

**Title V Operating Permit Program Evaluation
Tennessee Department of Environment and Conservation**

Division of Air Pollution Control

FINAL 2022 Evaluation Report



United States Environmental Protection Agency, Region 4

Air and Radiation Division

Atlanta, Georgia

Acknowledgements

The U.S. Environmental Protection Agency (EPA) Region 4 would like to acknowledge the dedication and commitment of the staff and management of the Tennessee Department of the Environment and Conservation (TDEC). TDEC staff addressed numerous challenges to keep their program operating smoothly during the pandemic, including remote work, public notice and comment, and public meetings and hearings.

The EPA Region 4 permitting staff have had considerable engagement with TDEC this year through this program evaluation, as well as engagement on several prevention of significant deterioration construction permits, and the EPA's new electronic permitting system. In every instance, the EPA found the management and staff to be very knowledgeable, professional, and dedicated to their mission. The EPA appreciates TDEC's cooperation and willingness to respond to our information requests.

Title V Operating Permit Program Evaluation Findings
Tennessee Department of the Environment and Conservation (TDEC),
Division of Air Pollution Control
FINAL 2022 Evaluation Report, September 2022

Executive Summary

Positive Finding(s)

- TDEC has a good record of timely issuance of title V initial permits, significant and minor permit modifications, issuing 12 significant modifications in the 2021 calendar year.
- TDEC permits are generally thorough and well-written and are reviewed by upper level permitting staff prior to issuance.
- TDEC upper level permitting staff is working to develop new trainings and example permit templates for new staff as TDEC has recently lost a significant amount of their experienced title V staff due to retirements and currently has a high number of new permit writers. Additionally, TDEC is working to encourage longevity through staff relationship building and securing more funding that will ensure more consistent cost of living increases and performance bonuses.
- TDEC includes a large portion of the permit records and compliance history of facilities on its online databases which makes it readily accessible to the public at any time. Additionally, TDEC emphasizes the importance of public participation by making it a main tab on its home page.
- TDEC has worked to find creative ways to ensure that its title V operating permits program remains sustainable, particularly considering diminishing billable emissions and increased costs. This includes the use of base fees, the option of being billed for actual and/or allowable emissions, and the periodic adjustment of the fee structure based on an annual financial review and stakeholder involvement.

Areas to Monitor

- TDEC has had a record number of construction permit applications this year and with recent staff turnover and a high number of new staff, TDEC has had to place some title V permits in an “intentional backlog” status. At the time of the FY22 program review, TDEC had a backlog, *i.e.*, applications in-house for eighteen (18) months or longer, of two (2) initial title V applications and seven (7) title V permit renewal applications. This represents less than five (5) percent of TDEC’s title V universe. TDEC should continue to track all permit issuance rates on their online database, SmogLog, and report any significant changes in the

number of permits being intentionally backlogged on their quarterly permitting calls with the EPA.

Action Items

- The EPA recommends TDEC, as soon as practicable, initiate another review of its fee structure to ensure that its title V program remains sustainable beyond FY23. With a trend of expenses outpacing revenue, there is concern that expenses will continue to outpace revenue and that the once sizeable forwarding balance of title V funds will significantly be reduced. It is particularly crucial to initiate this review soon since it is understood that the process of updating the fee structure must be approved by the Tennessee Air Pollution Control Board via rulemaking.

Recommendations

- Based on the EPA's in-depth review of fifteen (15) selected title V permits, the EPA is making recommendations to improve their statements of basis, add clarification to some general permit terms, consider alternatives to AP-42 emission factors, and to ensure that permits for sources with multiple title V permits properly reference all permits for that source. These recommendations are provided in Section VI, Selected Permit Reviews, and address the following topics: general permit conditions granting permit shields and requiring the prompt reporting of deviations from permit terms; the use of AP-42 emission factors; statement of basis considerations including the level of detail with respect to the facility's background, emission units, products, and providing information on the quantification of emission changes for minor modifications.
- The EPA encourages TDEC to take advantage of available resources mentioned in Section IV of this report and to seek out more opportunities for community outreach, particularly with respect to affected communities, in order to address any potential environmental justice (EJ) concerns.

