



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

March 16, 2022

Commissioner Shawn LaTourette
New Jersey Department of Environmental Protection
401 E. State Street, CN 027
Trenton, New Jersey 08625-0027

Dear Commissioner LaTourette:

On January 14, 2021, the United States Environmental Protection Agency (EPA), Region 2 Office, conducted the fifth program evaluation of New Jersey's Title V Operating Permit Program. The bases for EPA's evaluation are the requirements of title V of the federal Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, EPA's regulations implementing the Clean Air Act, which are codified at 40 C.F.R. part 70, and New Jersey's Title V Operating Permit Program as approved on November 28, 2001. Due to the extraordinary circumstances imposed by the COVID-19 pandemic, this audit precluded on-site visits and face-to-face interviews and was conducted via conference calls and video conferencing. On September 24, 2020, EPA initiated this audit with a letter of inquiry.

This most current audit focused on the progress New Jersey has made in addressing issues and concerns EPA identified in the 2016 audit and determining if new implementation issues have surfaced in the past few years. EPA is pleased to see that many of the 2016 issues have been resolved. The comprehensive responses provided to the issues/questions presented in our September 24, 2020 letter and subsequent inquiries contributed to the completion of the attached audit report.

We would like to note that the NJDEP staff was helpful in providing EPA with the necessary information to complete this audit. I would especially like to thank Ken Ratzman and his staff for their assistance. If you have any questions regarding this report, please have your staff contact Mr. Kirk Wieber, Chief of our Air Programs Branch, at (212) 637-3381.

Sincerely,

A handwritten signature in black ink, appearing to read "LFG", with a horizontal line extending to the right.

Lisa F. Garcia
Regional Administrator

Enclosure

cc: Francis Steitz

Fifth Audit of the New Jersey Title V Operating Permit Program
by the U.S. Environmental Protection Agency

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I. Introduction

As part of its oversight responsibility, the U.S. Environmental Protection Agency (“EPA”) concluded the fifth audit of New Jersey’s Operating Permit Program on January 14, 2021. This audit began with a letter to the New Jersey Department of Environmental Protection (“NJDEP” or the “Department”) dated September 24, 2020, providing the scope of the audit with a list of issues to be discussed and resolved. *See Attachment A.* The audit focused on resolving outstanding issues that remained from the previous 2016 program audit as well as new issues that EPA has identified during its ongoing oversight review of select permits. To date, following EPA’s requests that certain changes be made to New Jersey’s implementation of its Operating Permit Program and NJDEP’s agreement to implement them, many of the outstanding issues are now resolved. *See NJDEP response letter, Attachment E.* These issues and proposed solutions at resolving them are further detailed below.

II. Changes to Resolve “Supersession” Issue

In 1997, EPA determined that any state rule containing the word “supersede” in the rule text was problematic to 40 C.F.R. Part 70 program implementation because the word “supersede” could be interpreted as rendering preconstruction permits non-existent or invalid for a title V facility. This came to be known as the “supersession issue.” EPA clarified that title V permits may not supersede, void, replace or eliminate the independent enforceability of terms and conditions of State Implementation Plan (“SIP”)-approved permits.

In a March 29, 2000 letter and in subsequent audits, EPA identified language known as “supersession” language in New Jersey’s Operating Permits Rule, N.J.A.C. 7:27-22. EPA advised NJ to discontinue the use of supersession language that suggests that the title V operating permit will replace or supersede a previously issued “preconstruction permit” in a state operating permit program. While NJDEP clarified that New Jersey title V permits do not supersede, void, replace or eliminate preconstruction permits issued under the New Jersey SIP, rule revisions to this effect were not completed until after the 2016 audit. In addition to revising the text of N.J.A.C. 7:27-22.33, which had the “supersession” language, EPA also recommended changing the title of this rule provision. The previous title, “Preconstruction review,” created the erroneous impression that preconstruction reviews are conducted under the Operating Permit Rule. Therefore, to eliminate any confusion, EPA recommended changing the title of N.J.A.C. 7:27-22.33 from “Preconstruction review” to “Consolidated preconstruction and operating permit review.”

Effective December 23, 2017, New Jersey amended its air permitting rule at N.J.A.C. 7:27-22.33(b) and (c). The rule now provides that applicable preconstruction requirements and the terms and conditions in the preconstruction permit are consolidated, not superseded, into the operating permit. The title of N.J.A.C. 7:27-22.33 has been changed from “Preconstruction review” to “Consolidated preconstruction and operating permit review.” Further, New Jersey SIP rules found at N.J.A.C. 7:27-8.2 (b)(1) and (2)

were also amended to require that the terms and conditions of any preconstruction permit and operating certificate be consolidated in the operating permit. *See Attachment B*. The supersession issue has been resolved.

III. Changes to Clarify Existing Rule Provisions

EPA became aware of a discrepancy between the language of N.J.A.C. 7:27-22.9(d) and the requirement of 40 C.F.R. § 70.5(c)(8)(iii)(C). N.J.A.C. 7:27-22.9(d) which states that where the facility “is not subject to an order or consent decree for the violation [of any applicable requirement], the owner or operator of the facility may request an administrative consent order from the Department to address the violation ” This language suggests that an administrative consent order is not contemplated as an element of the compliance plan in the operating permit and appears to be at odds with 40 C.F.R. § 70.5(c)(8)(iii)(C), which requires an administrative order to be reflected in the source’s compliance schedule. 40 C.F.R. § 70.5(c)(8)(iii)(C) provides that the “compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.” It is incontrovertible that 40 C.F.R. § 70.5 contemplates the compliance schedule to include the terms contained in administrative consent orders. However, New Jersey’s Operating Permit Rule at N.J.A.C. 7:27-22.9(d) suggests otherwise.

On December 23, 2017, New Jersey added new language to N.J.A.C. 7:27-8.3(k) and N.J.A.C. 7:27-22.3(uu) to indicate that it will note in the preconstruction and operating permits any requirements that are derived from a consent decree between the permittee and the EPA, and that the Department will not change those requirements without first notifying the EPA. The new language further stipulates that if the facility is subject to an order, including an administrative consent order or consent decree, then the facility’s compliance schedule must be incorporated into the facility’s operating permit and be at least as stringent as the order or consent decree. *See* N.J.A.C. 7:27-22.9(c)(5)(ii). New Jersey’s additions ensure that consent decree provisions incorporated into the operating permit are not changed without notification to the EPA. *See Attachment C*. This issue has been resolved.

IV. Pre-notification of Rule Revisions

Although EPA recognizes that the Department strives to keep EPA informed of any plan to revise its title V rules on an ongoing basis and to share potential rule changes with the agency, EPA noted that, in some instances, it has not been made aware of such changes early enough in the rule adoption process to, in effect, have an opportunity to offer comments or suggestions before rule adoption. During the 2016 audit, New Jersey agreed to keep EPA informed of any rule revision plans on an ongoing basis and share potential rule changes to engage EPA at the beginning of the state rulemaking process.

Following the May 6, 2016 audit, the Department remedied this issue by sending timely notifications to EPA requesting approval of ongoing revisions to its title V operating permit program. New Jersey submitted for EPA approval various amendments via separate letters dated November 29, 2017, November 30, 2017, and August 22, 2018, addressed to EPA Region 2’s then-Regional Administrator, Hon. Peter D. Lopez. Further,

on May 23, 2019, EPA received an additional notification from Francis Steitz, Director of the NJDEP Division of Air Quality, to John Filippelli, then-Director of the Clean Air and Sustainability Division of EPA Region 2, relating to additional proposed revisions to the NJDEP's Operating Permit Program. These letters are included in Attachment D. This issue has been resolved.

V. Rule Citation in Compliance Plan

A. SIP Rules

Many operating permits cite N.J.A.C. 7:27-22.16(a) and (e) of the "Operating Permits" rules as the underlying authority for imposing limits on emissions or operating parameters. This practice goes back to the beginning of New Jersey's Operating Permit Program, when EPA commented many times that each permit condition should reflect the correct underlying authority that created the requirements stipulated in the permit. The regulations at N.J.A.C. 7:27-22.16(a) and (e) are often cited in permits as applicable requirements, thereby becoming the underlying authority, in lieu of an established federal or state rule, by which an emission limit or operating parameter is imposed. N.J.A.C. 7:27-22.16(a) and (e), in and of themselves, do not provide or create emissions limits or standards. These limits or standards must first be established pursuant to a federal rule (*e.g.*, New Source Performance Standards ("NSPS"), National Emission Standards for Hazardous Air Pollutants ("NESHAP"), Maximum Achievable Control Technology ("MACT"), Prevention of Significant Deterioration ("PSD")) or state rule (*e.g.*, N.J.A.C. 7:27-8, N.J.A.C. 7:27-9, N.J.A.C. 7:27-18), consistent with 40 C.F.R. § 70.6(a)(1)(i), before they are included in the operating permit pursuant to N.J.A.C. 7:27-22.16. Those federal rules or state rules are the underlying applicable requirements that should be cited in the title V operating permit.

In a letter dated May 16, 2017, Kenneth Ratzman, Assistant Director Air Quality Regulation and Planning of NJDEP, affirmed that it has been the Department's ongoing practice to use N.J.A.C. 7:27-22.16(e) for those applicable requirements that were incorporated into title V operating permits from preconstruction permits. The letter further clarified that in cases where no modifications are made to applicable requirements brought forward from preconstruction permits, the operating permit continues to reflect N.J.A.C. 7:27-22.16(e). And, where such applicable requirements are modified, N.J.A.C. 7:27-22.16(a) is used as the citation for any modified and new applicable requirements. EPA consents to NJDEP's ongoing and proposed practice, provided it includes the relevant citations for federal rules and regulations (NSPS, MACT, PSD, etc.) or state rules (N.J.A.C. 7:27-16, N.J.A.C. 7:27-16, etc.) in connection with the specific operation of an emission unit. In recent exchanges addressing this issue, the Department agrees that the above approach of citing N.J.A.C. 7:27-22.16(a) must be done in conjunction with the appropriate citations for federal rules/regulations or state rules, if such rules are applicable. *See Attachments E and F*. This issue has been resolved.

B. BACT/LAER

In the past, NJDEP has not been consistent in citing the correct underlying applicable requirements for Best Available Control Technology (“BACT”) and/or Lowest Achievable Emission Rate (“LAER”). For pollutants that are subject to the BACT, the permit conditions establishing the BACT limits should cite 40 C.F.R. § 52.21 as the underlying applicable requirement. For those pollutants that are subject to the LAER, the permit conditions establishing the LAER limits should cite N.J.A.C. 7:27-18 (or “Subchapter 18”), the New Jersey’s Emission Offset Rules for non-attainment areas approved under Title I of the Clean Air Act, 42 U.S.C. §§ 7401-7515.

This issue has not surfaced in recent EPA oversight permit reviews. Following the 2016 Audit, NJDEP agreed to and continues to fully implement the correction requested by EPA. This issue has been resolved.

C. MACT, NESHAP, and NSPS

EPA found inconsistencies in the citation of MACT, NESHAP, and NSPS in the compliance plan within the same permit. To facilitate the reviewer’s evaluation, it is recommended that NJDEP provide both the citation for the specific rule provision and the general description for all NSPS, NESHAPS, and MACT requirements.

As agreed by NJDEP following the 2016 Audit, the permit conditions now include both the general description and the citation for the specific provision of the rule. This issue has been resolved.

VI. Permit Content

A. MACT/NSPS Provisions

It has been common practice in some permits, when an emission unit is subject to a particular MACT or NSPS, that all the requirements from the federal standard are copied onto the operating permit, even when some of those requirements may not apply due to the size or type of the emission unit involved. EPA suggests that the length of the operating permit can be reduced and the permit itself can be made clearer to the reader if irrelevant requirements are not included in the permit.

NJDEP agrees, and now endeavors to include in a permit only those sections of federal standards that are applicable and relevant. NJDEP has pledged to continue this practice and to remove any non-applicable requirements that could have remained inadvertently from prior compliance plans. This issue is closed.

B. Periodic Monitoring for PM2.5

For certain types of emission units that emit both PM10 and PM2.5, it has been a common permitting practice to assume that emissions of PM10 equal the emissions of PM2.5. Often, NJDEP intends for the source to demonstrate compliance with its PM2.5 limit using PM10 stack test results. Where, for practical purposes, PM10 and PM2.5 emissions are assumed to be equal, then it is appropriate that the monitoring section of the operating permit for the PM2.5 limit state that compliance is demonstrated using the PM10 stack test results. However, where it is intended for the permit to independently enforce PM2.5 emission limits for a given emission unit, the

permit should provide stack testing methods that are specific to the monitoring of PM2.5 emissions, including any other related monitoring provisions that may be used in demonstrating compliance with its PM2.5 emission limits.

Following a February 6, 2020 conference call, NJDEP submitted to EPA a list of sources for which specific stack testing methods and other monitoring provisions are used to demonstrate compliance with the source's PM2.5 emission limits. The list includes combustion turbines from the following energy sources: PSEG Sewaren, Newark Energy Center, West Deptford Energy Center, North Jersey Energy Associates (Sayreville), Nautilus Power (Lakewood Cogeneration), and Covanta Essex. Thus, EPA considers this issue of separately testing for PM2.5, where the regulations so stipulate, settled, unless proven otherwise during EPA's ongoing permit oversight review process.

VII. Additional Issues

A. Title V Fee Program

During the 2016 program audit, EPA raised questions about the prospect of the 2015 fee increase to provide sufficient emissions-based fee revenue to fund New Jersey's Operating Permit Program. With reductions in the total emissions from sources due to implementation of better controls and a shrinking universe of facilities subject to title V, EPA had requested another fee analysis to provide a more up-to-date account of the fee revenues and title V expenditures of New Jersey's title V fee program. This analysis was last submitted to EPA in 1995. However, in lieu of this fee analysis, on May 14, 2021, EPA requested that New Jersey fill out the "Annual Financial Data Form for 40 CFR Part 70" that was included as "Attachment C" of EPA's March 27, 2018 guidance titled, "Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70." *See Attachment H.* On June 23, 2021, New Jersey submitted the completed form, which EPA includes as part of the record for this audit; *see Attachment I.* Based on EPA's review, although New Jersey is not able to fund the Part 70 program with emissions-based fees, application fees, and other permitting fees; New Jersey's Operating Permits Program is fully funded each year because it is supplemented by additional funds transferred to it by the State, including through operational budgets and legislative appropriations. As New Jersey is aware, Section 502(b)(3)(A) of the CAA requires that a permitting authority collect fees from subject sources that are "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program." EPA requests that New Jersey provide a plan to address the shortfall in permit fee revenue. EPA is committed to working with New Jersey to address this issue.

B. Statement of Basis

During the review of select New Jersey proposed permits, EPA relies on information contained in the accompanying Statement of Basis ("SOB") to identify those periodic monitoring decisions or other critical information that may not be available in the permit. The SOB is a document that is separate from the permit and highlights information that is not or cannot be included in the permit. While the SOB is required

by 40 C.F.R. § 70.7(a)(5), the regulation does not prescribe the required contents of the SOB. It has been left to the permitting authorities to decide, on a case-by-case basis, on the merit and adequacy of the information that is to be included in the SOB. In consultation with EPA, NJDEP developed a draft SOB boilerplate that lists a minimum set of critical information that has been found over time to assist in the permitting review process. A comprehensive draft SOB outline consisting of up to nine (9) sections has been developed [*see Attachment G*] to provide specific information related to a facility's title V permitting activities and operations. These sections are as follows:

1. Facility Information
2. Area Attainment Classification
3. Background and History
4. Case-by-Case Determinations
5. Emission Offsets Requirements
6. Basis for Monitoring and Recordkeeping Requirements
7. Applicable State and Federal Rules
8. Facility's compliance Status
9. Exempt Activities

Still, because each facility's operating conditions are unique, the SOB is found on occasion to lack critical information that EPA deems important in performing its reviews. When these circumstances arise, EPA reaches out to NJDEP to require that additional clarifying information be included in the SOB. Such interactions between EPA and NJDEP are unavoidable, due to the varied categories of permitting activities and conditions that are encompassed by the title V permitting program. It is for this reason that EPA regards the existing outline of the draft SOB as a work in progress. EPA expects continued joint work with NJDEP in identifying and adding critical elements to the SOB, with the aim of enhancing the permit review process.

Since the last audit, EPA made certain recommendations pertaining to the SOB and to a facility's permit. These recommendations are intended to facilitate easy tracking of important changes made at a facility and/or to assist the permit reviewer in making a speedy determination of a facility's applicability status with regard to specific rules or regulations. A summary of these recommendations, along with New Jersey's responses, are as follows:

- a) EPA recommended that the SOB contain a historical record of all the changes that are made at a facility and to a facility's permit.

NJDEP noted that it added an "Operating Permit Revision History" section to the SOB that summarizes all the changes that have been incorporated into the operating permit through seven-day notice changes, administrative amendments, minor modifications, or significant modifications, beginning with the approval of the initial operating permit or the most recent renewal thereof. EPA welcomes this addition to the SOB.

- b) EPA recommended that, when requirements are deleted from one permit to the next, the SOB should provide a discussion explaining the rationale for the deletion from the previous permit.

NJDEP noted that its current practice is to include a discussion in the SOB when any significant applicable requirements are removed from the permit, such as requirements to obtain emission offsets. Nevertheless, NJDEP asserts that it is committed to correct any inadvertent deficiency when, and if, identified by EPA during the Pre-Draft and Draft permit reviews and to update the SOB accordingly. EPA will continue to monitor this issue to ensure that the rationale for significant deletions is documented in the SOB.

- c) During our periodic meetings with New Jersey to review permit-related issues, EPA recommended that NJDEP include in the SOB a “non-applicability determination” section where a facility’s exemption status from applicable federal and/or state requirements would be documented. The intent of such a recommendation is to facilitate permit reviewers, at large, in making speedy determinations of a facility’s exemption status from applicable requirements.

New Jersey has agreed to EPA’s request to add to the SOB information that will document any exemption of an affected unit from otherwise applicable federal or state requirements. EPA considers this issue resolved by New Jersey’s agreement to add the requested section in the SOB. EPA will provide feedback to New Jersey regarding its implementation during future oversight permit reviews.

- d) EPA recommended that the SOB provide a brief discussion of the applicability or non-applicability of the Compliance Assurance Monitoring (“CAM”) rule promulgated at 40 C.F.R. Part 64 to each emission unit that uses a control device. Specific monitoring requirements apply when an emission unit is subject to CAM, which may be more comprehensive than standard requirements.

In response, NJDEP consented to adding a new section in the SOB in all future operating permit renewal applications to document the applicability or non-applicability of the CAM Rule. *See Attachment F.* EPA considers this issue resolved by New Jersey’s agreement to add the requested section in the SOB. EPA will provide feedback to New Jersey regarding its implementation during future oversight permit reviews.

VIII. Table 1: Summary of Action Items and Recommendations

| Issues | Actions and Recommendations |
|---------------------|---|
| Title V Fee Program | New Jersey will develop a plan to address the issue of permit fee sufficiency. EPA commits to work with New Jersey as needed. |
| Statement of Basis | EPA recommended that, when requirements are deleted from one permit to the next, the SOB should provide a discussion |

| | |
|--|--|
| | explaining the rationale for the deletion from the previous permit. NJDEP asserts that it is committed to providing such rationale, when applicable. EPA will continue to monitor this issue to ensure that the rationale for any deletion from one permit to the next is documented in the SOB. |
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IX. Conclusion

In conclusion, overall, New Jersey is implementing an effective operating permit program under title V of the CAA. EPA notes that its request for resolution of outstanding issues was met with a positive and cooperative response from NJDEP. The issue of adequate funding, as this relates to the title V fee program, and improvements to the SOB to make it more useful to the public, require additional attention from New Jersey.

EPA Region 2's audit reports of New Jersey's Operating Permit Program for prior years can be found at: <https://www.epa.gov/caa-permitting/title-v-program-evaluations-region-2>

LIST OF ATTACHMENTS:

- Attachment A** - September 24, 2020 Letter from Kirk Wieber of EPA to Kenneth Ratzman of NJDEP
- Attachment B** - Rule Changes for N.J.A.C. 7:27-8 and 22 Pertaining to Preconstruction Permits
- Attachment C** - Rule Changes for N.J.A.C. 7:27-8 and 22 Pertaining to Consent Decree Provisions
- Attachment D** - NJDEP Letters to EPA, dated November 29, 2017, November 30, 2017, August 22, 2018, and May 23, 2019 on Pre-notification of Rule Revisions
- Attachment E** - NJDEP Letter dated May 16, 2017 from Kenneth Ratzman to Suilin Chan of EPA
- Attachment F** - NJDEP response letter, dated November 9, 2020
- Attachment G** - NJDEP Significant Modification Draft SOB
- Attachment H** - Program and Fee Evaluation Strategy and Guidance for 40 C.F.R. Part 70
- Attachment I** - NJDEP Annual Financial Data (Fiscal Year 2020)

ATTACHMENT A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

September 24, 2020

Mr. Kenneth Ratzman
Assistant Director, Air Quality Regulation and Planning
Division of Air Quality
New Jersey Department of Environmental Protection
401 E. State Street, CN 027
Trenton, New Jersey 08625-0027

Dear Mr. Ratzman:

The U.S. Environmental Protection Agency Region 2 Office (EPA) will be conducting the fifth audit of the State of New Jersey's Operating Permit Program (OPP) in the next few months. In this audit, we will focus on outstanding issues from the 2016 audit and issues that we have identified during EPA's oversight review of draft and proposed permits made available by the New Jersey Department of Environmental Protection (NJDEP) on its permitting website found at <http://www.state.nj.us/dep/aqpp/publicnotices.htm>

This letter defines the scope of our audit. A virtual meeting will be scheduled with you and/or your staff to enable us to gather information needed for the audit. The meeting also provides an opportunity to clarify issues and initiate discussion of potential resolution to address the issues. To facilitate our assessment of the New Jersey's OPP and therefore our meeting discussion, the issues that are the subject of this audit are provided in the attachments to this letter. Outstanding issues from the 2016 OPP audit that require follow up are listed in Attachment A. The issues specific to the New Jersey program that we would like to discuss and resolve in this audit are listed in Attachment B to this letter. Please provide a response to both attachments within 30 days of the date of this letter.

Please have your staff contact Lionel MacKenzie of my staff at (212) 637-3770 or mackenzie.lionel@epa.gov to arrange for a mutually convenient date for the meeting. We will draft a report to document our findings as well as any agreement made with NJDEP during this audit.

We appreciate in advance the efforts that NJDEP will make to address the issues identified in the attachments.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kirk Wieber".

Kirk Wieber, Acting Chief
Air Programs Branch

Attachments

cc: Frank Steitz, NJDEP

Attachment A
Outstanding Issues from 2016 Audit

Some of the issues from Sections IV and V of the 2016 NJDEP Operating Permits Program Audit have been reproduced below for follow up. These may be resolved by the showing of a permit(s) issued since the 2016 audit that no longer exhibit the issues identified below. Issues resolved will not be included in the 2020 Operating Permits Program audit.

IV. Rule Citation in Compliance Plan

40 CFR §70.6(a)(1)(i) requires the permit to specify and reference the origin of and authority for each permit term or condition. The rule citation listed on the operating permit plays a role in a source's annual compliance certification. For this reason, it is important to be precise when citing the underlying applicable requirement for each emission limit of the operating permit. Below are rule citation issues EPA has identified during its oversight review of select operating permits.

A. SIP Rules

Many operating permits cite N.J.A.C. 7:27-22.16(a) and (e) of the Operating Permit Rule as the underlying authority for imposing limits on emissions or operating parameters. This practice goes back to the beginning of New Jersey's Operating Permit Program when EPA commented many times that each permit condition should reflect the correct underlying authority that created the requirements stipulated in the permit. However, NJDEP asserted that since N.J.A.C. 7:27-22.16(a) requires the Department to include emission limits in the operating permit, it is appropriate to cite this provision for the authority to impose the permit limits. EPA finds that NJDEP has not properly cited the underlying authority for some permit terms and conditions as required by 40 CFR §70.6(a)(1)(i). Below are EPA's explanation as to why these Subchapter 22 provisions should not be cited as the underlying applicable requirement for certain permit terms and conditions:

N.J.A.C. 7:27-22.16(a):

"The Department will include in each operating permit, drafted for, or issued to, a facility, emission limitations and standards, including any operational requirement necessary to assure compliance with all applicable requirements which apply to a source operation or a group of source operations or to the facility as a whole at the time of permit issuance."

