



**U.S. Environmental Protection Agency
Region 2**

Title V Operating Permit Program Evaluation

**New York State Department of
Environmental Conservation**

FINAL REPORT

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ATTACHMENTS

- Attachment 1** – EPA 2022 Questionnaire sent to NYSDEC, dated September 28, 2022
- Attachment 2** – EPA 2022 Questionnaire sent to NYSDEC, dated November 28, 2022
- Attachment 3** – NYSDEC Letter Response to the 2022 Title V Program Review Questionnaire, dated February 9, 2023
- Attachment 4** – July 12, 2019 EPA comment letter on draft Title V permit for CPV Valley, LLC
- Attachment 5** – November 7, 2019 EPA comment letter on draft Title V permit for Starrett City Power Plant (*Starrett Letter 1*)
- Attachment 6** – May 13, 2020 EPA comment letter on draft Title V permit for Ball Metal Beverage Container Corporation
- Attachment 7** – June 11, 2020 EPA comment letter on draft Title V permit for International Imaging Materials, LLC
- Attachment 8** – November 12, 2020 EPA comment letter on draft Title V permit for New York University Central Plant
- Attachment 9** – March 24, 2021 EPA comment letter on draft Title V permit for Independence Station
- Attachment 10** – June 1, 2021 EPA comment letter on draft Title V permit for Montefiore Medical Center
- Attachment 11** – June 28, 2021 EPA comment letter on draft Title V permit for Hollingsworth and Vose Easton Mill’s
- Attachment 12** – August 30, 2021 EPA comment letter on draft Title V permit for Astoria Gas Turbine Power, LLC
- Attachment 13** – September 9, 2021 EPA comment letter on draft Title V permit for Danskammer Energy, LLC
- Attachment 14** – September 30, 2021 EPA comment letter on draft Title V permit for Parkchester South Condominium
- Attachment 15** – December 28, 2021 EPA comment letter on draft Title V permit for Caithness Long Island Energy Center
- Attachment 16** – February 28, 2022 EPA comment letter on draft Title V permit for Starrett City Power Plant (*Starrett Letter 2*)

I. INTRODUCTION

The Environmental Protection Agency (EPA) Region 2 Office oversees implementation of the Operating Permits Program approved for New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands pursuant to Title V of the Clean Air Act (“CAA”). EPA conducts an audit of each of these programs once every four years. The EPA recently conducted the fifth evaluation (“2022 evaluation”) of the Title V program implemented by the New York State Department of Environmental Conservation (“NYSDEC”). NYSDEC implements a fully approved Title V program. EPA refers to this evaluation as the 2022 evaluation because it was initiated in late September 2022, with a questionnaire to gather information from NYSDEC. Although EPA received NYSDEC’s response on February 9, 2023, EPA was unable to complete its review and the evaluation report until now due to resource issues immediately following the return from the pandemic.

The objectives of the 2022 evaluation are: 1) assess whether the NYSDEC’s Title V program is being implemented consistent with the requirements of Title V of the CAA, the EPA’s implementing regulations and as approved by EPA; and 2) identify areas of NYSDEC’s Title V program that need improvement. Based on our experience, the program audit combined with the EPA’s on-going oversight review of draft and proposed Title V permits issued by the NYSDEC provides a reasonable assessment of the NYSDEC’s implementation of its Title V program.

The NYSDEC issues Title V permits to approximately 332 facilities¹ through its nine regional offices. Additional staff located at the NYSDEC’s Central Office (“Albany Office”) provide administrative support as well as technical support to the overall Title V program implementation. In the 2022 program audit, the EPA revisited the issues identified in the 2018 Title V Operating Permit Program Evaluation Report (“2018 report”) that was transmitted to NYSDEC on April 25, 2019. Refer to Section II of this 2022 Title V Operating Permit Program Evaluation Report (“2022 report”) for detail. Also, this 2022 report addresses other issues, which we identified during our routine oversight review of draft Title V permits since the 2018 report and on which we provided comments to NYSDEC. Please refer to Section III of this report for detail.

On September 28, 2022, the EPA sent the NYSDEC a questionnaire (“2022 Questionnaire”)² that contained 17 questions. While the majority of those questions focused on the progress that NYSDEC has made in addressing the concerns identified by the EPA in the 2018 report, the other questions were designed to cover additional concerns from EPA’s review of draft Title V permits issued by the NYSDEC since the 2018 report. NYSDEC responded to the 2022 Questionnaire on February 9, 2023.³

The EPA’s 2022 evaluation of the NYSDEC’s Title V permitting program concludes that, overall, NYSDEC implements a generally comprehensive and effective Title V program. Its Title V permits generally contain sufficient monitoring, recordkeeping, and reporting requirements to

¹The 2018 report noted that there were 384 Title V facilities.

²The EPA’s 2022 Questionnaire was sent to NYSDEC on September 28, 2022 and then re-sent on November 28, 2022. See Attachments 1 and 2.

³See Attachment 3.

determine compliance with emission limits. We note that the NYSDEC has made improvements to its Permit Review Report (“PRR”)⁴ content, e.g., the rationale for supporting gap-filling monitoring requirements in Title V permits has been included in many PRRs. We also note that improvements were made, to some extent, to the PRR content related to documenting the limits on the potential to emit (or capping limits) included in Title V permits, as well as documenting changes included in a draft Title V permit. Notable improvements include:

- NYSDEC provides the public access online to key Title V permit documents, such as draft and final Title V permits, PRRs, Public Notices, facility emissions summaries, and annual emission statements.
- NYSDEC implements a Title V permit Quality Assurance program focused on the Albany Office providing oversight review of draft Title V permits and associated PRRs prior to public review.
- NYSDEC implements an adequate public notification process (including affected States and Tribal Nations).
- NYSDEC has adequate guidance and tools available to assess where Environmental Justice (“EJ”) issues may arise with Title V permitting actions and to incorporate EJ concerns into the Title V permitting review process.

However, NYSDEC could achieve some overall improvements by ensuring that the content of all of its PRRs consistently follow the NYSDEC’s PRR internal guidance (Division of Air Resources Internal Guidance (“DAIG -10”)) and by adding a new section to its DAIG -10 to address 40 C.F.R. Part 64, Compliance Assurance Monitoring (“CAM rule”) applicability.

