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MEMORANDUM

TO: Regional Directors
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Central Office Enforcement Managers

CC: James Golden, Deputy Director of Operations

FROM: Michael G. Dowd, Director, Air and Renewable Energy Division *MGD*

SUBJECT: APG-251: Implementation Guidance for Issuance of Article 3 Federal Operating Permits

DATE: February 10, 2017

Purpose

This document contains implementation guidance for Article 3 (combined Title V / Title IV (Acid Rain)) Federal Operating Permit (FOP). Although the structure of Article 3 has always allowed for the issuance of a single combined Title V / IV FOP, implementation problems have often resulted in the issuance of separate Title V and IV permits or permits with separate Title V and IV sections, each with its own expiration date. By issuing one combined Article 3 FOP using the procedure outlined below, it is expected that DEQ staff time spent on such permits will be reduced; the timing of issuance / expiration date confusion will be resolved; and a consistent state-wide implementation process will be promoted.

Applicability

This guidance applies to FOP applications involving electric generating units (EGUs) that are subject to Title IV (Acid Rain) of the Clean Air Act; i.e. have a nameplate capacity of greater than or equal to 25 MW and burn a fuel with annual average sulfur content of greater than or equal to 0.05 percent. There are currently 31 such sources planned or operating in Virginia. This guidance document provides a procedure for Air Permitting staff to follow in the review of such permit applications and ultimate issuance of a single Article 3 FOP for each source. This

procedure is intended to outline the process. Details of each specific circumstance may warrant deviations from this document and will be considered on a case-by-case basis.

Background

Acid Rain Program: Title IV of the 1990 Clean Air Act established the Acid Rain Program (ARP), which is administered by the EPA. The ultimate goal of the program is to reduce emissions of SO₂ and NO_x emissions, the primary precursors of acid rain, from fossil fuel fired power plants. Title IV is under the umbrella of the Title V Federal Operating Permit; however, because of the disparity between the application due dates, misunderstanding of fixed issuance / expiration dates, fees, and maintaining permit-related documents in CEDS, there is often confusion in and among the DEQ regions regarding how a Title V / Title IV permit should be issued.

Confusion Regarding Issuance and Expiration Dates of the Acid Rain Permit

Historically, there has been a perceived requirement of January 1 and December 31 issuance and expiration dates for the Title IV (Acid Rain) portion of the Article 3 Permit. After discussions with EPA Region 3 and research into existing regulations and guidance documents, it has been determined that there are no statutory requirements to mandate that the Acid Rain portion of the TV / Article 3 Permit must have an effective date of January 1 and / or an expiration date of December 31. In light of this, Acid Rain / TIV portions of the Article 3 Permit may be issued any day of the year – and subsequently the same date as the Title V portion of the Article 3 Permit.

The Acid Rain Permit Application, EPA Form 7610-16 (Revised 12-2016), can be accessed from the Forms page, <http://www.deq.virginia.gov/programs/air/forms.aspx>, on the DEQ website or directly from the U.S. EPA website, <https://www.epa.gov/airmarkets/acid-rain-permitting>.

Implementation

Because of the complexity of the potential scenarios involved with an Article 3 Permit, three potential scenarios have been identified and provided with procedures to efficiently meet the ultimate goal of issuing one Article 3 Permit. In addition to the potential scenarios, permit writers will also have to identify how the fee(s) will be handled and how to input the permit records into DEQ's database, CEDS.

Scenario #1

Issuing the initial Article 3 Permit when the Acid Rain Permit Application is received 24 months prior to construction and the Title V Permit application 12 months after commencing operation.

State and Federal Regulations allow facilities to operate under an Acid Rain Permit “application shield” until the issuance of the Article 3 Permit (See 9VAC5-80-430 F and Instructions for the Acid Rain Program Permit Application, which states the following: “A complete Acid Rain Permit Application, once submitted, is binding on the owners and operators of the affected source and is enforceable in the absence of a permit until the Title V permitting authority either issues a permit to the source or disapproves the application.”). In other words, until the Article 3 Permit is issued, the facility must operate under the conditions of the Acid Rain Permit Application.

Can a facility request a separate Acid Rain Permit from DEQ when the facility is still in the construction and/or start-up phase of the project?

If requested, DEQ will issue a separate initial Acid Rain Permit for new facilities. These facilities will be charged two separate fees for issuance of the Acid Rain Permit and the Title V permit. Ultimately these facilities will synchronize their Acid Rain and Title V permits during a subsequent renewal process. The Acid Rain Permit Application shield will continue to be in effect until the issuance of the Article 3 Permit.

DEQ will notify the source of the permit application shield.

DEQ will provide a letter of notification describing the effective “application shield” upon receipt of a completed Acid Rain Permit Application. This letter will describe how the completed Acid Rain Permit Application shall be binding on the owners and operators, the designated representative of the affected source, and the affected units covered by the permit application. The letter will also state that the Acid Rain Permit Application shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of the Article 3 Permit (9VAC5-80-430 F.7.d.).

Scenario #2

Renewal of an Article 3 Permit when the Title V and Title IV sections of the permit are synchronized (have same expiration date).

The source will submit both the Acid Rain Permit Application and the Title V application to DEQ a minimum of six months prior to expiration of the Article 3 Permit. DEQ will simultaneously process the two applications and re-issue the permit with the same effective and expiration dates.