Although 7:27-22.16(a) requires NJDEP to include all emission limitations, standards and operational requirements necessary to assure compliance with all applicable requirements, 7:27-22.16(a) does not provide the authority to create such limits or standards. These limits or standards must first be established pursuant to a federal rule (e.g., NSPS, NESHAP, MACT, PSD) or state rule (e.g., N.J.A.C. 7:27-8, N.J.A.C. 7:27-9, N.J.A.C. 7:27-18) before they are included in the operating permit pursuant to 7:27-22.16. Those federal rules or state rules are the underlying applicable requirements that should be cited in the operating permit.

N.J.A.C. 7:27-22.16(e):

"The Department shall incorporate into each operating permit the provisions of any effective preconstruction permit and operating certificate issued for the facility, or any part thereof..."

N.J.A.C. 7:27-22.16(e) requires NJDEP to incorporate all effective preconstruction permit conditions into the operating permit. However, it is the underlying rule or regulation by which the permit conditions were created that should be cited as the basis for that particular permit condition. As explained above, emission limits and standards are established by a federal or state rule in the preconstruction permit. The fact that N.J.A.C. 7:27-22.16(e) requires NJDEP to "copy" the provisions of the preconstruction permit onto the operating permit does not make N.J.A.C. 7:27-22.16(e) the underlying applicable rule that authorized the creation of the emission limits and standards found in the preconstruction permit. Rather, it is the rule under which the preconstruction permit was issued that authorized those emission limits and standards. Therefore, the operating permit should cite the underlying federal (such as NSPS) or state rule (such as N.J.A.C. 7:27-8), as the underlying applicable requirement that established the preconstruction permit conditions.

In sum, N.J.A.C. 7:27-22.16(a) and (e) merely instruct NJDEP to include all preconstruction permit conditions as well as all emission limitations, standards and operational requirements in the source's operating permit. They are not the underlying applicable requirements that form the basis for the permit terms and conditions necessary to assure compliance with all applicable requirements.

B. BACT/LAER

For pollutants that are subject to the Best Available Control Technology (BACT), the permit conditions establishing the BACT limits must cite 40 CFR §52.21 as the underlying applicable requirement. For those pollutants that are subject to the Lowest Achievable Emission Rate (LAER), the permit conditions establishing the LAER limits should cite N.J.A.C. 7:27-18 (or Subchapter 18), New Jersey's Emission Offset Rules for non-attainment areas approved under Title I of the CAA. NJDEP has not been consistent in citing the correct underlying applicable requirements for BACT and/or LAER. EPA found permit conditions establishing LAER limits that failed to cite N.J.A.C. 7:27-18 as the underlying authority for the limits. Instead, permit conditions frequently incorrectly cited N.J.A.C. 7:27-22.16(a) which is a general requirement for NJDEP to "include in each operating permit, drafted for, or issued to, a facility, emission limitations and standards, including any operational requirement necessary to assure compliance with all applicable requirements which apply to a source operation or a group of sources operations or to the facility as a whole at the time of permit issuance." See discussion in IV.A above.

To illustrate EPA's point regarding inconsistencies in this regard, EPA will use the West Deptford operating permit as an example. EPA reviewed the Title V permit issued to West Deptford, ID 56078, BOP 120001, dated July 17, 2014 where NO_x was subject to both 40 CFR §52.21 and Subchapter 18 and VOC was subject to Subchapter 18. The BACT emission limit for NO_x was less than or equal to 2 ppmvd @15% O₂ which was identical to the LAER emission limit. Below are citation issues identified on this permit:

Ref # 3 and 4 of Operating Scenario 1 (pages 74 of 164) established the BACT and LAER NO_x emission limits and cited N.J.A.C. 7:27-22.16(a) as the underlying applicable requirement (Attachment E). This is incorrect. These permit conditions should cite N.J.A.C. 7:27-18 and 40 CFR §52.21 as the underlying applicable requirements for the LAER and BACT limits, respectively.

Ref #4 and 5 of Operating Scenario 2 (page 79 of 164) established the BACT and LAER limits and correctly cited 40 CFR §52.21 as the underlying applicable requirement for the BACT limit but incorrectly cited N.J.A.C. 7:27-22.16(a) as the underlying applicable requirements for the LAER limit (Attachment E).

N.J.A.C. 7:27-18 should have been cited as the correct underlying applicable requirements for the LAER limit.

The VOC limit established under Ref #11 of Operating Scenario 1 (page 75 of 164) and under Ref #12 of Operating Scenario 2 (page 80 of 164) again incorrectly cited N.J.A.C. 7:27-22.16(a) as the underlying authority for the LAER limits. See Attachment F. The underlying applicable requirement cited for these permit conditions should have been N.J.A.C. 7:27-18.

The above was discussed at the May 2016 on site meeting, NJDEP agreed that N.J.A.C. 7:27-18 should be cited for LAER limits. NJDEP agreed to look into this issue and provide its response to EPA's audit report.

C. MACT, NESHAP, NSPS

During EPA's oversight review of select permits, EPA found inconsistencies in the citation of MACT, NESHAP, and NSPS in the compliance plan within the same permit. For permit conditions that originated from the MACT, NESHAP or NSPS, it would be helpful in EPA's oversight review as well as citizens' review, if both the general description of the rule (e.g., 40 CFR Part 60 Subpart Da, 40 CFR Part 61 Subpart J, MACT Subpart ZZZZ) and the specific provision of the rule (e.g., 40 CFR §61.112(c)) are cited.

For example, in the West Deptford Energy LLC permit dated August 6, 2015, EPA found the following differences in the NSPS citations:

Ref #22 (page 132 of 169) and Ref. #25 (page 133 of 169) provided the general description of the rule, NSPS Subpart IIII, as well as the rule citation, 40 CFR 60.4211(c). See Attachment G.

Ref #54 (page 68 of 169) of the same permit only stated the rule citation, 40 CFR 60.4320(a), but failed to provide the general description, i.e., NSPS Subpart KKKK. See Attachment H.

Ref #66 (page 72 of 169) of the same permit also only provided the rule citation, 40 CFR 60.4385, but did not provide the general description of the rule, i.e., NSPS Subpart KKKK. See Attachment H.

To facilitate the reviewer's evaluation, it is recommended that NJDEP provide both the citation for the specific rule provision and the general description for all NSPS, NESHAPS, and MACT requirements.

V. Permit Content

A. MACT/NSPS Provisions

In some permits, when an emission unit is subject to a particular MACT or NSPS, all of the requirements from the federal standard are copied onto the operating permit verbatim, even if some of the requirements do not apply due to the size or type of units involved. The size of the operating permit can be reduced and the permit itself can be made clearer to the reader if irrelevant requirements are not included in the permit.

During the on-site visit, NJDEP responded that EPA's comments are in line with NJDEP's standard operating procedure. NJDEP agreed to look into the issue and alert permit writers of the need to pay closer attention to multi-faceted federal requirements that require tailoring on a case-by-case basis.

Attachment B

2020 NJDEP Operating Permit Program Audit Items of Interest for Discussion

I. Outstanding Issues from 2016 Audit

Most of the issues identified in the 2016 audit have been addressed by NJDEP. However, some of the issues from Section IV and Section V of the 2016 audit still require follow up. These two sections of the 2016 audit report have been reproduced and included as an attachment to this paper for discussion.

II. Items of Interest for the 2020 Audit

A. Statement of Basis (SOB)

a. Addition of new requirements

The SOB should describe all changes made to the draft permit, even when requirements from NSPS, NESHAP, etc. are added. For example, in the PSEG Burlington permit, NESHAP requirements were added without any explanation. The SOB should be as explicit about changes to the permit as possible. The SOB should contain a record of all changes made to the facility and to the facility's permit so that a citizen can easily find out changes at a facility without having to review all of the issued permits. While a modified permit or renewal permit once replaces the previously issued permit, the SOB should not be replaced. It should include the history of changes at the facility to which descriptions of future modifications would be added.

b. Deletion of requirements

When requirements are deleted from the permit, the SOB should also provide a discussion on why those requirements are deleted from the previous permit. For example, in the case of Cinnamon Bay, requirements to obtain emissions offsets pursuant to N.J.A.C. 7:27-18 were removed from the permit after the offsets were obtained with no record in the SOB (Cinnamon Bay). While it may be NJDEP's standard practice to remove 'obsolete' requirements from the permit, such action should be recorded in the SOB with the rationale for its removal.

c. Non-applicable requirements

The SOB should include a brief discussion of potentially applicable federal standards and/or NJ SIP approved air regulations that may be applicable to each newly added or modified emission source¹. The rationale for non-applicability could be emissions cap, size of emission source, specific operational limits, type of fuel combusted, etc. The creation of a "non-applicable requirements" section in the SOB to document any and all reasons that cause the emission source(s) to be exempt or not subject to otherwise applicable federal and/or state

¹ Emission source shall have the meaning of "Equipment" or "Source operation" in N.J.A.C. 7:27-22

requirements will improve the public's understanding of a title V facility, and therefore minimize potential appeals.

d. CAM applicability

The SOB should provide a brief discussion on the applicability or non-applicability of the CAM rule to each emission unit² that uses a control device. Specific monitoring requirements apply when an emission unit is subject to CAM, which may be more comprehensive than standard requirements.

B. Emissions-based fees

Are GHG emissions accounted for in the title V emissions-based fees?

² See 40 C.F.R. Part 70 "*Emissions unit*" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of title IV of the Act.

ATTACHMENT B

“Temporary operating certificate” means an operating certificate with a term shorter than five years, issued under N.J.A.C. 7:27-8.7(d).

“Testing” means a procedure for the determination of the kind and amount of one or more air contaminants, potential air contaminants or air contaminant precursors present. This term includes, but is not limited to, sampling, sample custody, analysis, and reporting of findings.

“Test run” or **“run”** means a single integrated measurement or procedure used for the purpose of collecting a sample of any air contaminant emitted during a specified time interval.

“Total fixed capital cost” means the total sum, in dollars, paid to purchase and install equipment or control apparatus, including any design costs incurred. This term does not include any costs of operation or startup. This term also does not include the costs of dismantling any equipment or control apparatus being replaced, site preparation, placement of any footings or foundation upon which the structural elements of the equipment or control apparatus rest. This term also does not include any charges for legal services, governmental taxes or fees, or any patent or licensing costs.

“Total suspended particulate matter” or **“TSP”** means any air contaminant dispersed in the outdoor atmosphere which exists as solid particles or liquid particles at standard conditions and is measured in accordance with N.J.A.C. 7:27B-1; 40 CFR 60, Appendix A, Methods 5 through 5H; or another method approved by the Department and EPA.

“Use” means to engage in any form or manner of operation of equipment or control apparatus subsequent to the installation of such equipment or control apparatus. This term includes any trial operation.

“Used oil” is as defined at N.J.A.C. 7:27-20.1.

“Volatile organic compound” or **“VOC”** means a volatile organic compound as that term is defined by the EPA at 40 CFR 51.100(s), as supplemented or amended, which is incorporated by reference herein.

7:27-8.2 Applicability

- (a) This subchapter applies to certain sources of air contaminant emissions. Some of the sources are pieces of equipment; others are source operations or processes. A source that is required to have a permit and certificate under this subchapter is called a "significant source." A source that is not required to have a permit and certificate under this subchapter is called an "insignificant source."
- (b) The following requirements apply to a significant source subject to this subchapter at a facility that becomes subject to operating permit requirements under N.J.A.C. 7:27-22:

1. All permits and certificates required by this subchapter must be obtained and maintained until an operating permit, as defined at N.J.A.C. 7:27-8.1 and 22.1, is issued. Upon issuance of an operating permit, the terms and conditions of the preconstruction permit and operating certificates shall be consolidated in the operating permit.
 2. If a new source that is subject to operating permit requirements elects under N.J.A.C. 7:27-22.5(g) to obtain a preconstruction permit and certificate under this subchapter prior to obtaining an operating permit, the source shall continue to comply with the terms and conditions of the preconstruction permit and the operating certificate, which shall be consolidated in the operating permit, as defined at N.J.A.C. 7:27-8.1 and 22.1; and
 3. In some cases, a portion of an operating permit facility (such as a research and development operation) is not subject to operating permit requirements. In such a case, the owner or operator of the facility shall obtain and maintain a separate preconstruction permit and operating certificate for the portion of the facility that is not subject to an operating permit. The terms and conditions of the preconstruction permit and the operating certificate shall remain separate from and shall not be consolidated into the facility's operating permit.
- (c) Any equipment or source operation that may emit one or more air contaminants, except carbon dioxide (CO₂), directly or indirectly into the outdoor air and belongs to one of the categories listed below, is a significant source (and therefore requires a preconstruction permit and an operating certificate), unless it is exempted from being a significant source pursuant to (d) or (e) below:
1. Commercial fuel burning equipment, except for a source listed in (c)21 below, that has a maximum rated heat input of 1,000,000 BTU per hour or greater to the burning chamber, including emergency generators as defined at N.J.A.C. 7:27-19.1;
 2. Any source operation of equipment that has the potential to emit any Group 1 or Group 2 TXS (or a combination thereof) at a rate greater than 0.1 pounds per hour (45.4 grams per hour);
 3. Dry cleaning equipment;
 4. A surface cleaner which uses a cleaning solution containing five percent or more VOCs, HAPs, or VOC and HAP combined and which is:
 - i. An unheated open top surface cleaner with a top opening of greater than six square feet (0.56 square meters) or a capacity greater than 100 gallons;
 - ii. A heated open top surface cleaner;

| | | |
|---|----------------------|-----------|
| iii. Review Testing Report | Per Report Per Stack | \$ 910.00 |
| c. On-site Monitoring of Sample Collection Pursuant to an Approved Source-Specific Testing Protocol | Per Day Per Person | \$ 1,370 |
| d. Periodic Monitoring Equipment Protocol | Per Protocol | \$ 460.00 |

(aa) Effective January 1, 2020 through December 31, 2024, the adjusted fee schedule for a registration is set forth at (aa)1 and 2 below.

| <u>Activity</u> | <u>Basis</u> | <u>Amount</u> |
|---|---------------------|---------------|
| 1. Registration for initial authorization, or renewal of authorization, to act under a General Operating Permit | Per Registration | \$ 885.00 |
| 2. Registration for, or five-year renewal of, authorization to operate a used oil space heater under N.J.A.C. 7:27-20.3 | Per Registration | \$ 885.00 |

7:27-22.32 Hearings and appeals

- (a) An adjudicatory hearing regarding a determination made by the Department pursuant to this subchapter may be requested and granted in accordance with N.J.A.C. 7:27-1.32.
- (b) If a person does not have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27-1.32, there is final agency action as to that person when the Department takes final action on the application.
- (c) If a person does have a right to request an adjudicatory hearing pursuant to N.J.A.C. 7:27-1.32, there is final agency action as to that person when the Department denies the request for an adjudicatory hearing, or when the Commissioner issues a final decision on the matter, whichever is later.
- (d) A person who wishes to appeal a penalty assessed for a violation of this subchapter may request an adjudicatory hearing pursuant to the procedures at N.J.A.C. 7:27A.
- (e) The Department's failure to take final action on an administratively complete application for an initial operating permit, renewal, minor modification or significant modification, within the deadlines provided by this subchapter, shall constitute grounds for the commencement of an action in lieu of the prerogative writ of mandamus, to compel Departmental action on the application.

7:27-22.33 Consolidated preconstruction and operating permit review

- (a) This section sets forth the procedures by which the Department will implement the preconstruction review requirements of N.J.S.A. 26:2C-1 et seq., as they apply to facilities subject to this subchapter.

- (b) The owner or operator of a facility subject to this subchapter that is in operation prior to the applicable application deadline at N.J.A.C. 7:27-22.5(c) shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8 until the Department issues an operating permit for the facility. When the Department issues the operating permit to the facility, the operating permit shall include the terms and conditions of the preconstruction permit.
- (c) The owner or operator of a facility subject to this subchapter that commences operation after the applicable application deadline at N.J.A.C. 7:27-22.5(c) shall submit an application for an initial operating permit by the deadline established at N.J.A.C. 7:27-22.5(f). Until the issuance of an operating permit for the facility, the owner or operator of the facility shall obtain and maintain all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8. When the Department issues the operating permit to the facility, the operating permit shall include the terms and conditions of the preconstruction permit.
- (d) An application for a minor modification pursuant to N.J.A.C. 7:27-22.23, or a significant modification pursuant to N.J.A.C. 7:27-22.24, shall be subject to preconstruction review, which will include a demonstration that any equipment or control apparatus which is constructed, reconstructed, or modified incorporates advances in the art of air pollution control for the kind and amount of air contaminant emitted pursuant to N.J.A.C. 7:27-22.35.
- (e) For an application for a minor or significant modification, the Department will simultaneously conduct the preconstruction permit review pursuant to N.J.A.C. 7:27-8 and the operating permit review pursuant to this subchapter. Ordinarily, the Department will issue the preconstruction approval as part of the final operating permit modification approval. However, if requested by an applicant for a modification, the Department will issue the preconstruction approval simultaneously with the proposed operating permit that is forwarded to the EPA pursuant to N.J.A.C. 7:27-22.12. For a minor modification pursuant to N.J.A.C. 7:27-22.23, preconstruction approval will authorize the permittee to begin construction and operation of a minor modification, at the permittee's own risk. For a significant modification of the operating permit pursuant to N.J.A.C. 7:27-22.24, the permittee may begin construction of a significant modification, but may not operate the modified facility until the Department has approved the significant modification.
- (f) If a facility or source operation becomes subject to a case-by-case MACT standard pursuant to N.J.A.C. 7:27-22.26(c) prior to issuance of an operating permit for the facility, the owner or operator of the facility shall establish a case-by-case MACT standard pursuant to N.J.A.C. 7:27-22.26(e). The owner or operator of the facility shall obtain and maintain a preconstruction permit and operating certificate pursuant to N.J.A.C. 7:27-8, which applies the case-by-case MACT standard to the appropriate source operation(s), until an operating permit covering the facility is issued which incorporates the case-by-case MACT standard.

7:27-22.34 Early reduction of HAP emissions

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7:27-8.3 General provisions

- (a) No person may construct, reconstruct, install, or modify a significant source or control apparatus serving the significant source without first obtaining a preconstruction permit under this subchapter.
- (b) No person shall operate (nor cause to be operated) a significant source or control apparatus serving the significant source without a valid operating certificate.
- (c) No permittee may take any action which requires a permit revision, compliance plan change, seven-day-notice change, amendment, or change to a batch plant permit, under any applicable provision at N.J.A.C. 7:27-8.17 through 8.23, without complying with that applicable provision.
- (d) Any person holding a permit or certificate shall make said permit or certificate, together with any amendments, seven-day-notices, or other documents related to the permit and certificate, readily available for Department inspection on the operating premises.
- (e) No person shall use or cause to be used any equipment or control apparatus unless all components connected or attached to, or serving the equipment or control apparatus, are functioning properly and are in use in accordance with the preconstruction permit and certificate and all conditions and provisions thereto.
- (f) A preconstruction permit or certificate shall not be transferable either from the location authorized in the preconstruction permit or certificate in effect to another location, or from any one piece of control apparatus or equipment to another piece of control apparatus or equipment.
- (g) Once a permit and certificate is issued, the permittee is fully responsible for compliance with this subchapter and with the permit and certificate, including adequate design, construction, and operation of the source, even if employees, contractors, or others work on or operate the permitted source. If the Department issues any other requirement with the force of law, such as an order, which applies to the source, the permittee is also responsible for compliance with that requirement.
- (h) Preconstruction permits and certificates issued under this subchapter do not in any way relieve the applicant from the obligation to obtain necessary permits from other governmental agencies and to comply with all other applicable Federal, State, and local rules and regulations.
- (i) A person conducting only normal repair or maintenance of control apparatus or equipment, as defined at N.J.A.C. 7:27-8.1, need not comply with (a), (b) or (c) above.
- (j) No person holding any preconstruction permit or certificate shall suffer, allow, or permit any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which is, or tends to be,

injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property. This shall not include an air contaminant which occurs only in areas over which the owner or operator has exclusive use or occupancy. In determining whether an odor unreasonably interferes with the enjoyment of life or property, the Department shall consider all of the relevant facts and circumstances, including, but not limited to, the character, severity, frequency, and duration of the odor, and the number of persons affected thereby. In considering these and other relevant facts and circumstances, no one factor shall be dispositive, but each shall be considered relevant in determining whether an odor interferes with the enjoyment of life or property, and, if so, whether such interference is unreasonable considering all of the circumstances.

- (k) The Department will note in the preconstruction permit any requirements derived from an existing or terminated consent decree between the permittee and the EPA, and will not change such requirements or remove them from the preconstruction permit without first notifying the EPA.
- (l) (Reserved)
- (m) The Department and its representatives have the right to enter and inspect any facility or property in accordance with N.J.A.C. 7:27-1.31.
- (n) There shall be an affirmative defense to liability for penalties for a violation of a preconstruction permit or certificate, occurring as a result of an equipment malfunction, an equipment startup, an equipment shutdown, or during the performance of necessary equipment maintenance. The affirmative defense shall be asserted and established as required by P.L. 1993, c.89 (adding N.J.S.A. 26:2C-19.1 through 2C-19.5) and any rules that the Department promulgates thereunder, and shall meet all of the requirements thereof. There shall also be an affirmative defense to liability for penalties or other sanctions for noncompliance with any technology based emission limitation in the preconstruction permit or certificate, if the noncompliance was due to an emergency as defined at N.J.A.C. 7:27-22.1, provided that the affirmative defense is asserted and established in compliance with 40 CFR 70.6(g) and meets all the requirements thereof.

7:27-8.4 How to apply, register, submit a notice, or renew

- (a) This subchapter applies to:
 - 1. Application for a preconstruction permit and operating certificate;
 - 2. Application for a preconstruction permit and operating certificate for an environmental improvement pilot test;
 - 3. Application for a preconstruction permit and operating certificate revision;
 - 4. Application for a compliance plan change;

may voluntarily elect to obtain an operating permit for the facility in lieu of obtaining operating certificate(s) for the equipment or control apparatus.

7:27-22.3 General provisions

- (a) The owner or operator of a facility subject to this subchapter shall obtain and maintain an operating permit for the facility pursuant to this subchapter.
- (b) The owner or operator of a facility subject to this subchapter shall ensure that no person shall use or operate any significant source operation at the facility without a valid operating permit for the facility, which covers the source operation.
- (c) The owner or operator of a facility subject to this subchapter shall ensure that no air contaminant is emitted from any significant source operation at a rate, calculated as the potential to emit, that exceeds the applicable threshold for reporting emissions set forth in N.J.A.C. 7:27-22 Appendix, Table A or N.J.A.C. 7:27-17.9(a), unless emission of the air contaminant is authorized by the operating permit.
- (d) A permittee shall ensure that any source operation and any other activity covered by the operating permit, and all components connected to, attached to, or serving the source operation are operated and maintained properly and according to the requirements of the operating permit.
- (e) A permittee shall ensure that all requirements of the operating permit are met.
- (f) Each owner and each operator of any facility, source operation, or activity to which this subchapter applies is responsible for ensuring compliance with all requirements of this subchapter. If the owner and operator are separate persons, or if there is more than one owner or operator, each owner and each operator is jointly and severally liable for any fees due under this subchapter, and for any penalties for violation of this subchapter.
- (g) Any provision of any other rule, statute or other document, incorporated into this subchapter, includes all future supplements and amendments to the incorporated document, unless the context of this subchapter clearly indicates otherwise.
- (h) The provisions of (b), (c), (d), and (e) above shall not apply at a facility:
 - 1. Prior to the applicable deadline for applying for an initial operating permit, set forth at N.J.A.C. 7:27-22.5; or
 - 2. If a timely and administratively complete application has been filed and an application shield is in effect for the facility pursuant to N.J.A.C. 7:27-22.7.
- (i) The term of an operating permit will be established in the operating permit. The Department will not issue an operating permit with a term of greater than five years.

a minor modification of the operating permit set forth at N.J.A.C. 7:27-22.23(f) and (g). The approval will be effective for 90 days. If a person wishes to extend the pilot test for 90 or fewer days, the person shall submit a new application for preconstruction approval for an environmental improvement pilot test to the Department for each additional 90-day period. The fee for an environmental improvement pilot test is set forth at N.J.A.C. 7:27-22.31, and shall be paid in accordance with N.J.A.C. 7:27-22.31(g).

