

MDEQ Proposes Revisions to Air Permit Rules

The Michigan Department of Environmental Quality (MDEQ) has proposed revisions to its regulations concerning air use permits to install and renewable operating permits (ROP). The rule revisions clarify existing rules, respond to objections that had been raised by the United States Environmental Protection Agency (EPA) and provide additional exemptions from permit to install requirements.

A key aspect of the proposed revisions is that a new MDEQ Air Quality Division (AQD) Rule 214a would provide for the issuance of a “source-wide permit to install” concurrent with any ROP issued by MDEQ. The source-wide permit to install would be contained in the same document as the ROP, but the source-wide permit to install would be independently enforceable. The source wide permit to install would include all federally-enforceable terms and conditions of existing permits to install for that stationary source and would replace all existing permits to install. The ROP would include additional provisions not found in the source-wide permit to install, such as additional monitoring, recordkeeping and reporting requirements that are required to be included in all ROPs. In the event that the ROP expires or is terminated, the source-wide permit to install would continue in force. This proposed rule change responds to EPA objections that the current rules improperly state that all exiting permits to install are voided upon issuance of an ROP for a given facility.

AQD Rule 201 would be revised to clarify that a permit to install is required prior to construction, reconstruction, relocation or modification of any process or process equipment that emits any air pollutant or any air contaminant regulated under federal or state air quality regulations unless an exemption under AQD Rules 278-290 applies. Rule 201 would also be revised to clarify that, if a permit to install is issued solely to regulate air contaminants that are

governed by state regulations, but not federal regulations, the restrictions of such a permit would be enforceable only by MDEQ.

AQD Rule 201 would also be revised to state that an existing permit to install may be voided by MDEQ if: (a) a new permit to install covering the source is issued by MDEQ; (b) the terms and conditions of the permit to install are included in an ROP/source-wide permit to install; or (c) all of the emission units covered by the permit to install are physically removed from the site or have been permanently shut down.

AQD Rule 202 would be revised to state that a “construction waiver” authorizing the construction of equipment prior to the issuance of a permit to install, may not be issued for any activity that is subject to: (a) federal Prevention of Significant Deterioration (PSD) or nonattainment new source review requirements; (b) regulations applicable to construction or reconstruction of a major source of hazardous air pollutants under the federal Clean Air Act (CAA); or (c) regulations applicable to construction or modifications of certain categories of source subject to national emission standards for hazardous air pollutants in 40 C.F.R. Part 61.

AQD Rule 203 would be substantially revised to clarify the information that is required to be included in an application for a permit to install. The required information would include: (a) a complete description, in appropriate detail, of the activities covered by the application; (b) a description of all federal, state or local air pollution control regulations believed by the applicant to be applicable to the proposed project, including a proposed method of complying with the regulations; (c) a description, in appropriate detail, of the nature and quantity of all air emissions that are reasonably anticipated; (d) a description of how the air emissions from the proposed project will be controlled or otherwise minimized; (e) a description of each stack or vent related to the project; (f) scale drawings showing a plan view of the property and the location of the

proposed equipment; (g) information necessary for the preparation of an environmental impact statement, if MDEQ determines that the project may have a significant impact on the environment; and (h) data demonstrating that the emissions from the project will not have an unacceptable air quality impact in relation to all federal, state and local air quality standards.

AQD Rule 204 would be revised to clarify the procedures for an applicant to designate an authorized representative to submit a permit application, respond to questions from MDEQ about the application and/or to negotiate the terms and conditions of the permit with MDEQ.

AQD Rule 205 would be revised to provide that if a particular source becomes a “major offset” source or modification or a major source or major modification under federal PSD regulations solely by virtue of a relaxation of a permit restriction that had been established to limit the potential to emit of the source, then that source or modification would be subject to preconstruction review as though construction had not yet commenced.

AQD Rule 206 would be revised to state that MDEQ must review an application for a permit to install for “administrative completeness” within 10 days after its receipt by MDEQ. In addition, except for permits subject to a public comment period, MDEQ must take final action to approve or deny the permit within 60 days after receiving all the information required under Rule 203. If a public comment period is required, then MDEQ must take final action to approve or deny the permit within 120 days after receipt of all the information required under Rule 203. These revisions to Rule 206 would also rescind the provisions for expedited review of a permit application when delays would cause undue hardship to the applicant.

AQD Rule 216 would be clarified to state that a person may immediately implement certain changes to an ROP known as an “administrative permit amendment” provided that the person complies with all requirements applicable to the administrative permit amendment,

including the conditions that are proposed in the administrative permit amendment application. An amendment to Rule 216 would also adopt by reference the provisions of 40 C.F.R. 70.8(c)(2002) concerning administrative permit amendments.

AQD Rule 219 would be revised to simplify the procedures for notifying MDEQ of a change in ownership or operational control of a source subject to a permit to install. As proposed, Rule 219 would require that MDEQ be notified of the change in ownership or operational control and that the new owner or operator certify that the terms and conditions of the permit to install are understood and accepted. As proposed, under Rule 219, the transfer of responsibility under a permit to install would be automatic and would no longer require MDEQ approval.

Proposed revisions to AQD Rule 220 would exempt nitrogen oxide emissions from certain nonattainment new source review requirements if EPA has determined that further nitrogen oxide emission reductions would not improve air quality. Another revision to Rule 220 would clarify that emission reductions required by the CAA or by any MDEQ rule, order or permit could not be used as emission offsets. The definition of “volatile organic compound” in Rule 220 would be simplified by adopting the federal definition of “volatile organic compound” in 40 C.F.R. 51.100(s) by reference.

Revisions to AQD Rules 240 and 241 would update the references to air quality dispersion models and procedures that may be used in conjunction with permit applications and to clarify the procedures and criteria for MDEQ to approve the use of an alternative model.

The AQD regulations specifying exemptions from the requirement to obtain a permit to install are found in AQD Rules 280-290. Current AQD Rule 278 and proposed AQD Rule 278a provide limitations on the applicability of these exemptions to certain types of sources and

activities. Revisions to Rule 278 would clarify that the exemptions found in Rules 280-290 do not apply to any activity that: (a) is subject to PSD or nonattainment new source review requirements; (b) would result in an increase in actual emissions greater than the “significance” levels specified in AQD Rule 119; (c) is the construction or reconstruction of a major source of hazardous air pollutants as defined in 40 C.F.R. 63.2 and 63.5(b)(3); or (d) is a construction or modification as defined in 40 C.F.R. Part 61 concerning national emission standards for hazardous air pollutants.

Proposed Rule 278a would require any person owning or operating an exempt process or process equipment to be able to provide information demonstrating the applicability of the exemption within 30 days after a written request from MDEQ.

MDEQ has proposed to rescind AQD Rule 279, which provides MDEQ with authority to grant additional exemptions from the requirement to obtain a permit to install in writing but without promulgating a new rule. EPA had objected to this regulation as providing too much discretion to MDEQ to exempt sources from permitting requirements.

Numerous revisions to AQD Rules 281-289 would clarify existing exemptions, codify exemptions previously issued under Rule 279, and to add new exemptions from the requirement to obtain a permit to install. Some of the principal changes proposed by MDEQ include:

- An exemption for portable blast-cleaning equipment used during construction to clean new water tanks or other new structures.
- An exemption for electric resistance melting and holding furnaces that have a capacity of not more than 6,000 pounds per batch and 16,000 pounds per day and which melt only clean charge.
- An exemption for pad printers.

- An exemption for vacuum trucks used at remediation sites as a remedial action method, if not used more than once per month at the site and not for more than 2 consecutive days.
- An exemption for air sparging systems where the sparged air is emitted back to the atmosphere only by natural diffusion.
- An exemption for air separation or fractionation equipment used to produce nitrogen, oxygen or other atmospheric gases.
- An exemption for concrete batch plants that meet various requirements specified in AQD Rule 289(d).

The proposed rule package also includes proposed revisions to definitions of terms used in the air permit rules and proposed air permit rules, including new definitions of “applicant,” “clean charge,” “federally enforceable” and “state-only enforceable,” as well as several revisions to existing definitions. References to standards adopted by reference in AQD Rule 299 would also be updated if the proposed rule package is adopted.

MDEQ is considering public comments on the proposed rules and is expected to make a final decision on the proposals in 2003. 2002 MR 17 (October 1, 2002)

S. Lee Johnson