



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Ms. Laura Crowder
Director, Division of Air Quality
West Virginia Department of Environmental Protection
601 57th St. SE
Charleston, West Virginia 25304

Dear Ms. Crowder,

Enclosed is the final report for the West Virginia title V program evaluation conducted by my staff this summer. I would like to thank you, and your staff for their cooperation and support in conducting the evaluation in a remote format. I look forward to our continued collaboration and success in the Title V program.

If you have any questions regarding the report, please do not hesitate to contact me at 215-814-2178, or have your staff contact Gwendolyn Supplee at 215-814-2763 or supplee.gwendolyn@epa.gov.

Sincerely,

CRISTINA
FERNANDEZ

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CRISTINA FERNANDEZ
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Cristina Fernández, Director
Air & Radiation Division

Enclosure

cc: Ms. Carrie McCumbers



Clean Air Act Title V Program Evaluation Report
West Virginia Department of Environmental Protection – FY2021
Prepared By: EPA Region 3
September 7, 2021

I. Executive Summary

For fiscal year 2021, the Environmental Protection Agency Region 3 (EPA) evaluated West Virginia Department of Environmental Protection's (WVDEP) title V permit program.¹ Due to the COVID-19 pandemic, the evaluation was conducted via remote means. Areas of review included permit preparation and content, public participation and outreach, permit issuance, and staffing and resources.

EPA found that WVDEP's Division of Air Quality (DAQ) prepares title V permits in accordance with title V rules and regulations. West Virginia's implementation of electronic resources, extensive draft permit review, and collaboration result in the development of high-quality permits. The DAQ does continue to face challenges with respect to revenue planning based on the current structure of its current title V fee collections.

II. Introduction

Title V program evaluations are part of EPA's routine oversight of state programs with the intent of identifying best practices, areas for improvement, and ways in which EPA can improve its oversight role. DAQ is responsible for Clean Air Act permitting for all of West Virginia. WVDEP does not have any regional air permitting offices, and the staff/management are located in one central administrative office, DAQ, located in Charleston, West Virginia. Historically, EPA has conducted title V program evaluations in person with onsite interviews of air permit managers (APMs). However, due to the travel constraints of the COVID-19 pandemic, the format of this evaluation was modified. This evaluation was conducted through remote means of written questionnaires, virtual meetings, and email correspondence. Areas evaluated include title V permit preparation and content, public participation and outreach, permit issuance, and resources and internal management support.

III. Evaluation

To gather information, EPA provided Ms. Carrie McCumbers, the DAQ APM, with a questionnaire on March 4, 2021 (Appendix A). Written responses were requested and received by April 15, 2021. On June 16, 2021, EPA's Mary Cate Opila (Air Permits Branch Chief), Gwendolyn Supplee (West Virginia Air Permits Contact) and Matthew Willson (Permit Reviewer) held a follow up virtual meeting with Ms. McCumbers. The content of this report is based on the written questionnaire responses, the follow up virtual meeting with DAQ, and publicly available information on WVDEP's website, as well as EPA's experience working with DAQ's title V permit program during routine oversight. File review was not conducted during the evaluation process because EPA routinely reviews draft and proposed title V permits prepared by DAQ.

¹ Approved 10/03/2001 at [66 FR 50325](#).

A. Title V Permit Preparation and Content

Title V Initial permit applications are submitted to the DAQ by sources determined to be subject to title V according to the applicability requirements of West Virginia's regulations found at 45CSR§30-3. Applications are submitted on forms developed by DAQ and are available publicly through the WVDEP website. Application content will vary depending upon the type and nature of the facility's operations. Each application is evaluated using standard engineering principles and practices associated with the facility operations to ensure the provisions of any appropriate state rule or federal regulation are addressed in the application. A Completeness Determination Checklist is used to determine administrative completeness for all initial and title V renewal applications. This checklist is also available on the DAQ website for applicants to use prior to submitting a title V application. This ensures that all applicants know which elements are required for administrative completeness and allows them to check over their application to see if everything has been included prior to submittal. Within 60 days of receipt, DAQ determines if the application is timely and administratively complete. After the permit application is deemed to be administratively complete, the assigned permit writer begins the technical review process. This review includes gathering information on the facility, emission units, control equipment, emission points, potential emissions, raw materials, products, and applicable regulatory requirements.

