

**Renewable Operating Permit – Lean Process Improvement
Action Team #7 - ROP Modifications
December 21, 2010 Summary Report**

Background

In July 2010, the Department of Natural Resources and Environment (DNRE) hosted a Lean Process Improvement (LPI) Workshop for the Renewable Operating Permit (ROP) process. The workshop was attended by Air Quality Division (AQD) staff and industry and environmental representatives. The purpose of the workshop was to redesign a more efficient and effective ROP program that meets all Clean Air Act requirements.

As a result of the workshop, recommendations were made to and approved by the AQD and DNRE management. Action Teams were formed and assigned tasks to implement these recommendations. Action Team Number 7 is responsible for addressing the processing of ROP modifications, which have been suspended since December 2009.

The Modification (Action) Team was assigned the task to evaluate the possibility of the PTI process incorporating ROP modifications. Action Team goals were outlined at a planning meeting on August 30, 2010 and the goal of the Modification Team was identified as “Develop a process to incorporate ROP modifications into the PTI approval process.” The potential tasks were identified as: 1) Evaluate & compare PTI & ROP modification rules, regulations and procedures, 2) Investigate integration of PTI process with ROP modification process, 3) Investigate tools needed to incorporate PTI into ROP, and 4) Receive AQD Management approval.

Action

The Modification Team met on September 8, 2010, to begin discussing the possibilities for incorporating the ROP modifications into the PTI approval process. At this meeting the team first discussed “What is the team’s actual charge?” Is the goal to evaluate merging just the *application* processes (i.e., add a check box to the PTI application form which states this application also serves as the request to revise the ROP), or merging the actual *approval* processes (i.e., approval of the PTI also approves the ROP revision request)? The team decided the charge is to develop a process to incorporate the ROP modification into the PTI approval process. However, merging the two approval processes could also necessitate merging the applications.

The team reviewed a summary of the Air Pollution Control Rules and federal regulations which are applicable to the PTI program, including Section 5505 of Act 451, Rule 201, and Rule 206; and those which apply to the ROP modification process, which include Section 5506 of Act 451, Rule 216 and 40 CFR Part 70.7. The team also evaluated and compared the PTI processing procedures and the ROP modification procedures.

Overview

Merging the ROP modification process into the PTI process would require addressing the different types of modifications. The majority of ROP revisions are minor modifications per Rule 216(2) and the vast majority of these are to incorporate the requirements from a PTI. Rule 216(1)(a)(v) provides an option for a PTI to be rolled into the ROP as an administrative amendment if the PTI approval process is “enhanced”.

If a change is made which requires a PTI, the source submits an application to the AQD. Rule 206 requires determination of administrative completeness of the PTI application within 10 days of receipt. The rule also requires the AQD to take final action on an application within 60 days of receipt of all technical information, or 120 days if the application is subject to a public comment period. These time frames do not include additional time required if the applicant must respond to a request from the department for additional information. After approval of the permit, construction may begin and the source submits a minor modification request to incorporate the new PTI requirements into the ROP. In the interim the source has a PTI with applicable requirements which may or may not conflict with the ROP requirements. However, the source may operate the change upon submittal of the application to revise the ROP.

Timing for submittal of a request to revise the ROP is hard-wired into Rule 216 and the clock for processing ROP modification applications starts the day the application is received. The timeframes within which the request must be acted upon by the AQD are also spelled out in Rule 216.

Minor Modifications

A source does not have to submit the ROP revision request until ready to commence operation of the change authorized by a PTI. However, Rule 216(2) provides that the source may submit a minor modification application immediately upon issuance of the PTI. The AQD must act on a minor modification application within 90 days of receipt or 15 days after the 45-day EPA review ends, whichever is later. The AQD incorporates the requirements from the PTI into the ROP and issues the revised ROP. Since the PTI format closely follows the format used in the ROP, incorporation of the PTI requirements into the ROP is fairly straight forward. If a new PTI is based on the emission unit/flexible group tables that are within the existing ROP, the modification can literally be a copy-paste of the revised tables into the ROP itself. Regardless, no change involving incorporation of PTI conditions into an ROP can be approved without first providing a 45-day EPA review period.

Among the requirements for a minor modification application, the applicant must identify any new applicable requirements that will apply if the change occurs, as well as the proposed changes to the terms and conditions of the ROP that are believed to be adequate to address the change and any new applicable requirements. The application must also be certified by a responsible official that the change meets the minor modification criteria. Although Rule 204 allows the submittal of a PTI application by an agent (consultant, lawyer, etc.) or other designated representative that may not meet the definition of responsible official, the minor modification submittal can be certified only by a responsible official. As a result, two separate applications would still be necessary, even with a merged process.