I. Background

In response to the recommendations of a 2002 Office of Inspector General (OIG) audit, the EPA developed an action plan for performing reviews of title V programs for each air pollution control agency beginning in fiscal year (FY) 2003.

Following the initial title V program reviews, the EPA committed to conduct ongoing periodic title V program reviews for state and local programs that have at least 20 title V major sources within their jurisdiction. These follow-up evaluations may target specific areas of the program, follow-up items from previous evaluations, or overall implementation. In addition, at the request of the OIG, the EPA formally added a title V fee audit component in 2018.

The EPA Region 4 oversees eight state and 10 local air permitting authorities with title V operating permit programs. Eleven of these programs have at least 20 title V major sources (the remaining 7 programs have 10 or fewer sources). Resources allowing, the EPA Region 4 typically commences two title V program evaluations annually, with the goal of reviewing each of these eleven programs on a five to six-year cycle. The purpose of these evaluations is to ensure the ability of the permitting authority to carry out its duties and responsibilities, as required, to effectively run the title V program, to document good practices and to identify if there are any ways the EPA can assist the permitting authority in meeting their title V commitments.

The initial evaluation of TDEC's permitting program was conducted in July 2009, with a subsequent evaluation conducted in 2014. The 2014 program evaluation included a review of TDEC's internal electronic database which at the time, was being created. The EPA looked at the consistency of what documents various searches returned as well as the information included in the public comment period summary documents.

The 2021 TDEC program evaluation consisted of a review of staffing resources and internal management support, title V revenue and expenses, public participation, EJ in permitting, permit issuance rates, and a detailed review of fifteen (15) issued permits. This information was gathered through TDEC's response to the EPA's program evaluation survey questions, review of selected permit files, a virtual visit with interviews and discussions on April 20, 2022, a fee review based on additional information provided to the EPA for TDEC's FY19-FY21 budget cycles and fee rulemaking process, and permits issuance rates reported to the federal Title V Operating Permit System (TOPS) data through December of 2021. Preliminary results of our review of selected permit reviews were provided on April 19, 2022, and discussed with TDEC on April 20, 2022. TDEC was provided with our draft FY22 program evaluation report on August 12, 2022.

II. Program Overview and Staffing Resources

TDEC’s Division of Air Pollution Control is, “*directed to maintain the purity of the air resources of the State of Tennessee consistent with the protection of normal health, general welfare, and physical property of the people while preserving maximum employment and enhancing the industrial development of the State*” (<https://www.tn.gov/environment/program-areas/apc-air-pollution-control-home.html>). TDEC’s primary air permitting office is in downtown Nashville, Tennessee, but some staff are based in Knoxville, Tennessee. Sullivan County Tennessee is currently in nonattainment status with the 2010 Sulfur Dioxide National Ambient Air Quality Standard and is the only current nonattainment zone within Tennessee. TDEC’s air permitting regulations are codified at 1200-03-09 (Construction and Operating Permits) and TDEC’s Division of Air Pollution Control Regulations are included in Chapters 1200-03-01 through -37 and 0400-30-01 through -39.

TDEC has jurisdiction over the permitting of air emission sources throughout Tennessee, except for Davidson, Hamilton, Knox, and Shelby counties. Facilities located in these areas receive permits issued by the respective local air pollution control agencies except for state-owned facilities, which are permitted by TDEC.

The Permitting Section consists of four branches: Chemicals, Food, and Wood; Surface Coating and Combustion; Composite Materials; and Metal, Paper, and Landfills. Each section is responsible for issuing construction and operating permits for the facilities that fall into their source categories, reviewing reports not reviewed by field inspectors, and writing Notices of Violation. As of April 2022, TDEC is responsible for regulating 215 title V sources. The number of staff members that TDEC requires in each of their positions that support title V work to support the current title V workload are included in the Table below. TDEC is currently in the process of filling 2 vacancies, both will be working on title V as approximately 50 percent of their job duties.