- (ss) For the purposes of this subchapter, any VOCs which are neither HAPs, nor are specified by the Department as air contaminants regulated by New Jersey pursuant to N.J.S.A. 26:2C-9.2i (P.L. 1995, c.188, § 4(i)), shall be considered as a single air contaminant, and may be used interchangeably. Such use shall not be considered installation or modification.
- (tt) On and after April 25, 2004, no permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter.
- (uu) The Department will note in the operating permit any requirements derived from an existing or terminated consent decree between the permittee and the EPA and will not change such requirements or remove them from the operating permit without first notifying the EPA.
- (vv) The following information is available from the Department:
 - 1. A list of air contaminants currently listed by EPA as HAPs pursuant to 42 U.S.C. § 7412(b) may be requested from the Department at the address set forth at N.J.A.C. 7:27-22.3(t). A list of regulated air contaminants may also be requested from the Department at that address; and
 - 2. Technical manuals are available on the Department's website at <http://www.nj.gov/dep/aqpp/techman.html> and may be requested from the Department at the following address:

Department of Environmental Protection
Air Quality Permitting Program
Bureau of Technical Services
Air Quality Evaluation Section
401 East State Street, 2nd Floor
Mail Code 401-02
PO Box 420
Trenton, New Jersey 08625-0420
Telephone: (609) 633-1110

7:27-22.4 General application procedures

- (a) The procedures in this section apply to all applications and notices submitted to the Department pursuant to this subchapter. Specific procedures for initial operating permits,

Assessment for Operating Permits (technical manual 1004), available at the address in (c) above.

2. Guidance on conducting air quality simulation modeling and risk assessment is available in the Department's technical manual for Risk Assessment for Operating Permits (technical manual 1004), available at the address in (c) above.
3. An applicant for an initial operating permit or the renewal of an operating permit may voluntarily prepare a risk assessment based on ambient air quality monitoring of actual levels of hazardous air pollutants, in lieu of an assessment based on air quality simulation modeling. Guidance on conducting air monitoring is available at the following address:

Department of Environmental Protection
Office of Air Quality Management
Bureau of Air Monitoring
401 East State Street, 7th Floor
Mail Code 401-07H
PO Box 420
Trenton, New Jersey 08625-0420
Telephone: (609) 292-0138

- (e) Any new or revised technical manuals referenced in this section will be subject to public input prior to finalization.

7:27-22.9 Compliance plans

- (a) Pursuant to N.J.A.C. 7:27-22.6(f)8, an applicant for an initial operating permit shall submit a proposed compliance plan, drafted in accordance with this section and certified in accordance with N.J.A.C. 7:27-1.39, as part of an application for the initial operating permit.
- (b) An applicant for a renewal, significant modification, or minor modification shall draft proposed revisions to any portion of the facility's compliance plan affected by any change to the facility made since the operating permit was issued. The proposed revisions shall be drafted in accordance with this section and submitted as part of the application for the renewal, significant modification, or minor modification.
- (c) A proposed compliance plan shall include the following:
 1. A description of the current compliance status of the facility with respect to all applicable requirements;
 2. For each applicable requirement, a statement setting forth the methods used to determine the facility's compliance status, including a description of any monitoring, recordkeeping, reporting or test methods, and any other information

necessary to verify compliance with or enforce any proposed permit condition or any applicable requirement. This statement shall include, but is not limited to:

- i. All monitoring, analysis procedures, recordkeeping, reporting, or test methods required by any applicable requirement, including any applicable monitoring procedures or methods required under the Federal "enhanced monitoring program" set forth at 40 CFR Part 64;
 - ii. Where the applicable requirement does not require monitoring, recordkeeping, reporting, or test methods sufficient to demonstrate the facility's compliance with the operating permit, proposed monitoring, recordkeeping, reporting, or test methods which:
 - (1) Are sufficient to demonstrate compliance;
 - (2) Use terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and
 - (3) Can be used for enforcement of the applicable requirement;
 - iii. Proposed requirements concerning the use, maintenance, and installation of monitoring equipment and concerning monitoring, recordkeeping, reporting, or test methods. This shall include, but is not limited to, schedules for monitoring, recordkeeping, reporting, and source emissions testing; specification of parameters to be measured, recorded, and reported; and formats for recording and reporting; and
 - iv. Where the permittee proposes to use monitoring of operating parameters to demonstrate compliance (as opposed to direct emissions testing or monitoring), a proposed enforceable limit or range of operation for the parameter monitored, and how this parameter correlates to the emission limit.
3. For each applicable requirement with which the facility is in compliance at the time the application for an operating permit is submitted to the Department, a statement that the facility will continue to comply with the applicable requirement;
 4. For each promulgated applicable requirement which will become applicable to the facility after the application for an operating permit is submitted to the Department, but prior to the anticipated end of the term of the operating permit:
 - i. The date the provision will become applicable to the facility or to any part thereof;

- ii. A statement that the facility will comply with the applicable requirement on a timely basis; and
 - iii. A detailed compliance schedule, if such schedule is expressly required by the applicable requirement;
 5. For each applicable requirement for which the facility is not in compliance at the time the application for an operating permit is submitted to the Department:
 - i. A narrative description of how the facility will achieve compliance with the applicable provision(s) of the applicable requirement;
 - ii. A proposed compliance schedule setting forth the remedial measures to be taken, including an enforceable sequence of actions with milestones leading to compliance. If the facility is subject to any order, including an administrative consent order, or consent decree, the proposed schedule of remedial measures shall incorporate the order or consent decree, and shall be at least as stringent as the order or consent decree; and
 - iii. A schedule for submittal of progress reports, certified in accordance with N.J.A.C. 7:27-1.39, every six months, or more frequently if specified by the underlying applicable requirement, order, consent decree;
 6. The following statements:
 - i. The permittee will ensure the compliance of the facility with the accidental release provisions at 42 U.S.C. § 7412(r);
 - ii. The permittee will ensure the compliance of the facility with any employee trip reduction rules promulgated by NJDOT; and
 - iii. The permittee will ensure that any architectural coatings used at the facility conform with the standards set forth at N.J.A.C. 7:27-23; and
 7. A schedule for the periodic submittal of compliance certifications, prepared in accordance with N.J.A.C. 7:27-22.19(f). Submittal shall be annual, or more frequent if so specified by the underlying applicable requirement or by the Department in the operating permit.
- (d) If any source operation or any aspect of a facility's operation is in violation of any applicable requirement, and the facility is not subject to an order or consent decree for the violation, the owner or operator of the facility may request an administrative consent order from the Department to address the violation pursuant to N.J.A.C. 7:27A. A request to enter into an administrative consent order shall be submitted to:

ATTACHMENT D



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

Mail Code 401-07

P.O. BOX 402

Trenton, NJ 08625-0402

TEL # (609) 292-2885

FAX # (609) 292-7695

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

November 29, 2017

Honorable Peter D. Lopez
Regional Administrator
USEPA, Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866

RE: New Jersey Rule Adoption and State Implementation Plan Revision:
Vapor Recovery Systems at Gasoline Dispensing Facilities,
Permitting Changes and t-butyl acetate (TBAC) Reporting Repeal

Dear Regional Administrator,

Enclosed for your review and approval are adopted rule changes and a revision to the New Jersey State Implementation Plan (SIP) for the ozone National Ambient Air Quality Standards (NAAQS). The Department is adopting three distinct rule changes in the package associated with reducing burden, repealing outdated rules and clarifying potentially ambiguous rules. These new rules and rule amendments were adopted by the Department on October 24, 2017 and became effective (published in the New Jersey Register) on November 20, 2017.

The first change in this SIP revision consists of the Department rule changes to N.J.A.C. 7:27-16.3, Gasoline Transfer Operations, and an analysis that shows that the decommissioning of Stage II (hereafter referred to as Phase II) vapor recovery in New Jersey will meet the demonstration requirements set forth in the United States Environmental Protection Agency (EPA) rules and guidance.

The amendments to N.J.A.C. 7:27-16.3 remove the requirement to install Phase II vapor recovery systems at new gasoline dispensing facilities and require the decommissioning of existing Phase II vapor recovery systems that are not compatible with on-board refueling vapor recovery (ORVR) systems within three years. The amendments include requirements and specifications for decommissioning and gasoline dispensing facility testing. Additionally, the Department is adopting requirements that the Phase I, tank breathing and refueling systems be upgraded for improved emission reductions.

The second change is amendments to N.J.A.C. 7:27-8 and 22, which respond to an EPA audit of the State's air permitting program. The adoption makes it clear that the terms and conditions in the preconstruction permit will be incorporated into the Title V operating permit for major facilities. In addition, consistent with EPA requirements, amendments to N.J.A.C. 7:27-22.11(e) remove the requirement to post notice of a draft operating permit in the newspaper and instead allow posting on the Department's website.

The final change is the repeal of N.J.A.C. 7:27-34, t-butyl acetate (TBAC) Emissions Reporting, to be consistent with EPA's repeal of this requirement.

The rule proposal was published in the July 3, 2017 New Jersey Register. A public hearing on these rule amendments and proposed SIP revision was held on Thursday, August 24, 2017. Written comments relevant to the proposal were accepted until the close of business, Thursday, September 1, 2017. All comments were addressed in the adoption.

We appreciate the assistance your staff will provide in reviewing this SIP revision. If you or your staff has any questions, please contact Francis C. Steitz at (609) 633-8220.

Sincerely,



Bob Martin
Commissioner

Enclosures:

SIP Revision including Public Notice Documentation
Rule Proposal
Rule Adoption

c (Email letter):

Kirk Wieber, USEPA Region II
Suilin Chan, USEPA Region II
Rick Ruvo, USEPA Region II
Paul Baldauf, Assistant Commissioner, NJDEP
John R. Renella, NJ Deputy Attorney General
Francis C. Steitz, Director, Division of Air Quality, NJDEP



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

Mail Code 401-07

P.O. Box 402

Trenton, NJ 08625-0402

TEL # (609) 292-2885

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

November 30, 2017

Honorable Peter D. Lopez
Regional Administrator
EPA, Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866

RE: New Jersey Adopted Rules and State Implementation Plan Revision

Dear Regional Administrator Lopez:

Enclosed for your review and approval are two separate rule adoptions that also represent revisions to the New Jersey State Implementation Plan (SIP). The rules are:

1. Control and Prohibition of Air Pollution by Volatile Organic Compounds and Oxides of Nitrogen
 - o Adopted Amendments: N.J.A.C. 7:27-16.1, 16.7, 16.16, 16.27, 19.2, 19.5, 19.8, and 7:27A-3.10
 - o Adopted New Rules: N.J.A.C. 7:27-16.14, 16.15, and 16.24
2. Fine Particles (PM_{2.5}) in Air Permitting, Sulfur (Startup/Shutdown/Malfunction (SSM) Exemption), and Emission Statements
 - o Adopted Amendments: N.J.A.C. 7:27-7.2, 8.1, 7:27-8 Appendix 1 Table A, 18.1, 18.2, 18.4, 18.5, 18.7, 21.1, 21.3, 21.4, 21.5, 21.8, 22.1, 22.2, 22.8, and 7:27-22 Appendix Table A

CTG/NO_x RACT

The first adoption, Control and Prohibition of Air Pollution by Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x), or CTG/NO_x RACT, addresses New Jersey's Reasonably Available Control Technology (RACT) obligations for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) pursuant to Section 184 of the Clean Air Act (CAA), 42 U.S.C. §7511c. On June 11, 2015, the Department submitted to the United States Environmental Protection Agency (EPA) a SIP revision that addressed New Jersey's RACT obligations for the 75ppb ozone NAAQS that are applicable to states within the Ozone Transport

Region. In the 2015 RACT SIP revision, the Department committed to proposing rule revisions to address the RACT obligations. This submittal satisfies that commitment.

The adopted rules and amendments meet VOC RACT requirements by incorporating recommendations from four CTGs for source categories represented in New Jersey: Industrial Cleaning Solvents (EPA 453/R-06-001); Paper, Film, and Foil Coatings (EPA 453/R-07-003); Miscellaneous Metal and Plastic Parts Coatings (EPA 453/R-08-003); and Fiberglass Boat Manufacturing Materials (EPA-453/R-08-004). The adopted requirements are consistent with EPA guidance, the recommendations of regional organizations, and the limits for similar sources as established by other states. The adopted rules and amendments address NO_x RACT requirements by establishing new limits on NO_x emissions from existing simple cycle combustion turbines combusting natural gas and compressing gaseous fuel at major NO_x facilities and stationary reciprocating engines combusting natural gas and compressing gaseous fuel at major NO_x facilities.

The Department adopted the new rules and amendments on September 1, 2017. The adoption was published in the New Jersey Register on November 6, 2017 (49 N.J.R. 3518(a)). The Department held a hearing on the proposed new rules, rule amendments and SIP revision on February 13, 2017 and accepted written comments through March 4, 2017. A summary of the comments received on the proposed new rules, rule amendments and SIP revision, as well as the Department's responses to those comments, are included as part of the enclosed adoption document.

PM_{2.5}/Sulfur SSM

The second adoption, Fine Particles (PM_{2.5}) in Air Permitting, Sulfur (Startup/Shutdown/Malfunction (SSM) Exemption), and Emission Statements, or PM_{2.5}/Sulfur SSM, pertains to the repeal of an antiquated exemption for emergency releases from pressure-relieving stacks for sulfur compounds, adding PM_{2.5} into the air permitting rules, eliminating the option to submit Emission Statements through email, and requiring the reporting of PM_{2.5} and ammonia at the source level in Emission Statements. This adoption constitutes a revision to New Jersey's SIP for Sulfur, Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit), Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules), Emission Statements, and Operating Permits.

The Department adopted the new rules and amendments on October 10, 2017. The adoption was published in the New Jersey Register on November 6, 2017 (49 N.J.R. 3511(a)). The Department held a hearing on the proposed new rules, rule amendments and SIP revision on May 9, 2017 and accepted written comments through May 19, 2017. A summary of the comments received on the proposed new rules, rule amendments and SIP revision, as well as the Department's responses to those comments, are included as part of the enclosed adoption document.

Enclosed are copies of rule adoptions as published in the New Jersey Register and documentation of the public participation for the rulemaking and SIP revision. We appreciate the assistance your staff provided New Jersey in preparing this SIP revision. If you or your staff has any questions, please contact Francis C. Steitz at (609) 633-8220.

Sincerely,



Bob Martin
Commissioner

Enclosures

cc (Letter only):

Paul Baldauf, Assistant Commissioner, NJDEP
Francis C. Steitz, Director, Division of Air Quality, NJDEP
John R. Renella, New Jersey DAG
John Filippelli, USEPA
Rick Ruvo, USEPA



State of New Jersey

Department of Environmental Protection
P.O. Box 402
Trenton, New Jersey 08625

PHILIP D. MURPHY
Governor

CATHERINE R. McCABE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

August 22, 2018

The Honorable Peter D. Lopez
Region 2 Administrator
U.S. Environmental Protection Agency
290 Broadway, 26th Floor
New York, New York 10007-1866

Dear Mr. Lopez: *Pete*

Enclosed for your review and approval is New Jersey's most recent air rules adoption for resiliency and air toxics that also represent revisions to New Jersey's State Implementation Plan. The rule adoption consists of three parts:

- Update to the hazardous air pollutant reporting thresholds using the most recent science-based methodologies;
- Exempt from air emission control and permitting requirements to improve resiliency during emergency and similar situations;
- Provide flexibility for facilities to use low-emitting temporary and portable equipment; and
- Repeal of the CAIR NO_x Trading Program (N.J.A.C. 7:27-30) and the NO_x Budget Program (N.J.A.C. 7:27-31).

Specifically, the DEP amended the following rules:

- N.J.A.C. 7:27-8, Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit)
- N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds
- N.J.A.C. 7:27-17, Control and Prohibition of Air Pollution by Toxic Substances
- N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution by Oxides of Nitrogen
- N.J.A.C. 7:27-21, Emission Statements
- N.J.A.C. 7:27-22, Operating Permits
- N.J.A.C. 7:27A-3.10, Civil Administrative Penalties

The DEP adopted the new rules and amendments on December 14, 2017. The adoption was published in the *New Jersey Register* on January 16, 2018 (50 N.J.R. 454(a)). The DEP held a

hearing on the proposed new rules, rule amendments and repeals, and SIP revision on September 6, 2017, and accepted written comments through October 6, 2017. A summary of the comments received on the proposed new rules, rule amendments and SIP revision, as well as the DEP's responses to those comments, are included as part of the enclosed adoption document.

I would be pleased to discuss this with you or your staff may contact Francis C. Steitz, director of the DEP's Division of Air Quality, at (609) 984-1484 or Francis.Steitz@dep.nj.gov.

Sincerely,



Catherine R. McCabe

Enclosures

cc: Paul Baldauf, Assistant Commissioner
Air Quality, Energy and Sustainability
New Jersey Department of Environmental Protection

Francis C. Steitz, Director
Division of Air Quality
New Jersey Department of Environmental Protection

John R. Renella, Deputy Attorney General
New Jersey Office of the Attorney General

John Filippelli, Director
Clean Air and Sustainability Division
U.S. Environmental Protection Agency

Rick Ruvo, Chief
Air Programs Branch
U.S. Environmental Protection Agency



State of New Jersey

Department of Environmental Protection
P.O. Box 420
Trenton, New Jersey 08625

PHILIP D. MURPHY
Governor

CATHERINE R. McCABE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

May 23, 2019

John Filippelli, Director
USEPA, Region 2
Air and Radiation Division
290 Broadway
New York, NY 10007-1866

RE: Supplemental Request for approval of revisions to the Title V Operating Permit Program based upon recent changes in the rules at N.J.A.C. 7:27-22

Dear Mr. Filippelli:

This letter shall serve as a formal request for EPA's approval of changes to New Jersey's Title V Operating Permit program. The revisions were made pursuant to three recent amendments to the Department's rules at N.J.A.C. 7:27-22. Each of the three sets of rule amendments were submitted to Regional Administrator, Hon. Peter D. Lopez, via separate letters dated November 29, 2017, November 30, 2017, and August 22, 2018. Each of the electronic submissions contained a description of the amendments to the rules, information concerning the public hearings, and copies of the published proposals and adoptions.

It was recently brought to our attention that though the correspondence referenced above identified changes to New Jersey's rules (including changes to Subchapter 22) and requested approval of those changes for the New Jersey State Implementation Plan (SIP), the submissions did not specify that the request for approval should encompass the changes in New Jersey's Operating Permit program. For these reasons, please accept this letter as a supplement to our prior submissions.

Below please find descriptions of the recent changes to the Operating Permit program. The Department has provided three separate descriptions, which have been arranged according to the corresponding rule amendments and dates.

- I. **Air Emission Control/Permitting Exemptions and Hazardous Air Pollutant Reporting Thresholds Rule Amendments, and CAIR NO_x Trading NO_x Budget Trading Programs Rule Repeal, 50 N.J.R. 454(a), operative date February 12, 2018 (letter dated August 22, 2018)**

Air Emission Control and Permitting Exemptions

The Department amended its permitting rules at N.J.A.C. 7:27-22, Operating Permits, to provide certain exemptions, listed below, from the permitting rules for equipment that is used during and after natural and human-caused disasters. The amendments also exempt from permitting requirements (but not other applicable rules) certain equipment that has a negligible environmental impact, either because the Department has limited the number of hours the equipment may be used without a permit, or for some other reason, as listed below.

- Equipment used in emergencies and emergency aftermath, e.g., portable equipment used for emergency management activities
- Equipment used in situations similar to emergencies, e.g., emergency generators used during non-emergency power disruptions
- Construction engines and construction, repair, and maintenance equipment
- Portable construction, repair, and maintenance equipment that remains on site for no more than one year
- Portable equipment that is used to temporarily replace certain equipment shut down as part of construction, repair, and maintenance activities
- Rental facility equipment for inspecting, testing, and demonstrating at the rental facility
- Portable hard drive and paper shredders
- Conveyance and baling of source-separated materials
- Excavated materials placed directly into transportation vehicles

Updating and Consolidating the Reporting Thresholds for Hazardous Air Pollutants (HAPs)

The Department also amended and relocated the HAP reporting thresholds from Table B of the Appendix to N.J.A.C. 7:27-22 and consolidated all HAP reporting and SOTA thresholds at proposed new N.J.A.C. 7:27-17.9, the Air Pollution Control rules that regulates toxic substances.

To provide the appropriate time for the implementation of new permit requirements, new N.J.A.C. 7:27-22.30(l), requires operating permit renewals with an expiration date three years or later after the operative date of the amendments to include all HAPs that exceed the reporting thresholds in proposed N.J.A.C. 7:27-17.9.

Miscellaneous Amendments

The Department also proposed to add definitions for “open top surface cleaner” and “surface cleaner” at N.J.A.C. 7:27-22.1 and deleted the term “de minimis” from N.J.A.C. 7:27-22.1 and 22.35(b) and (c). The term “de minimis” was misused in the rule when referring to the HAP and SOTA reporting thresholds.

The Department adopted these amendments to the rules on December 14, 2017. The adoption was published in the New Jersey Register on January 16, 2018 at 50 N.J.R. 454(a). The Department held a hearing on the rule amendments on September 6, 2017 and accepted written comments through October 6, 2017. A copy of the Department’s responses to those comments were included in the adoption document that was published in the New Jersey Register on January 1, 2018 and submitted electronically to the Regional Administrator by letter dated August 22, 2018.

II. PM2.5 / Sulfur Startup/Shutdown/Malfunction rule amendments, 49 N.J.R. 3511(a), operative date December 9, 2017 (letter dated November 30, 2017)

NSR applicability – thresholds for PM2.5 and its precursors

The Department amended the definition of “major facility” at N.J.A.C. 7:27-22.1 and added major facility thresholds for PM2.5, NO_x as a PM2.5 precursor, and SO₂ as a PM2.5 precursor to be consistent with the Federal requirements.

The existing definitions of “major facility” at N.J.A.C. 7:27-8.1 and 22.1 already included thresholds for both NO_x and SO₂, but as ozone precursors, not as PM2.5 precursors. To address PM2.5, the Department proposed to regulate NO_x under the PM2.5 NSR requirements by establishing a different threshold for NO_x as a PM2.5 precursor. To do so, the rules must distinguish between NO_x as a PM2.5 precursor, and NO_x as an ozone precursor and as the air contaminant with which the criteria pollutant nitrogen dioxide (NO₂) is associated. The Department proposed to do this by adding the parenthetical “(as a PM2.5 precursor).” Similarly, the Department created a separate threshold line for SO₂ as a PM2.5 precursor by adding the parenthetical “(as a PM2.5 precursor).”

Reporting Thresholds

N.J.A.C. 7:27-22.2, Table 1, was amended by adding potential to emit reporting threshold levels for PM2.5 and for NO_x and SO₂ as PM2.5 precursors at a level identical to that established in the Federal rules. If a facility emits or has the potential to emit any of the air contaminants listed in the table in an amount that equals or exceeds the threshold amount in the table, then the facility is subject to the operating permit rules, N.J.A.C. 7:27-22. Also, amendments to Table A, “Thresholds for Reporting of Emissions of Air Contaminants Other than Hazardous Air Pollutants (HAPs)” in the Appendix to N.J.A.C. 7:27-22, added a reporting threshold for PM2.5.

The Department adopted these amendments to the rules on October 10, 2017. The adoption was published in the New Jersey Register on November 6, 2017 at 49 N.J.R. 3511(a). The Department held a hearing on the rule amendments on May 9, 2017 and accepted written comments through May 19, 2017. A copy of the Department’s responses to those comments were included in the adoption document that was published in the New Jersey Register on November 6, 2017 and submitted electronically to the Regional Administrator by letter dated November 30, 2017.

III. Stage I & II and TBAC repeal rule amendments, 49 N.J.R. 3590(a), operative date December 23, 2017 (letter dated November 29, 2017)

Preconstruction Permit Consolidated with Operating Permit

The Department amended its air permitting rule for major facilities at N.J.A.C. 7:27-22, Operating Permits, in response to an audit of the Department’s major facilities program that the United States Environmental Protection Agency (US EPA) conducted in 2016.

Specifically, N.J.A.C. 7:27-22.33(b) provided that all preconstruction permits and operating certificates required pursuant to N.J.A.C. 7:27-8 were “superseded” by the subsequently issued operating permit, which could be interpreted to mean that the terms of the preconstruction permit and operating permit no longer apply. The Department addressed the EPA’s concerns

through rule amendments to clarify that applicable preconstruction requirements and the terms and conditions in the preconstruction permit will be consolidated, not superseded, into the operating permit.

Similarly, as set forth in amended N.J.A.C. 7:27-22.33(e), the Department will simultaneously conduct the preconstruction permit review under N.J.A.C. 7:27-8 and operating permit review under N.J.A.C. 7:27-22 for an application for a minor modification or significant modification. Although the Department ordinarily will issue the preconstruction approval as part of the operating permit approval, as made clear in the amended rule, the applicant can request that the Department issue the preconstruction approval when it issues the proposed operating permit.

Further, the Department deleted certain references to "draft permit" in N.J.A.C. 7:27-22 and replaced those references with the correct term of "proposed operating permit" where it was appropriate.