After technical review is complete, the permit writer then prepares the draft permit and permit fact sheet. DAQ utilizes templates for its permits and fact sheets to ensure that all required elements are included. Following internal review by the APM, DAQ shares a draft permit and fact sheet with the source for review prior to public notice, and then permit is noticed for public comment for 30 days. DAQ utilizes a concurrent review process, where the draft permit is provided for the required 30-day public comment and EPA review for its' 45-day review period at the same time. If significant comments are received by DAQ during the 30-day public comment, the permit is no longer considered to be under concurrent review, and the permit undergoes a separate 45-day EPA sequential review period as a proposed permit.

Under sequential review, a response to comments document is developed and included with the proposed permit for EPA's review. If comments received during concurrent review are not significant based on the nature of the comments, a response to comments document shall still be included in the final issued permit. Following the end of the comment period, the permit is issued, distributed to relevant parties, and posted to the WVDEP website.

DAQ has developed detailed Standard Operating Procedures (SOPs) for the following permit actions which are a key tool in developing permits:

- Title V Permitting – Initials
- Title V Permitting – Renewals
- Title V Permitting – Significant Modifications
- Title V Permitting – Minor Modifications

These SOPs standardize the permitting process and provide a list of steps and procedures that must be followed. DAQ has boilerplate forms for permits, fact sheets, notices, and permit correspondence which

are accessible and used by all title V engineers. Additionally, all permitting actions are reviewed by the title V program manager. The title V program manager reviews for major issues such as rule/regulation applicability and monitoring, testing, recordkeeping, and reporting, as well as minor issues such as typos, grammar, and inconsistencies. The title V program manager reviews all permitting actions at pre-draft, proposed (if sequential review), and final issuance. These SOPs are annually reviewed and updated by the title V engineers and the title V permitting secretary. The final SOPs are shared and discussed with the entire title V group. Having the staff annually reviewing these SOPs promotes team building, allows less experienced permit engineers to ask questions about the process and procedures, and allows discussions regarding streamlining and process improvements. It also prompts engineers to re-familiarize themselves with the process and make sure they are up to date with any changes. EPA considers this to be a best practice undertaken by DAQ and encourages continuation of the annual review of SOPs.

B. Public Participation and Outreach

When DAQ receives a permit application, DAQ enters it in WVDEP's electronic document management system, ApplicationXtender (AX), which is accessible to the public. The draft/proposed comment period begins when a Class I legal advertisement is published in a newspaper, in general circulation for the county where the emissions will occur. When a permit is at draft/proposed, the permit, permit application, fact sheet, and notice are provided on the DAQ's website with the comment period beginning and ending dates documented in the fact sheet and also on DAQ's section of the website, <https://dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx> (accessed on July 28, 2021).

West Virginia's rules at §45-30-6.8.a.3 also require DAQ to develop a mailing list by (1) including those who request in writing to be on the list, (2) soliciting persons for "area lists" from participants in past permit proceedings in that area, and (3) notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in publications such as regional and state-funded newsletters or environmental bulletins. There are links in various locations on the WVDEP website for public notices. On WVDEP's main website, there is a link that allows the public to join a WVDEP area mailing list to receive emails of public notices for specific counties, located at <https://dep.wv.gov/insidedep/Pages/DEPMailingLists.aspx> (accessed on July 28, 2021).

If public comments are received, all public comments are addressed in the proposed permit and fact sheet (if sequential review is required) and in the final permit and fact sheet. The fact sheet contains a Statement of Basis section to address comments received. At the time the final permit is issued, DAQ sends a response to the commenter which addresses their comments and also sends a copy of the final permit and fact sheet.