Some areas of the program that can benefit from improvements are highlighted below:

- Consistently incorporate applicable requirements from all federal standards into Title V permits.
- Ensure insignificant activities⁵ subject to applicable requirements are incorporated into Title V permits consistent with EPA’s approval of the Title V program.
- Explore ways to cover the costs of administering the NYSDEC’s Title V program.
- Explore ways to ensure resources to process Title V permit applications in a timely manner, to avoid any significant permitting backlog.
- Utilize EPA’s streamlining strategies in Title V permits, to ensure permits include all applicable requirements.

⁴40 C.F.R. § 70.7(a)(5) requires Title V air permitting authorities to provide a statement of basis. For the NYSDEC issued Title V permits, the PRR is the equivalent of a statement of basis.

⁵Throughout this report, insignificant activities are referred to as “exempt or trivial activities,” as consistent with the terms used in 6 NYCRR 201-3.

Please see Sections II and III of the 2022 report for details on our findings and recommendations related to the opportunities for improvement and refinement of the NYSDEC’s Title V program. Some of the items listed in the 2022 report require follow-up actions from NYSDEC.

II. FOLLOW UP TO 2018 PROGRAM REVIEW

A. Permit Review Report Content – Rationale for Gap Filling Monitoring

The Action Item and Recommendations related to the Rationale for Gap Filling Monitoring that were identified in the 2018 report are summarized below. EPA’s 2022 report evaluates the progress made by the NYSDEC since 2018.

2018 Action Item 2: In the Permit Review Report (“PRR”) NYSDEC should identify and document the rationale for all gap-filling monitoring included in the permit.

2018 Recommendations for Action Item 2: a) NYSDEC should identify permit conditions containing gap-filling monitoring requirements. EPA suggests that this may be accomplished by citing to 6 NYCRR 201-6.4(b)(2) as the origin of authority; b) NYSDEC should ensure that each PRR documents the rationale for gap-filling monitoring that was selected; c) NYSDEC may need to make additional efforts to ensure that the PRR Guidance is being followed by its regional offices; and d) EPA suggests that NYSDEC examine whether changes to the PRR Guidance are necessary to better articulate what needs to be included in the PRR relative to gap-filling monitoring requirements.

2022 EPA Findings - 40 C.F.R. § 70.6(a)(3)(i)(B) and the NYSDEC’s Title V regulations at 6 NYCRR 201-6.4(b)(2)⁶ require permits to contain monitoring that is sufficient to demonstrate compliance with all applicable requirements. When an applicable requirement lacks sufficient monitoring, such as having only one-time monitoring to demonstrate initial compliance or monitoring that is too infrequent to demonstrate compliance on an on-going basis, permitting authorities add “periodic monitoring” to fill the gaps in the applicable requirement (known as the “gap-filling” periodic monitoring requirement). Part 70, at 40 C.F.R. 70.7(a)(5), requires Title V permitting authorities to provide “a statement that sets forth the legal and factual basis for the draft permit conditions.” The purpose of this requirement is to support the proposed Title V permit with a discussion of the decision-making that went into the development of the permit. This helps inform the public and the EPA of the permitting authority’s legal and factual basis for issuing the permit and it serves as an essential tool for conducting a meaningful permit review.⁷ The statement of the legal and factual basis is referred to as the statement of basis (“SOB”). One aspect that should be addressed in a SOB is the gap-filling monitoring provision. The absence of a detailed rationale for the monitoring methods employed makes public participation during the public comment period difficult. In cases where no additional monitoring is required by a SIP

⁶This citation from 6 NYCRR 201-6 represents the current numbering of Part 201-6.

⁷See EPA guidance documents related to the suggested content of the Statement of Basis: “Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits,” dated April 30, 2014, available at <https://www.epa.gov/sites/default/files/2015-08/documents/20140430.pdf>, and an EPA Region 5 letter to Ohio EPA, dated December 20, 2001, available at <https://www.epa.gov/sites/default/files/2015-08/documents/sbguide.pdf>.

approved rule, a discussion of the periodic or sufficiency monitoring requirement that is added to the permit, i.e., the gap-filling monitoring, should be discussed. The NYSDEC's internal guidance, DAIG -10, for the PRR, which is the equivalent of the SOB, also requires that the gap-filling monitoring requirements be addressed in the PRR.

Based on our review of the PRR examples provided by NYSDEC as part of its response to our 2022 Questionnaire, those PRRs did address the gap-filling requirements. EPA notes NYSDEC's effort to address this action item and encourages NYSDEC to continue this practice to address gap-filling in all of its PRRs, to assure consistency with this practice across the regional offices. EPA also recommends NYSDEC reference 6 NYCRR 201-6.4(b)(2)⁸ as the origin of authority for those permit conditions that include "gap-filling" monitoring requirements in the permit condition language.

B. Capping Limits

The Action Item related to the emission limitations on the potential to emit ("PTE") or capping limits, identified in the 2018 report, along with EPA's 2022 evaluation of the progress made by the NYSDEC since 2018, are discussed below:

2018 Action Item 1 - NYSDEC should ensure that all capping limits and the rationale for the corresponding compliance determination are adequately documented in the PRR.

2022 EPA Findings - The NYSDEC's DAIG -10 requires that each PRR document the capping limits or limits on the PTE established in a Title V permit by identifying the emission units/emission sources to which the limits apply and discusses the compliance demonstration method selected for those limits. This documentation approach is consistent with EPA's guidance. In the PRRs provided as examples by NYSDEC as part of its response to our 2022 Questionnaire, the capping limits and the rationale for the corresponding compliance demonstration methods included in the permit were properly discussed and/or documented, consistent with the NYSDEC's DAIG -10. However, this was not the case for some of the PRRs⁹ for the draft Title V permits that EPA reviewed and commented on since issuance of the 2018 report. EPA recommends that NYSDEC consistently document the capping limits in all of its PRRs, according to its PRR Guidance, DAIG -10.

2018 Action Item 2 - NYSDEC should ensure that all capping limits are federally and practicably enforceable, consistent with NYSDEC's regulations and DAR-17 guidance.

⁸6 NYCRR 201-6.4(b)(2) "Permit conditions for monitoring. Each Title V facility permit issued under this Part shall include the following provisions pertaining to monitoring:...

(2) where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit shall specify the periodic monitoring sufficient to yield reliable data from the relevant time periods that are representative of the major facility's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirements."