N.J.A.C. 7:27-8.2(b)3 was amended to address the situation where a portion of a major facility (such as a research and development operation) is subject to the minor facility rules at N.J.A.C. 7:27-8, but is not subject to operating permit requirements of N.J.A.C. 7:27-22 (although the facility otherwise is). In such a case the facility must obtain and maintain a separate preconstruction permit under N.J.A.C. 7:27-8 for that portion of the facility and, unlike the cases addressed by N.J.A.C. 7:27-8.2(b)1 and 2, the terms and conditions of this separate preconstruction permit will not be consolidated into the facility's operating permit.

Federal Consent Decree

In some cases, an operating permit includes requirements derived from a consent decree between the permittee and the EPA. Even if the consent decree has been terminated, the conditions may remain in a permit because the term of the permit extends beyond the term of the consent decree. The Department added new N.J.A.C. 7:27-8.3(k) and 22.3(uu) to indicate that the Department will note in the permit which requirements are derived from a consent decree, and that the Department will not change the requirements without first notifying the EPA. In addition, if the facility is subject to an order or consent decree, then the facility's compliance schedule must incorporate and be at least as stringent as the order or consent decree.

Public Notice of Draft Operating Permits

The Department amended N.J.A.C. 7:27-22.11(e) to replace newspaper publication of a notice of a draft operating permit with posting on the Department's website. These changes were in response to recent amendments to the EPA's rules governing the public notice requirements for the Title V operating permit program (81 Fed. Reg. 71613, October 18, 2016) (final rule). The EPA's final rule removed the requirement to provide public notice of a draft permit through publication in a newspaper and instead provides for electronic publication of notice of these actions.

The Department adopted these amendments to the rules on October 24, 2017. The adoption was published in the New Jersey Register on November 20, 2017 at 49 N.J.R. 3590(a). The Department held a hearing on the rule amendments on August 24, 2017 and accepted written comments through September 1, 2017. A copy of the Department's responses to those comments were included in the adoption document that was published in the New Jersey Register and submitted to the Regional Administrator by letter dated November 29, 2017.

As noted above, the letters previously provided to your office contained copies of the proposals as published in the New Jersey Register, which included the notices of public hearing, as well as copies of the adoptions as published in the New Jersey Register. For these reasons, the Department has not duplicated those attachments here.

If you have any questions regarding the revisions, please do not hesitate to contact Kenneth Ratzman at (609) 292-0834.

Sincerely,



Francis C. Steitz
Director
Division of Air Quality

c: Paul Baldauf, Assistant Commissioner, NJDEP
Rick Ruvo, USEPA
John Renella, New Jersey DAG

ATTACHMENT E



State of New Jersey

DEPARTMENT of ENVIRONMENTAL PROTECTION AIR QUALITY, ENERGY AND SUSTAINABILITY

Division of Air Quality
401 E. State Street, 2nd floor, P.O. Box 420, Mail Code 401-02
Trenton, NJ 08625-0420

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

May 16, 2017

Ms. Suilin Chan
Chief, Permitting Section
United States Environmental Protection Agency - Region 2
290 Broadway, 25th Floor
New York, NY 10007-1866
Ms. Suilin Chan

Dear Chief Chan:

Enclosed are responses to the follow-up items identified in former Regional Administrator Judith Enck's letter dated October 27, 2016, regarding the 2016 audit of New Jersey's Title V Operating Permit Program.

I would like to thank you and your staff for working closely with NJDEP during this audit and our continued partnership towards improving New Jersey's air quality.

Sincerely,

Kenneth Ratzman, Assistant Director
Air Quality Regulation and Planning

c: Director Francis Steitz, Division of Air Quality, NJDEP
Bachir Bouzid, Section Chief, Operating Permit Section
Khawar Kalim, Consultant, Division of Air Quality

Enclosure

| EPA Comment / Action Item | NJDEP Response |
|---|---|
| <p>I. Introduction (EPA's introductory comments).</p> | <p>No comment/response.</p> |
| <p>II. Title V Fees</p> <p>A new fee demonstration is needed to analyze all possible funding options that would lead to a self-sufficient fee program. NJDEP should submit the fee demonstration or fee analysis as part of its audit response (due by end April 2017).</p> | <p>NJDEP will continue to evaluate options to address the major facility fees revenue shortfall and will share our plans with EPA. However, note that despite shortfall in fees revenue, New Jersey continues to fully fund its Title V program.</p> |
| <p>III. Rule Revisions Required to Resolve Outstanding Issues</p> <ol style="list-style-type: none"> 1. <u>Supersession Issue</u>: NJDEP needs to remove the word "supersede" from N.J.A.C. 7:27-22.33(b) and (c). 2. <u>Administrative Consent Order</u>: NJDEP should clarify that "order" includes "administrative consent order". 3. <u>Pre-Notification of Rule Revision</u>: NJDEP has agreed to keep EPA informed of any plans to revise its rules and share potential rule changes with EPA. | <p>A rule revision is underway to update the relevant sections of N.J.A.C. 7:27-22 and corresponding sections of N.J.A.C. 7:27-8, as agreed in our meeting on August 19, 2016.</p> <p>A rule revision is underway to update the relevant sections of N.J.A.C. 7:27-8 and N.J.A.C. 7:27-22.</p> <p>NJDEP will continue to inform EPA of any rule change plans and share potential rule changes with EPA. We will also continue to provide a copy of revised rules to EPA for incorporation into New Jersey's program approval.</p> |
| <p>IV. Rule Citation in Compliance Plans</p> <p>A. <u>SIP Rules</u>: Citation of 22.16(a) and (e) in lieu of the underlying SIP creates confusion.</p> | <p>It has been NJDEP's ongoing practice to use N.J.A.C. 22.16(e) for applicable requirements that were brought forward into operating permits from preconstruction permits. When such applicable requirements are modified, N.J.A.C. 7:27-22.16 (a) is used as the citation for modified and any new applicable requirements.</p> |

| | |
|---|---|
| <p>B. <u>BACT/LAER</u>: Improper citation for LAER limits for non-attainment pollutants creates confusion.</p> <p>C. <u>MACT, NESHAP, NSPS</u>: Permit requirements should include full citation for Federal rules.</p> | <p>In some cases, where no modifications are done to applicable requirements brought forward from preconstruction permits, the operating permit continues to reflect N.J.A.C. 7:27-22.16(e). This approach provides NJDEP the correct basis for such applicable requirement.</p> <p>In addition to sharing the draft and proposed permits with EPA, NJDEP sometimes also shares pre-draft permits with the intention that any inadvertent and infrequent omissions will be identified by EPA and addressed by NJDEP during the routine reviews. Going forward, when issuing modifications subject to N.J.A.C. 7:27-18, NJDEP will cite N.J.A.C. 7:27-18 (instead of N.J.A.C. 7:27-22.16(a)) for emission rates determined by a LAER analysis.</p> <p>As requested, NJDEP will cite both the general description and the specific provision of the rule.</p> |
| <p>V. Permit Content</p> <p>A. <u>MACT/NSPS Provision</u>: Inclusion of MACT NSPS provisions in the permit that are irrelevant to the emission unit creates confusion.</p> <p>B. <u>Periodic Monitoring for PM2.5</u>: Lack of monitoring provisions to demonstrate PM2.5 compliance in cases where PM2.5 emissions are set to equal to PM10 emissions.</p> | <p>NJDEP strives to address Federal standards (e.g. NSPS and MACT) in compliance plans so that they are easily identifiable and enforceable. Our goal is to include only the applicable and relevant sections of the standard. This approach not only provides for efficiencies in permit development, it minimizes confusion without sacrificing enforceability. NJDEP will continue with this practice and remove any non-applicable requirements left inadvertently in compliance plans.</p> <p>NJDEP agrees. In cases where PM10 testing also demonstrates compliance with PM2.5, NJDEP will make sure to include appropriate language under monitoring requirement to clearly state that compliance is demonstrated using the PM10 stack test results.</p> |

| | |
|---|--|
| <p>VI. Fiscal Report Questions</p> <p>Clarification on the following operating cost items are needed since the amount varied greatly during FY 2013, 2014, 2015:</p> <ul style="list-style-type: none"> - Code 2499 HOUSEHOLD/SEC REIMBURSEMENT - Code 3699 PROFESSIONAL SERV REIMBURSEMENT - Code 3899 OTHER SERVICES REIMBURSEMENT - Code 7710 INFO PROCESSING TELE EQUIPMENT | <p>See Attachment I at the end of this document.</p> |
| <p>VII. Compliance Certifications via CDX</p> <p>Submittal of compliance certifications from facilities to EPA's Central Data Exchange (CDX).</p> | <p>EPA is currently not ready to receive electronic compliance certifications through CDX. This request was withdrawn by EPA through the letter dated January 20, 2017. See Attachment II.</p> |

ATTACHMENT I - Clarification of the operating cost during three fiscal years

| Operating Cost Item | FY 2012 | FY 2013 | FY 2014 | Reason for fluctuation |
|--------------------------------------|-----------|-----------|-----------|---|
| 2499 HOUSEHOLD/SEC REIMBURSEMENT | (3,249) | (743) | 3,388 | Charges relate to uniforms, supplies, and safety equipment for staff. These charges are reimbursement from the Stack Test and Mobile Sources program. Fluctuation are due to the timing of reimbursement during the calendar year. |
| 3699 PROFESSIONAL SERV REIMBURSEMENT | (131,985) | (166,357) | (248,004) | These charges mostly relate to processing fees charged by credit card companies for NJDEP's Online Application Portal. The main account is set up under Air program and every year charges are distributed to and reimbursed by other programs. These fluctuations should decline in upcoming years as the credit card fees are now directly billed to users. |
| 3899 OTHER SERVICES REIMBURSEMENTS | (2,439) | (98,878) | (181) | DMV I&M reimbursements for the Mobile Sources program. Fluctuation are due to the timing of reimbursement during the calendar year. |
| 7710 INFO PROCESSING TELE EQUIPMENT | 2,310 | 20,152 | (125) | Expenses related to new computer upgrades and related equipment. |

ATTACHMENT II – EPA Letter regarding CDX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 20 2017

Mr. Bachir Bouzid, Chief
Operating Permits Section
Bureau of Stationary Sources
Air Quality Permitting Program
New Jersey Department of Environmental Protection
401 East State Street, 2nd Floor
P.O. Box 27
Trenton, NJ 08625-0027

JAN 25 2017
RECEIVED

Re: e-Reporting for Title V Submittals

Dear Mr. Bouzid:

Per our conversation of January 17, 2017, EPA is currently not ready to receive title V reports (i.e., annual compliance certifications, semi-annual monitoring reports, etc.) in electronic format from subject sources. Therefore, EPA withdraws its request for electronic reporting directly from title V affected sources as discussed in its October 27, 2016 Operating Permits Program audit report. Title V affected sources should continue to submit their title V reports/certifications to EPA as required by their title V permits in hard copies until further notice.

Please feel free to call me at (212) 637-4019 if you have any additional questions regarding this matter.

Sincerely yours,

Handwritten signature of Suilin W. Chan in cursive.

Suilin W. Chan, Chief
Permitting Section
Air Programs Branch

ATTACHMENT F



State of New Jersey

Department of Environmental Protection
Air Quality, Energy and Sustainability

Division of Air Quality
Bureau of Stationary Sources

401 E. State Street, 2nd Floor, P.O. Box 420, Mail Code 401-02
Trenton, NJ 08625-0420

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CATHERINE R. McCABE
Commissioner

Mr. Lionel MacKenzie
Permitting Section
United States Environmental Protection Agency - Region 2
290 Broadway, 25th Floor
New York, NY 10007-1866

November 9, 2020

Dear Mr. MacKenzie:

Enclosed are responses to the follow-up items identified in Acting Chief Kirk Wieber's letter dated September 24, 2020, regarding the upcoming audit of New Jersey's Title V Operating Permit Program.

Please have your staff contact Ms. Carrie Dooley at carrie.dooley@dep.nj.gov or 609-292-0834 to check possible dates for the audit. We are looking forward to working with you and your staff to further clarify any issues and discuss potential resolution to address the issues.

Sincerely,

A handwritten signature in black ink, appearing to read "D Wong".

Danny Wong, Bureau Chief
Bureau of Stationary Sources, DAQ

c: Kirk Wieber, Suilin Chan, Air Programs Branch, USEPA - Region 2
Francis Steitz, Director, Division of Air Quality, NJDEP
Kenneth Ratzman, Assistant Director, Air Quality Regulation and Planning, NJDEP
Joel Leon, Section Chief, Operating Permit Section, NJDEP
Khawar Kalim, Consultant, Division of Air Quality, NJDEP

I. OUTSTANDING ISSUES FROM 2016 AUDIT

| EPA Comment / Action Item | NJDEP Response |
|---|--|
| <p>IV. Rule Citation in Compliance Plans</p> <p>A. <u>SIP Rules</u>: Citation of 22.16(a) and (e) in lieu of the underlying SIP rule creates confusion.</p> <p>B. <u>BACT/LAER</u>: For pollutants that are subject to the Best Available Control Technology (BACT), the permit conditions establishing the BACT limits must cite 40 CFR §52.21 as the underlying applicable requirement. For those pollutants that are subject to the Lowest Achievable Emission Rate (LAER), the permit conditions establishing the LAER limits should cite N.J.A.C. 7:27-18, New Jersey’s Emission Offset Rule.</p> | <p>It has been NJDEP’s ongoing practice to use N.J.A.C. 22.16(e) for applicable requirements that were brought forward into operating permits from preconstruction permits. When such applicable requirements are modified, N.J.A.C. 7:27-22.16 (a) is used as the citation for modified and any new applicable requirements. Over the years, a vast majority of applicable requirements from original preconstruction permits have been converted to operating permit requirements.</p> <p>In some cases, where no modifications are done to applicable requirements brought forward from preconstruction permits, the operating permit continues to reflect N.J.A.C. 7:27-22.16(e). This approach provides NJDEP the correct basis for such applicable requirement.</p> <p>For any applicable requirements with underlying federal or state rules, the above approach is used in conjunction with the appropriate citations for federal rules (NSPS, MACT, PSD, etc.) or state rules (N.J.A.C. 7:27-16, N.J.A.C. 7:27-18, etc.).</p> <p>Following the 2016 Audit, NJDEP agreed to and continues to fully implement this requirement.</p> |

| | |
|---|--|
| <p>C. <u>MACT, NESHAP, NSPS</u>: NJDEP should provide both the citation for the specific rule provision and the general description for all NSPS, NESHAPS, and MACT requirements.</p> | <p>As agreed following the 2016 Audit, the permit conditions now include both the general description and the citation for the specific provision of the rule.</p> |
| <p>V. Permit Content</p> <p>A. <u>MACT/NSPS Provision</u>: In some permits, when an emission unit is subject to a particular MACT or NSPS, all of the requirements from the federal standard are copied onto the operating permit verbatim, even if some of the requirements do not apply due to the size or type of units involved.</p> | <p>NJDEP agreed to and now includes only the applicable and relevant sections of federal standards. NJDEP will continue this practice and remove any non-applicable requirements left inadvertently in compliance plans.</p> |

II. ITEMS OF INTEREST FOR THE 2020 AUDIT

| | |
|--|--|
| <p>A. Statement of Basis (SOB)</p> <p>a. Addition of new requirements: The SOB should describe all changes made to the draft permit, even when requirements from NSPS, NESHAP, etc. are added. For example, in the PSEG Burlington permit, NESHAP requirements were added without any explanation. The SOB should be as explicit about changes to the permit as possible. The SOB should contain a record of all changes made to the facility and to the facility's permit so that a citizen can easily find out changes at a facility without having to review all of the issued permits. While a modified permit or renewal permit once replaces the previously issued permit, the SOB should not be replaced. It should include the history of changes at the facility to which descriptions of future modifications would be added.</p> | <p>PSEG Burlington permit: NJDEP is currently working with EPA to address all of EPA's comments regarding PSEG Burlington Draft Renewal permit, including the addition of NESHAP 5D requirements. As discussed in our response of November 2, 2020, these requirements were added as a part of permit renewal, where we update any Federal and state requirements the facility becomes subject to since the last renewal.</p> <p>History of Changes: NJDEP's current SOB already provides Operating Permit Revision History that summarizes all the changes that have been incorporated into the operating permit through seven-day notice changes, administrative amendments, minor modifications, or significant modifications since the approval of the initial operating permit or the most recent renewal thereof. For details, please refer to Section III, BACKGROUND AND HISTORY in Attachment A. In addition, Section V of the SOB lists all the applicable state and federal rules a</p> |
|--|--|

b. Deletion of requirements: When requirements are deleted from the permit, the SOB should also provide a discussion on why those requirements are deleted from the previous permit. For example, in the case of Cinnamon Bay, requirements to obtain emissions offsets pursuant to N.J.A.C. 7:27-18 were removed from the permit after the offsets were obtained with no record in the SOB (Cinnamon Bay).

While it may be NJDEP's standard practice to remove "obsolete" requirements from the permit, such action should be recorded in the SOB with the rationale for its removal.

c. Non-applicable requirements: The SOB should include a brief discussion of potentially applicable federal standards and/or NJ SIP approved air regulations that may be applicable to each newly added or modified emission source. The rationale for non-applicability could be emissions cap, size of emission source, specific operational limits, type of fuel combusted, etc. The creation of a "non-applicable requirements" section in the SOB to document any and all reasons that cause the emission source(s) to be exempt or not subject to otherwise applicable federal and/or state requirements will improve the public's understanding of a title V facility, and therefore minimize potential appeals.

facility is subject to. See Attachment A.

NJDEP is committed to correct any inadvertent deficiency when and if identified by EPA during the Pre-Draft and Draft permit reviews and update the SOB accordingly.

NJDEP's current practice is to include a discussion in the SOB when any significant applicable requirements are removed from the permit, such as requirements to obtain emission offsets, etc. To ensure effective implementation of this practice, we have updated the SOB template by including a reminder for the permit writers. See Attachment A, Section III, BACKGROUND AND HISTORY.

In case of Cinnamon Bay, the applicable requirement related to securing and purchasing emission offsets was removed only after the facility had secured and purchased the required emission offsets. As per EPA comments, the SOB was revised to document the rationale for removal and re-posted on the website.

As described above, the SOB already contains a list of all the applicable state and federal rules a facility is subject to. See Attachment A, Section V, APPLICABLE STATE AND FEDERAL RULES .

NJDEP does not believe that it's productive to have a non-applicable requirements section in the SOB. NJDEP believes it is the applicant's responsibility to make the applicability and non-applicability determinations and then submit a certified application for NJDEP's review.

NJDEP's "comprehensive permitting" approach is sufficiently complimented by our existing SOB; it serves the needs of the public, the regulated community and the permitting authority, and meets all the criteria established pursuant to the CAA. NJDEP issues all-inclusive comprehensive operating permits – which contain all applicable requirements, monitoring and recordkeeping methods, and reporting requirements. These are sufficient to explain compliance obligations, without referring to any detailed supplementary material or providing a

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| <p>d. CAM applicability: The SOB should provide a brief discussion on the applicability or non-applicability of the CAM rule to each emission unit that uses a control device. Specific monitoring requirements apply when an emission unit is subject to CAM, which may be more comprehensive than standard requirements.</p> | <p>rationale for what is NOT included in the permit.</p> <p>NJDEP will continue to handle any specific non-applicability questions from EPA or other stakeholders, including public, on a case-by-case basis. Such questions will be responded to during the EPA reviews and during public comment process.</p> <p>NJDEP will add a new section in the SOB for Operating Permit Renewals to document the applicability or non-applicability of the CAM rule. NJDEP currently requires all facilities to provide CAM related information with their Operating Permit renewal applications. For details, refer to Section 1 in the Attachment to the RADIUS Air Operating Permit Renewal Application (click the link to access the document).</p> |
| <p>B. Emissions-based fees</p> <p>Are GHG emissions accounted for in the Title V emissions-based fees?</p> | <p>No, consistent with the current Major Facility Operating Permit rule, GHG emissions (CO2 emissions) are exempted from the Title V annual emission fees. For details, see N.J.A.C. 7:27 22.31(b)2.</p> |

ATTACHMENT A

STATEMENT OF BASIS – OPERATING PERMIT RENEWAL

STATEMENT OF BASIS for NAME OF THE FACILITY

TITLE V OPERATING PERMIT RENEWAL

Program Interest (PI): [55555](#) / Permit Activity Number: BOP[10003](#)

I. FACILITY INFORMATION

Name of the Facility is located at facility's location including county and consists of plant description (e.g. a lube oil blending plant or a petroleum products storage and distribution plant). The facility is owned by Name of the Owner and is operated by Name of the Operator.

The facility is classified as a major facility based on its potential to emit list all major PTE air contaminants from Section A by summing the significant and insignificant emissions (and non-source fugitive emissions if applicable to the facility) for each air contaminant from Section A Table 1 and Table 2 that the facility is major for (e.g. 115 tons per year of volatile organic compounds).

CONTINUE WITH THE FOLLOWING TEXT IF ALSO MAJOR FOR HAPS: It is also classified as a major hazardous air pollutant (HAP) facility. A major HAP emitting facility is designated as major when the allowed emissions exceed 10 tons per year of any individual hazardous air pollutant or 25 tons per year of any combination of individual hazardous air pollutants that may be emitted simultaneously.

USE THE FOLLOWING PARAGRAPH IF HAPS ARE INCLUDED IN THE COMPLIANCE PLAN AND/OR INSIGNIFICANT SOURCE/NON-SOURCE FUGITIVE INVENTORIES: This permit allows individual hazardous air pollutants to be emitted at a rate not to exceed: list all HAPs from Section A Table 1 (e.g. 401 pounds per year of benzene) and/or HAPS (Total) from Section A Table 2 (e.g. 27.8 pounds per year of total HAPs from insignificant sources and/or non-source fugitive sources) Total HAPs emissions from insignificant sources and/or non-source fugitives are estimated values and are not speciated.

OR

This permit does not contain any hazardous air pollutants.

USE THE FOLLOWING PARAGRAPH ONLY IF THERE IS A VOC LIMIT CORRECTION TO INCLUDE FORMALDEHYDE: VOC emissions are being corrected to include formaldehyde emissions previously not accounted for. This emission increase is meant to capture emissions already present and no new actual emissions are being generated. As a result, the Department is not revisiting the applicability of State of The Art (N.J.A.C. 7:27-22.35) and Federal New Source Review (40 CFR 52.21-PSD and N.J.A.C. 7:27-18).

II. AREA ATTAINMENT CLASSIFICATION

The Federal Clean Air Act (CAA) sets National Ambient Air Quality Standards (NAAQS) for six common air pollutants. These commonly found air pollutants (also known as "criteria pollutants") are particulate matter, ground-level ozone, carbon monoxide (CO), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), and lead. The US Environmental Protection Agency (USEPA) also classifies areas as "attainment" or "nonattainment" for each criteria pollutant, based on the magnitude of an area's problem. Nonattainment classifications are used to specify what air pollution reduction measures an area must adopt, and when the area must reach attainment. Currently, the entire State of New Jersey is designated as nonattainment for the 8-hour ozone NAAQS. New Jersey is designated attainment for all other pollutants. For nonattainment classification refer to <https://www.epa.gov/green-book/green-book-national-area-and-county-level-multi-pollutant-information>.

III. BACKGROUND AND HISTORY

The equipment that emits air contaminants from this facility include: list equipment type and control devices with control device efficiency (e.g. lube oil process vessels; mixing kettles; a number 2 fuel oil fired boiler; and a tanker truck loading rack equipped with a carbon adsorption system with no less 90% reduction efficiency for volatile organic compound emissions).

NOTE TO PERMIT WRITERS – Use the following paragraph only if a new GOP is being included in the permit: This permit also incorporates one general operating permit(s) (Activity # BOP[XXXXXX](#)) that the facility obtained for an emergency diesel generator with a heat input rate of 20 MMBTU/hr (HHV). This generator is permitted to operate up to 100 hours per year on fuel oil for testing and maintenance. The

STATEMENT OF BASIS for [NAME OF THE FACILITY](#)

TITLE V OPERATING PERMIT RENEWAL

Program Interest (PI): [55555](#) / Permit Activity Number: BOP[10003](#)

total increase in facility emissions due to the addition of this new generator is [1.4](#) tons of NOx, [0.5](#) tons of VOC and [250](#) tons of CO2(e) per year.

USE THIS PARAGRAPH IF CHANGES WERE MADE SINCE THE APPROVAL OF THE IOP OR MOST RECENT RENEWAL - Table 1 - Operating Permit Revision History (located at the end of this document) provides a summary of all the changes that have been incorporated into the operating permit through seven-day notice changes, administrative amendments, minor modifications, or significant modifications since the approval of the initial operating permit or the most recent renewal thereof. Please refer to the attached explanation sheet for the structure and configuration of conditions of approval, included in the Facility Specific Requirements section of this permit.