TDEC staff required for FY2022 Title V workload

Functional Unit	FY2022 FTEs*
Administrative Services	3.7
Director’s Office	3.2
Small Business Assistance	2.0
Compliance Validation	4.0
Enforcement	2.5
Field Services	11.6
Permitting	13.8
Regulatory Development	3.7
Emissions Inventory and Special Projects	2.8
Quality Control (Monitoring)	2.5
Quality Assurance (Monitoring)	2.1
Total Title V FTEs	51.9

*FTEs = Full Time Equivalents

Primarily due to long-term employee retirement, TDEC has lost 13 staff members in the last 3 years, all of whom worked on title V in some capacity and generally spent about 50 percent of their workload on title V. As new permit writers have been hired to replace those that have left, TDEC's team of upper-level staff, Environmental Consultant III's (EC3s), is working to develop a training program. Currently, five of TDEC's permit writers have less than a year's experience and three additional permit writers have less than three years of experience.

In order to encourage longevity, new staff received their initial training in small groups to help them better connect with one another. TDEC's Board has approved two recent title V fee increases (one that went in effect in 2021 and another that will go into effect in 2023 in November) to ensure that currently filled positions will be adequately funded and that there will be funding to fill any positions that become vacant. Additionally, Tennessee's 2012 TEAM Act resulted in an improved employee performance evaluation system that more consistently provides cost of living increases and performance bonuses for all Tennessee employees, which has improved retention in the Division.

Finding(s): TDEC has recently lost a significant number of their experienced title V staff due to retirements and currently has a high number of new staff. New training is being developed and TDEC is working to encourage longevity through staff relationship building in addition to more funding to ensure more consistent cost of living increases and performance bonuses.

Recommendations: TDEC's upper-level staff should continue to develop their training program for permit writers and continue working to encourage staff longevity.

The EPA Follow-up: Along with our final report, the EPA Region 4 plans to provide TDEC with the EPA's Region 4 permit training checklist, based on the draft EPA Learning Management System (LMS) air permitting curriculum, as well as a list of recommended air permitting fundamental and core courses. The EPA's Office of Air Quality Planning and Standards retired the Air Pollution Training Institute (APTI) website in May 2021 and opened the new Learning Management System (LMS) website last year for state and local agencies. Permitting is one of the focus areas of the new curriculum. The old APTI content is still available for use by permitting authorities and Metro 4, Inc. and Southeastern States Air Resource Managers, Inc. (Metro 4/SESARM) to conduct in-person and web-based training. The new LMS site has a training calendar and registration portal for Metro 4/SESARM. Per the LMS training plan and permitting curriculum developed with the assistance of states/local agencies and the multijurisdictional air pollution control organizations, such as Metro 4/SESARM, the EPA is reworking old content and developing new content for the site. Courses currently available include *Intro to Permitting SI-460*, *Air Pollution Control Orientation SI-422*, and the new *Setting Potential to Emit in New Source Review SI-NSR201*. New courses in New Source Review/Prevention of Significant Deterioration (PSD) Applicability, Best Available Control Technology (BACT), Control Cost Analysis, and Plantwide Applicability Limits (PALs) are expected soon. The EPA provides Clean Air Act (CAA) section 105 pass-through grants to Metro 4/SESARM, which decides which in-person courses are offered. If TDEC would like a specific course offered, such as the intro to title V course offered by

SESARM-Metro 4 in 2020, the EPA suggests that TDEC let SESARM-Metro 4 know, so that the necessary courses are prioritized on the training agenda.

III. Title V Fees

Title V permitting authorities are required by section 502(b)(3) of the CAA, and the corresponding title V regulations at 40 CFR § 70.9, to collect permit fees from sources subject to title V sufficient to cover all costs necessary to develop and administer their title V permit programs. Permitting agencies must collect part 70 fees that are sufficient to cover both direct and indirect part 70 permit program costs. These fees must be used solely to cover the costs of the title V program and states must provide periodic demonstrations that they meet these fee requirements. 40 CFR § 70.9(d). Accordingly, air agencies (or state legislatures, as applicable) may need to revise fee schedules periodically to remain in compliance with the requirement that permit fees cover all part 70 permit program costs. Changes in costs over time may be due to many factors, including but not limited to: inflation, implementation costs, salary and healthcare cost increases, changes in the number of sources required to obtain part 70 permits, declining emission rates (especially reductions in coal-fired emission sources); complexity of permitting actions being performed; and promulgation of new emission standards, such as new Maximum Achievable Control Technology (MACT) standards, New Source Performance Standards (NSPS), and Waste Incineration rules under CAA sections 111, 112, or 129 respectively.