⁹See for example: comment 1 of the EPA comment letter for Hollingsworth & Vose Co (Attachment 11); and comment II.2 of the EPA comment letter 1 for Starrett City Power Plant (Attachment 5).

2022 EPA Findings - The NYSDEC “DAR-17/Federal Enforceability of Air Pollution Control Permits”¹⁰ (“DAR-17” Guidance), dated March 30, 2017, which is consistent with the EPA’s established guidance, provides that for the limits on the PTE or emission caps to be enforceable as a practical matter, those capping limits must be clearly defined and be accompanied by the compliance demonstration method (i.e., monitoring, periodic testing, recordkeeping, and reporting requirements). In the two permits provided by NYSDEC as part of its response to our 2022 Questionnaire, the capping limits were properly identified and the corresponding compliance demonstration methods were also provided, ensuring that the PTE is practically enforceable. However, this was not the case for some of the draft Title V permits¹¹ EPA reviewed and commented on since the 2018 report. NYSDEC should continue to (1) develop and include in its permits practicably enforceable limits on the PTE, consistent with its DAR-17 Guidance; and (2) encourage more consistency across the regional offices in addressing this item.

C. Permit Review Report Content-Applicability and Non-Applicability of Federal Standards

The Action Item related to the Permit Review Report Content – Applicability and Non-Applicability of Federal Standards identified in the 2018 report, along with EPA’s 2022 evaluation of the progress made by the NYSDEC since 2018, are discussed below.

2018 Action Item 1: The PRR should adequately document all permitting decisions, including the applicability and non-applicability of federal standards.

2022 EPA Findings - Based on the two PRR examples provided by NYSDEC as part of its response to our 2022 Questionnaire, it appears that the applicability/non-applicability of federal standards was adequately discussed. However, this was not the case for some of the PRRs¹² for the draft Title V permits EPA reviewed and commented on since the 2018 report. NYSDEC should continue to (1) document in all of its PRRs the applicability and non-applicability of federal emission standards, to be sure that there is no ambiguity concerning the applicability of certain federal emissions standards to the emission sources at the facility; and (2) encourage more consistency across the regional offices in addressing this item.

¹⁰DAR-17 Guidance can be found at https://www.dec.ny.gov/docs/air_pdf/dar17.pdf.

¹¹See for example comment 2 of the EPA comment letter for CPV Valley, LLC (Attachment 4); comment 1 of the EPA comment letter for Hollingsworth & Vose Co (Attachment 11); comment 2 of the 2 EPA comment letters for Starrett City Power Plant (Attachments 5 and 16); comment II of the EPA comment letter for Astoria Gas Turbine Power, LLC (Attachment 12); and comment 7 of the EPA comment letter for Danskammer Energy, LLC (Attachment 13).

¹²See for example comment II of the EPA comment letter for Ball Metal Beverage Container Corporation (Attachment 6); comment II of the EPA comment letter for International Imaging Materials, LLC (Attachment 7); comment V.2 of the EPA comment letter for Danskammer Energy, LLC (Attachment 13); comment VI of the EPA comment letter for Astoria Gas Turbine Power, LLC (Attachment 12); comment B. of the EPA comment letter for CPV Valley, LLC (Attachment 4); comment 3 of the EPA comment letter for Montefiore Medical Center (Attachment 10); comment II of the EPA comment letter for Caithness Long Island Energy Center (Attachment 15).

D. Federal Enforceability – Non-Delegated Federal Standards (Title V Permit Content – Inclusion of Applicable Requirements such as Federal Emission Standards)

The Action Items and Recommendation identified in the 2018 report, related to inclusion of the applicable requirements of the federal emission standards in Title V permits, along with EPA’s 2022 evaluation of the progress made by the NYSDEC since 2018, are discussed below.¹³

2018 Action Item 1: 1) NYSDEC should ensure that Title V permits include, in sufficient detail, all applicable requirements, including those from federal regulations for which NYSDEC has not yet accepted delegation; 2) NYSDEC should remove language that directs enforcement of permit conditions deriving from non-delegated regulations to EPA.

2018 Recommendation for Action Item 1: 1) NYSDEC is encouraged to develop templates to facilitate the inclusion of applicable requirements from non-delegated standards into its Title V permits.

2022 EPA Findings – Based on the draft Title V permits we reviewed and commented on since the 2018 report, which were issued to facilities that have emission sources subject to federal standards for which NYSDEC did not take delegation, such as NSPS Subpart IIII “Standards of Performance for Stationary Compression Ignition Internal Combustion Engines” (“NSPS IIII”); NSPS Subpart JJJJ “Standards of Performance for Stationary Spark Ignition Internal Combustion Engines” (“NSPS JJJJ”); NESHAP Subpart ZZZZ “National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines” (“NESHAP ZZZZ”); and NESHAP JJJJJ “National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources” (“NESHAP JJJJJ”), in almost all cases¹⁴ those permits did not include the specific applicable requirements from the respective federal standard(s) that apply to those emission sources. The permits included only one of the following statements identifying the federal standard(s) in lieu of permit conditions containing the specific applicable requirements:

“Facilities that have reciprocating internal combustion engines must comply with applicable portions of 40 CFR 63 subpart ZZZZ.”

“Facilities that have stationary compression ignition internal combustion engines must comply with applicable portions of 40 CFR 60 Subpart IIII.”

“Facilities that have stationary spark ignition internal combustion engines must comply with applicable portions of 40 CFR 60 subpart JJJJ.”

¹³ As EPA stated in the 2018 audit report, while a State has discretion in deciding when or if to take delegation of a federal standard, that does not excuse a State from including all applicable requirements in Title V permits it issues or from enforcing them. CAA §§ 502(b)(5)(A), (B), and (E) and 502(d)(1). 40 C.F.R. § 70.4(b)(3)(i) requires the permitting authority to “[i]ssue permits and assure compliance with each applicable requirement of this part by all part 70 sources.”

¹⁴There are two draft Title V permits that we reviewed since the 2018 report which included the applicable requirements from NSPS IIII, NSPS JJJJ or NESHAP ZZZZ.

“Facilities that are area sources of HAP with industrial, commercial, or institutional boilers must comply with applicable portions of 40 CFR 63 JJJJJ.”