OR

USE THIS PARAGRAPH IF NO CHANGES WERE MADE SINCE THE APPROVAL OF THE IOP OR MOST RECENT RENEWAL - No changes were made to the operating permit through seven-day notice changes, administrative amendments, minor modifications, or significant modifications since the approval of the initial operating permit or the most recent renewal thereof. Please refer to the attached explanation sheet for the structure and configuration of conditions of approval, included in the Facility Specific Requirements section of this permit.

NOTE TO PERMIT WRITERS – If the permit includes HAPs as indicated under Section I of the Statement of Basis, or if Risk Assessment was conducted for other Air Toxics emissions, use ONE of the paragraphs from the [Health Risk Assessment Options](#) document (click to open).

NOTE TO PERMIT WRITERS – Use the following text only when health risk assessment was not conducted for certain HAPs that have no health risk factors: Health risk assessment for the following HAPs was not conducted due to unavailability of health risk factors: [List HAPs here](#).

NOTE TO PERMIT WRITERS - Permit requirements related to securing emission credits can be removed from the operating permit in situations where emission offsets have been secured by a facility and all Subchapter 18 requirements have been addressed. Use the following as guidance for documenting the reason for the removal in this section: The facility secured and purchased the required offsets and has satisfied the provisions of the requirement. [Provide details](#).

This is a [Permit Renewal/Permit Modification with Renewal/Permit Modification](#) and includes the following changes:

NOTE TO PERMIT WRITERS – Copy and paste the Reason for Application from NJEMS Permit Document Set (PDS).

The changes made during this permitting action result in allowable annual emissions changes as follows: [describe here](#). OR [There are no proposed changes to air contaminants](#).

IV. BASIS FOR MONITORING AND RECORDKEEPING REQUIREMENTS

The facility's operating permit includes monitoring, recordkeeping and reporting requirements that are sufficient to demonstrate the facility's continued compliance with the applicable requirements consistent with the following:

1. Provisions to implement the testing and monitoring requirements of N.J.A.C. 7:27-22.18, the recordkeeping and reporting requirements of N.J.A.C. 7:27-22.19, and all emissions monitoring and analysis procedures or compliance assurance methods required under the applicable requirements, including any procedures and methods promulgated pursuant to 40 CFR 64; and

STATEMENT OF BASIS for NAME OF THE FACILITY

TITLE V OPERATING PERMIT RENEWAL

Program Interest (PI): [55555](#) / Permit Activity Number: BOP10003

2. Where the applicable requirement does not require direct periodic monitoring of emissions, the Department requires periodic monitoring of surrogate parameters sufficient to yield reliable data from the relevant time period that are representative of the facility's compliance with the permit.

For each equipment, select the appropriate paragraph(s), based on equipment type, from the [Surrogate Monitoring Options document](#) (click to open). Edit the selected paragraph(s) as needed and paste here.

3. In some cases, direct periodic monitoring of emissions and/or surrogate parameters is not required due to one or more of the following:

- Equipment size and capacity limitations,
- Subject equipment being permitted at the maximum rated capacity,
- There is no specific state or Federal standard that applies to this piece of equipment,
- Not a pollutant of concern for this piece of equipment,
- Agreements with EPA on the frequency of testing and monitoring for combustion sources.

Based on the above criteria, there is no direct or surrogate monitoring for the following pieces of equipment:

- List each piece of equipment, corresponding emission unit and E/U description, with no direct periodic monitoring of emissions and no surrogate monitoring, e.g., E2 (U2) Boiler 5.

V. APPLICABLE STATE AND FEDERAL RULES

The facility is subject to New Jersey Air Pollution Control Regulations, codified in N.J.A.C. 7:27-1 through 34, as applicable. A complete text of these regulations is available at:

<http://www.nj.gov/dep/aqm/rules27.html>

The facility is also subject to Federal regulations listed below.

CHOOSE AS APPLICABLE AND ADD AS NECESSARY

NSPS Subpart Kb: Volatile Organic Liquid Storage Vessels

NSPS Subpart J: Petroleum Refineries

MACT Subpart A: General Provisions

The Greenhouse Gas (GHG) emissions from this facility are 17,000 TPY CO₂e and there is no GHG emissions increase. This renewal is not subject to PSD rules at 40 CFR 52.21.

VI. FACILITY'S COMPLIANCE STATUS

USE THIS PARAGRAPH IF THERE ARE NO COMPLIANCE SCHEDULES IN THE PERMIT: The Responsible Official at the facility has certified that the facility currently meets all applicable requirements of the Federal Clean Air Act and the New Jersey Air Pollution Control Act. Based on this certification, the Department's evaluation of the information included in the facility's application, and a review of the facility's compliance status, the Department has concluded that this air pollution control operating permit should be approved.

OR

USE THIS PARAGRAPH IF THERE ARE COMPLIANCE SCHEDULES IN THE PERMIT: The Department has determined that the facility does not meet all applicable requirements of the Federal Clean Air Act and the New Jersey Air Pollution Control Act. Describe non-compliance items (e.g., Facility's engines do not comply with the NO_x RACT emission standard of 8.0 g/hp-hr per N.J.A.C. 7:27-19.8(c) when firing #2 fuel oil. AND Describe any non-compliance items, related to stack testing, reported by the facility in Section 4 of the attachment to the RADIUS Operating Permit Renewal Application. As a

STATEMENT OF BASIS for [NAME OF THE FACILITY](#)

TITLE V OPERATING PERMIT RENEWAL

Program Interest (PI): [55555](#) / Permit Activity Number: BOP[10003](#)

result, this draft permit includes compliance schedules for the facility to follow to achieve compliance. Contingent on compliance being achieved in accordance with the schedules, the Department has concluded that this air pollution control operating permit should be approved. The compliance schedules require that the facility achieve compliance by [Date](#).

AND

USE THIS PARAGRAPH IF THERE IS APPLICATION SHIELD: The facility has submitted a timely and complete application to renew their operating permit and an application shield is in effect.

OR

USE THIS PARAGRAPH IF THERE IS NO APPLICATION SHIELD AND THE PERMIT HAS NOT EXPIRED: The facility does not have application shield as it did not submit a timely and complete application to renew their operating permit. Hence the facility is allowed to operate only until the expiration date of the current permit.

OR

USE THIS PARAGRAPH IF THERE NO APPLICATION SHIELD AND THE PERMIT HAS EXPIRED: The facility's operating permit has expired without an application shield but the facility and the Department have entered into Administrative Consent Order to address this situation.

END OF CHOICES

This operating permit also includes a permit shield, pursuant to the provisions of N.J.A.C. 7:27-22.17. A permit shield provides that compliance with the relevant conditions of the operating permit shall be deemed compliance with the specific applicable requirements that are in effect on the date of issuance of the draft operating permit, and which form the basis for the conditions in the operating permit.

Also, prior to the expiration of the five-year period, the facility will be required to apply for a renewal of this operating permit, at which time the Department will evaluate the facility and issue a public notice with its findings.

VII. EXEMPT ACTIVITIES

The facility's operating permit does not include exempt activities such as office and interior maintenance activities, maintenance shop activities, food preparation facilities, cafeterias and dining rooms, etc. A complete list of exempt activities, as allowed by the Operating Permit rule, can be found at N.J.A.C. 7:27-22.1.

NOTE TO PERMIT WRITERS - The revision history table should be copied from the Revision History for Statement of Basis report launched from NJEMS. The following steps will walk you through the process:

1. Navigate to the PI Number of the facility in NJEMS.
2. Select any document in Central File, and click the button labeled "Launch Report" in the bottom left-hand corner of the screen.
3. Click on the report titled "Revision History for Statement of Basis", and click the button labeled "Run Report". The report will open in your browser.
4. Click the "Export" button in the toolbar (one with the right-angle arrow at the top of a box). Select File Type as "Excel (.xlsx)" in the popup window.
 - a. In Internet Explorer, a popup will appear at the bottom of the browser window asking if you want to open or save the file. Click "Open". The report will open in Excel.
 - b. In Google Chrome, the file will download and appear on the bottom left-hand corner of the screen. Click on the file, and it will open in Excel.
5. Select the table by clicking in the top left-hand cell of the table and dragging your mouse to the bottom right-hand cell in the table. The entire table should be outlined and highlighted in blue.
6. Copy the table by pressing and holding the Ctrl key and then pressing the C key. The outline around the table should now be dashed and moving.
7. Select the text below stating "Paste table here.", and paste the copied table by pressing and holding the Ctrl key and then pressing the V key.
8. Delete this green text.

Table 1 - Operating Permit Revision History

Paste table here.

FACILITY NAME (FACILITY ID NUMBER)

BOP050001

Activity Number assigned by the Department

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Emission Unit Number assigned by the Facility

Brief description of emission unit

Emission Unit: U40 Sewage Sludge Incinerators
Operating Scenario: OS Summary

OR OS2 Fluidized Bed Incinerator

OS Summary lists all rules and requirements that apply to an emission unit. An emission unit may contain one or more pieces of equipment and corresponding operating scenarios.

OSX denotes the operating scenario number and lists the rules and requirements that apply to a scenario. An operating scenario represents various ways (or scenarios) a piece of equipment is permitted to operate.

Item Number

Description of applicable requirement

Monitoring method to ensure compliance

Recordkeeping to show facility's compliance

Actions and submittals required for the facility

| Ref.# | Applicable Requirement | Monitoring Requirement | Recordkeeping Requirement | Submittal/Action Requirement |
|-------|---|--|--|--|
| 3 | The permittee shall conduct an annual performance test for each pollutant in Table 2 of 40CFR62 Subpart LLL between 11 and 13 calendar months after the previous performance test or within 60 days of a process change. [40 CFR 62.16000(a)] | Other: Conduct the performance test using the test methods, averaging methods and minimum sampling volumes or durations as specified in 40CFR62 Subpart LLL and according to the testing, monitoring and calibration requirements specified in 40 CFR 62.16015(a). [40 CFR 62.16000(a)]. | Other: (1) Maintain records of the results of initial, annual and any subsequent performance tests conducted to determine compliance with the emission limits and standards and/or to establish operating limits, as applicable. [40 CFR 62.16025(e)]. | Submit a report: Annually to the Administrator and to the Department. The permittee shall submit an annual compliance report as specified in 40 CFR 62. [40 CFR 62.16000(d)] |

Rule citation for applicable requirement

Rule citation for monitoring requirement

Rule citation for recordkeeping requirement

Rule citation for submittal/ action requirement

Explanation Sheet for Facility Specific Requirements

ATTACHMENT G

STATEMENT OF BASIS for NAME OF THE FACILITY

TITLE V OPERATING PERMIT SIGNIFICANT MODIFICATION

Program Interest (PI): [55555](#) / Permit Activity Number: BOP[100003](#)

I. FACILITY INFORMATION

Name of the Facility is located at facility's location including county and consists of plant description (e.g. a lube oil blending plant or a petroleum products storage and distribution plant). The facility is owned by Name of the Owner and is operated by Name of the Operator.

The facility is classified as a major facility based on its potential to emit list all major PTE air contaminants from Section A by summing the significant and insignificant emissions (and non-source fugitive emissions if applicable to the facility) for each air contaminant from Section A Table 1 and Table 2 that the facility is major for (e.g. 115 tons per year of volatile organic compounds)

CONTINUE WITH THE FOLLOWING TEXT IF ALSO MAJOR FOR HAPS: It is also classified as a major hazardous air pollutant (HAP) facility. A HAP emitting facility is designated as major when the allowed emissions exceed 10 tons per year of any individual hazardous air pollutant or 25 tons per year of any combination of individual hazardous air pollutants that may be emitted simultaneously.

USE THE FOLLOWING PARAGRAPH IF HAPS ARE INCLUDED IN THE COMPLIANCE PLAN AND/OR INSIGNIFICANT SOURCE/NON-SOURCE FUGITIVE INVENTORIES: This permit allows individual hazardous air pollutants to be emitted at a rate not to exceed: list all HAPs from Section A Table 1 (e.g. 401 pounds per year of benzene) and/or HAPS (Total) from Section A Table 2 (e.g. 27.8 pounds per year of total HAPs from insignificant sources and/or non-source fugitive sources) Total HAPs emissions from insignificant sources and/or non-source fugitives are estimated values and are not specified.

OR

This permit does not contain any hazardous air pollutants.

USE THE FOLLOWING PARAGRAPH ONLY IF THERE IS A VOC LIMIT CORRECTION TO INCLUDE FORMALDEHYDE: VOC emissions are being corrected to include formaldehyde emissions previously not accounted for. This emission increase is meant to capture emissions already present and no new actual emissions are being generated. As a result, the Department is not revisiting the applicability of State of The Art (N.J.A.C. 7:27-22.35) and Federal New Source Review (40 CFR 52.21-PSD and N.J.A.C. 7:27-18).

II. AREA ATTAINMENT CLASSIFICATION

The Federal Clean Air Act (CAA) sets National Ambient Air Quality Standards (NAAQS) for six common air pollutants. These commonly found air pollutants (also known as "criteria pollutants") are particulate matter, ground-level ozone, carbon monoxide (CO), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), and lead. The US Environmental Protection Agency (USEPA) also classifies areas as "attainment" or "nonattainment" for each criteria pollutant, based on the magnitude of an area's problem. Nonattainment classifications are used to specify what air pollution reduction measures an area must adopt, and when the area must reach attainment. Currently, the entire State of New Jersey is designated as nonattainment for the 8-hour ozone NAAQS. New Jersey is designated attainment for all other pollutants. For nonattainment classification refer to <https://www.epa.gov/green-book/green-book-national-area-and-county-level-multi-pollutant-information>.

III. BACKGROUND AND HISTORY

The equipment that emits air contaminants from this facility include: list equipment type and control devices with control device efficiency (e.g. lube oil process vessels; mixing kettles; a number 2 fuel oil fired boiler; and a tanker truck loading rack equipped with a carbon adsorption system with no less 90% reduction efficiency for volatile organic compound emissions).

NOTE TO PERMIT WRITERS – Use the following paragraph only if a new GOP is being included in the permit: This permit also incorporates one general operating permit(s) (Activity # BOP[XXXXXX](#)) that the facility obtained for an emergency diesel generator with a heat input rate of 20 MMBTU/hr (HHV). The

STATEMENT OF BASIS for **NAME OF THE FACILITY**

TITLE V OPERATING PERMIT SIGNIFICANT MODIFICATION

Program Interest (PI): [55555](#) / Permit Activity Number: BOP[100003](#)

total increase in facility emissions due to the addition of this new source(s) is [1.4](#) tons of NO_x, [0.5](#) tons of VOC and [250](#) tons of CO₂(e) per year.

NOTE TO PERMIT WRITERS – If the permit includes HAPs as indicated under Section I of the Statement of Basis, or if Risk Assessment was conducted for other Air Toxics emissions, use ONE of the paragraphs from the [Health Risk Assessment Options](#) document (click to open).

NOTE TO PERMIT WRITERS – Use the following text only when health risk assessment was not conducted for certain HAPs that have no health risk factors: Health risk assessment for the following HAPs was not conducted due to unavailability of health risk factors: [List HAPs here](#).

NOTE TO PERMIT WRITERS - Permit requirements related to securing emission credits can be removed from the operating permit in situations where emission offsets have been secured by a facility and all Subchapter 18 requirements have been addressed. Use the following as guidance for documenting the reason for the removal in this section: The facility secured and purchased the required offsets and has satisfied the provisions of the requirement. [Provide details](#).

This is a [Permit Renewal/Permit Modification with Renewal/Permit Modification](#) and includes the following changes:

NOTE TO PERMIT WRITERS – Copy and paste the Reason for Application from NJEMS Permit Document Set (PDS).

[This modification will also change the facility-wide emission limits as listed in the following table:](#)

| Allowable Emission Limits | Facility's Potential Emissions (tons per year)* | | | | | | | | | |
|---------------------------|---|-----------------|----|-----------------|-------------|--------------------------|---------------------------|----|--------------|---------------------------|
| | VOC (total) | NO _x | CO | SO ₂ | TSP (total) | PM ₁₀ (total) | PM _{2.5} (total) | Pb | HAPs (total) | CO ₂ e (total) |
| Current Permit | | | | | | | | | | |
| Proposed Permit | | | | | | | | | | |
| Change (+ / -) | | | | | | | | | | |

- VOC Volatile Organic Compounds
- NO_x Nitrogen Oxides
- CO Carbon Monoxide
- SO₂ Sulfur Dioxide
- TSP Total Suspended Particulates
- PM₁₀ Particulates under 10 microns
- PM_{2.5} Particulates under 2.5 microns
- Pb Lead
- HAPs Hazardous Air Pollutants
- CO₂e Carbon Dioxide equivalent

* Other Any other air contaminant regulated under the Federal Clean Air Act. [This modification will change permitted ammonia emissions from 100 to 120 tons per year.](#) OR [This permit does not contain any air pollutants under this category.](#) OR [There is no change to the ammonia emissions.](#) NOTE TO PERMIT WRITERS – Obtain this information from Section A, Table 4.

NOTE TO PERMIT WRITERS – The Current Permit data in the above table must be same as in Section A, Table 1 and Table 2 of the current/approved permit and the Proposed Permit data must be same as in Section A, Table 1 and Table 2 of the modified permit (current modification). The allowable emission limits shall include both significant and insignificant sources.

OR [There are no proposed changes to air contaminant allowable emission rates.](#) OR ADD IF THERE ARE CHANGES ONLY TO OTHER AIR CONTAMINANTS [This modification will change permitted ammonia emissions from 100 to 120 tons per year.](#)

IV. CASE-BY-CASE DETERMINATIONS

USE THE FOLLOWING ONLY IF THE FACILITY IS SUBJECT TO CASE-BY-CASE DETERMINATION:

STATEMENT OF BASIS for NAME OF THE FACILITY

TITLE V OPERATING PERMIT SIGNIFICANT MODIFICATION

Program Interest (PI): [55555](#) / Permit Activity Number: BOP[100003](#)

Include a paragraph (2-3 sentences) describing Department's decision regarding the case-by-case determination for this modification when any of the following applies:

- [NOx RACT pursuant to N.J.A.C. 7:27-19.13](#)
- [VOC RACT pursuant to N.J.A.C. 7:27-16.17](#)
- [State of the Art \(SOTA\) pursuant to N.J.A.C. 7:27-22.35](#)
- [Lowest Achievable Emission Rate \(LAER\) pursuant to N.J.A.C. 7:27-18.3\(b\)](#)
- [Best Available Control Technology \(BACT\) pursuant to 40 CFR 52.51...](#)
- [Any other case-by-case determinations](#)

OR [No case-by-case determinations were required for this modification.](#)

V. EMISSION OFFSET REQUIREMENTS

USE THIS PARAGRAPH ONLY IF THE FACILITY IS SUBJECT TO EMISSION OFFSETS: This modification shows an increase of [XX.X](#) tons per year (tpy) of [NOx](#) emissions during the contemporaneous period (last five years). This increase is greater than the N.J.A.C 7:27-18 (Sub 18) significant net emission threshold of [25](#) tpy. The facility is therefore required to purchase [XX.X](#) tons of [NOx](#) offsets pursuant to N.J.A.C 7:27-18, at an offset ratio of [1:3](#) tons reduction to [1.0](#) ton of [NOx](#) emission increase.

Option 1: Use this paragraph if the facility has submitted the CER Transfer Application (CERs identified) and a Notarized Transfer Letter (CERs secured).

The applicant has obtained [XX.X](#) tons of [NOx](#) offsets from [Name of the Entity Selling Offsets](#), located at [Entity's Address](#). The Department has verified that those emission reductions would comply with the provisions at N.J.A.C 7:27-18.5.

Option 2: Use this paragraph if the facility has submitted the CER Transfer Application (CERs identified) but without a Notarized Transfer Letter (CERs NOT secured).

The applicant has proposed to obtain [XX.X](#) tons of [NOx](#) offsets from [Name of the Entity Selling Offsets](#), located at [Entity's Address](#). The Department has verified that those emission reductions would comply with the provisions at N.J.A.C 7:27-18.5. If this permit is approved, the offsets would need to be secured and transferred to the applicant through a permit significant modification prior to initiation of operation, pursuant to N.J.A.C. 7:27-18.3(f).

OR [This modification is not subject to Emission Offset requirements.](#)

VI. BASIS FOR MONITORING AND RECORDKEEPING REQUIREMENTS

The facility's operating permit includes monitoring, recordkeeping and reporting requirements that are sufficient to demonstrate the facility's continued compliance with the applicable requirements consistent with the following:

1. Provisions to implement the testing and monitoring requirements of N.J.A.C. 7:27-22.18, the recordkeeping and reporting requirements of N.J.A.C. 7:27-22.19, and all emissions monitoring and analysis procedures or compliance assurance methods required under the applicable requirements, including any procedures and methods promulgated pursuant to 40 CFR 64; and

NOTE TO PERMIT WRITERS – For Significant Modifications, complete items 2 and 3 below ONLY for the Equipment/Emission Units subject to the modification.

2. Where the applicable requirement does not require direct periodic monitoring of emissions, the Department requires periodic monitoring of surrogate parameters sufficient to yield reliable data from the relevant time period that are representative of the facility's compliance with the permit.

STATEMENT OF BASIS for NAME OF THE FACILITY

TITLE V OPERATING PERMIT SIGNIFICANT MODIFICATION

Program Interest (PI): [55555](#) / Permit Activity Number: BOP[100003](#)

For each equipment, select the appropriate paragraph(s), based on equipment type, from the [Surrogate Monitoring Options document](#) (click to open). Edit the selected paragraph(s) as needed and paste here.

3. In some cases, direct periodic monitoring of emissions and/or surrogate parameters is not required due to one or more of the following:

- Equipment size and capacity limitations,
- Subject equipment being permitted at the maximum rated capacity,
- There is no specific state or Federal standard that applies to this piece of equipment,
- Not a pollutant of concern for this piece of equipment,
- Agreements with EPA on the frequency of testing and monitoring for combustion sources.

[Based on the above criteria, there is no direct or surrogate monitoring for the following pieces of equipment:](#)

- List each piece of equipment, corresponding emission unit and description, with no direct periodic monitoring of emissions and no surrogate monitoring, e.g., E2 (U2) Boiler 5.

VII. APPLICABLE STATE AND FEDERAL RULES

This modification is subject to New Jersey Air Pollution Control Regulations, codified in N.J.A.C. 7:27-1 through 34, as applicable. A complete text of these regulations is available at:

<http://www.nj.gov/dep/aqm/rules27.html>

This modification is also subject to Federal regulations listed below.

CHOOSE AS APPLICABLE AND ADD AS NECESSARY

NSPS Subpart Kb: Volatile Organic Liquid Storage Vessels

NSPS Subpart J: Petroleum Refineries

MACT Subpart A: General Provisions

The Greenhouse Gas (GHG) emissions from this facility are [17,000](#) TPY CO₂e and [there is no GHG emissions increase OR the GHG emissions increase are 15,000 TPY CO₂e](#). This modification is not subject to PSD rules at 40 CFR 52.21.

VIII. FACILITY'S COMPLIANCE STATUS

USE THIS PARAGRAPH IF THERE ARE NO COMPLIANCE SCHEDULES IN THE PERMIT: The Responsible Official at the facility has certified that the facility currently meets all applicable requirements of the Federal Clean Air Act and the New Jersey Air Pollution Control Act. Based on this certification, the Department's evaluation of the information included in the facility's application, and a review of the facility's compliance status, the Department has concluded that this air pollution control operating permit should be approved.

This operating permit includes a permit shield, pursuant to the provisions of N.J.A.C. 7:27-22.17. A permit shield provides that compliance with the relevant conditions of the operating permit shall be deemed compliance with the specific applicable requirements that are in effect on the date of issuance of the draft operating permit, and which form the basis for the conditions in the operating permit.

Prior to the expiration of the Operating Permit's five-year term, the facility will be required to apply for a renewal, at which time the Department will evaluate the facility and issue a public notice with its findings.

OR

STATEMENT OF BASIS for [NAME OF THE FACILITY](#)

TITLE V OPERATING PERMIT SIGNIFICANT MODIFICATION

Program Interest (PI): [55555](#) / Permit Activity Number: BOP[100003](#)

USE THIS PARAGRAPH IF THERE ARE COMPLIANCE SCHEDULES IN THE PERMIT: The Department has determined that the facility does not meet all applicable requirements of the Federal Clean Air Act and the New Jersey Air Pollution Control Act. [Describe non-compliance items \(e.g., Facility's engines do not comply with the NOx RACT emission standard of 8.0 g/hp-hr per N.J.A.C. 7:27-19.8\(c\) when firing #2 fuel oil.](#) As a result, this draft permit includes compliance schedules for the facility to follow to achieve compliance. Contingent on compliance being achieved in accordance with the schedules, the Department has concluded that this air pollution control operating permit should be approved. The compliance schedules require that the facility achieve compliance by [Date](#).

