA, or is received in hard copy.
6. E-mail USEPA staff informing them if there are no changes resulting from the public comment period.
7. If the MPCA wishes to have USEPA reduce the 45 day review period, MPCA will informally inform

USEPA staff that the MPCA will be making such a request as early in the permitting process as possible. The types of projects for which this may be sought include, but are not limited to, Part 70 permits implementing environmentally beneficial projects, Part 70 permits pre-authorizing construction if no comments are received during the 30 day public comment period and permit revisions that will be included in Minnesota's SIP. MPCA will formally make such a request when submitting the information to USEPA during the public comment period. The fact that such a request is being made should be highlighted in the RE: portion of the cover letter also.

K. USEPA agrees to do the following:

1. Provide technical support and assistance and training opportunities as available for interpretation of national regulations, development of technology-based requirements, automated transmission of permit data to USEPA, general technical assistance in determining appropriate permit conditions and processing permits, and other areas as requested by MPCA.

2. Communicate to MPCA when additional legal, technical, and financial resources may be necessary to implement new program requirements, including section 112 requirements.

3. Seek to work closely with MPCA in making case-by-case MACT determinations under sections 112(g) or (j), including providing to MPCA the use of centralized USEPA data bases.

4. Provide MPCA the opportunity for involvement and input into new program activities or initiatives.

5. Provide comments or objections to proposed permits in an expeditious manner, but no later than 45 days from receipt of the proposed permit, the permit application or application summary form, and any written refusal to accept an affected State's recommendations.
 - a. Include with any objection a statement of the reasons for the objection and the actions that should be taken by MPCA to resolve the basis for the objection.
 - b. Send a copy of its written comments to the permit applicant.
 - c. Issue or deny the permit if MPCA fails to submit a revised permit for review within 90 days after receipt of an objection.
 - d. Withdraw its objection when satisfied that MPCA has resolved the basis for the objection and provide a copy of the withdrawal to the applicant.

6. EPA staff will either e-mail or call MPCA staff to inform them of when the 45 day period starts.

7. On a case by case basis, USEPA will agree to reduce the 45 day review period upon the request of MPCA. The types of projects for which this may be sought include, but are not limited to, Part 70 permits implementing environmentally beneficial projects, Part 70 permits pre-authorizing construction if

no comments are received during the 30 day public comment period and permit revisions that will be included in Minnesota's SIP.

8. Timely notify MPCA when the Administrator receives public petitions which object to the issuance of a permit, and keep MPCA informed as of USEPA's response. Notify the permit applicant if the Administrator objects to a permit as a result of a public petition to the Administrator.

IV. DATA MANAGEMENT AND INFORMATION TRANSFER

A. USEPA and MPCA will work together to develop an efficient data management and information transfer system. USEPA and MPCA agree to expeditiously transfer to one another any specifically requested documents.

B. At a minimum, the following permit documents shall be available to USEPA either through direct electronic access, or by submission to USEPA: construction/operating permit applications or application summary forms (if agreed to by USEPA and MPCA), proposed permits, any written refusal to accept an affected State's recommendations on a draft permit, and final permits. This list includes any such documentation required by permit revision procedures.

C. MPCA and USEPA agree to the following procedures with respect to confidentiality of information:

1. Any information obtained or used in the administration of the program shall be available to USEPA or MPCA upon request without restriction unless the MPCA has granted confidentiality status to the information.
2. If any information is submitted to MPCA under a claim of confidentiality and the MPCA grants confidentiality status, the MPCA agrees to notify USEPA of the existence of confidential information not being transmitted directly from the MPCA. Also, upon request from USEPA, the MPCA will require the permittee to submit the confidential information directly to USEPA along with a confidentiality claim.
3. Any information obtained from a permitting agency or from a source and subject to a claim of confidentiality will be treated by USEPA in accordance with the regulations in 40 CFR pt. 2.

D. MPCA agrees to make available to USEPA and the public (to the extent provided by confidentiality provisions) the following permitting information. MPCA agrees to develop their data management system (DELTA) to be compatible with AIRS-AFS to the extent practicable.

1. Basic permit tracking information.

2. Copies of all permit application (including compliance plans), and any summary forms of permit applications.

3. Copies of draft and proposed permits.
4. Copies of all final permits and all settlements and decisions in permit appeals.
5. Records of sources covered by general permits.
6. Records of denied and revoked permits.
7. Records of public notice procedures permits have undergone, and copies of public comments.
8. Copies of permit revisions, modifications, and amendments and any applications for such revisions.
9. Source-specific information in AIRS-AFS format regarding compliance monitoring and enforcement of the program, including inspections, monitoring reports, compliance certification, violations, and the resolution of violations.
10. Source specific information in AIRS-AFS format regarding the following permitting-related elements:
 - a. Permitting authority name;
 - b. New permit or permit modification;
 - c. AFS plant identification number;
 - d. Permit identification number; and
 - e. Date permit issued.
11. The number of Title V permits issued in each of the first five years of the program as a percentage of the total permits to be issued, and as a percentage of total emissions. MPCA will provide this information annually, starting on the date one year after interim program approval. For this reporting requirement, MPCA will count a permit as issued at the start of USEPA's 45-day review period.
12. By July 1 of each year, MPCA will share their permit workplan for the coming year. This will include a goal for which permits will be issued in the coming year.

E. To the extent practicable, the MPCA and USEPA agree to make the information listed above available to one another through electronic mechanisms, such as DELTA. When this is not practicable, the permit documents will be made available in hard copy.

The DELTA Central File will identify what permit related documents are available for a given facility. MPCA agrees to update permit documents available on DELTA as milestones are achieved. All documents which require signature approval will include an indicator which contains the date of signature.

F. MPCA and USEPA agree to maintain a current permit program contact list as an attachment to this document.

G. USEPA agrees to submit the following to MPCA:

1. A periodic review of MPCA's administration of the program based on the Agency's reports, meetings with Agency officials, and file audits;
2. By October 1 of each year, a list of USEPA permitting priorities.

V. SIGNATURES

/S/ 7/1/97

_____ Date: _____

Ann Foss, Acting Manager

Permits Section, Division of Air Quality

Minnesota Pollution Control Agency

/S/ 7/24/97

_____ Date: _____

Steve Rothblatt, Chief

Air Programs Branch, Region V

United States Environmental Protection Agency

ATTACHMENT 1

U.S. ENVIRONMENTAL PROTECTION AGENCY

PERMIT PROGRAM CONTACTS

LAST NAME	FIRST NAME	E-MAIL ADDRESS	PHONE #
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ATTACHMENT 2

AIR QUALITY DIVISION

PERMIT SECTION STAFF DIRECTORY

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Beil	David	david.beil@pca.state.mn.us	612/296-7810
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