The EPA established a 2022 presumptive minimum fee of \$54.37 per ton of regulated pollutant. States may charge less than the presumptive minimum, and use alternative fee structures, if they provide a demonstration that they have adequate fees to fully cover the direct and indirect costs of adequately implementing and enforcing the title V program. 40 CFR § 70.9(b)(2) & (3). The title V regulations at 40 CFR § 70.9(b)(2)(i) indicate that the Administrator will presume that the fee schedule meets the fee schedule requirements of part 70 if the program would result in the collection and retention of an amount not less than the presumptive minimum. 40 CFR § 70.9(b)(1) & (2).

As previously stated, permitting authorities may charge less than the presumptive minimum and use alternative fee structures, if they provide a demonstration that they have adequate fees to fully cover the direct and indirect costs of adequately implementing and enforcing the title V program. 40 CFR § 70.9(b)(2) & (3). Depending on the nature of the emissions, TDEC collects both more and less than the presumptive minimum allowed by 40 CFR § 70.9(b)(2). Based on actual emissions, TDEC currently charges \$90 per ton for electric generating units (EGU) and \$64.20 per ton for non-EGU; based on allowable emissions, TDEC charges \$57 per ton for EGU and \$40.20 per ton for non-EGU.

As with other permitting authorities within the EPA's Region 4, TDEC reports a steady decline in billable emissions as new rules, cleaner fuels, and use of control technologies have reduced emissions. In addition, regulatory complexity of numerous sources, inspection requirements, and public engagement have increased. To counter this, TDEC has over time increased its billable

emissions rates. The latest fee increase (approved by the Tennessee Air Pollution Control Board on November 10, 2021) will take effect in FY23. TDEC reviews its title V fee structure annually for the next 2-year period in an effort to ensure adequate fees to fund its title V program.

From the completed survey and subsequent submittal of additional information, Table I, below, was created to summarize TDEC’s title V expenses, revenue, and billable emissions.

Table I: Summary of FY19-FY21 Title V Fee Expenditures, Revenue and Billable Emissions

REVENUE FOR TITLE V FUND	FY19	FY20	FY21	PROJECTED FY22	PROJECTED FY23
TOTAL REVENUE (\$)	6,381,900	5,808,093	6,090,095	6,458,848	7,275,123
TOTAL EXPENSES (\$)	5,703,359	5,577,539	6,321,925	6,835,162	7,600,000
TOTAL TITLE V ACCOUNT FUNDS REMAINING (\$)	1,591,187	1,821,741	1,589,911	1,213,597*	888,720*
TOTAL BILLABLE EMISSIONS (Tons)	113,626	116,835	100,911	-	-

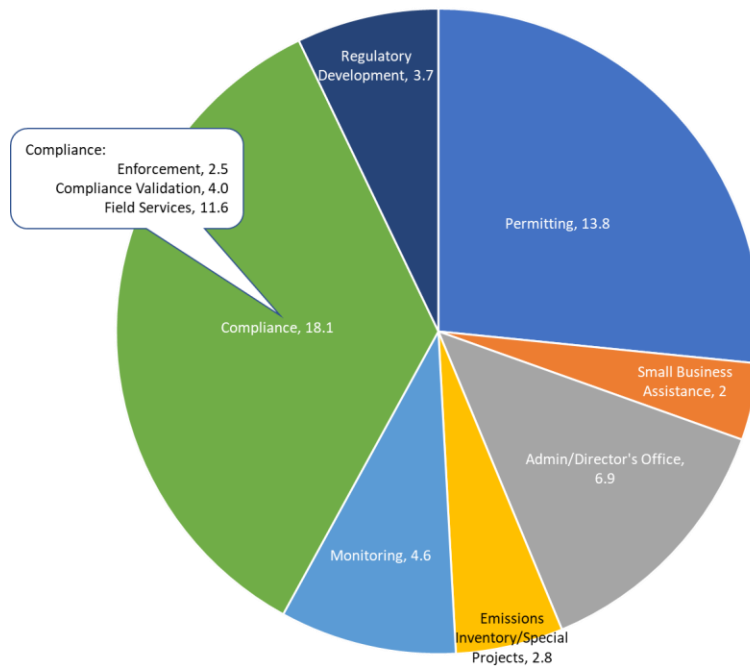
*Values calculated using projected revenue/expenses provided by TDEC.