This operating permit includes a permit shield, pursuant to the provisions of N.J.A.C. 7:27-22.17. A permit shield provides that compliance with the relevant conditions of the operating permit shall be deemed compliance with the specific applicable requirements that are in effect on the date of issuance of the draft operating permit, and which form the basis for the conditions in the operating permit.

Also, prior to the expiration of the five-year period, the facility will be required to apply for a renewal of this operating permit, at which time the Department will evaluate the facility and issue a public notice with its findings.

IX. EXEMPT ACTIVITIES

The facility's operating permit does not include exempt activities such as office and interior maintenance activities, maintenance shop activities, food preparation facilities, cafeterias and dining rooms, etc. A complete list of exempt activities, as allowed by the Operating Permit rule, can be found at N.J.A.C. 7:27-22.1.

FACILITY NAME (FACILITY ID NUMBER)
BOP050001

Activity Number assigned by the Department

**New Jersey Department of Environmental Protection
Facility Specific Requirements**

Emission Unit Number assigned by the Facility

Brief description of emission unit

Emission Unit: U40 Sewage Sludge Incinerators
Operating Scenario: OS Summary

OR OS2 Fluidized Bed Incinerator

OS Summary lists all rules and requirements that apply to an emission unit. An emission unit may contain one or more pieces of equipment and corresponding operating scenarios.

OSX denotes the operating scenario number and lists the rules and requirements that apply to a scenario. An operating scenario represents various ways (or scenarios) a piece of equipment is permitted to operate.

Item Number

Description of applicable requirement

Monitoring method to ensure compliance

Recordkeeping to show facility's compliance

Actions and submittals required for the facility

| Ref.# | Applicable Requirement | Monitoring Requirement | Recordkeeping Requirement | Submittal/Action Requirement |
|-------|---|--|--|--|
| 3 | The permittee shall conduct an annual performance test for each pollutant in Table 2 of 40CFR62 Subpart LLL between 11 and 13 calendar months after the previous performance test or within 60 days of a process change. [40 CFR 62.16000(a)] | Other: Conduct the performance test using the test methods, averaging methods and minimum sampling volumes or durations as specified in 40CFR62 Subpart LLL and according to the testing, monitoring and calibration requirements specified in 40 CFR 62.16015(a). [40 CFR 62.16000(a)]. | Other: (1) Maintain records of the results of initial, annual and any subsequent performance tests conducted to determine compliance with the emission limits and standards and/or to establish operating limits, as applicable. [40 CFR 62.16025(e)]. | Submit a report: Annually to the Administrator and to the Department. The permittee shall submit an annual compliance report as specified in 40 CFR 62. [40 CFR 62.16000(d)] |

Rule citation for applicable requirement

Rule citation for monitoring requirement

Rule citation for recordkeeping requirement

Rule citation for submittal/ action requirement

Explanation Sheet for Facility Specific Requirements

ATTACHMENT H



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MAR 27 2018

MEMORANDUM

SUBJECT: Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70

FROM: Peter Tsirigotis
Director 

TO: Regional Air Division Directors, Regions 1 – 10

The attached guidance is being issued in response to the Environmental Protection Agency Office of Inspector General's (OIG) 2014 report regarding the importance of enhanced EPA oversight of state, local, and tribal¹ fee practices under title V of the Clean Air Act (CAA).² Specifically, this guidance reflects the EPA's August 22, 2014, commitment to the OIG in response to the OIG's Recommendations 2 through 8 to "issue a guidance document that sets forth a fee oversight strategy" (we refer to the attached guidance as the "**title V evaluation guidance**"). The EPA's response to the OIG's other recommendation is being issued concurrently in a separate memorandum and guidance concerning the EPA's review of fee schedules for title V programs ("updated fee schedule guidance").³

The title V evaluation guidance is consistent with EPA principles and best practices for efficient and effective oversight of state permitting programs⁴ and applies those principles and best practices to the specific context of title V program and fee evaluations under part 70 of the CAA. As a result, this guidance highlights opportunities for communication and collaboration between the EPA and air agencies throughout the evaluation process. Principles and best practices are discussed in Section I of the attached title V evaluation guidance.

¹ As used herein, the term "air agency" refers to state, local, and tribal agencies.

² *Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues*; U.S. EPA Office of the Inspector General. Report No. I5-P-0006. October 20, 2014 ("OIG Report").

³ *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsirigotis, Director, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 ("updated fee schedule guidance"). See the EPA's title V guidance website at <https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index>.

⁴ See *Promoting Environmental Program Health and Integrity: Principles and Best Practices for Oversight of State Permitting Programs* (August 30, 2016).

Example best practices for conducting part 70 fee or program evaluations described in the guidance, as well as other existing guidance documents relevant to title V evaluations, include:

Example Best Practices:

- The frequency and timing of program and fee evaluations are defined in the Office of Air and Radiation’s National Program Manager Guidance (NPM guidance), which is issued for a 2-year period.⁵ See Section III of the title V evaluation guidance.
- The EPA will post final evaluation reports on publicly accessible websites established for this purpose. See Section III.D of the title V evaluation guidance.
- A best practice for resolving concerns that arise during or after an evaluation is to use collaborative approaches, such as face-to-face meetings between the air agency and the EPA when possible, and preferably prior to taking formal approaches provided for in the part 70 regulations. See Section III.E of the title V evaluation guidance.

Other Available Guidance:

- EPA guidance on the sufficiency of fees and other fee requirements of part 70 for permitting programs, including guidance on certain requirements related to fee demonstrations. See Section IV of the title V evaluation guidance.
- EPA guidance on governmental accounting standards tailored to the part 70 program, including an example method for calculating annual fees, costs, and the “presumptive minimum” fee amount; types of revenue that may be counted as “fees”; clarification on the definition of “direct costs,” “other direct costs,” and “indirect costs”; and a review of methods for determining indirect costs. See list of EPA guidance on part 70 fee requirements in Attachment B of the title V evaluation guidance.

Finally, the title V evaluation guidance contains several attachments:

- Attachment A is a checklist that may be used by the EPA to help plan for a particular program or fee evaluation using a step-by-step approach with suggested timeframes for completing each step, including a timeframe for the issuance of the final evaluation report.
- Attachment B is a list of reference documents and other resources that may be useful as background information for reviewing issues that may arise during a program or fee evaluation.
- Attachment C provides an example annual financial data reporting form. It may be used as a tool to collect information to track an air agency’s compliance with certain part 70 fee requirements. The form may be used to track information on fee revenue, program costs, and the presumptive minimum fee amount for a particular air agency. The example form also includes helpful explanations of common accounting terms referenced in part 70.

The EPA is also working to increase and improve internal collaboration, communication, expertise, and the sharing of information between the EPA staff working on title V evaluations. For example, as a best practice, the EPA plans to establish an internal system to facilitate staff input on and sharing of evaluation tools and evaluation reports.

⁵ See *Final FY 2017 OAR National Program Manager Guidance Addendum*, U.S. EPA, Publication Number 440B16001 (May 6, 2016) (NPM guidance) located at <https://www.epa.gov/sites/production/files/2016-05/documents/fy17-oar-npm-guidance-addendum.pdf>.

The development of this guidance included outreach and discussions with stakeholders, including the EPA Regions, the National Association of Clean Air Agencies, and the Association of Air Pollution Control Agencies.

If you have any questions concerning the title V evaluation guidance, please contact Juan Santiago, Associate Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, at (919) 541-1084 or santiago.juan@epa.gov.

Attachments

1. Program and Fee Evaluation Strategy Guidance for 40 CFR Part 70 (“title V evaluation guidance”)
2. Attachment A – Evaluation Checklist for 40 CFR Part 70
3. Attachment B – Resources
4. Attachment C – Example Annual Financial Data Form for 40 CFR Part 70

DISCLAIMER

These documents explain the requirements of the EPA's regulations, describe the EPA's policies, and recommend procedures for sources and permitting authorities to use to ensure that program evaluations and fee evaluations are consistent with applicable regulations. These documents are not a rule or regulation, and the guidance they contain may not apply to a particular situation based upon the individual facts and circumstances. The guidance does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory language such as "guidance," "recommend," "may," "should," and "can," is intended to describe the EPA's policies and recommendations. Mandatory terminology such as "must" and "required" is intended to describe controlling requirements under the terms of the Clean Air Act and the EPA's regulations, but the documents do not establish legally binding requirements in and of themselves.

Program and Fee Evaluation Strategy Guidance for 40 CFR Part 70

I. Principles and Best Practices for EPA Oversight of Permitting Programs

As part of the EPA's ongoing efforts to strengthen partnerships with state, local, and tribal agencies (referred to here as, "air agencies"), in 2016, the EPA established common principles and best practices for oversight of state permitting programs for air, water, and solid waste. *See Promoting Environmental Program Health and Integrity: Principles and Best Practices for Oversight of State Permitting Programs*, August 30, 2016.¹ The principles and best practices are intended to promote efficient and effective oversight that optimizes both collaboration and accountability in support of program health and integrity.

The title V evaluation guidance aligns with these principles and best practices and will consider them in title V evaluations of local and tribal air permitting programs as well as state programs. For example, this guidance provides for air agency evaluations that will be accomplished through clear, accurate, and up-to-date guidance, including guidance on evaluations and fee requirements for air agencies; routine review of air agency programs to identify and implement program improvements; requirements for yearly program evaluations on timeframes established in the Office of Air and Radiation's National Program Manager Guidance (NPM guidance);² the use of tools, including checklists, for planning and tracking the timely completion of evaluations; opportunities for collaboration between the EPA and air agencies throughout the evaluation process; and electronic posting of final evaluation reports.

II. Summary of Title V Requirements for Air Agencies

A. General Program Requirements

Title V of the Clean Air Act (CAA or Act) of 1990 establishes an operating permit program for major sources of air pollutants, as well as some other sources.³ The EPA promulgated regulations under 40 CFR part 70 (part 70), consistent with title V of the Act, to establish the minimum elements for operating permit programs to be administered by permitting authorities.

Air agencies with approved permit programs under part 70 must comply with minimum permit program requirements, such as reviewing application forms, adhering to certain permit processing procedures (including timeframes), ensuring certain permit content, collecting fees sufficient to fund the program, providing for public participation and EPA review of individual

¹ The report is located at https://www.epa.gov/sites/production/files/2016-10/documents/principles_and_best_practices_for_oversight_of_state_permitting_programs.pdf.

² The latest NPM guidance is for FY 2018 and FY 2019: *Final FY 2018 - 2019 OAR National Program Manager Guidance*, U.S. EPA, Publication Number 440P17002 (September 29, 2017) (NPM guidance) located at <https://www.epa.gov/sites/production/files/2017-09/documents/fy18-19-oar-npm-guidance.pdf>. The most recent NPM guidance should be consulted for specific program requirements and timeframes.

³ See CAA §§ 501-507; 42 U.S.C. §§ 7661-7661f.

permits, and supplementing permits with compliance provisions (when needed), among other requirements.⁴

B. Summary of Title V Fee Requirements

The EPA is issuing a separate memorandum and updated fee schedule guidance on the activities that constitute title V permit program costs and must, therefore, be funded by permit fees. The requirements for air agency fee programs are further discussed in Section I of the updated fee schedule guidance.⁵ This title V evaluation guidance identifies best practices and guidance on EPA oversight of air agency fee programs, particularly through program and fee evaluations. Attachment B of the title V evaluation guidance provides a list of all previously issued EPA guidance on part 70 fee requirements. The following is a summary of the fee requirements that will guide the EPA reviews of air agency programs:⁶

- Permit fees must be paid by “part 70 sources,”⁷ and the permit fees must cover all “reasonable (direct and indirect) costs” of the permit program.⁸ If the permit fees at least cover the total permit program costs, the fees are deemed to be sufficient.
- Permit fees paid by “part 70 sources” are “exchange revenue” or “earned revenue” in governmental accounting terminology because a good or service (e.g., a permit) is exchanged by a governmental entity for a price (e.g., a permit fee).⁹ Only revenue classified as “exchange revenue” should be compared to costs to determine the overall financial results of operations for a period.¹⁰ This means that no legislative appropriations, taxes, grants,¹¹ fines and penalties, which are generally characterized as

⁴ See 40 CFR §§ 70.1(a) and 70.4.

⁵ *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsirigotis, Director, OAQPS, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 (updated fee schedule guidance).

⁶ See the updated fee schedule guidance at Section I. General Principles for Review of Title V Fee Schedules.

⁷ The term “part 70 sources” is defined in 40 CFR § 70.2 to mean “any source subject to the permitting requirements of this part, as provided in 40 CFR §§ 70.3(a) and 70.3(b) of this part.”

⁸ See CAA section 502(b)(3)(A); 40 CFR § 70.9(a).

⁹ See Statement of Recommended Accounting Standards Number 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, issued by the Federal Accounting Standards Advisory Board (FASAB) (“FASAB No. 7”) at page 2 and see Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by the Governmental Accounting Standards Board (GASB) at pages 1-4.

¹⁰ See FASAB No. 7 at page 8. For example, see Governmental Accounting Standards Series, Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by GASB, and Statement of Recommended Accounting Standards Number 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, issued by FASAB.

¹¹ Since part 70 fees are “program income” under 40 CFR § 31.25(a), part 70 fees cannot be used as match for section 105 grants, and no state may count the same activity for both grant and part 70 fee purposes. See an October 22, 1993, memo (and several other memos) on this subject, listed in Attachment B of this document.

“non-exchange revenue,”¹² should be compared to program costs to determine if permit fees are sufficient to cover costs.

- Any fee required by part 70 must “be used solely for permit program costs”—in other words, required permit fees may not be diverted for non-part 70 purposes.^{13,14} Nothing in part 70 restricts air agencies from collecting additional fees beyond the minimum amount needed to cover part 70 program cost; however, all fees (including surplus) must be used for part 70 purposes.
- During permit program implementation, the EPA may require “periodic updates” of the “initial accounting” portion of the “fee demonstration” to show whether fee revenue required by part 70 is used solely to cover the costs of the permit program.¹⁵
- During program implementation, the EPA may also require a “detailed accounting” to show that the fee schedule is adequate to cover costs when an air agency changes its fee schedule to collect *less than* the “presumptive minimum”¹⁶ or if the EPA determines, based on comments rebutting a presumption of fee sufficiency or on the EPA’s own initiative, that there are serious questions regarding whether the fee schedule is sufficient to cover the permit program costs.¹⁷

¹² “Nonexchange revenue” arises primarily from the exercise of governmental power to demand payment from the public (e.g., income tax, sales tax, property taxes, fines, and penalties) and when a government gives value directly without directly receiving equal value in return (e.g., legislative appropriations and intergovernmental grants).

¹³ Part 70 purposes are all activities in a permit program that must be funded by part 70 fees. As the EPA has previously explained in the EPA’s November 1993 memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance (“fee demonstration guidance”)*, the types of activities included in a permit program to be funded by permit fees, and the costs of those activities will differ depending on many factors associated with the particular permitting authority. These include the number and complexity of sources within the area covered by the program; how often the permitting authority reviews permits (e.g., some permitting authorities may renew permits every year instead of every 5 years); the universe of sources covered (i.e., some permitting authorities may not opt to defer permitting for non-major sources); the experience of the permitting authority with permitting (e.g., agencies with permitting experience may not need as extensive training programs as those with no operating permit experience); and many other factors. Each permitting authority will have to determine its own permitting effort and what activities are directly or indirectly concerned with operating permits.

¹⁴ See 40 CFR § 70.9(a).

¹⁵ See fee demonstration requirements at 40 CFR §§ 70.9(c) and 70.9(d) and see the EPA’s November 1993 memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance (“fee demonstration guidance”)*, on preparing fee demonstrations for the initial part 70 program submittal.

¹⁶ A fee schedule that would result in fees above the “presumptive minimum” is considered to be “presumptively adequate.” The “presumptive minimum” is generally defined to be “an amount *not less than* \$25 per year [adjusted for increases in the Consumer Price Index] times the total tons of the actual emissions of each “regulated air pollutant (for presumptive fee calculation)” emitted from part 70 sources.” Note that the calculation of the “presumptive minimum” also excludes certain emissions and adds a “GHG cost adjustment.” See 40 CFR 70.9(b)(2)(i) through (v).

¹⁷ See 40 CFR § 70.9(b)(5) and Section 2.0 of the fee demonstration guidance for an example “detailed accounting.” The scope and content of a “detailed accounting” may vary but will generally involve information on program fees and costs and accounting procedures and practices that will show how the air agency’s fee schedule will be sufficient to cover all program costs.

III. Best Practices for EPA Evaluation of Part 70 Programs

This section includes an overview of title V program and fee evaluations and describes the EPA's recommended best practices for conducting program and fee evaluations. This includes a general process and recommended steps for conducting such evaluations, including a timeframe for completion of final evaluation reports. This section also includes recommendations for activities that may occur after a final evaluation report is issued, including for resolution of concerns raised during an evaluation process, and for public posting of final evaluation reports.

A. Overview of Part 70 Program and Fee Evaluations

In its oversight capacity, the EPA periodically evaluates part 70 programs to ensure that they are being implemented and enforced in accordance with the requirements of title V and part 70. Program and fee evaluations help the EPA pinpoint areas for program improvement, determine if previously suggested areas of improvement have been addressed by the air agency, and identify best practices that can be shared with other air agencies and the EPA Regions to promote program health and integrity.

The frequency and timeframes for conducting part 70 evaluations are documented in the NPM¹⁸ guidance. The frequency and timeframe for a specific evaluation should be consistent with the NPM guidance for the period in which the evaluation occurs.¹⁹ The current NPM guidance requires each EPA Region to complete one part 70 evaluation each year. This means that final evaluation reports should be issued within a 1-year timeframe.²⁰ It may be possible for the EPA to complete some evaluations on a shorter timeframe than specified by the NPM guidance when the scope of an air agency evaluation is tailored to some element of the program, based on previous performance, as evidenced by previous evaluations. Looking for these opportunities and completing evaluation reports in less than a year is encouraged as a best practice.

Program evaluations can be conducted on any particular element or elements of the part 70 program, including the complete program, or the air agency's implementation (including fee reviews), enforcement, and legal authority for the program.

As a best practice, the EPA Regions should review previous evaluation results that may help inform and tailor the appropriate scope of an upcoming evaluation and may give particular focus to issues that have previously been identified as problematic. In addition, the EPA Regions should be aware of any recent statutory or regulatory changes (including to federal or state rules) and may want to focus part of the evaluation on these newer implementation areas.

¹⁸ The final FY 2018 – 2019 NPM guidance includes a goal for the EPA Regions to perform an evaluation for at least one permitting authority for each EPA Region per year. The Regional goals in the guidance are reviewed periodically and may change in the future.

¹⁹ The NPM guidance is currently revised on a 2-year cycle. The current guidance is effective for fiscal years 2018 and 2019.

²⁰ The EPA notes that program or fee evaluations are not currently required to begin on the first day of the fiscal year; thus, an evaluation may start during one fiscal year and end during the next fiscal year.

To ensure that permitting authorities have adequate resources to implement their part 70 programs, another best practice is to conduct a fee evaluation as part of the overall program evaluation. The content and scope of a fee evaluation may be specific to the air agency being evaluated, but frequent topics include those identified in Sections II.B and IV of this title V evaluation guidance.

B. Preparing for Title V Evaluations

Developing an evaluation checklist and an evaluation questionnaire can help expedite the program review process and is considered a best practice for the EPA Regions in preparing for a part 70 program evaluation. An example evaluation checklist, to plan for and track the progress of a particular evaluation, is provided in Attachment A. An evaluation checklist provides a framework of specific topics to be evaluated and recommended steps leading to issuance of a final evaluation report, including a timeline based on the 1-year timeframe of the current NPM guidance. Note that the timeframes for the individual steps in the example checklist are flexible, provided the 1-year overall timeframe is met. Another recommended best practice is to share the checklist with the air agency prior to the actual evaluation to assist them in preparing for the evaluation.

An evaluation questionnaire is another tool that the EPA Regions may prepare in advance of an evaluation. Typically, an evaluation questionnaire is a compilation of specific questions intended to gather information and data from an air agency to assist the EPA in its evaluation of a particular part 70 program. As a best practice, the EPA Regions should share draft questionnaires with other EPA Regions or Headquarters offices to seek input and share “lessons learned” prior to transmitting to the air agency. Collaboration can enhance national consistency and help the Regional office learn from the experiences of other Headquarters offices.

C. Information and Data Gathering Phase

An important initial step of any program or fee evaluation is gathering information about current program implementation. Typically, an evaluation formally begins when the EPA Region sends a letter to the air agency informing the agency of the EPA’s intent to conduct an evaluation, with a request for specific information and data needed to conduct the evaluation. Usually such a letter will be preceded by an informal call or email to provide the air agency with notice of the evaluation. The letter should specify the scope of the evaluation and a timeline for when a response from the air agency is expected. As a best practice, if the EPA Region intends to use an evaluation questionnaire, that questionnaire should be included with the letter.

The next recommended step is for the air agency to respond in writing to the EPA’s questions and provide the information or data that was requested. The length of time to complete this step is dependent on the scope of the evaluation and the air agency’s data collection systems. If the air agency foresees an issue with providing the information requested in a timely manner, it should reach out to the EPA Region to discuss steps to address the issue and reach consensus on a revised timeline.

If resources allow, the EPA Region should, as a best practice, conduct an in-person meeting with the air agency shortly after sending the letter (and questionnaire if one is to be used) to answer

preliminary questions on timing and scope. In addition, the EPA Region and the air agency could hold a follow-up meeting to discuss the air agency's draft response. In preparing for these meetings, the EPA staff should make every effort to gather as much relevant information as possible before meeting with the air agency in order to make the best use of time.

In addition to the evaluation questionnaire, another method for collecting information or data for an evaluation includes file and permit reviews. File reviews may also be used by the EPA to evaluate the effective implementation of certain program responsibilities (e.g., to quality assure fee collection procedures). The EPA may use a permit review (reviewing a sample of issued permits) to evaluate whether the air agency is satisfying permit-content requirements and permit-issuance procedures in practice.²¹

D. Evaluation Report Phase

The EPA staff should document each title V evaluation in an evaluation report. The report may describe concerns identified during the evaluation and, if any concerns are identified, may include recommended corrective actions with intended timeframes for resolution. The EPA may also ask the air agency to provide an explanation of how it will resolve these concerns and an estimate of the timeframe needed for the air agency to complete its work.

The EPA staff drafting the evaluation report should consult with Regional management or Headquarters offices as needed, particularly if the report addresses nationally significant issues. Once completed, the draft evaluation report's findings and recommendations, including those addressing novel or controversial issues, should be shared with EPA management and other offices.

As a best practice, the EPA should provide the draft report to the air agency with an option to provide comments back to the EPA. During this time, the EPA and the air agency may also choose to have further discussions of the draft report findings. If further discussion occurs, additional time may be necessary to complete the final report and corrective action plan.

After attaching any air agency comments to the report and revising the report to incorporate input from EPA management and the air agency being evaluated, the final report should be signed by the relevant EPA air program manager or other designated EPA official. The final report should then be transmitted to the air agency and an electronic copy should be posted on a publicly accessible website maintained by the EPA (the Regional websites are linked to the national webpage for the part 70 program).²² As a best practice, any supporting information related to the evaluation should be posted on the EPA website with the final report, including the air agency's response to the questionnaire, relevant communications, and other supporting data. Approaches used to address novel or controversial issues should be summarized and shared for potential use in future reviews.

²¹ See 40 CFR §§ 70.6 and 70.7.

²² See <https://www.epa.gov/title-v-operating-permits/epa-oversight-operating-permits-program>.

E. Post-Report Activities

Activities that occur after the EPA transmits the final evaluation report are not included in the 1-year timeframe for completing the evaluation process pursuant to the NPM guidance. Subsequent activities will proceed on a separate track under different timeframes.

The EPA may provide an opportunity for the air agency to respond in writing to the final evaluation report, particularly in cases where the EPA identified concerns but a corrective action plan was not agreed upon during the preparation of the final report. This step is not necessarily part of the evaluation process and may proceed on a separate track. The EPA would not expect such responses to necessarily be part of the final report, particularly in cases where the responses occur after the final report has been transmitted to the air agency. However, these post-report responses may be included as supporting information on the website, along with the final report.