This is the same approach NYSDEC has followed since before the 2018 program audit. The only difference is that the language that directed “enforcement of permit conditions deriving from non-delegated federal standards to EPA” was removed, as required by EPA in the 2018 report. The recommendation made by EPA, to include all applicable requirements, including those from non-delegated federal standards, into Title V permits, was not implemented by NYSDEC. To achieve inclusion of specific applicable requirements from the non-delegated federal standards into Title V permits, EPA requests that priority be given by NYSDEC to an ongoing collaboration with EPA to develop specific permit conditions or template language for use in all NYSDEC regional offices or find other ways to address this issue.

2018 Action Item 3: EPA encourages NYSDEC to take delegation of NESHAP and NSPS that apply to emission units at Title V facilities in the State of New York, including standards noted in this report and outstanding items noted in EPA’s June 2014 evaluation report. NYSDEC should finalize the 6 NYCRR 200.10 revisions as expeditiously as possible.

2022 EPA Findings – This 2018 Action Item 3 was not addressed and thus remains an action item for NYSDEC in the 2022 evaluation.

E. Compliance Assurance Monitoring (CAM Rule or Part 64)

2022 EPA Relevant CAM Rule Background - CAM regulations at 40 C.F.R. Part 64, apply to Title V sources with large emission units that rely on add-on control devices to comply with applicable requirements. The underlying principle of the CAM rule, as stated in the preamble to the 1997 rulemaking, is “to assure that the control measures, once installed or otherwise employed, are properly operated and maintained so that they do not deteriorate to the point where the owner or operator fails to remain in compliance with the applicable requirements.”¹⁵ According to the CAM rule, sources are responsible for proposing a CAM plan to the permitting authority that provides a reasonable assurance of compliance with applicable requirements. Compliance with the CAM plan forms a basis for the source to certify compliance with applicable requirements for pollutant-specific emission units and add-on control devices.

Sufficient detail should be provided in the PRR in order to understand whether or not any emission unit at a Title V facility is subject to the CAM rule. When the CAM rule does apply, NYSDEC should summarize in the PRR the facility’s proposed CAM plan and state whether NYSDEC is approving or has approved the plan. If NYSDEC is approving the plan, but some aspects of the CAM rule monitoring in the permit differ from the facility’s proposal, those differences should be highlighted and explained appropriately in the PRR. The lack of information about CAM applicability in the PRR makes meaningful review of a draft permit by the public or EPA very challenging.

The Action Items related to the CAM Rule identified in the 2018 report, along with the 2022 EPA evaluation of the progress made by the NYSDEC since 2018, are discussed below:

¹⁵See 62 FR 54900, 54902, October 22, 1997.

2018 Action Item 1: 1) NYSDEC should ensure that the Title V permit for sources subject to CAM contains a CAM plan that includes all required elements of Part 64.

2022 EPA Findings - Based on the two permits examples provided by NYSDEC in response to our 2022 Questionnaire, it appears that the elements of the CAM plan included in those permits are consistent with the Part 64 CAM plan requirements. We encourage NYSDEC to continue to ensure that all CAM plans satisfy the CAM rule requirements.

2018 Action Item 2: 1) NYSDEC should ensure that for sources subject to the CAM rule, the PRR identifies each emission unit to which the CAM rule applies, explains why the CAM rule applies, and provides the rationale for approving the CAM plan.

2022 Findings – The two PRR examples, Flexo Transparent (“Flexo”), and Corning Incorporated (“Corning”), provided by NYSDEC in response to our 2022 Questionnaire did not identify the emission units at the Title V facility to which CAM applies or mention or discuss the rationale for approving the CAM plan as we recommended.

- The Flexo PRR, on page 19, only included the following: “Compliance Assurance Monitoring (CAM) (Condition # 45): This facility is subject to CAM since the potential pre-control device VOC emissions are above the major source threshold of 50 tons per year. Flexo submitted an acceptable CAM Plan in February 2008, which is referenced in this condition.”
- The Corning PRR, on page 27, only included the following: “Condition 54 – 40 CFR Part 64: This condition applies to the federal Compliance Assurance Monitoring (CAM) rule, which requires Corning to monitor control devices, capture systems, and/or process parameters to provide a reasonable assurance of compliance with emission limitations or standards. This condition outlines the sources subject to CAM and the specific requirements of the rule that apply.”

Some of the PRRs¹⁶ accompanying the draft Title V permits we reviewed and commented on since the 2018 report also did not identify the emission units at the Title V facility to which CAM applies. EPA encourages more consistency across the regional offices to ensure the company submits the CAM plan, and the CAM plan approval is adequately addressed in the PRR.

F. Insignificant Activities (Emissions Sources) Subject to Federal Emissions Standards

The Action Items related to Insignificant Activities (referred to by NYSDEC as exempt or trivial activities) identified in the 2018 report, along with EPA’s 2022 evaluation of the progress made by the NYSDEC since 2018, are discussed below:

¹⁶See for example: comment II. B of the EPA comment letter for Ball Metal Beverage Container Corporation (Attachment 6); comment II.A.2 of the EPA comment letter for International Imaging Materials, LLC (Attachment 7).

2018 Action Item 1: 1) NYSDEC should continue to implement Parts 201-3 and 201-6 as approved by EPA as part of the NYSDEC’s Title V permit program. Changes to the Title V program, including changes to the exempt and trivial activities in Parts 201-3 and 201-6, must be submitted to EPA as a Title V program revision.

2022 Findings – Based on the draft Title V permits reviewed and commented on by EPA since the 2018 report, NYSDEC has not refrained from implementing rule revisions that EPA has not approved as a Title V program revision. NYSDEC continues its pre-2018 report practice of implementing the revised Parts 201-3 and 201-6 that the State adopted as a State rule. Thus, the first portion of the 2018 Action Item 1 remains an ongoing concern for EPA in 2022. NYSDEC submitted the revised Parts 201-3 and 201-6 to EPA on April 2021. These rule revisions are still undergoing review at EPA, but EPA cautions that, if EPA determines that a rule revision is not approvable as part of NY’s Operating Permits Program under Part 201-6, NYSDEC would need to move permit conditions relying on that rule provision to the “State Only” section of the Title V permit.