Rule 206 and Rule 216 each include specific timeframes that do not accommodate a method to meet both regulatory requirements. Even if consideration is given to proposing a rule revision, it is difficult to envision a rule structure that would allow a reasonable timeframe for PTI issuance that would also allow meeting the deadline for issuance of the ROP minor modification. The PTI and the ROP modification cannot be issued concurrently because of the required 45-day EPA review in Rule 216(2).

Administrative Amendments

Rule 216(1)(a)(v) provides an option for an issued PTI to be rolled into the ROP as an administrative amendment if the PTI process is "enhanced" by providing a 30-day comment period to the public and affected states before the PTI is issued. This modification type allows the source to install, then operate the authorized change for up to 12 months before applying to revise the ROP. To qualify as an administrative amendment, Rule 216(1)(a)(v) specifies that the PTI must meet the permit content requirements of Rule 213 (including monitoring, recordkeeping & reporting) and the procedure to issue the PTI must include public participation and affected states review procedures substantially equivalent to those required by Rule 214. Because the required public participation procedure prolongs the PTI approval process, this option is used primarily for PTIs that would have otherwise been required to go through a public comment period.

If a source requests the contents of a PTI be incorporated as an administrative amendment, the AQD must be notified within one month of commencing operation. The ROP modification application cannot be submitted before the PTI is issued and the administrative amendment to the ROP cannot be incorporated into the PTI approval process because Rule 216(3) requires that a source must operate the change long enough (up to 12 months) to obtain and submit data sufficient to verify that the change is being operated in compliance with the PTI conditions. Rule 216(3) specifies that an application for an administrative amendment must include the results of all testing, monitoring and recordkeeping performed by the source to determine the actual emissions from the process or process equipment and to demonstrate compliance with the terms and conditions of the PTI. As with the minor modification applications addressed above, two separate applications would still be necessary if the application process could be merged.

Other ROP Rule Provisions Related to PTIs

A PTI and associated ROP revision cannot be concurrently processed if the establishment of Compliance Assurance Monitoring (CAM) requirements would be triggered by the change. The CAM rule promulgated in the federal regulation at 40 CFR Part 64 requires that ROPs include minimum applicable monitoring, operation, and maintenance to ensure that the equipment subject to CAM does not deteriorate to the point of failing to comply with emission limits. The PTI program does not have the authority to establish conditions with the CAM regulation as the underlying applicable requirement. CAM Plans must be created through the ROP authority if a propose change triggers the CAM requirement.

Other ROP program rules address the interface between receipt of a new PTI and changes to an ROP, but will be discussed briefly to explain why they are not significant to the charge to this Action Team.

Rule 215(3) provides that no ROP modification application is required to incorporate the terms and conditions of a new PTI if there is no conflict with the existing ROP within that PTI. Although a source may choose to apply to revise the ROP, the new requirements need not be added until the time of ROP renewal, which may be up to 5 years, depending on the ROP expiration. The only implication for the ROP revision process would be situations where the applications for PTIs and ROP modifications were merged and the facility would not be certain at the time of application whether or not the final PTI would overlap or conflict with ROP terms or conditions.

Rule 216 provides for state-only modifications to incorporate a PTI that would exclusively affect requirements enforceable only by the State of Michigan (e.g. Rule 901). The provisions are comparable to those for a minor modification except that no EPA review occurs. The rule also provides for significant modifications where the ROP revision would undergo the complete process that is used for the issuance of an ROP itself, including public comment and affected states and EPA review. In theory, a source could choose to apply for this type of change but the other revision categories require fewer issuance steps. If a relevant situation did arise in the future which would require either of these types of change, the rationale discussed for minor modifications or administrative amendments would apply.

Implications for the Application Process

Incorporating the ROP modification process into the PTI approval process may also necessitate merging the two applications. The PTI application form would have to be changed to capture the information required for the ROP modification.

Merging the applications would create more work for the applicant in preparing the new merged application. Rule 216(2) requires that minor modification applications include: "(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs; (ii) the proposed changes to the terms and conditions of the renewable operating permit that the person applying for the minor permit modification believes are adequate to address the change and any new applicable requirements; (iii) A certification by the responsible official which states that the proposed modification meets the criteria for use of minor permit modification procedures and that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete; and (iv) completed forms, supplied by the department, for the department to use to notify the United States environmental protection agency and any affected states." When submitting a combined application for a new PTI and the associated ROP modification, the responsible official would be pre-certifying to compliance with a PTI that has not yet been issued.

Additionally, an ROP modification application that does not completely meet the content requirements of Rule 216(2) would be incomplete and could not be accepted. The existing ROP modification application form was designed to streamline the application content requirement by allowing reference to the issued PTI rather than listing all of the new applicable requirements and providing exact wording for the proposed changes to the terms and conditions of the ROP. EPA has agreed that any issued minor PTI that has adequate monitoring, recordkeeping and reporting can be considered as meeting the criteria to be a minor modification because the technical review was already done through the PTI process.