The EPA encourages its staff to, where possible, conduct in-person meetings with their air agency counterparts in order to best facilitate resolution of any issues identified in the report. Depending on the complexity of the issue, such face-to-face meetings may be facilitated by the involvement of a third-party negotiator or other EPA offices (e.g., the Office of the Chief Financial Officer) as appropriate. Such meetings may prove useful to resolve straight forward issues that can be expeditiously resolved (e.g., permit administration or implementation issues that do not require regulatory changes), as well as to discuss long-term plans for resolving more complex issues (e.g., where resolution may involve changes to statutory authority, regulatory changes, or a multi-step process that may take multiple years to complete). In cases where initial discussions between the EPA and air agency staff do not result in a plan to resolve issues, a best practice is to elevate the issue to the management level (e.g., EPA and air agency management).

Finally, if the issue resolution process described above fails to resolve the issues identified during a program or fee evaluation, the EPA has the authority to consider whether an official EPA finding of a program deficiency is warranted.²³ The decision to make such a finding should be coordinated with EPA management at the Regional and Headquarter level. Section 502(i) of the Act provides that whenever the EPA Administrator determines that an air agency is not adequately administering or enforcing a title V program, or any portion of a title V program, the EPA shall provide notice to the air agency and may take certain measures intended to incentivize compliance. In practice, the EPA refers to the determination as a “finding,” the inadequate administration or implementation as a “deficiency,” and the notice as a “Notice of Deficiency” (NOD).²⁴ The EPA will use its best judgment to decide when a finding of a program deficiency is warranted; whenever such a finding is made, the EPA will issue an NOD and follow the requirements that flow from that finding.

²³ See 40 CFR §§ 70.10(b) and 70.4(i)(1).

²⁴ NODs are published in the *Federal Register*.

IV. Assessment of Fee Sufficiency and Other Fee Requirements

This section discusses the requirement for part 70 permit fees to be sufficient to cover program costs, including requirements for updates to certain elements of part 70 fee demonstrations, including for “periodic updates” to the “initial accounting” and for a “detailed accounting” in certain circumstances. This section also discusses Attachment C, which is an example annual financial data reporting form that may be used to report fee revenue, program costs, and to calculate the “presumptive minimum” for an air agency for a particular year.

Fee sufficiency. The part 70 rule uses the term “sufficient” in relation to fees and costs.²⁵ Since the question of whether fees are sufficient is a key concern that may be considered by the EPA as part of a program or fee evaluation, further explanation may be helpful:

- Section 502(b)(3)(A) of the Act requires permit programs to fund all “reasonable (direct and indirect) costs” of the permit programs through permit fees collected from sources. Similarly, part 70 requires the fees to be paid by “part 70 sources,”²⁶ requires the fees to be sufficient to cover all reasonable permit program costs, and requires the fees to be used “solely” for permit program costs.²⁷
- The costs against which fees are compared must include, at a minimum, certain activities required by the part 70 rules²⁸ and all “reasonable (direct and indirect) costs.”²⁹ Additional discussion on the revenue and costs that should be used in this comparison is provided in the separate updated fee schedule guidance as well as Section II.B of this title V evaluation guidance.
- If concerns regarding fee sufficiency are raised by the EPA, the EPA will typically follow the issue resolution procedures discussed in Section III.E of this title V evaluation guidance.

Initial fee demonstration. As part of the initial part 70 program submittal to the EPA, air agencies are required to provide a “fee demonstration” to show that the fee schedules selected by the air agencies would result in the collection and retention of fees in an amount sufficient to meet the fee requirements of part 70.³⁰ The contents of the “fee demonstration” vary depending on the status of the air agency with respect to the “presumptive minimum”:

²⁵ See 40 CFR §§ 70.9(a), (b) and (c).

²⁶ The term “part 70 sources” is defined in 40 CFR § 70.2 to mean “any source subject to the permitting requirements of this part, as provided in 40 CFR §§ 70.3(a) and 70.3(b) of this part.” Thus, a source is a part 70 source prior to obtaining a part 70 permit if the source is subject to permitting under the applicability provisions of 40 CFR § 70.3.

²⁷ See 40 CFR § 70.9(a).

²⁸ See 40 CFR § 70.9(b)(1).

²⁹ CAA section 502(b)(3)(A).

³⁰ See the fee demonstration requirements at 40 CFR §§ 70.9(c) and 70.9(d) and the EPA’s November 1993 memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance (“fee demonstration guidance”)*, on preparing fee demonstrations for the initial part 70 program submittal. See 40 CFR § 70.9(c), (d).

- Air agencies with fee schedules that would result in fees above the “presumptive minimum” are required to submit a “presumptive minimum program cost” demonstration showing that the expected fee revenue would in fact be above the “presumptive minimum”³¹ and also provide an “initial accounting”³² to show that fees would be used solely to cover part 70 program costs.
- Air agencies with fee schedules that would result in fees below the “presumptive minimum” are required to submit a “detailed accounting”³³ showing that the expected fee revenue would still be sufficient to cover part 70 program costs and an “initial accounting”³⁴ to show that the required fees would be used solely to cover part 70 program costs.

Also, as part of the initial program submittal, part 70 requires the submittal of several additional elements with respect to program costs.³⁵

Detailed accounting. After program approval, a “detailed accounting” that permit fees are collected and retained in an amount sufficient to cover all reasonable direct and indirect costs is required in the following two circumstances:³⁶

- When an air agency sets a fee schedule that would result in an amount less than the “presumptive minimum,”³⁷ or
- When the EPA determines—based on comments rebutting the presumption or its own initiative—that there are serious questions regarding whether the fee schedule is sufficient to cover costs.

A “detailed accounting” for an approved part 70 program would be based on data on fee revenue and program costs. The level of detail required in the “detailed accounting” remains at the discretion of the EPA and will depend on circumstance-specific factors related to the air agency being evaluated.³⁸

Periodic updates. After program approval, the EPA may require “periodic updates”³⁹ to the “initial accounting” element of the fee demonstration to confirm that required fees are being used solely to cover part 70 costs. A “periodic update” for an approved part 70 program is based on

³¹ This fee demonstration is referred to as the “presumptive minimum program cost” demonstration in Sections 1.1 and 3.2 of the EPA’s November 1, 1993, memo, *Title V Fee Demonstration and Additional Fee Demonstration Guidance* (“*fee demonstration guidance*”).

³² See 40 CFR § 70.9(d).

³³ See 40 CFR § 70.9(b)(5) and an example “detailed accounting” in Section 2.0 of the fee demonstration guidance.

³⁴ See 40 CFR § 70.9(d).

³⁵ See, e.g., 40 CFR § 70.4(b)(8)(v).

³⁶ See the “detailed accounting” requirements at 40 CFR § 70.9(b)(5)(1).

³⁷ The calculation of the “presumptive minimum” is provided in 40 CFR §§ 70.9(b)(2)(i) through (v).

³⁸ See the fee demonstration guidance, Section 2.0, for an example “detailed accounting.”

³⁹ See the “periodic update” provision at 40 CFR § 70.9(d).

records showing that required fee revenue is actually being retained and used to cover the reasonable direct and indirect costs of the part 70 program.

Example annual financial reporting form. Attachment C of this title V evaluation guidance is an example annual financial reporting form for part 70. This tool may be used to help track the collection of fee revenue, program costs, and the presumptive minimum fee amount for a particular air agency. Attachment C also includes helpful explanations of common accounting terms used for part 70 purposes. This example annual financial reporting form represents one way to collect the information previously described and is not required by part 70 for any particular oversight activity.

V. Identification of Financial and Accounting Expertise for Fee Reviews

The OIG Report requested that the EPA explain how to leverage financial or accounting expertise to assist with fee evaluations. Historically, the EPA staff with scientific, engineering, or similar technical degrees or experience are tasked with air agency program and fee evaluations.

A recommended best practice is to seek the assistance of existing EPA staff with governmental accounting, financial, or economics expertise, who work outside of the part 70 program (e.g., staff involved in grants administration or in determining the economic penalty of noncompliance for civil penalty assessment) to assist with fee evaluations as needed. One way for the EPA to seek internal assistance for fee evaluations would be to offer a formal detail opportunity (a temporary reassignment for a set period of time) for a financial or accounting professional to work on part 70 evaluations. Another way to seek internal EPA assistance would be to use the EPA's Skills Marketplace.⁴⁰

EPA staff without financial or accounting expertise who want to become familiar with state, local, or tribal financial and accounting standards and practices may consider reviewing governmental accounting guidance issued by the national accounting standards board (e.g., the Governmental Accounting Standards Board (GASB)) and financial or audit reports generated by the air agency. Financial or accounting audit reports generated by the air agency may also provide useful data, address emerging issues with the part 70 program, or confirm that known fee issues are being addressed.

Financial or accounting guidance. The primary focus of part 70 fee evaluations is to review whether the air agency's fee program is being implemented consistent with part 70 requirements (see Section II of this guidance, *Summary of Title V Requirements for Air Agencies*). The focus of fee evaluations under part 70 is different from the focus of typical financial or accounting "audits" (as that term is used in the accounting profession).⁴¹ Attachment B of this guidance

⁴⁰ The Skills Marketplace is a component of the EPA's recently launched Talent Hub Portal SharePoint site located at: https://usepa.sharepoint.com/sites/OA_Applications/TalentHub/smp/SitePages/Home.aspx.

⁴¹ In the accounting profession, the primary purpose of an audit is to verify that financial statements of governmental or private entities are consistent with specific accounting criteria.

includes several examples of governmental accounting or financial guidance and other resources that may be useful for technical staff to build expertise in these areas.

Financial or accounting audit reports generated by air agencies. Audit reports or financial reports prepared by air agencies for their own accounting, budgeting, or oversight purposes may include useful background information for fee evaluations, including caseload statistics, historical funding patterns, funding sources, and identification of program performance issues. The GASB requires air agencies to prepare annual financial reports to determine compliance with their budgetary requirements or finance-related requirements. Most air agencies follow these requirements through review of financial reports by an auditor, with preparation of the reports by the air agency budget office, legislature, or by the department itself. Most air agencies also require local programs to be audited for submittal to the state auditor. These financial audits are typically conducted at the departmental level, but part 70 data may be available upon request. Such reports are not required by the EPA, but, if available and timely, they may provide useful information for program or fee evaluations.

ATTACHMENT A

Evaluation Checklist for 40 CFR Part 70

Regardless of the type of evaluation being conducted (program, fee, or combination of the two), the EPA describes the evaluation process as consisting of two phases: 1) Information and Data Gathering Phase and 2) Evaluation Report Phase, each of which is composed of several recommended steps. The requirement of the EPA's national program manager guidance ("NPM guidance") for fiscal years 2018 and 2019 is for part 70 evaluations to be completed within 1 year.¹ The checklists in Tables 1 and 2 describe the phases, recommended steps, and timeframes for each phase and step, leading to completion of the evaluation process within the 1-year timeframe.

The EPA Regions may revise this checklist to meet their needs. For example, the column for recommended duration could be replaced with expected dates for completion of each step for planning purposes, and steps that do not apply for a specific evaluation could be deleted. The column for comments could be used to document reasons why expected timeframes were not met or other relevant information concerning implementation of a step.

Information and Data Gathering Phase

An EPA letter requesting certain information from the air agency, and the air agency's response is the first phase of the evaluation process. The recommended best practice for this phase is that it takes no longer than 160 days. Recommended steps and durations for the steps are listed in Table 1.

Evaluation Report Phase

Drafting and finalization of the evaluation report is the second phase of the evaluation process. The recommended timeframe for this phase is 205 days. Specific steps and a recommended duration for each step are listed in Table 2.

¹ *Final FY 2018 - 2019 OAR National Program Manager Guidance*, U.S. EPA, Publication Number 440P17002 (September 29, 2017) (NPM guidance) located at <https://www.epa.gov/sites/production/files/2017-09/documents/fy18-19-oar-npm-guidance.pdf>.

Table 1: Information and Data Gathering Phase Checklist
 (It is recommended that this phase take no more than 160 days.)

| Description | Recommended Duration | Checklist | Comments |
|--|---|---|-----------------|
| The Region drafts a checklist and sends an information request letter to the state, local or tribal agency (“air agency”). | No longer than 40 days. | <input type="checkbox"/> Start drafting letter and checklist: ___/___/_____ <input type="checkbox"/> Letter transmitted: ___/___/_____ <input type="checkbox"/> Air agency response received: ___/___/_____ <input type="checkbox"/> Air agency response received: ___/___/_____ | |
| Air agency responds to questions in writing. | No longer than 120 days. [†] This phase should be completed within 80 days of project initiation. | | |

[†] The scope of the evaluation and sophistication of the data collection systems employed by the air agency will inform the time needed for this step.

Table 2: Program and/or Fee Evaluation Report Phase Checklist
 (It is recommended that this phase take no more than 205 days.)

| Description | Recommended Duration | Checklist | Comments |
|---|--|---|----------|
| The Region reviews the air agency response and drafts evaluation report. EPA HQ consultation as needed. | No longer than 60 days. | <input type="checkbox"/> Regional review of air agency response <input type="checkbox"/> Consultation with HQ (as needed) Date step completed: ___ / ___ / ___ | |
| The EPA and the air agency meet to discuss results (optional). | No longer than 30 days after draft report available. | <input type="checkbox"/> EPA & air agency meeting to discuss results: ___ / ___ / ___ | |
| EPA Regional management briefed on draft report; copy provided to air agency for comment (optional). | No longer than 50 days. ^{††} | <input type="checkbox"/> EPA management briefing: ___ / ___ / ___ <input type="checkbox"/> Draft report sent for comment: ___ / ___ / ___ | |
| Air agency responds to draft report with comments (optional). | No more than 30 days. | <input type="checkbox"/> Air agency response received: ___ / ___ / ___ | |
| The EPA releases final version of evaluation report. | No more than 35 days. [‡] | <input type="checkbox"/> Final evaluation report released: ___ / ___ / ___ | |

^{††} If an air agency will not be providing comments on the report, the EPA Region could issue the final report by the end of this step or 140 days.

[‡] Some air agencies may request that the EPA also release the air agency's response with the release of the final evaluation report. The EPA recommends that Regions include such responses in their final reports, when practicable.

ATTACHMENT B

Resources

This is a list of resources where users can find additional information related to the requirements and issues discussed in this document.

Part 70 Monitoring Requirements

- Source Monitoring Guidance:
 - Monitoring Knowledge Base: <http://cfpub.epa.gov/oarweb/mkb/>.
 - Compliance Assurance Monitoring: <http://www3.epa.gov/ttn/atw/cam/ricam.html>.
 - Emissions Measurement Center: <http://www3.epa.gov/ttn/emc/>.
- Preconstruction Review:
 - For EPA resources concerning preconstruction review permitting, see <http://www2.epa.gov/nsr>.
 - For EPA guidance memos on preconstruction review, see <https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index>.

EPA Responses to Part 70 Petitions (EPA Orders)

- See EPA responses and petitions at <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

Greenhouse Gas Permitting Requirements

- October 23, 2015 - Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, Final Rule: <https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf>.

Guidance on Government Accounting Standards

- Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, as of June 30, 2015, Federal Accounting Standards Advisory Board (FASAB Handbook): http://www.fasab.gov/pdf/2015_fasab_handbook.pdf:
 - Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts*, page 396 of the FASAB Handbook (June 2015) (“SFFAS No. 4”).
 - Statement of Federal Financial Accounting Standards 7: *Accounting for Revenue and Other Financial Sources and Concepts for Reconciling Budgetary and Financial Accounting*, page 592 of the FASAB Handbook (June 2015) (“SFFAS No. 7”).
- Statements of the Governmental Accounting Standards Board (GASB Statements): <http://www.gasb.org/cs/ContentServer?c=Page&pagename=GASB%2FPage%2FGASBSectionPage&cid=1176160042391>.
 - Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998) (“GASB Statement No. 33”): http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029148&acceptedDisclaimer=true.
 - Statement No. 34, *Basic Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments* (June 1999) (“GASB Statement No. 34”): http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&acceptedDisclaimer=true.
- Examples of air agency financial or performance audit reports:
 - Accountability, *New York State Department of Environmental Conservation, Report of Title V Operating Permit Program Revenues, Expenses and Changes in Fund Balance for the Two Fiscal Years Ended March 31, 2009*, Report Number 2010-S-61. Accessed January 19, 2017, at: www.osc.state.ny.us/audits/allaudits/093011/10s61.pdf.
 - State of Washington, Department of Ecology, *Air Operating Permit Program Report Fiscal Year 2014*. Publication Number 15-02-008. Accessed January 19, 2017, at www.fortress.wa.gov/ecy/publications/documents/1502008.pdf.
 - State of North Carolina, Division of Air Quality, Department of Environment and Natural Resources, *Title V Air Quality Permit Program Accountability Report*, November 2009. Accessed January 19, 2017, at: www.ncleg.net/document/sites/committees/ERC/ERC%20Reports%20Received/2009/Dept%20of%20Environment%20and%20Natural%20Resources/2009-Nov%20-%20Title%20V%20Air%20Quality%20Permit%20Program.pdf.

List of EPA Guidance on Part 70 Fee Requirements

- January 1992 – *Guidelines for Implementation of Section 507 of the Clean Air Act Amendments – Final Guidelines*, U.S. EPA, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA. See pages 5 and 11-12 concerning fee flexibility for small business stationary sources:
<http://www.epa.gov/sites/production/files/2015-08/documents/smbus.pdf>.
- July 7, 1993 – *Questions and Answers on the Requirements of Operating Permit Program Regulations*, U.S. EPA. See Section 9 at page 9-1:
http://www.epa.gov/sites/production/files/2015-08/documents/bbrd_qa1.pdf.
- August 4, 1993 – *Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permit Programs Under Title V*, John. S. Seitz, Director, OAQPS, U.S. EPA to Air Division Directors, Regions I-X (“1993 fee schedule guidance”). Note that there was an earlier document on this subject that was superseded by this document:
<http://www3.epa.gov/ttn/naaqs/aqmguid/collection/t5/fees.pdf>.
- August 9, 1993 – *Acid Rain-Title V Guidance on Fees and Incorporation by Reference*, Brian J. McLean, Director, Acid Rain Division, U.S. EPA to Air, Pesticides, and Toxics Division Directors, to Regions I, IV, and VI, Air and Waste Management, Division Director, Region II, Air and Toxics Division Directors, Regions III, VII, VIII, IX, and X and Air and Radiation Division Director, Region V:
<http://www.epa.gov/sites/production/files/2015-08/documents/combo809.pdf>.
- September 23, 1993 – *Matrix of Title V-Related and Air Grant-Eligible Activities*, OAQPS, U.S. EPA, The matrix notes that it is to be “read and used in concert with the August 4, 1993 fee [schedule] guidance” (“matrix guidance”):
<http://www.epa.gov/sites/production/files/2015-08/documents/matrix.pdf>.
- October 22, 1993 – *Use of Clean Air Act Title V Permit Fees as Match for Section 105 Grants*, Gerald M. Yamada, Acting General Council, U.S. EPA to Michael H. Shapiro, Acting Administrator, Office of Air and Radiation, U.S. EPA:
[http://yosemite.epa.gov/oar/eab_web_docket.nsf/filings%20by%20appeal%20number/957cb8b03e0ccaaf0852574b0005aa688/\\$file/additional%20filing%20%20no.1%20...22.pdf](http://yosemite.epa.gov/oar/eab_web_docket.nsf/filings%20by%20appeal%20number/957cb8b03e0ccaaf0852574b0005aa688/$file/additional%20filing%20%20no.1%20...22.pdf).
- November 01, 1993 – *Title V Fee Demonstration and Additional Fee Demonstration Guidance*, John S. Seitz, Director, OAQPS, U.S. EPA to Director, Air, Pesticides and Toxics Management Division, Regions I and IV, Director, Air and Waste Management Division, Region II, Director, Air, Radiation and Toxics Division, Region III, Director, Air and Radiation Division, Region V, Director, Air, Pesticides and Toxics Division, Region VI, Director, Air and Toxics Division, Regions VII, VIII, IX, and X (“fee demonstration guidance”):
<http://www3.epa.gov/ttn/naaqs/aqmguid/collection/t5/feedemon.pdf>.

- July 21, 1994 – *Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA to Regional Administrators, Regions 1 - X:
<http://www.epa.gov/sites/production/files/2015-08/documents/grantmem.pdf>.
- August 28, 1994 – *Additional Guidance on Funding Support for State and Local Programs*, Mary D. Nichols, Assistant Administrator for Air and Radiation, U.S. EPA to Regional Administrators, Regions I – X (“additional guidance memo”):
<http://www.epa.gov/sites/production/files/2015-08/documents/guidline.pdf>.
- January 23, 1996 – Letter from Conrad Simon, Director, Air & Waste Management Division, U.S. EPA Region II to Mr. Billy J. Sexton, Director, Jefferson County Department of Planning and Environmental Management, Air Pollution Control District, Louisville, Kentucky (“Sexton memo”): https://www.epa.gov/sites/production/files/2016-04/documents/sexton_1996.pdf.
- January 1997 – *Overview of Clean Air Title V Financial Management and Reporting– A Handbook for Financial Officers and Program Managers*, Environment Finance Center, University of Maryland, Maryland Sea Grant College, University of Maryland. Supported by a grant from the U.S. EPA (“financial manager’s handbook”):
<http://www.epa.gov/sites/production/files/2015-08/documents/t5finance.pdf>.
- October 23, 2015 – *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units: Final Rule* (80 FR 64510). See Section XII.E, “Implications for Title V Fee Requirements for GHGs” at page 64633: <http://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf>.
- March 27, 2018– *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsigotis, Director, OAQPS, U.S. EPA, to Regional Air Division Directors, Regions 1 – 10 (“updated fee schedule guidance”):
<https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index>.

ATTACHMENT C

Example Annual Financial Data Form for 40 CFR Part 70

Permitting Authority: _____

Annual Period: ____/____/____ to ____/____/____ (MM/DD/YYYY)

| Annual Program Revenue | | |
|--|--|------------|
| A | Total Program Revenue (Fees Paid by Part 70 Sources) | \$ |
| Annual Presumptive Minimum Cost Calculation | | |
| B | Total Emissions of "Regulated Pollutants (for presumptive fee calculation)" | tons |
| C | Presumptive Minimum Fee Rate During Period (\$/ton) | \$ per ton |
| D | Total Greenhouse Gas (GHG) Cost Adjustments (as applicable) | \$ |
| E = (B*C)+D | Presumptive Minimum Cost for the Program | \$ |
| A < E or A ≥ E | Compare Total Program Revenue to Presumptive Minimum Cost Enter: "Less Than" or "Greater Than" or "Equal To" | |
| Annual Program Costs | | |
| F | Direct Labor Costs ¹ | \$ |
| G | Other Direct Costs ² | \$ |
| H = F+G | Total Direct Costs | \$ |
| I | Known Indirect Costs ³ | \$ |
| J = K*L | Calculated Indirect Costs ⁴ | \$ |
| K | Indirect Rate | % |
| L | Total Cost Base for the Part 70 Program | \$ |
| M = I or J | Total Indirect Costs | \$ |
| N = H+M | Total Program Costs | \$ |
| O = A - N | Annual Operating Result <i>(Report deficits in parentheses)</i> | \$ |

¹ This is the sum of all direct labor costs, including regular payroll, overtime payroll, leave, fringe, and any other administrative surcharges.

² This is the sum of all other direct costs, including travel, materials, equipment, contractor, and any other costs directly allocable to the part 70 program.

³ Indirect Costs may either be known or calculated. If known, enter on this row; if calculated, skip to the next three rows.

⁴ If Indirect Costs are calculated, enter the result here, and enter the rate and base below. Accounting or budgeting personnel may be able to provide additional information on or assistance with calculating Indirect Costs.

| Program Balance of Accounts (Report deficits in parentheses) | | |
|---|---|--------------|
| P | Beginning of Year Balance ⁵ | \$ |
| Q = O | Annual Operating Result | \$ |
| R | Fee Revenue Transferred In (describe in comments) | \$ |
| S | Non-Exchange Revenue Transferred In (describe in comments)a- Informational Only | \$ |
| T | Fee Revenues Transferred Out (describe in comments) | \$ () |
| U = O+Q+R-T | End of Year Balance | \$ |

COMMENTS:

Use this section to describe any changes in accounting methods or program elements that affect the fee program, categories of revenue or expenses that do not fit into any of the listed categories or apply across multiple categories, transfers in or out, or any unusual activities or circumstances relevant to fees administration. Attach additional pages if needed.

⁵ This is the prior year's "End of Year Balance."

BACKGROUND – EXAMPLE ANNUAL FINANCIAL DATA FORM FOR PART 40 CFR 70

The Example Annual Financial Data Form is a tool that may be used to collect information from state, local, or tribal (“air agencies”) part 70 programs concerning their compliance with part 70 requirements for fees. The use of this form is not required for any specific air agency or time period and it may be revised as appropriate. Air agencies may find this form useful for collecting programmatic information for their own internal tracking purposes.