To ensure that title V funds are used solely for the title V program, TDEC maintains a separate title V-specific account. Division staff enter time into two (2) databases: one is a statewide system (*Edison*) and the other is a department system (*SmogLog*). Both databases differentiate between title V, non-title V, and split activities. Non-personnel costs are charged to title V using specific accounting codes and pre-designated percentages. TDEC also funds small business assistance with title V fees, as required by section 507 of the CAA, as well as title V rule development, planning, emissions inventory, compliance, and monitoring. A breakdown of TDEC’s title V FTEs per program area provided by TDEC in its completed survey and verified during the April 20, 2022, interview, is shown below:

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TDEC Title V FTEs Per Program Area

Total FTEs: 59.1



From: TDEC Title V Program Evaluation Questionnaire, Submitted to EPA on December 1, 2021.

Findings: The EPA commends TDEC for its efforts to find creative ways to ensure that its title V operating permits program remains sustainable, particularly considering diminishing billable emissions and increased costs. This includes the use of base fees, the option of being billed for actual and/or allowable emissions, and the periodic adjustment of the fee structure based on an annual financial review and stakeholder involvement. However, based on Table 1, there appears to be a trend of expenses outpacing revenue such that a once sizeable forwarding balance of title V funds will significantly be reduced by the end of FY23. The concern here is that expenses will continue to outpace revenue and that fee schedule moving forward from FY23 will no longer meet the part 70 program requirements at 40 CFR § 70.9.

Recommendations: The EPA recommends TDEC, as soon as practicable, initiate another review of its fee structure to ensure that its title V program remains sustainable beyond FY23. This is particularly crucial since it is understood that the process of updating the fee structure must be approved by the Tennessee Air Pollution Control Board via rulemaking.

IV. Public Participation & Community Engagement

Title V public participation procedures apply to initial permit issuance, significant permit modifications, and permit renewals. Adequate public participation procedures (*see* 40 CFR § 70.7(h)) must provide for public notice, including an opportunity for public comment and public hearing on the draft permit. Draft permit actions may be noticed through email and on a website (e-notice) or through a newspaper of general circulation. The permitting authority must keep a record

of the public comments and respond to the significant issues raised during the public participation process.

TDEC offers a searchable online records depository where the public and regulated community can access electronic versions of documents related to air permitting actions and compliance actions at <https://dataviewers.tdec.tn.gov/dataviewers/f?p=19031:34001> and https://dataviewers.tdec.tn.gov/dataviewers/f?p=9001:610:97175517069709::NO::P610_SELECT_SEARCH:1. Additionally, TDEC posts public notices for proposed permitting actions and public hearings/meetings at <https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-air.html>. An online version of its air quality regulations, including the permitting requirements, are on its website at <https://www.tn.gov/environment/program-areas/apc-air-pollution-control-home/apc/air-pollution-control-regulations.html>. Records of permitting actions taken since April 2020 are also available through the public dashboard of the EPA's national Electronic Permits System database (EPS) at <https://www.epa.gov/caa-permitting/tennessee-proposed-title-v-permits>.

In addition to online notification, TDEC maintains a permit registry where individuals can request to be notified fifteen (15) days prior to the issuance of permitting actions in specified counties. Although TDEC has the authority to provide an option for individuals to be placed on a title V mailing list, no one to date has requested to be added to such a list. TDEC offers translation services upon request and notes that translation is also available through *Google Chrome*, which is specified as the “preferred browser” for viewing the “Public Participation Opportunities” tab on its web site. Public hearings are held if requested.

