



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONAL ADMINISTRATOR
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Brian Rockensuess, Commissioner
Indiana Department of Environmental Management
100 N Senate Avenue IGCN 1301
Indianapolis, Indiana 46204

Dear Commissioner Rockensuess:

The U.S. Environmental Protection Agency is concerned that the Indiana Department of Environmental Management (IDEM) will not collect sufficient fees in 2023 and subsequent years to effectively implement the state's Clean Air Act (CAA) Part 70 Operating Permit Program.

CAA § 502(b) and 40 C.F.R. § 70.9 require a permitting authority to collect fees from subject sources that are sufficient to cover all reasonable direct and indirect costs required to develop and administer the Title V program. All fees collected by a permitting authority under Title V must be used solely to support the permit program. It is incumbent upon permitting authorities to demonstrate that their fee structures are adequate to fully cover all costs associated with the implementation and enforcement of Title V programs. *See* 40 C.F.R. § 70.9(b)(2) and (3).

The Title V air quality permitting regulations require EPA to periodically review state fee demonstrations to ensure states are adequately meeting these funding requirements. 40 C.F.R. § 70.9(d). In 2021, EPA completed such a review in Indiana. We concluded then that Indiana's Title V fee demonstration supported the conclusion that Indiana could adequately meet the Title V funding requirements. We note that our evaluation was based on fees collected in 2020, which relied on 2018 emissions data.

IDEM recently provided funding projections based on fees collected in 2022, which indicate that revenues will not be sufficient to cover the state's Title V program operating costs this year, with larger deficits to ensue in subsequent years. IDEM projects a multi-million dollar deficit in its Title V funds by fiscal year 2024.¹

If IDEM is not able to secure sufficient funding for the Indiana Title V program, EPA has an obligation to address the funding deficit, utilizing CAA authorities up to and including the issuing of a notice of deficiency (NOD) under Section 502(i) of the CAA and the corresponding

¹ The EPA Office of Inspector General has taken notice of pervasive Title V fee deficits and unsustainable fee structures across the country, detailing these findings in a report released early 2022 and encouraging EPA to take stronger action in cases of persistent fee deficiencies.

Part 70 rules.² Other potential remedies include: a stringent performance plan with extensive EPA oversight; increased EPA-led enforcement at Title V sources; and EPA assuming permitting responsibilities for a portion of the Title V sources in Indiana.

We understand and are encouraged by the news that IDEM plans in coming months to propose changes to the state's Title V fee rule and, as necessary, relevant provisions of the Indiana Code, to increase fee revenue to cover the identified fee gap. We look forward to learning more about these developments and working with you to ensure that IDEM's Title V program is implemented and enforced consistent with the requirements of Title V of the CAA.

If you have questions, please contact John Mooney, Air and Radiation Division Director, at (312) 886-6043.

Sincerely,

Debra Shore
Regional Administrator
& Great Lakes National Program Manager
US EPA Region 5

² Upon issuance of an NOD, the CAA and Part 70 rules provide a timeframe for the state to address the deficiency and also specify the consequences if a state fails to adequately respond. *See* 42 U.S.C. § 7661a(i) and 40 C.F.R. § 70.10(b) and 70.4(i)(1). If the state has not corrected the deficiencies within the prescribed timeframe after issuance of an NOD, EPA would be required to apply the nonattainment New Source Review offset sanctions and highway sanctions under section 179(b) of the Clean Air Act. In addition, EPA would be required to promulgate, administer and enforce a whole or partial operating permit program within two years of issuance of the NOD.