Fee sufficiency. The primary purpose of the revenue, costs, and balance of accounts sections of the financial data form is to collect information concerning the sufficiency of fees, consistent with Clean Air Act (Act) § 502(b)(3)(A) and 40 CFR § 70.9(a). The fee sufficiency requirements include requirements for air agencies to collect annual fees (or the equivalent over some other period) that are sufficient to cover all reasonable direct and indirect costs of the program and to track if required fees are being

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diverted for non-part 70 purposes.^a

Presumptive minimum. A secondary use for the financial data form is to assess an air agency’s status with respect to the “presumptive minimum” of part 70.⁷ This assessment may have been important when an air agency was originally approved to collect above the “presumptive minimum,” but changes made over time have resulted in total annual fees being collected that are less than the “presumptive minimum.”⁸ This assessment is important because 40 CFR § 70.9(b)(3) requires air agencies that collect less than the presumptive minimum to submit a “detailed accounting” to ensure fee sufficiency, and air agencies that were originally approved to collect at least the presumptive minimum would not have submitted the detailed accounting with the program submittal. Examples of cases where an air agency’s status in this respect may have changed include where the air agency uses a formula to calculate the presumptive minimum that is outdated or inconsistent with 40 CFR § 70.9(b)(2) or where the program was approved to charge fees to individual sources using the methodology for calculating the presumptive minimum pursuant to 40 CFR § 70.9(b)(2) and the air agency’s requirements for fee payment from individual sources are outdated or inconsistent with the part 70 calculation.⁹

The EPA may use its discretion to decide when this form should be completed by an air agency and which sections of the form should be completed. The EPA will evaluate any information submitted and determine appropriate next steps.

⁶ The requirements that fees be sufficient to cover all reasonable direct and indirect program costs, and that such fees not be diverted for other purposes, applies to all title V permit programs, regardless of whether or not the program was approved to collect “not less than” or “less than” the presumptive minimum.

⁷ The presumptive minimum of CAA § 502(b)(3)(B) and 40 CFR § 70.9(b)(2) is generally calculated by multiplying a dollar per ton rate (which is adjusted annually for increases in the Consumer Price Index) by the tons of “regulated pollutants (for presumptive fee calculation)” emitted by all part 70 sources in an air agency for a year (or equivalent period) and adding a “GHG cost adjustment,” which is a set dollar amount to reflect certain increased costs for permitting.

⁸ Air agencies have flexibility to charge fees to sources on any basis, including to charge emission fees, application fees, service-based fees, or other types of fees, regardless of whether or not the program was approved to collect “not less than” or “less than” the presumptive minimum.

⁹ The presumptive minimum calculation of 40 CFR § 70.9(b)(2) was updated in 2015 to add a GHG cost adjustment; see the final rule, *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units; Final Rule* (80 FR 64510, October 23, 2015). See Section XI.E, “Implications for Title V Fee Requirements for GHGs” at page 64633:

<http://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf>.

Accounting methods: The part 70 rules do not generally require any particular governmental accounting standards or tracking systems to be used by air agencies. However, part 70 contains certain requirements for tracking permit fees and program costs and for funding the program costs with permit fees that must be met by all air agencies, regardless of the accounting standards and tracking systems being used. Due to variability and changes in accounting standards, systems, and practices, it is important for air agencies to note changes that may affect part 70 fees, costs, and accounting practices in the comments section of this form.

The EPA recognizes the following resources may be helpful in understanding governmental accounting standards as they relate to part 70 programs:

- Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, as of June 30, 2015, Federal Accounting Standards Advisory Board (FASAB).
http://www.fasab.gov/pdf/files/2015_fasab_handbook.pdf
 - Statement of Federal Financial Accounting Standards 4: *Managerial Cost Accounting Standards and Concepts*, page 396 of the FASB Handbook (June 2015) (“SFFAS No. 4”).
 - Statement of Federal Financial Accounting Standards 7: *Accounting for Revenue and Other Financial Sources and Concepts for Reconciling Budgetary and Financial Accounting*, page 592 of the FASB Handbook (June 2015) (“SFFAS No. 7”).
- Statements of the Governmental Accounting Standards Board (GASB):
<http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1176160042391#gasbs25>
 - Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998) (“GASB Statement No. 33”):
http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029148&acceptedDisclaimer=true
 - Statement No. 34, *Basic Financial Statements – and Management’s Discussion and Analysis – for State and Local Governments* (June 1999) (“GASB Statement No. 34”):
http://www.gasb.org/jsp/GASB/Document_C/GASBDocumentPage?cid=1176160029121&acceptedDisclaimer=true

Definition of terms: Several terms (e.g., “Direct Labor” and “Indirect Costs”) used in the Example Annual Financial Data Form are not defined in part 70. Some terms are defined in the EPA’s fee guidance (particularly the EPA’s updated fee schedule guidance¹⁰), in the U.S. Office of Management and Budget’s (OMB’s) Circular A-87 Revised (Cost Principles for State, Local, and Indian Tribal Governments), and in the FASB Handbook’s chapter on Managerial Cost Accounting Standards and Concepts (SFFAS No. 4), among other reference documents.

Supporting information: The information reported on this example form should be based on relevant supporting accounting information or documentation. Air agencies that complete the form for submittal to the EPA should maintain such supporting information for submittal to the EPA upon request.

¹⁰ *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, Peter Tsirigotis, Director, OAQPS, to Regional Air Division Directors, Regions I – 10, March 27, 2018, (updated fee schedule guidance).

INSTRUCTIONS – EXAMPLE ANNUAL FINANCIAL DATA FORM FOR PART 70

These instructions are a general explanation of how to complete the attached Example Annual Financial Data Form for Part 70 (“example financial form”). This form is not required to be submitted on any frequency by air agencies – it is simply a useful example of how an EPA Region may collect financial information related to title V fee requirements. The EPA Regions may revise this form to suit a particular air agency or may opt to only require certain sections be completed.

Annual Program Revenue

- Total Program Revenue (Fees Paid by Part 70 Sources)(\$): Include all title V fees paid directly by part 70 sources, including emission fees, application fees, and other fees under the air agency’s fee schedule.
 - The fees collected under a part 70 program are referred to as “Exchange Revenue” or “Earned Revenue” in governmental accounting guidance because a good or service is provided by a governmental entity (e.g., a permit) in exchange for a price (e.g., a permit fee).¹¹ Also, governmental accounting guidance provides that only revenue classified as “Exchange Revenue” should be compared against costs to determine the overall financial results of operations for a period.¹² This means that legislative appropriations, taxes, grants, fines, or penalties, which are generally characterized as “Non-Exchange Revenue,”¹³ should not be compared against costs to determine if fees are sufficient to cover part 70 program costs.
 - Some part 70 programs have direct access to permit fees to cover costs. However, other part 70 programs are required by state or local law to deposit permit fees into general accounts, with operating costs subject to legislative appropriation. In both scenarios, if the funds were originally paid as permit fees and used for part 70 purposes for the report year, the fees may be considered “Total Program Revenue” and entered as such on the example financial form. Permit fees that were retained in a prior year and transferred for use in the report year should be reported as “Funds Transferred In.”
 - Note that any non-part 70 fee revenue (“Non-Exchange Revenue”) should only be identified for informational purposes in the “Program Balance of Accounts” section of the example financial form, specifically the “Non-Exchange Revenue Transferred In” line.¹⁴

¹¹ See Statement of Recommended Accounting Standards Number 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, issued by the Federal Accounting Standards Advisory Board (FASAB) (“FASAB No. 7”) at page 2. Also see Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions* (December 1998), issued by the Governmental Accounting Standards Board (GASB) at pages 1-4. Conversely, “Non-Exchange Revenue” arises primarily from the exercise of governmental power to demand payment from the public (e.g., income tax, sales tax, property taxes, fines, and penalties) and when a government gives value directly without directly receiving equal value in return (e.g., legislative appropriations and intergovernmental grants).

¹² See FASAB No. 7 at page 8.

¹³ “Non-Exchange Revenue” arises primarily from the exercise of governmental power to demand payment from the public (e.g., income tax, sales tax, property taxes, fines, and penalties) and when a government gives value directly without directly receiving equal value in return (e.g., legislative appropriations and intergovernmental grants).

¹⁴ Since “Non-Exchange Revenue” is not allowed to be counted as part 70 fees, they should not be compared to costs or carried over to the “Beginning of Year Balance” or “End of Year Balance” lines.

Annual Presumptive Minimum Calculation

This section helps to determine if an air agency's status is considered to be "presumptively adequate" to fund program costs for a year.¹⁵ This determination is relevant to part 70 when an air agency's fee schedule was approved to be above the "presumptive minimum," but due to changes over time, it is now collecting and retaining fee revenue below the "presumptive minimum." When such a change occurs, 40 CFR § 70.9(b)(5) requires the air agency to submit a "detailed accounting" to show that its fees are sufficient to cover the part 70 program costs.

- **Total Emissions of "Regulated Pollutants (for presumptive fee calculation)" (tons/year):** Report the actual emissions of "Regulated Pollutants (for presumptive fee calculation)," as the term is defined in 40 CFR § 70.2, for all part 70 sources for the year. Also *see* 40 CFR § 70.9(b)(2)(ii) and (iii) for additional information on emissions that may be excluded from the total. The EPA sometimes refers to these emissions as "Fee Pollutants" since they are only used for fee purposes.
- **Presumptive Minimum Fee Rate During Period (\$/ton):** The EPA calculates the "Presumptive Minimum Fee Rate" (\$/ton) for part 70 in September of each year, and the fee rate is effective from September 1 through August 31 of the following year. The EPA publishes the fee rate on the EPA's title V permit website.¹⁶ If a part 70 program uses a different 12-month period, then the fee rate in effect at the beginning of the reporting period or an average fee rate (prorated by month) may be used.
- **Total Greenhouse Gas (GHG) Cost Adjustments, as applicable(\$):** A final rule published October 23, 2015, included a "GHG Cost Adjustment," which is part of the calculation of the "presumptive minimum" for an air agency under part 70.¹⁷ The adjustment is intended to reflect the increased costs of permitting GHGs for part 70 programs.
- **Presumptive Minimum Cost for the Program (\$):** To determine the total "presumptive minimum" for an air agency, multiply the actual emissions of "Regulated Pollutants (for presumptive fee calculation)" by the "Presumptive Minimum Fee Rate" and add the "GHG Cost Adjustment" (as applicable) for the period.
- **Compare Revenue to Presumptive Minimum Cost:** Compare the "Total Program Revenue" to the calculated "Presumptive Minimum Cost for the Program" to determine if the fee revenue has fallen below the "Presumptive Minimum." If the total program revenue is lower, a "detailed accounting" is required to show that fee revenue is sufficient to cover the program costs.¹⁸

¹⁵ See 40 CFR §§ 70.9(b)(2)(i) through (v) for more on the "presumptive minimum."

¹⁶ See <https://www.epa.gov/title-v-operating-permits/permit-fees>.

¹⁷ See 80 FR 64659 and 40 CFR §§ 70.9(b)(2)(i) and § 70.9(b)(2)(v) concerning the "GHG cost adjustment" for part 70.

¹⁸ See 40 CFR § 70.9(b)(5).

Annual Program Costs

The full cost of a part 70 program is described in accounting terms as being comprised of all reasonable “direct and indirect costs.” To assess the full cost, one should assess the total resources used to conduct a program or complete an activity under a program. Full cost includes all “direct and indirect costs,” regardless of funding sources. “Indirect costs” exist whether or not the program exists, while “direct costs” exist only if the program exists. If, by eliminating the program, a particular cost is eliminated, then the cost is labeled a “direct cost.”

Examples of “Direct Labor Costs,” “Other Direct Costs,” and “Indirect Costs” are provided below. It is beyond the scope of this example financial form to include a review of whether all part 70 program activities described in the separate updated fee schedule guidance¹⁹ are included in the “Direct and Indirect Costs;” however, such a review may be part of a “detailed accounting” or other EPA oversight activity.

- **Direct Labor Costs (\$):** Salary and wages for direct work on part 70, including for professional, administrative, and supervisory staff. These costs should include fringe benefits (compensation in addition to regular salary and wages). Also, include the portion of “Direct Labor Costs” not covered by employee contributions, such as those associated with employee contributions to insurance and retirement.
- **Other Direct Costs(\$):** Direct part 70 expenses, such as materials, equipment, professional services, official travel (i.e., food and lodging), public notice, public hearings, and contractors.
- **Indirect Costs(\$):** “Indirect Costs” are funds spent on general administration (sometimes referred to as overhead). For a part 70 program, this is a share of costs associated with managing the organization within which the permit program resides, represented through an “Indirect Rate.” For example, to the extent that a program resides within a larger office, the program may be charged a proportionate share of the overhead expense associated with the larger office. The budget or accounting office of the environmental division or department may be able to provide the indirect costs for part 70 or may be able to assist with determining them using one of the following methods:
 - **Known Indirect Costs(\$):** This is the known value of “Indirect Costs” for a part 70 program, such as may be provided by an air agency budget or accounting office.
 - **Calculated Indirect Costs(\$):** If the “Indirect Costs” are not known, then multiply an “Indirect Rate” (e.g., a percentage that represents a fraction of total costs that are indirect costs) by a known “Total Cost Base” (either “Total Costs” or “Total Labor Costs” for the part 70 program) to calculate “Indirect Costs.” If calculated in this manner, the “Indirect Rate” and the “Total Cost Base” should be included on the example financial form.
- **Annual Operating Result (\$):** The difference between the “Total Program Revenue” and “Total Program Costs” reveals the degree to which the program generated a surplus, deficit, or breaks even. If costs exceed fee revenue, then there was a deficit. If fee revenue exceeds costs, then there was a surplus. Deficits should be reported in parentheses to indicate a negative number.

¹⁹ See *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*. Peter Tsirigotis, Director, OAQPS, to Regional Air Division Directors, Regions 1 – 10, March 27, 2018 (updated fee schedule guidance).

Program Balance of Accounts

This section of the example financial form shows the program's overall fiscal status over time based on the balance at the beginning of the period, changes in account balances from operations, fund transfers, and resulting year-end balance.

- **Beginning of Year Balance (\$)**: The net balance (surplus or deficit) at the beginning of the year. If unknown, enter zero. This is the prior year's "End of Year Balance."
- **Annual Operating Result (\$)**: The amount of fees minus costs for the year. If negative, include in parentheses to indicate a deficit for the year.
- **Fee Revenue Transferred In (\$)**: Permit fee revenue not already accounted for above that is transferred from other accounts, such as fee revenue that was collected and retained in prior years used to cover costs for this year. Enter the amount of fee revenue and describe the source of funds in the comments section (e.g., permit fees retained in prior years) and whether the transfers are temporary (e.g., one-time) or permanent (e.g., recurring). If the funds originated as permit fees for the year being reported, enter the amount on the "Total Program Revenue" line, rather than this line.
- **Non-Exchange Revenue Transferred In (\$)**: Non-Exchange Revenue (e.g., grants, taxes, penalties, fines, and similar) transferred in to cover program costs. Enter the amount here and describe the source of funds in the comments section. This line is for information only and will not be included in any calculations of permit fee revenue on this form.
- **Fee Revenue Transferred Out (\$)**: Permit fee revenue transferred out of program accounts during the report year. In the comments section, describe the intended use of the funds and whether the transfer is permanent or temporary. If you intend to use the fees in future years for the part 70 program, please indicate so in comments. If not, please describe the intended use of funds and whether the fees are in excess of the costs for the year. Any such transfers out will be subject to close scrutiny by the EPA.
- **End of Year Balance (\$)**: The net balance (surplus or deficit) at the end of the year. In the comments section, please describe any steps that will be taken to address a significant deficit, if known or available.

EXAMPLES OF TYPICAL DIRECT AND INDIRECT COSTS

The following examples are intended to help permitting staff understand how various types of costs would be categorized for accounting purposes. For a complete list of part 70 program activities that should be included as part 70 costs, *see* the EPA's separate updated fee schedule guidance.

Direct Costs:

“Direct Costs” consists of two categories: 1) “Direct Labor Costs” and 2) “Other Direct Costs.”

- Examples of Direct Labor Costs:
 - Cost of “direct labor”;
 - Fringe benefits (i.e., retirement, health insurance, and life insurance); and
 - Leave, holiday, overtime and premium pay, and other personnel costs.
- Examples of Other Direct Costs:
 - Equipment purchases; and
 - Miscellaneous items, such as supplies and materials, equipment rentals, travel, purchased services such as printing, and contractual services.

Indirect Costs:

“Indirect Costs” can be thought of as the time spent on administrative support and other office expenses, which are not solely related to the program's operation because they benefit multiple programs or cost objectives, but are needed to operate a part 70 program.

- Examples of Indirect Costs:
 - Space rental, utilities, including telephones;
 - Administrative support related to an office's overall mission, including such costs as procurement, contracting, office services, property management, vehicle management, supply, finance, payroll, voucher processing, personnel services, records management, and document control;
 - Miscellaneous supplies and materials, including postage;
 - Data processing, management, and control;
 - Equipment rentals and costs;
 - Training and development;
 - Budget development, planning, and coordination;
 - Public information and inquiries;
 - Safety management, including inspection, training, and promotion;
 - Recurring reports, such as accounting or property reports; and
 - Unemployment Compensation, Equal Employment Opportunity Office costs and other affirmative action program costs.

DETERMINING THE PROPORTIONAL SHARE OF INDIRECT COSTS

When “Indirect Costs” are not known, they can be calculated through the use of an “Indirect Rate.” Generally, an “Indirect Rate” is calculated by dividing total “Indirect Costs” by total “Direct Costs.” Because air agency accounting methods vary, the indirect and direct costs can be for all environmental programs, the environmental department or division, or the air program. The resulting “Indirect Cost Rate” is the percentage of “Total Costs” that are “Indirect Costs.” The resulting “Indirect Rate” is then multiplied by the “Total Cost Base,” which may be either “Total Direct Labor Costs” or “Total Costs” for part 70, as shown below.

$$\text{Indirect Cost Rate} = \text{Total Indirect Costs} / \text{Total Direct Costs}$$

$$\text{Calculated Indirect Costs} = \text{Indirect Cost Rate} * \text{Total Direct Labor Costs for Part 70}$$

or

$$\text{Calculated Indirect Costs} = \text{Indirect Cost Rate} * \text{Total Costs for Part 70}$$

FOR MORE INFORMATION ON DETERMINING AIR AGENCY COSTS

For further information on determining costs for state, local, and tribal governments, see OMB Circular A-87 Revised, Cost Principles for State, Local and Indian Tribal Government (May 10, 2004) and OMB Circular A-133, Audits of State, Local Governments, and Non-Profit Organizations (last revised June 26, 2007). These guidance documents are not specific to part 70 but are generally useful for understanding costs for the purposes of the part 70 program.

ATTACHMENT I

Annual Financial Data Form for NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
Annual Period: 07/01/2019 - 06/30/2020 (Fiscal Year 2020)

| Annual Program Revenue | | |
|---|--|-----------------------|
| A | Total Program Revenue (Fees Paid by Part 70 Sources) | \$ 3,566,789 |
| Annual Presumptive Minimum Cost Calculation | | |
| B | Total Emissions of "Regulated Pollutants (for presumptive fee calculation)" | 25,132 |
| C | Presumptive Minimum Fee Rate During Period (\$/ton) | 52.03 |
| D | Total Greenhouse Gas (GHG) Cost Adjustments (as applicable) | - |
| E = (B*C) + D | Presumptive Minimum Cost for the Program | \$ 1,307,611 |
| A < E or A > E or A = E | Compare Total Program Revenue to Presumptive Minimum Cost Enter: "Less Than" or "Greater Than" or "Equal To" | Greater than |
| Annual Program Costs | | |
| F | Direct Labor Costs ¹ | \$ 7,601,371 |
| G | Other Direct Costs ² | \$ 2,053,738 |
| H = F + G | Total Direct Costs | \$ 9,655,109 |
| I | Known Indirect Costs ³ | \$ 1,687,504 |
| J = K * L | Calculated Indirect Costs ⁴ | |
| K | Indirect Rate | |
| L | Total Cost Base for the Part 70 Program | |
| M = I or J | Total Indirect Costs | \$ 1,687,504 |
| N = H + M | Total Program Costs | \$ 11,342,613 |
| O = A - N | Annual Operating Result <i>(Report deficits in parentheses)</i> | \$ (7,775,824) |
| Program Balance of Accounts (Report deficits in parentheses) | | |
| Program Balance of Accounts (Report deficits in | Beginning of Year Balance ⁵ | \$ 0 |
| Q = O | Annual Operating Result | \$ (7,775,824) |
| R | Fee Revenue Transferred In (describe in comments) | \$ - |
| S | Non-Exchange Revenue Transferred In (describe in comments) a - informational Only | \$ 7,775,824 |
| T | Fee Revenues Transferred Out (describe in comments) | |
| U = Q + R - T | End of Year Balance | \$ 0 |

Annual Financial Data Form for NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
Annual Period: 07/01/2019 - 06/30/2020 (Fiscal Year 2020)

COMMENTS:

Use this section to describe any changes in accounting methods or program elements that affect the fee program, categories of revenue or expenses that do not fit into any of the listed categories or apply across multiple categories, transfers in or out, or any unusual activities or circumstances relevant to fees administration. Attach additional pages if needed.

Comment 1: Non-Exchange Revenue is the program funding through NJDEP's operational budget and legislative appropriations.

Comment 2: As noted in Comment 1 above, the Title V Program is fully funded by NJDEP using a combination of fee revenue, operational budget, and legislative appropriations. Based on this, we have updated the formula for End of Year Balance.

Original formula: $U = O + Q + R + T$. Updated Formula: $U = Q + R + S + T$.

The original formula was adding the Annual Operating Result (O) and Annual Operating Result (Q) twice.

Annual Financial Data Form for NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
Annual Period: 07/01/2018 - 06/30/2019 (Fiscal Year 2019)

| Annual Program Revenue | | |
|---|--|-----------------------|
| A | Total Program Revenue (Fees Paid by Part 70 Sources) | \$ 3,846,133 |
| Annual Presumptive Minimum Cost Calculation | | |
| B | Total Emissions of "Regulated Pollutants (for presumptive fee calculation)" | 27,171 |
| C | Presumptive Minimum Fee Rate During Period (\$/ton) | \$ 51.06 |
| D | Total Greenhouse Gas (GHG) Cost Adjustments (as applicable) | - |
| E = (B*C) + D | Presumptive Minimum Cost for the Program | \$ 1,387,345 |
| A < E or A > E or A = E | Compare Total Program Revenue to Presumptive Minimum Cost Enter: "Less Than" or "Greater Than" or "Equal To" | Greater than |
| Annual Program Costs | | |
| F | Direct Labor Costs ¹ | \$ 6,658,534 |
| G | Other Direct Costs ² | \$ 1,819,817 |
| H = F + G | Total Direct Costs | \$ 8,478,351 |
| I | Known Indirect Costs ³ | \$ 1,409,612 |
| J = K * L | Calculated Indirect Costs ⁴ | |
| K | Indirect Rate | |
| L | Total Cost Base for the Part 70 Program | |
| M = I or J | Total Indirect Costs | \$ 1,409,612 |
| N = H + M | Total Program Costs | \$ 9,887,962 |
| O = A - N | Annual Operating Result <i>(Report deficits in parentheses)</i> | \$ (6,041,830) |
| Program Balance of Accounts (Report deficits in parentheses) | | |
| p | Beginning of Year Balance ⁵ | \$ (5,947,223) |
| Q = O | Annual Operating Result | \$ (6,041,830) |
| R | Fee Revenue Transferred In (describe in comments) | \$ - |
| S | Non-Exchange Revenue Transferred In (describe in comments) a - informational Only | \$ 6,041,830 |
| T | Fee Revenues Transferred Out (describe in comments) | \$ - |
| U = Q + R - T | End of Year Balance | \$ 0 |

Annual Financial Data Form for NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
Annual Period: 07/01/2018 - 06/30/2019 (Fiscal Year 2019)

COMMENTS:

Use this section to describe any changes in accounting methods or program elements that affect the fee program, categories of revenue or expenses that do not fit into any of the listed categories or apply across multiple categories, transfers in or out, or any unusual activities or circumstances relevant to fees administration. Attach additional pages if needed.

Comment 1: Non-Exchange Revenue is the program funding through NJDEP's operational budget and legislative appropriations.

Comment 2: As noted in Comment 1 above, the Title V Program is fully funded by NJDEP using a combination of fee revenue, operational budget, and legislative appropriations. Based on this, we have updated the formula for End of Year Balance.

Original formula: $U = O + Q + R + T$. **Updated Formula: $U = Q + R + S + T$.**

The original formula was adding the Annual Operating Result (O) and Annual Operating Result (Q) twice.