As a matter of practice, TDEC does not reach out to specific communities beyond the standard notification process. Enhanced outreach is not available at this time; however, the Technical Secretary of TDEC's Air Pollution Control Board may provide additional outreach if deemed appropriate. With respect to EJ, TDEC does have an in-house EJ coordinator responsible for the oversight of EJ-related activities. All TDEC staff receive required EJ training annually and permit staff have access to demographic information and other resources (via the EJ coordinator) necessary for making EJ assessments. This being said, TDEC “does not have the explicit authority to factor considerations that could implicate EJ into the permit process and does not have authority to incorporate community opposition to permitted or proposed activities beyond ensuring compliance with environmental statutes and regulations.” This interpretation by TDEC regarding its regulatory authority as well as its responsibilities relating to EJ are presented along with other general EJ guidance at <https://www.tn.gov/environment/program-areas/opsp-policy-and-sustainable-practices/opsp-title-vi-and-environmental-justice.html>.

Additional EJ resources can be found at <https://www.epa.gov/environmentaljustice>. The EPA's “Activities To Promote Environmental Justice in the Permit Application” (<https://www.federalregister.gov/documents/2013/05/09/2013-10945/epa-activities-to-promote-environmental-justice-in-the-permit-application-process>) summarizes additional useful tools for community engagement. Also, the EPA recently released “EPA Legal Tools to Advance

Environmental Justice” (<https://www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf>) in May 2022.

Findings: The EPA commends TDEC for the amount of information stored in its online databases that are available to the public. These databases include permit applications, communications with facilities and the EPA, draft/proposed permits, final permits, statements of basis, compliance reports, and notices of violation. All of this information makes the permit record and the compliance history of the facility readily accessible to the public at any time. The EPA also commends TDEC for emphasizing the importance of public participation by making it a main tab on its home page.

Recommendations: The EPA encourages TDEC to take advantage of available resources mentioned above and to seek out more opportunities for community outreach, particularly with respect to affected communities, in order to address any potential EJ concerns.

V. Permit Issuance Rates

The title V regulations require air permitting agencies to “take final action on each permit application, including a request for permit modification or renewal, within 18 months, or such lesser time approved by the Administrator, after receiving a complete application.” 40 CFR § 70.7(a)(2). Ensuring that title V permits are renewed and subject to public review every five (5) years is an important aspect of every title V program. Delayed permit issuance reduces the ability of the public to review and provide comments on a permit and can result in a delay in the incorporation of new applicable requirements.

As part of the program evaluation, the EPA reviewed TDEC’s title V program permit issuance rates submitted by TDEC through the EPA’s TOPS reporting database to ensure that permits are issued in a timely manner and renewed on a five-year cycle. TDEC reported timely issuance of eight significant permit modifications from July to December of 2021 and three significant permit modifications from January to June 2022. TDEC currently has three significant permit modification applications in backlog status.

At the time of the FY22 program review, TDEC had a backlog, *i.e.*, applications in-house for eighteen (18) months or longer, of 2 initial title V applications and 7 title V permit renewal applications. This represents less than five (5) percent of TDEC’s title V universe. TDEC uses their online database, SmogLog, to track all activities performed by the division, including permit issuance. With this system, permits can be intentionally backlogged, if needed to effectively manage permits that cannot be issued by regulatory deadlines. Once intentionally backlogged, the application is removed from the staff work assignments. After a pre-determined time, permits are taken out of this intentional backlog category and new issuance goals are set. The intentional backlogging of permits does not affect the regulatory clock.

As discussed earlier, TDEC currently has eight new permit writers with less than three years’ worth of experience. TDEC also prioritizes the issuance of construction permits. As a result of the high

number of new staff and a record number of construction permit applications TDEC has received recently, TDEC has had to place a number of title V permits in the intentional backlog status. As new permit writers continue to be trained, TDEC has a plan in place to eventually eliminate the title V backlog.

Findings: TDEC has a good record of timely issuance of initial permits and significant and minor permit modifications with the current backlog being a result of staff turnover and the prioritization of processing the high quantity of recent construction permit applications. TDEC and the EPA will continue to monitor progress on the backlog and discuss any significant changes in the number of permits that TDEC has intentionally backlogged on quarterly permit calls with the EPA.