WVDEP is in the process of hiring a permanent Environmental Justice coordinator and evaluating procedures for incorporating environmental justice concerns into its public notices for affected communities.

C. Permit Issuance

On October 27, 2005, DAQ and EPA entered into an agreement memorialized in a Memorandum of Understanding (MOU) regarding DAQ's implementation of its title V operating permit program. In the MOU, DAQ agreed to, among other things:

- Issue 100 percent of new initial permits within 18 months of receipt of a complete application;
- Issue 75 percent of renewals within 18 months of expiration date;
- Issue 75 percent of significant permit modifications within 18 months of receipt of a complete application; and
- Cooperate with EPA during any title V operating permit program evaluation and collaboratively determine how best to implement mutually agreed upon measures that would improve program performance.

DAQ is doing a commendable job in issuing permits in a timely fashion. At the time of the program evaluation meeting, there was only one permitting action – a significant permit modification for Eastern Gas Transmission & Storage, Inc. – Hastings Extraction, that was past the MOU Target Issue Date. At the time of the program evaluation meeting, the APM indicated that the project was on hold by the facility, and DAQ was requested to hold the processing of the title V permit modification. Since the meeting, the R13 permit for project was issued, and WVDEP has begun review of the title V significant permit modification.

There is no existing permit backlog. For purposes of this discussion, initial title V permits and title V permit renewals with applications older than 18 months are considered backlogged (note: this does not include significant modifications). As of July 2021, there were no active permit applications older than 18 months.

D. Resources and Internal Management Support

Fees

The Clean Air Act requires WVDEP to collect adequate fee revenue to cover the costs of its title V permit program. Title V fees in West Virginia are based on emissions (\$/ton), with approximately 60% of title V fees generated in West Virginia paid by the top ten emitting sources. Nine of the top ten sources are coal-fired electric generating units (EGUs), for which utilization is projected to decrease. Recently, one of the coal-fired EGUs which is in the top ten has announced it is scheduled to shut down in 2028, and news reports indicate that at least two others may also shut down in 2028 as well. As utilization decreases, emissions will decrease, as will title V revenues. As these plants cease to be economically viable, they will shut down and DAQ may begin to experience a shortfall in revenue to cover the costs of implementing its title V permit program.

In 2020, DAQ convened a stakeholder group to assist in drafting proposed changes to West Virginia's title V rule to incorporate a sustainable and equitable fee structure. The goal of the stakeholder group

was the development of a fee structure which would be able to adjust to projected decreases in title V revenues as changes in regulated sources occur in the coming years. The workgroup failed to reach consensus, and DAQ is still considering options for a sustainable and equitable fee structure that can adjust to the projected changes in emissions.

Because West Virginia's Legislative process takes time, planning and options identification should be occurring now to ensure a funding shortfall does not occur. In order to keep up with rising expenses and lower revenue from emissions fees, DAQ should continue to investigate options to increase their emissions fees or consider charging additional fees such as application fees, operating permit maintenance fees, and/or an hourly fee based on the complexity of the permit being issued.

Staffing

In 2020, title V staffing decreased from 7 to five permit writers due to retirements and/or staff taking other positions within WVDEP. Efforts have been underway to achieve staffing levels of eight FTE for permit writers. These efforts include sharing one FTE between new source review (NSR)/title V for larger chemical plants and other complex facilities and conducting recruitment to fill two different position classifications – Technical Analysts and Engineer. DAQ has encountered challenges in filling Engineer positions, so DAQ is in the process of trying to re-classify both of the positions to Technical Analysts. For the past several years, the title V workload has remained steady without a need to increase the number of permit engineers above eight to meet statutory deadlines. As indicated above, DAQ does not have any permit backlogs which would be indicative of staffing shortages. If workload increases such that statutory deadlines are not being met, DAQ would reassess the number of title V permit writers needed for the program at that time.

