



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

March 6, 2008

Mr. Bob Emerson, Director
Office of the State Budget
Department of Management and Budget
P.O. Box 30026
Lansing, Michigan 48909

Dear Mr. Emerson:

Attached is our final plan for compliance with the recommendations in the Office of the Auditor General's (OAG) Performance Audit of the Fee Adequacy Within the Air Quality Division (761-0143-07). The audit period covered by this audit is October 1, 2004, through March 31, 2007.

The Office of Financial Management granted permission to distribute the plan in accordance with Part VII, Chapter 4, Section 100 of the Financial Management Guide (FMG).

The following is the audit response summary to the recommendations:

1. Citations complied with: n/a
2. Citations which DEQ agrees with and will comply:
 - a. Will comply with: 1
 - b. Budget considerations: 1
3. Citations DEQ disagrees with: n/a

Sincerely,

Signature Redacted

Steven E. Chester
Director
517-373-7917

Attachment

cc/att: Members of the Natural Resources and Environmental Affairs Committee
Members of the DEQ Subcommittee, Senate Appropriations
Members of the DEQ Subcommittee, House Appropriations
Members of the Great Lakes, and Environment Committee
Mr. Gary S. Olson, Senate Fiscal Agency
Mr. Mitchell E. Bean, House Fiscal Agency
Mr. Thomas H. McTavish, Auditor General
Mr. Steven Baker, Office of the Auditor General

Department of Environmental Quality
60 Day Response
February, 2008

Performance Audit (761-0143-07) of the
FEE ADEQUACY AND DELEGATED AUTHORITY
AIR QUALITY DIVISION

October 1, 2004 through March 31, 2007

Finding Number 1: Renewable Operating Permit (ROP) Program Fees and Costs

Audit Report Recommendation

We recommend that the ROP Program fees generate sufficient revenue and/or that Air Quality Division (AQD) reduce ROP Program activities to ensure that ROP Program costs do not exceed revenues.

Department of Environmental Quality Response

The Department of Environmental Quality (DEQ or Department) partially agrees with the finding and recommendation. The funding for the ROP Program is the responsibility of the Michigan Legislature and is established through a fee schedule to fund required activities under the federal Clean Air Act. This commitment was established as a pre-requisite of the ROP program being delegated from the U.S. Environmental Protection Agency (U.S. EPA) to the State of Michigan.

The Department is responsible for collecting the authorized fees in accordance with Section 5522 of Act 451 and implementing the ROP program in accordance with the Clean Air Act. The DEQ supports establishment of a fee system to generate sufficient revenue to meet the legal requirements of Section 5522, the federal Part 70 regulations, and the federal Clean Air Act.

During the audit period, the Department established a work group with the regulated community to review the fee schedule for the ROP program, including the review of Department recommendations to renew and to increase the fees effective September 30, 2005. The fee schedule recommendations included adequate revenue to support the ROP program in accordance with the requirements of the Clean Air Act. In the context of the legislative deliberations on the Department's Fiscal Year 2006 (FY 06) budget, the final agreement included legislative action to continue the then current air emissions fee schedule through September 30, 2007, with no increase in the fee schedule to fund the ROP program at an adequate level to meet the federal requirements. Beginning October 1, 2005, the Department has used available fund balance to support the on-board staff in the program. In order to manage within available funding for this program, the Department has not filled positions in the ROP program since October 1, 2005 as the positions have become vacant. Further, the Department has transferred several staff from this program to other programs and funding sources in the department. The result has been that as of September 2007, the staffing level for this program has declined to a level that may jeopardize the ability to meet the requirements of the Federal Clean Air Act.

It is important to note that the FY 08 Executive Budget recommendations included a request to increase the air emissions fees to support an adequate staffing level to meet the requirements of the Federal Clean Air Act. This fee increase would be effective September 30, 2007 and extend the current fees for four fiscal years. As of September 2007, the only action in progress by the Legislature on this issue is HB 5242 (passed by the House) that will extend the current level of air emissions fee for four fiscal years, with no support for the requested fee increase.

However, the Department disagrees that the ROP Program activities can be reduced below current levels. As noted in the Finding (page 16, lines 4 through 22), the Department has limited its activities related to the ROP Program in an effort to control costs. These limitations have resulted in the Department being unable to complete ROP renewals and modifications on a timely basis, in violation of Title 40, Part 70 of the Code of Federal Regulations. To further reduce ROP activities would significantly increase the likelihood that the Michigan ROP program would be found deficient by the U.S. EPA, and could jeopardize the program compliance status with the Clean Air Act.

If found deficient, resultant U.S. EPA actions may include the issuance of an informal warning or a formal Notice of Deficiency published in the Federal Register and rescinding of Michigan's delegated authority. If a Notice of Deficiency is published, additional ramifications to Michigan include withholding federal highway funds in areas not meeting the National Ambient Air Quality Standards until the deficiency is rectified. If Michigan delegation is rescinded, U.S. EPA would implement the ROP Program at the federal level, including assessing and collecting related fees. Fees collected by U.S. EPA would be established using U.S. EPA cost basis, and would not be based on the Michigan formula with caps for the largest facilities. For Michigan facilities, the result would likely result in a higher fee structure.

January 2008 Update

No action was taken on the fee package for the FY 08 budget. Based on the current formula, fee revenue for FY 08 is projected to be \$1,000,000 less than the FY 07 revenue. PA 75 of 2007 (effective September 30, 2007) extended the existing air emissions permit fee schedule to October 1, 2011. It is important to note that the air emissions permit fee schedule has not been increased since October 1, 2001.

As funding remains insufficient to fully implement the ROP Program, the Department continues to limit its activities related to the ROP Program in an effort to control costs. These limitations have resulted in the Department being unable to complete ROP renewals and modifications on a timely basis, in violation of Title 40, Part 70 of the Code of Federal Regulations.

Further cuts to other programs within the Department's Air Quality Division have been necessary as funding continues to decline.