VI. Selected Permit Reviews

As part of the program evaluation, the EPA reviewed fifteen (15) recent TDEC title V permitting actions to ensure consistency with title V requirements. These reviews are in addition to the real-time reviews that the EPA Region 4 conducts for targeted permit actions. The fifteen (15) permitting actions were selected as examples of different types of permitting actions (*e.g.*, initial permits, renewal permits, significant and minor modifications), different source categories, varying applicable requirements (*e.g.*, New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), case-by-case Maximum Achievable Control Technology (MACT), Compliance Assurance Monitoring (CAM), Best Available Control Technology (BACT), Prevention of Significant Deterioration (PSD) avoidance, etc.), and differing compliance history (*e.g.*, consent decrees). The EPA acknowledges that due to the small sample size, the Agency's comments may not be indicative of any systemic inconsistencies. In general, the EPA found TDEC's title V permits to be well written and consistent with title V regulatory requirements. The EPA's findings and general recommendations are below:

1. General Permit Conditions

- a) General permit condition A11(c) grants a permit shield even though in separate general conditions C1(f), C2(c), and C4(d) it is stated that such a shield does not apply to operational flexibility, 502(b)(10)s, and minor modifications. Having a general grant of a permit shield, such as the one in condition A11(c), without additional qualifying statements, could be misleading when a minor modification permit is issued. We recommend revising condition A11(c) to clarify that a permit shield is not granted to a permit that is issued as a minor modification.
- b) The title V regulations at 70.6(a)(3)(iii)(B) require the permit to incorporate and require "prompt" reporting of deviations from permit requirements, including the probable cause of such deviations, and any corrective actions or preventive measures taken. Even though general permit condition B8 requires prompt reporting of deviations and "a statement giving all pertinent facts," it does not specify that the reporting should include the probable cause and any corrective actions or preventative measures taken. We

recommend revising permit condition B8 to specify that the reporting should include the probable cause of the deviations and any corrective actions taken.

2. Use of AP-42 Emission Factors

- a) Please refer to EPA's [enforcement alert](#) dated November 2020 regarding the appropriate use of AP-42 emission factors. While not prohibited, the use of AP-42 emission factors to calculate a unit's emissions may not result in accurate emission estimates. It is noted that AP-42 factors are averages, often based on limited data, and therefore are not a good representation of the emissions from a defined emissions unit used under different operating scenarios. These factors were designed for large scale, area-wide attainment demonstrations and inventories, and not source specific assessments. The EPA recommends that the applicant use AP-42 emission factors in the emission calculations as the last resort or ensure that the estimates are conservative and include associated rationale in the permit record.
- b) The use of AP-42 emission factors for purposes of emissions inventory or fees is typically of no concern but it could be helpful to clarify in the permit record when AP-42 emission factors are being used in that way.

3. Sources with Multiple Title V Permits

In instances when a facility has multiple title V permits, the permits should reference each other, particularly if one supersedes another ([see](#) Eastman). Perhaps a table/spreadsheet can be created, maintained, and referenced that lists the various permits as well as the respective issuance dates. Such a table/spreadsheet could also list all emission units, the applicable emission limits, and which permits establish the respective limits.

4. Statements of Basis (SOB)

- a) During our review of the permit SOBs, we observed varying levels of detail and completeness across permitting actions. We recognize that this may be the result of having new, less experienced permit writers and varying degrees of internal reviews and it is our understanding that TDEC is in the process of making improvements to their SOBs. EPA has provided guidance regarding the content of an adequate SOB. *See* [SOB Guidance Document](#). In addition, the following petition responses provide guidance regarding what should be included in the SOB: [Onyx Environmental Services](#); [GP Port Hudson](#); [Doe Run](#). Some specific recommendations include, providing more information on the facility's background, emission units and products in Section I.A. of the SOB, and for minor modifications, providing information on quantification of emissions changes to demonstrate that the change is not a title I modification and stating why it qualifies as a minor modification.
- b) It is our understanding that TDEC's "Title V Permit Statement" document is intended to serve as the "statement of basis" required by 70.7(a)(5) and the "permit application

summary form” required by 70.8(a) in place of the complete permit application. We recommend referring to our summary form guidance related to the initial title V program implementation agreements, to ensure that adequate information is included in the SOB to address the application summary, see Appendix A. For example, providing a summary table of actual emissions and potential emissions rather than just stating “yes/no” on the major source status table, might be more representative of what is included in the title V permit application.