Resources and Internal Management Support

The title V program manager utilizes monthly reports to internally track resources and permit deadlines to meet statutory deadlines. Monthly reports consist of the title V goals for the upcoming month, accomplishments for the previous month, and two reports generated from Airtrax for the previous month entitled “Title V MOU Goals” and “Title V Modifications.” The “Title V MOU Goals” report is used for tracking initial permits, permit renewals, and significant modifications. The report includes each application’s received date, complete date, DAQ target issue date, MOU target issue date, date the pre-draft was submitted to the title V program manager for review, draft/proposed permit issue date, and issue date. The “Title V Modifications” report is used for administrative amendments, minor modifications, and permit reopenings. This report includes the application’s received date, the date the pre-draft was submitted to the title V program manager for review, the proposed permit issue date, and the issue date. Prior to distribution of the reports, the title V program manager checks the reports to verify that up-to-date information has been entered by the title V engineers, checks to see if any permits are in danger of exceeding the DAQ target issue date or MOU target issue date, and checks each title V engineer’s goals to see if they have a plan to meet their deadlines. If there are any permits in danger of not meeting the deadlines, a follow up is conducted with the title V engineer to determine why issuance is being held up and when/how the problem can be resolved. The title V program manager also uses the “Title V MOU Goals” report to make sure that a completeness determination has been made within the statutory deadline.

Additionally, an internal tracking spreadsheet is used by the title V program manager which includes all active title V permits, their issue date, renewal due date, and expiration date. It also shows which facilities have multiple title V permits. It indicates if a permit is an initial permit, or which renewal it is (1st, 2nd, 3rd, etc.). There is also a page to list all title V permits which have been made inactive and the reason the source no longer has a title V permit. This spreadsheet is also used at the beginning of each month to generate a list of title V permit applications that are due in three months. The title V permitting secretary uses this list to send renewal reminder letters to the facilities. This helps ensure that renewal applications are received by their due dates.

As evidenced by DAQ's timely issuance of permits within the MOU and statutory deadlines, these reports and spreadsheets are useful tools to plan staff workload and to track title V permits and their status.

Training

As identified earlier in this report, DAQ has comprehensive SOPs for reviewing initial permits, renewal permits, significant modifications, minor modifications, and administrative amendments. As part of ongoing training, the title V staff reviews the SOPs annually and makes recommendations for modification as necessary based on experience and input from each other. DAQ also has SOPs for electronic filing/naming of permitting documents and title V filing procedures. New employees are provided these SOPs. New and current employees are directed to online courses at EPA's Learning Management System (LMS). DAQ also has a training coordinator who sends notifications of upcoming courses such as those available through and hosted by MARAMA (Mid Atlantic Regional Air Management Association) and LMS. These trainings are typically low or no-cost classroom trainings, however, due to the COVID-19 pandemic, most trainings are still being offered virtually.

IV. Conclusions

EPA would like to thank DAQ for its responsiveness and cooperation throughout the evaluation process. EPA appreciates DAQ's flexibility in accommodating this year's alternative format.

Below is a summary of findings: both best practices and areas for improvement. Although areas for improvement are identified in this report, they do not amount to a determination of a finding of deficiency. Additionally, we have not included dates by which the areas for improvement need to be completed, as the activities do not amount to a determination of a finding of deficiency.

A. Summary of Best Practices

Timeliness for Permit Issuance

DAQ has made major improvements since its first program evaluation in 2005-2006 with respect to issuing permits in a timely manner. As noted above, currently there is only one permit that has not been issued within the MOU guidelines, and that is due to circumstances beyond DAQ's control as the facility had placed the project on hold. Recently, the R13 permit was issued and DAQ has since begun reviewing the title V significant modification permit application. DAQ utilizes a number of reports and tracking spreadsheets that have helped plan workload and should be continued to be utilized as they have resulted in major improvements to the timely issuance of permits.