2018 Action Item 2: EPA’s 2018 report provided 1) NYSDEC should ensure that insignificant activities, referred to by NYSDEC as exempt or trivial activities, are consistent with the NYSDEC’s Title V permit program approved by the EPA. The Part 201-3 that EPA reviewed and approved as part of NY State Operating Permits Program in 2001 stated that exempt or trivial activities that are subject to any applicable requirement are not omitted from Title V permitting. Thus, insignificant activities and their corresponding applicable requirements must be included in the Title V permits unless EPA approves and incorporates the revisions to Part 201-3 into the NY Title V program, which has yet to occur. EPA notes that this issue is discussed in detail in Section III.E of the 2018 report.

2022 EPA Findings – Based on the draft Title V permits¹⁷ we reviewed and commented on since the 2018 report, this Action Item has not been addressed by NYSDEC. Thus, the 2018 Action Item 2 remains an ongoing concern for EPA in 2022 and needs to be addressed by NYSDEC.

2018 Action Item 3: 1) NYSDEC should ensure that each application contains the necessary information to determine what requirements apply to the trivial or exempt activities.

2022 Findings – Based on our review of the three Title V permit applications provided by NYSDEC in response to our 2022 Questionnaire and those Title V permit applications we reviewed since the 2018 report, the Title V applications still lack the necessary information for one to determine whether applicable requirements apply to an emission source that NYSDEC considers an exempt or trivial activity. The 2018 Action Item 3 remains an ongoing concern for EPA in 2022 and needs to be addressed by NYSDEC.

¹⁷See for example: comment 15.b of the EPA comment letter for CPV Valley, LLC (Attachment 4); comments B. and C of the EPA comment letter for the Ball Metal Beverage Container Corporation (Attachment 6); comment B of the EPA comment letter for Independence Station (Attachment 9); comment 2 of the EPA comment letter for Hollingsworth & Vose Co (Attachment 11); comment B.2 of the EPA comment letter for Astoria Gas Turbine Power, LLC (Attachment 12); comment C.3 of the EPA comment letter for Danskammer Energy, LLC (Attachment 13); comment 2 of the EPA comment letter for Parkchester Condominium (Attachment 14); comment 1.a.iii of the EPA comment letter 2 for Starrett City Power Plant (Attachment 16).

G. Title V Permit Renewals – Application Content

The Action Item and Recommendations related to Title V permit renewals and application content identified in the 2018 report, along with EPA’s 2022 evaluation of the progress made by the NYSDEC since 2018, are discussed below:

2018 Action Item 1: 1) NYSDEC should ensure that all Title V renewal applications meet the application content requirements of 6 NYCRR 201-6.2 and 40 CFR § 70.5.

2018 Recommendations for Action Item 1: a) NYSDEC should ensure that all applications include emission information (at the emission unit and facility level), emissions calculations, all applicable requirements, and an updated list of insignificant activities (referred to by NYSDEC as trivial or exempt activities); b) NYSDEC should ensure that Title V renewals are submitted using the current application form; and c) NYSDEC should add “CAM Plan” to the “Supporting Documentation” list of the application form.

2022 EPA Findings – Based on our review of the two Title V permit renewal applications provided by NYSDEC in response to our 2022 Questionnaire, NYSDEC has only implemented Recommendation (b) of this Item. With respect to Recommendations (a) and (c), the permit applications still do not include emission information at the emission unit level; do not address the applicability of all requirements; and do not include a CAM Plan as an item of the “Support Documentation” list. The 2018 Action Item 1 and its recommendations at a) and c) remain an ongoing concern for EPA in 2022 and need to be addressed by NYSDEC.

H. Title V Fee Program

The Action Items and Recommendations related to the Title V Fee Program that were identified in the 2018 report, along with EPA’s 2022 evaluation of the progress made by the NYSDEC since 2018, are discussed below:

2018 Action Item 1: NYSDEC should take actions to ensure that Title V program expenses are covered solely by Title V revenues.

2018 Recommendation for Action Item 1: NYSDEC should consider the revenue generating ideas presented in the audit report to determine if they are appropriate for NYSDEC to adopt.

2022 EPA Findings - An important part of each permitting authority’s Title V program is to ensure that the permit program has the resources necessary to develop and administer the program effectively. A key requirement of the Part 70 program is that the permitting authority establish an adequate fee program to collect sufficient Title V fees to cover Title V permit program expenses. These fees must be used solely to cover the Title V permit program costs and the permitting authority shall provide a demonstration that the fee schedule selected will result in the collection and retention of fees in an amount sufficient to meet these fee requirements. *See* 40 C.F.R. § 70.9 (c) and (d). Accordingly, the permitting authorities (or state legislatures, as applicable) may need to revise fee schedules periodically to assure compliance with this

requirement. In its response to the 2022 Questionnaire, NYSDEC indicated that it has continued to use the State General Fund to supplement Title V fee revenues in order to fully fund its Title V program. Additionally, NYSDEC has borrowed monies from the NY Statewide Transportation Improvement Program (STIP), in order to cover some of the Title V expenses which could not be covered by the collected Title V fees. The NYSDEC Title V program fund's cumulative deficit as of April 1, 2022 was \$ 37,762,135, which represents an increase of about 66% from the cumulative deficit of \$22,803,390 noted in the 2018 report. The projected cumulative deficit for March 31, 2023 was \$ 42,750,634. During the audit process, NYSDEC asserted that every year since the 2018 report it has requested the New York State Legislature (NYSL) to amend the Title V fee legislation to allow for collection of sufficient Title V fees to cover the costs of the Title V permit program, but the NYSL has not approved any of those requests. The last time the Title V fees were increased was in 2015, when the base fee was introduced, and the graduated fee schedule was adjusted upward. NYSDEC has also indicated that an updated base fee, in addition to an increase in the dollars per ton fee rate, would be needed. Earlier this year, the NYSL amended the Title V fee legislation, ECL section 72-0303, effective January 1, 2027, increasing both the base fee and the per ton fees. We understand NYSDEC is tasked with promulgating implementing regulations. EPA is pleased to acknowledge that NYSDEC's efforts over the years have yielded positive results. EPA recognizes the fee issue is not unique to New York State and encourages the NYSDEC to continue its efforts to meet the permit program fee requirements and to address the fee shortfall. DEC is requested to keep EPA apprised of its efforts. Toward that end, we would like to receive periodic updates related to implementation of the fee increases that DEC advises will be effective in 2027.