If a PTI has not yet been issued, the ROP modification application must be independently reviewed as to whether or not it meets several state and federal criteria that exist within Rule 216(2)(a). Most significantly, Rule 216(2)(a)(ii) forbids any change that would significantly affect any existing monitoring, reporting, or recordkeeping that has not been authorized through the PTI process to be approved as a minor modification. Rule 216(2)(a)(iv) does not allow a minor modification to directly incorporate any opt-out or synthetic minor limits without the PTI authorization.

Although it is easier to determine if a PTI meets the criteria for an enhanced PTI administrative amendment; Rule 216(3) specifies that this category cannot apply unless the PTI has already been issued, the change has been operated for up to 12 months, and the application includes proof that the source is operating the change in compliance with the associated PTI conditions. Therefore, even if the application forms themselves were

merged, the ROP modification application could not be submitted until a much later date to include the results of all required testing, recordkeeping and/or reporting.

All ROP modification applications must be made available to EPA before the start of that 45-day review period. Currently, the applications, which are mostly two pages (an M-001 and C-001 form) are scanned and placed on the AQD ftp site for EPA to access. If the PTI application form becomes the application for the ROP modification, the entire merged application would need to be scanned and provided to EPA.

Recommendation

The team members agree that incorporating the ROP modifications with the PTI process is not feasible at this time. Rule 216 and 40 CFR Part 70.7 set specific timelines for processing the various types of ROP modifications and these timeframes do not coincide with the timeline for processing a PTI application. Also, because the ROP modification process includes a 45-day EPA review period, combining the PTI with the ROP modification could subject the PTI to unnecessary and additional EPA review and comment, and delay issuance.

Even if logistically feasible, merging the two processes would require changes to the rules and regulations governing both the PTI and ROP programs. The LPI Scoping Document which was provided to all members before the LPI Workshop specifically identified "changes to state and federal regulations" as a parameter that is out-of-scope for this LPI initiative.

The Modification Action Team recommends suspending any further consideration of incorporating the ROP modifications with the PTI process at this time.

Additional Comments

Although the Modification Team is proposing that no further action be taken to integrate the ROP modifications with the PTI process, team members representing industry feel the need to address the processing of ROP modifications within the context of the overall ROP program. The key issue identified during the workshop was "ROP revisions are not being processed." This issue had also been identified during brainstorming sessions with the Michigan Manufacturers Association and the Michigan Chamber of Commerce.

Since the commencement of the ROP program, issuing timely ROP modifications proved to be difficult due to conflicting priorities for both District Staff and PTI engineers. Therefore, the task of processing all of the ROP modifications was shifted to a specialist in Lansing, with logging and tracking of the issuance process done by a single support staff person. The work group concluded the consolidated review process developed and implemented by the centralized Lansing staff was very efficient and effective in processing the ROP modifications. Members felt the procedures were concisely carried out in conformance with state and federal requirements and the reviews were timely for both AQD district staff responsible for inspecting the sources, as well as the applicants requesting the modifications.

However, in December 2009, the processing of ROP modification applications was suspended in response to funding shortfalls. In October 2009, the AQD implemented program cuts reducing the ROP program by 11 positions to address the funding shortfall. In December 2009, additional cuts were necessary to meet the FY10 budget. These cuts included the suspension of processing ROP modification applications, with reassignment of staff and the decision to incorporate modifications into the ROP at the time of ROP renewal. The AQD was fully aware that this action may result in conflicting permit requirements and does not eliminate the requirements of the permittee to apply for an ROP modification pursuant to Rule 216; however, the source may legally operate the change authorized in the PTI immediately upon submittal of the application.

Industry feels failure to process the ROP modifications defeats the very purpose of the ROP program - to put all air quality requirements for a source in one place. There is concern that it is more difficult to properly track what terms and conditions are legally in effect and to certify compliance accordingly. There is an industry perception that failure to process the ROP modifications makes sources vulnerable to third party actions, uncertainty, and regulatory drift.

Although the Modification Team was not assigned the specific task of determining how to reactivate processing the ROP modifications, the industrial representatives commented that the ROP modification review and approval process was sufficiently streamlined for effective management of ROP modification requests and

recommends the AQD returns to the central processing procedure if and when necessary ROP funding becomes available. Industry believes returning to an active ROP modification processing mode is more important than any efficiency gained by merging the PTI and ROP programs. Industrial representatives expressed their desire that other program revisions, such as rule changes, may be visited when and if the ROP program can sustain such enhancements.

Respectfully submitted:
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