Resources

DAQ has robust SOPs that have resulted in the issuance of quality, well-written permits. DAQ has made good use of staff engagement and peer review of these SOPs as well. DAQ staff has been very responsive at addressing EPA questions and comments as they come up during the course of EPA's review of West Virginia draft/proposed permits. DAQ should ensure that as new permit writers are onboarded, that they take advantage of training opportunities as well as engagement with more seasoned permit staff.

B. Areas for Improvement**Title V Fees**

The Clean Air Act requires that fee revenue is adequate to cover the costs of its title V permit program. DAQ has indicated that it can take up to two years to propose and enact new legislation to increase existing emission fees and/or propose new additional fee types. Given that the majority of fees used to run the program currently come from large coal-fired EGUs, and that several of these coal-fired EGUs have indicated that they may close as early 2028, it is imperative that DAQ continue to work towards analyzing and executing changes to their permitting fee structure in anticipation of declining future revenues.

MOU

The MOU between EPA and DAQ has not been revisited since it was signed on October 27, 2005. There have been changes in EPA's divisional structure and federal rule changes such that the MOU may no longer accurately reflect the current interactions between EPA and DAQ. EPA recommends that EPA and DAQ work together to review and possibly revise the MOU.

Appendix A
FY 2021 WVDEP Title V Program Evaluation
Questionnaire

A. Title V Permit Preparation and Content

1. Please describe the permit development process, from receipt of an application to final issuance.
2. Please describe efforts DEP has made over the last five years to improve the efficiency of internal processes for issuing title V permits: revisions of internal procedures and policies, standard operating procedures, etc.
3. Please describe any quality assurance processes for title V permits.
4. Please describe the process for developing monitoring requirements within title V permits.
5. Are there any new rules in the title V program since 2014?

B. Public Participation and Outreach

1. Please describe the process for public participation from receipt of an application to final permit issuance.
2. When are hearings held? How does DEP decide whether or not to hold a hearing?
3. Please describe how DEP interacts and engages with the public when comments are made.
4. How does DEP engage with environmental justice communities as related to title V permit issuance?

C. Permit Issuance

1. Do any of the following impact ability to issue timely title V permits (initial or renewal)?
 - State Implementation Plan (SIP) gap/backlog
 - Pending revisions to underlying NSR/Prevention of Significant Deterioration (PSD) permits
 - Compliance/enforcement issues
 - EPA rulemaking
 - Lack of EPA guidance
 - Competing internal priorities
 - Other (please specify)

2. Please describe the permit appeals process. How often are title V permits appealed? Does WVDEP have a process to inform EPA when permits are appealed?

D. Resources and Internal Management Support

1. Please describe tracking systems used for the title V program. How do the tracking systems contribute to the efficiency of your title V program?

2. Please describe current staffing levels. Are staffing levels sufficient in relation to permitting workload? What is the process for determining sufficient staffing?

3. Title V Fees²

- a. Has your title V fee structure changed since EPA's fee audit in 2019?
- b. How does DEP track title V fee usage and ensure that title V fees are used in accordance with 40 CFR Part 70 fee requirements?
- c. Are there any incidences since WV FY2017 where fees were not used in accordance with 40 CFR Part 70 requirements?
- d. Are fees adequate to fund title V activities? Are fees in future years expected to be adequate to fund title V activities?
- e. Describe any recent or anticipated activities DEP has taken to ensure title V fees are adequate.

4. Please describe the process for ensuring new and current permit writers have access to adequate training.

² Note: EPA conducted a comprehensive fee evaluation in 2019 and developed a corresponding report (fee report). The answers to these questions can reference the fee report (if the information in the report is still accurate), or can provide an update to the information in the fee report.

Location of fee report: https://www.epa.gov/sites/production/files/2019-08/documents/wv_title_v_permit_fee_evaluation_report_8_5_19.pdf