5. Observed Positives

- a) TDEC’s online database is robust and helpful.
- b) Citations of origin/authority of terms/conditions are typically included in permits.
- c) Permits are well organized and easy to follow. Format of permits (*i.e.*, inclusion of a compliance narrative) makes it easier to understand designated compliance method(s).
- d) Generally, SOBs include a good level of detail with respect to permitting history, including clearly identifying what has been changed by various modifications and administrative amendments (*e.g.*, Waupaca significant revision includes an informative background summary of PSD projects).

VII. Conclusion

Based on the permit files reviewed, title V survey results, TOPS data, fee documents, interviews and discussions, and follow-up information received, the EPA concludes that:

- TDEC has an excellent grasp of the requirements of title V and is continually working to find impactful ways to increase their staff’s ability to meet all the varied program elements of title V. TDEC has committed to develop a new program to train new staff. Reviews of TDEC permits noted that they are generally complete and well written. Based on the EPA’s in-depth review of a selection of fifteen (15) permits, the EPA has made recommendations to improve their statements of basis, add clarification to some general permit terms, consider alternatives to AP-42 emission factors, and to ensure that permits for sources with multiple title V permits properly reference all permits for that source.
- The EPA acknowledges the ongoing nationwide challenge of maintaining a fully funded title V program with significantly declining emissions and fees. Analysis of TDEC’s recent title V funds show that there appears to be a trend of expenses outpacing revenue such that a once sizeable forwarding balance of title V funds will significantly be reduced by the end of FY23. The EPA recommends TDEC, as soon as practicable, initiate another review of its fee structure to ensure that its title V program remains sustainable beyond FY23. Section 502(i) of the CAA and the corresponding part 70 rules provide the EPA with the authority to address inadequacies such as insufficient fees through the issuance of a notice of deficiency (NOD). The CAA and part 70 rules also provide a timeframe in which an issued NOD must be adequately addressed as

well as specify the consequences for failing to do so. *See* 42 USC § 7661a(i) and 40 CFR 70.10(b).

- The EPA Region 4 is committed to providing any needed assistance with respect to permit reviews and public engagement, including permitting projects with EJ implications. Specifically, the EPA Region 4 is committed to providing prompt feedback to TDEC regarding any rule and guidance interpretation inquiries and any general or specific permitting questions raised, and to keep TDEC informed of any future agency actions, such as rulemaking, that may have an impact on permitting programs.

Permit Application Summary Form

General Facility Information

Facility name	AFS(9-digit) or CDS (10-digit) Plant ID
Facility address	Date application received
Source description	Application number
SIC code of major product	Permit number(s)

Application Type/Permit Activity

<input type="checkbox"/> Initial issuance	<input type="checkbox"/> Permit renewal
<input type="checkbox"/> Significant modification	<input type="checkbox"/> Administrative Amendment
<input type="checkbox"/> Minor Modification	<input type="checkbox"/> General permit

Facility Emissions Summary

Pollutant	Actual (tpy)	Potential (tpy)
PM		
SO ₂		
NO _x		
CO		
VOC		
LEAD		
Individual HAP (by CAS)		
Total HAPs		

Compliance Summary

Source is out of compliance Compliance schedule included
 Compliance certification signed

Applicable Requirements list

NSR NSPS SIP CAM
 PSD NESHAPS BART Other

Miscellaneous

- Acid rain source
- CAIR source
- Source subject to 112(r)
- Source requested synthetic PTE limit to avoid major source requirement (e.g., PSD, MACT)
- Source applied for federally enforceable emissions cap
- Source provided terms for alternative operating scenarios
- Source subject to a MACT standard
- Source requested case-by-case 112(g) or (j) determination
- Source applied for a plant-wide applicability limit (PAL)
- Source requested terms for operational flexibility
- Source requested streamlining of multiple applicable requirements
- Source requested monitoring plan to establish periodic monitoring
- Application proposes new control technology
- Certified by responsible official
- Diagrams or drawings included
- Confidential business information (CBI) included