2018 Action Item 4: NYSDEC should continue to take steps to improve its Title V permit issuance rate.

2022 EPA Findings - Permit issuance problems, namely large backlogs of unissued permits, are often linked to a lack of resources. We appreciate the NYSDEC's efforts to creatively look for ways to fill the permitting staff vacancies and take steps to ensure proper training for all of its new permitting staff as described by NYSDEC in its response to the 2022 Questionnaire. However, EPA is extremely concerned by the backlog reported in NYSDEC's response to the 2022 Questionnaire. NYSDEC reported a backlog¹⁸ of 202 Title V permit application renewals, which represents about 58% of the entire NYSDEC Title V permits universe. This is a significant increase from the 22% noted in the 2018 report. 2018 Action Item 4 remains a concern for EPA in 2022 which should be addressed by NYSDEC.

2018 Action Item 7: For all DOH activities that are paid for by Title V funds, NYSDEC should provide justification, in its future annual reports, on how the activities are related to the Title V permitting program.

2022 EPA Findings – It appears that the 2018 Action Item 7 issue has been resolved. We suggest that NYSDEC continue to include, in its future annual reports, adequate justification for paying Department of Health (DOH) activities with Title V funds.

¹⁸Those Title V applications were pending final action beyond 18 months.

I. Document Changes Made in Permit Modifications

The Action Item related to documenting the changes made in permit modifications was identified in the 2018 report. EPA's 2022 evaluation of the progress made by the NYSDEC since 2018 is discussed below:

2018 Action Item 1: NYSDEC should ensure that all permit modifications are adequately documented in the PRR and PN.

2022 EPA Findings – The PRRs and Public Notices (PN) that NYSDEC provided as examples in its response to the 2022 Questionnaire indeed included a description of the permit modifications. However, this was not the case for the PRRs or PNs associated with other draft permits EPA reviewed and commented on since issuance of the 2018 report.¹⁹ We encourage NYSDEC to include a clear description of all of the changes resulting from a permit modification in each PRR and PN at the time of draft permit issuance so that the public can easily identify those changes within the permit and review them during the public comment period. In this way, NYSDEC would enhance the public's participation in the Title V permitting process.

J. Public Participation

This Action Item relates to Public Participation. The issue, as identified in the 2018 report, is summarized below. EPA's 2022 evaluation of the progress made by the NYSDEC since 2018 is also discussed below:

1. Web Version of Draft Title V Permits

2018 Action Item 1: (1) NYSDEC should continue to post the complete draft Title V permit (as opposed to only portions that pertain to the modification) on its website during the public comment period; and (2) where the NYSDEC does not post the entire draft Title V permit on its website during public comment, the draft permit cover page (i.e., description section) should clearly state that the draft permit includes only the newly added condition and/or the modified conditions. The draft permit should also clearly indicate which existing permit conditions were removed.

2022 EPA Findings – Based on NYSDEC's response to the 2022 Questionnaire, the draft Title V permit modifications made publicly available during the public comment period still include only the added or modified portions of the permit. The complete version of the permit which, once approved, would become the final permit for that Title V facility was not made available. NYSDEC's response to the questionnaire stated that the public notice does not contain language indicating that the draft permit includes only those portions impacted by the proposed modification. Instead, it includes a description of the project or modification, i.e., a summary of the changes to the permit. NYSDEC provided a few examples of such public notices to EPA.

¹⁹See for example: comment VI. of the EPA comment letter for Astoria Gas Turbine Power, LLC (Attachment 12); and comment V.2 of the EPA comment letter for Danskammer Energy LLC (Attachment 13).

The public must be afforded the opportunity to provide meaningful comments on all draft Title V permits. The brief description of the project included in a public notice does not inform the public that the draft permit available for review is in fact only the portion of the draft permit impacted by the changes and not the complete and comprehensive version that will become the final permit for that facility. This 2018 Action Item remains a concern for EPA in 2022. We recommend that NYSDEC either (1) make publicly available the entire draft permit (instead of only portions of the permit that would be impacted by the modification); or (2) clearly indicate in the public notice or on the draft permit cover page that the draft permit available for public review includes only the newly added and/or modified permit conditions. We believe that the public would benefit from having the entire draft permit available for public comment, as opposed to only the portions being modified, so that the public can have a better understanding of how the permit is changed to address the proposed modification.

2. Availability of Permit Related Documents During Public Review

2018 Action Item 1: NYSDEC should continue to ensure that the permit record that supports the draft permit decision is readily available upon request.

2022 EPA Evaluation – As indicated in the response to the 2022 Questionnaire, since the 2018 report, NYSDEC has expanded the Title V permit program-related documents and information that are made publicly available online to include, in addition to the currently issued Title V permits, PRRs, draft permits, and public notices, information such as the facility emissions summary and annual emission statements. We encourage NYSDEC to continue to develop its website capabilities and make publicly available online the Title V permit applications and other documents in the Title V permit record.

K. NYSDEC's Title V Rule Changes

This Action Item relates to the Title V Rule Changes identified in the 2018 report. EPA's 2022 evaluation of the progress made by the NYSDEC since 2018 is discussed below:

2018 Action Item 1: NYSDEC should submit all revisions to 6 NYCRR 201-6 to EPA for approval as a Title V program revision.

2022 Findings – NYSDEC's revised rule at 6 NYCRR 201-6 has been submitted to EPA and is currently undergoing review. This Action Item has been resolved.

L. Quality Assurance Process for Reviewing Draft Permits and PRR Prior to Public Review

The Recommendations related to the Quality Assurance ("QA") Process for Reviewing Draft Permits and PRR Prior to Public Review identified in the 2018 report are summarized below. EPA's 2022 evaluation of the progress made by the NYSDEC since 2018 is also discussed below:

2018 Recommendations: 1) NYSDEC should consider implementing a quality assurance process for all draft permits (and PRRs) by involving the first line supervisors, prior to public review; and 2) NYSDEC should continue its efforts to periodically update its permit manual.

2022 Findings – We appreciate NYSDEC’s efforts in developing and implementing a Title V permit QA program that is focused on having the Albany Office providing oversight review of the draft Title V permits and associated PRRs prior to public review. We also appreciate NYSDEC’s plan to make the QA program a formal permitting process requirement.