Scenario #3

Renewal of an Article 3 Permit when the Title V and Title IV sections of the permit have separate or out-of-sync expiration dates. Two sub-scenarios have been identified for this scenario.

- 1. If the Title IV/Acid Rain portion of the existing Article 3 Permit has a different expiration date than the Title V portion of the permit and the Acid Rain portion expires first.*

If the Acid Rain portion of the permit is first to expire, the source will submit the Acid Rain Permit Application (marked “for ARP permit renewal” on the application) a minimum of six months prior to the expiration of the Acid Rain Permit. At this point, the permit writer will review for completeness, hold the application, and note the event in CEDS. The facility will continue to operate under the application shield. When the Title V Permit application is received and reviewed for completeness, both applications will be processed and the permit writer will issue a single Article 3 Permit with one set of effective / expiration dates. Note: These dates can be any day of the year – not necessarily January 1 effective and/or December 31 for expiration.

2. *If the Title IV/Acid Rain portion of the existing Article 3 Permit has a different expiration date than the Title V portion of the permit and the Title V portion expires first.*

In the event that the Title V portion of the permit expires but the Acid Rain Permit continues to be in effect, the TV application will be submitted by the source a minimum of six months prior to the expiration of the TV permit. At this point, the permit writer will review for completeness, hold the TV application, and note the event in CEDS. The facility will continue to operate under the existing TV permit under application shield. When the Title IV application is received and reviewed for completeness, both applications will be processed and the permit writer will issue a single Article 3 Permit with one set of effective / expiration dates. Note: These dates can be any day of the year – not necessarily January 1 effective and/or December 31 for expiration. At the discretion of the regional office, the first round of reissuance under the new procedure could allow the TV portion of the permit to be reissued prior to the expiration of the Acid Rain Permit. In this situation, when the subsequent Acid Rain Permit renewal application is submitted, the procedure outlined in sub-scenario 1 of this scenario should be followed.

Handling the fees associated with Article 3 Permits

DEQ will encourage the payment of the Article 3 application fee upon submission of the initial Acid Rain Permit Application. This fee is the “Title V permit (Articles 1, 3)” fee referenced in 9VAC5 Chapter 80 Article 10. Upon subsequent permit renewals, the Article 3 application fee will be submitted with the Article 3 Acid Rain/Title V renewal application. If the source requests a separate Acid Rain Permit, two fees will be charged.

Maintaining Records for the Article 3 Permit in CEDS

In CEDS, the permit writer will go to the “Associate Program / Permit Types” screen of the permit application record and choose the appropriate Article 3 – Title IV (the program type should always be Article 3 – Title IV) permit type (e.g., TITLEIV for an initial application; RENEWAL for a renewal application) for the permit application. There should be only one application record (and number) in CEDS; i.e. the single application record will include both the Acid Rain and the TV permit portions of the Article 3 application.

Upon receiving the first of the two portions of the Article 3 application (one portion for TIV / Acid Rain and the other for TV), the permit writer will choose “Hold for TV Application” or “Hold for TIV Application” from the “Application Review Status” menu. This will signify that the permit writer has received the first portion of the application and that further processing of the application is on hold pending submittal of the second portion of the application. The “Primary Dates” section of application record should also be updated in a timely manner. The permit writer should input the corresponding dates for 1) “Application Received”; 2) “Deemed Timely and Complete”; and 3) “60 Day Letter” for the first portion of the Article 3 application. The “Application Complete/Tech. Complete” field should be left blank until both the TIV and TV applications have been deemed complete.

When the second portion of the Article 3 application is received by DEQ (this may be either the TV or the TIV portion of the application), the permit writer will create three “AIRMISC – Miscellaneous” events from the “Events” tab of the CEDS application record. These events should be used to capture 1) “Application Received”; 2) “Deemed Timely and Complete”; and 3) “60 Day Letter” dates associated with the second portion of the Article 3 application. The comments field provided for each of the three miscellaneous events should be used to indicate the purpose of the event (for example: “60 Day Letter for TV portion of Article 3 application”). Indicate the appropriate date for each of these events in the “Completed Date” field and leave the anticipated date field empty.

Once both applications have been submitted and both applications are deemed complete by DEQ, the permit writer should process the combined Article 3 application as usual. There should only be one “Application Complete / Tech. Complete” entry, one “Permit Signature Date” entry and one “Final Permit Action” entry.

In the event that a separate Acid Rain Permit is issued (at the request of a source), contact Central Office for guidance on the appropriate CEDS data entry.

Definitions for Reference

- *Acid Rain Program* – (9VAC5-80-370) the national SO₂ and NO_x air pollution control and emissions reduction program established in accordance with Title IV of the federal Clean Air Act and Article 3 of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution.
- *Article 1 Permit* – (9VAC5-80-50 et seq.) The Federal Operating Permit (FOP) issued by DEQ addressing the Title V requirements of a non-acid rain program major / Title V major stationary source (e.g., solid waste incineration units).
- *Article 3 Permit* – (9VAC5-80-360 et seq.) The FOP issued by DEQ addressing TIV and TV requirements for an acid rain program applicable (major) stationary source.
- *Title IV* - Permitting provisions of Title IV of the Clean Air Act (CAA) fall under the regulatory umbrella of Title V, requiring EPA to establish criteria for the approval of Title V programs that are compatible with the national Acid Rain Program.
- *Title V* – Section of the CAA that requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit.