



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

SAM NUNN ATLANTA FEDERAL CENTER

61 FORSYTH STREET, SW

ATLANTA, GEORGIA 30303-8960

July 17, 2023

Kasia Smith-Alexander
Administrator
Environmental Health
Shelby County Health Department
1826 Sycamore View Road
Memphis, Tennessee 38134

Dear Ms. Smith-Alexander:

As you are aware, the U.S. Environmental Protection Agency, Region 4, is currently undertaking a follow-up of the 2019 review of the Shelby County Health Department's (SCHD) state operating permit program pursuant to title V of the Clean Air Act (CAA). The follow-up review included discussion of topics from the suggested actions included in the 2019 program evaluation, including your work to address the title V backlog. The EPA commends SCHD's success in reducing their title V backlog from the seven renewals and nine significant modifications in backlog status at the time of the 2019 program evaluation to zero permits in the backlog status as of March 2023. Based on the suggested action regarding title V fees, this review also includes an evaluation of SCHD's 40 CFR part 70 fee demonstration. The part 70 air quality permitting regulations require the EPA to periodically review state fee demonstrations to ensure states are adequately funding their title V permitting program and using their title V fee revenue solely for title V purposes. *See* 40 CFR 70.9(a). While our follow-up review meeting on March 29, 2023, did alleviate some concerns from the 2019 program evaluation regarding current title V funding, the timeline of SCHD's most recent fee change raised some concerns regarding timeliness of future fee increases and its impact on the program.

In accordance with 40 CFR 70.9(b)(2)(i), the EPA presumes that a permitting authority's fee structure is sufficient to adequately fund its title V permitting program if it collects at least the "presumptive minimum" (on a dollars-per-ton-of-regulated-pollutant-emitted-annually basis) as established by the EPA annually. Currently, SCHD does charge the presumptive minimum, as well as other set fees, and the financial data presented during this review shows that SCHD will have sufficient title V funds to cover their FY23 title V operating costs. The EPA recognizes the efforts made by SCHD to pass the fee increase which ensured this. However, there is concern based on the data our office reviewed that SCHD's title V permitting program may not be self-sufficient in the long term. Since FY19, title V expenditures have been growing while revenues have been in decline. In FY22, SCHD relied on their title V surplus fund from previous fiscal years, as well as general funds, to fully cover all title V expenditures. The approved 2023 fee increase is projected to bring in an annual revenue of \$750,000, yet total expenditures in FY23 are expected to be \$899,344. At the time of this fee evaluation, the remaining title V surplus fund was projected to be approximately \$300,000. This may warrant concern for future sustainability of the program as the gap between projected FY24 revenue and current expenditure rates is \$149,344, i.e., if these current rates continue, the surplus fund will only be able to fund the difference for about two additional years. Please be aware that section 502(i) of the CAA, and the corresponding part 70 rules provide authority for the EPA to address inadequacies in state programs

through the issuance of a notice of deficiency (NOD) to the state. Insufficient fees are a type of programmatic inadequacy that could be appropriately addressed through issuance of a NOD.

The EPA is aware of the contributing negative impact of declining billable emissions (a trend noticed nationally) is having on SCHD's title V revenues. The EPA believes that, for SCHD's title V permitting program to continue to be financially self-sufficient, SCHD must seek out and implement all funding options it deems viable, as afforded by 40 CFR 70.9(b)(3), and should also consider the timeliness of any future fee increases required to ensure sufficient funding.

We look forward to working with you to address these fee concerns to ensure that SCHD's title V program is implemented and enforced consistent with the requirements of title V of the CAA. If you have questions, please contact me at (404) 562-8976, or Mr. Brad Akers, Supervisor of the Air Permits Section, at (404) 562-9089.

Sincerely,

Caroline Y. Freeman
Director
Air and Radiation Division