III. 2022 PROGRAM REVIEW - ADDITIONAL FINDINGS

A. Streamlining Requirements in Title V Permits

A primary objective of the Title V program is to provide each major facility with a single permit that ensures compliance with all applicable CAA requirements. To accomplish this objective, permitting authorities must incorporate in Title V permits all applicable requirements²⁰ as well as any permit terms necessary to assure compliance with these requirements (e.g., emission limitations, testing, monitoring, recordkeeping, reporting requirements, etc.).²¹ Alternatively, if the facility and/or the Title V permitting authority (such as NYSDEC) wishes not to include all applicable requirements and, instead, include only the most stringent applicable requirements in the Title V permit, the EPA streamlining guidance documents should be followed. Those documents are:

- EPA’s March 5, 1996 “White Paper Number 2 for Improved Implementation of the Part 70 Operating Permit Program” (“White Paper # 2”)²²
- EPA’s April 30, 2014 memorandum, “Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits.”²³

The EPA White Paper #2 recommends that when streamlining is utilized, the permit should contain language indicating that when the facility is in compliance with the more restrictive applicable requirement, it is in compliance with the less restrictive applicable requirement. The citation of authority for the streamlined condition should reference the authority of the streamlined or more restrictive applicable requirement as well as the authority of the subsumed or less restrictive applicable requirement. By including the origin of authority of the subsumed applicable requirement in a Title V permit, the respective less restrictive requirement, which was not separately included in the permit, remains an applicable requirement to the source. Also, the EPA White Paper #2, provides that a streamlining demonstration should include a side-by-side comparison (streamlining demonstration) of all of the applicable requirements, including emission limits, monitoring, recordkeeping, and reporting requirements. This demonstration should be included in the Statement of Basis (or the PRR in the case of NYSDEC). Different limit formats (different “units” of measurement) require a detailed discussion to demonstrate which limit is more stringent, including a conversion factor established to allow for conversion from one unit of measure to another. In determining the

²⁰See definition of applicable requirement at 40 C.F.R § 70.2.

²¹See 42 U.S.C. § 7661 c(a), 40 C.F.R. §§ 70.6(a)(1), 70.3(c)(1).

²²See White Paper #2 at <https://www.epa.gov/sites/default/files/2015-08/documents/wtppr-2.pdf>

²³See “Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits” at <https://www.epa.gov/sites/default/files/2015-08/documents/20140430.pdf>

stringency of an emission limit, the averaging times should be reviewed closely. For example, two emission limits that have different averaging time could not be directly compared to immediately conclude which one is more stringent. The streamlining analysis should document which emission limit is more stringent, provided that such demonstration is feasible. While streamlining applicable requirements is an acceptable practice, it must be appropriately applied and documented to assure compliance with all applicable requirements. The main objective of a Title V permit is to include all applicable requirements for the subject source.

EPA reviewed several draft Title V permits and PRRs²⁴ since the 2018 report. We found that NYSDEC omitted applicable requirements that NYSDEC considered less stringent than the applicable requirement included in the permit. However, NYSDEC did not provide the necessary streamlining analysis in the PRR or include the origin of authority for the subsumed applicable requirement(s) in the permits.

In response to our 2022 Questionnaire, NYSDEC provided two permits, the Algonquin Southwest Compressor Station and Flexo Title V permits and their corresponding PRRs, which EPA reviewed as examples of how NYSDEC conducts streamlining in its Title V permits. In the Algonquin Southwest Compressor Station Title V permit, NYSDEC established two NO_x emission limits (in Conditions 22²⁵ and 24²⁶)²⁷ and states that those limits are lower than the applicable RACT and NSPS Subpart KKKK NO_x emission limits that were omitted from the permit. However, the NYSDEC did not include an adequate documentation in the PRR (see pages 19-20²⁸) of the streamlining analysis that supports the inclusion of the selected NO_x limits as permit conditions 22 and 24, over the other applicable (RACT and NSPS) NO_x limits. The various NO_x limits were based on different averaging times (3-hour block average vs. 1-hour average),²⁹ temperature, load conditions, etc., which makes a direct comparison inappropriate

²⁴See for example: comment III of the EPA comment letter for Danskammer Energy, LLC (Attachment 13); comment IV of the EPA comment letter for Astoria Gas Turbine Power, LLC (Attachment 12); comment 16 of the EPA comment letter for CPV Valley, LLC (Attachment 4); comment 3 of the EPA comment letter for Caithness Long Island Energy Center (Attachment 15); and comment 5 of the EPA comment letter for New York University Central Plant (Attachment 8).

²⁵ Condition 22, which NYSDEC indicates includes a streamlined applicable requirement, establishes a NO_x emission limit of 15 ppmvd @15% O₂ for simple-cycle turbines, based on “3 - hour block average” as measured via performance test.

²⁶Condition 24, which again NYSDEC indicates includes a streamlined applicable requirement, establishes a NO_x emission limit of 9 ppmvd @15% O₂ for simple- cycle turbines, based on “3 - hour block average.”

²⁷ Conditions 22 and 24 explain that the NO_x emission limits of 15 and 9 ppmvd @15% O₂, respectively, represent the manufacturer’s emission limits guarantees for the turbines while operating at steady state, at 50 -100 % load, and ambient temperatures above 0⁰ F.

²⁸The PRR for the Algonquin permit at pages 19 and 20, which NYSDEC indicates includes the streamlining discussion, does not adequately document that the NO_x emission limits included in those two above-cited permit conditions assure compliance with those emission limits omitted from the permit. Specifically, there is no information as to whether the omitted NO_x RACT emission limit and NSPS KKKK NO_x emission standards apply only during the turbine steady state operation, at 50-100 % load and at ambient temperatures above 0⁰ F, as is the case for the NO_x emission limits deemed to be most stringent. Thus the three NO_x emission limits (NO_x RACT emission limit, NSPS KKKK NO_x emission standards, and the manufacturer NO_x emission guaranteed emission limits (which are deemed the most stringent)) are not directly comparable.

²⁹ Based on our cursory review of NYSDEC NO_x RACT rule, compliance with the NO_x RACT emission limit for simple-cycle turbines must be determined with a “one-hour average” during the ozone season, as opposed to a “3-

without a streamlining analysis. In addition, NYSDEC cited 6 NYCRR 201-6 as the origin of authority for the established NO_x limits that NYSDEC considered the more restrictive emission limits. This is incorrect because 6 NYCRR 201-6 does not provide the authority to create new requirements except for monitoring, recordkeeping, and reporting. Also, as discussed above, the permit condition(s) should include both the origin of authority for the streamlined or more restrictive emission limit and for the subsumed or less restrictive emission limit(s). The conclusion as to which of the NO_x emission limits is the most stringent one can only be made if documented through a streamlining analysis. The purpose of a streamlining analysis is to document how the streamlined emission limit (or other requirement) is at least as stringent (if not more stringent) than the subsumed (omitted) emission limit. Therefore, EPA finds these NO_x emission limits in Conditions 22 and 24 inadequate.

The Flexo Title V permit, at Condition 25, which NYSDEC indicates includes a streamlined applicable requirement, establishes a VOC emission limit of 45 tons per year that applies to several flexographic printing presses. Condition 26 of the Flexo Title V permit, which NYSDEC also indicates includes a streamlined applicable requirement, establishes a VOC emission limit of 49 tpy that applies to one printing press. Those two conditions do not mention the other less stringent VOC emission limits which were omitted from the permit or cite to their origin of authority. Again, NYSDEC did not implement the streamlining approach outlined in the EPA White Paper #2. Also, the PRR for the Flexo permit, at pages 18 and 19 where the streamlining discussion was included, did not specify what other VOC emission limits, if any, were subsumed. Based on the PRR discussion it is unclear whether NYSDEC has streamlined the VOC tpy emission limits, or whether the intent was to streamline the control and capture system VOC reduction efficiency (in percentage).

2022 Action Item 1 – If NYSDEC wishes to continue its practice of creating streamlined Title V permit conditions, NYSDEC must ensure that the permit condition meant to address the streamlined applicable requirements cites to the origin of authority of the applicable requirement included in the permit and to the origin of authority of any subsumed requirements, as required by the EPA White Paper # 2. In addition, the PRR should document how the permit condition addressing the streamlined applicable requirement assures compliance with all subsumed applicable requirements that were omitted from the Title V permit.

2022 Action Item 2 – We recommend that NYSDEC develop a standard operating procedure (SOP) for all permit writers to use to appropriately streamline the applicable requirements in its Title V permits. Such a procedure should follow the EPA guidance provided in White Paper # 2, as summarized above.

hour block average” that is specified in the two permit conditions for the streamlined NO_x emission limits. Given their different averaging times, the subsumed NO_x RACT emission limit and the streamlined NO_x emission limit(s) are not directly comparable. There is no information in the PRR to indicate that NYSDEC reviewed the averaging times while determining the stringency of the NO_x emission limit.

B. 2022 Additional CAM Rule Action Items

If CAM rule applies, how it applies to each pollutant-specific emission unit³⁰ at a major facility must be evaluated. *See* 40 C.F.R. § 64.2 (a). In general, EPA believes that all PRRs should address whether the CAM rule applies to the subject facility. As specified at 40 C.F.R. § 64.2, the CAM rule applies to those emission units, at major sources, that are 1) subject to emission limits or standards for the applicable regulated pollutant (or a surrogate thereof) (e.g., lb/hr, lb/MMBTU, ppm or destruction efficiency or percentage reduction);³¹ 2) use a control device to achieve compliance with the applicable emission limitation or standard; and 3) have pre-control potential to emit (PTE) of a regulated pollutant in an amount at or greater than the major source threshold. Since the 2018 report, we have reviewed and commented on several PRRs³² of draft Title V permits for facilities with emission units that are subject to emission limits and use control devices to achieve those limits. Neither the PRR nor the application explicitly state whether CAM applies or provide any information (such as the pre-control PTE of emission units) to allow for the CAM applicability analysis. We believe that including in (or attaching to) the PRR the pre-control device PTE and post-control device PTE for each emission unit that is subject to an emission limit and uses a control device to achieve that specific emission limit would allow for an accurate CAM analysis. This is a best practice that enables the public and EPA to meaningfully review the basis for CAM applicability (based on pre-control PTE) and the basis for proper monitoring conditions (based upon post-control PTE).

The following are the additional 2022 Action Items related to the CAM rule that should be addressed by NYSDEC:

2022 Action Item 1: NYSDEC should update its PRR internal guidance (DAIG -10) to include a SOP regarding CAM applicability. This section should include a short introduction on the CAM rule to raise awareness of the potential applicability of the CAM rule if the facility has any emission units that use a control device. For each emission unit that is subject to an emission limit and uses a control device to achieve that specific emission limit, the SOP should require the Title V permit applicant to provide: 1) the pre-control device PTE and post-control PTE; and 2) the CAM rule applicability analysis. All calculations used to assess pre-control and post-control PTE should be provided by the permittee in its application and should be readily available to the public.

2022 Action Item 2: NYSDEC should add a standard section regarding CAM rule applicability in its Title V application form. This section should include the same information specified above under “2022 Action Item 1,” information that NYSDEC should include in its PRRs.³³

³⁰Pollutant-specific emission unit means an emission unit considered separately with respect to each regulated air pollutant. *See* 40 C.F.R. §64.1 .

³¹*See* 40 C.F.R. §64.1 Definitions “Emission limitation or standard.”

³²*See* for example: comment 3 of the EPA comment letter for Montefiore Medical Center (Attachment 10); comment B.3 of the EPA comment letter for Astoria Gas Turbine Power, LLC (Attachment 12); comment C.6 of the EPA comment letter for Danskammer Energy, LLC (Attachment 13).

³³As stated in Section III.B, Action Item 1, “For each emission unit that has an emission limitation and uses a control device for achieving that specific emission limitation, the SOP should require the Title V permit applicant to provide: 1) the pre-control device PTE and post-control PTE; and 2) the CAM rule applicability analysis. All

CAM rule applicability can evolve over time as a Title V source makes changes, thus CAM rule applicability should be re-evaluated to ensure continual source compliance. Consequently, NYSDEC should require Title V sources to validate in their Title V renewal applications whether previous CAM non-applicability determinations are still valid.

C. Public Notification Process

NYSDEC's Title V public participation procedures, and thus, public notification processes apply to initial permit issuance, significant permit modifications, and permit renewals. NYSDEC offers online access to the draft Title V permits and associated PRRs. The public notices that specify the dates of the public comment periods are published on the NYSDEC Environmental Notice Bulletin (ENB) web site, and also by the applicant in a local newspaper. NYSDEC develops a mailing or notification list of those who request individual notification of the public announcement of a specific application. NYSDEC also offers free translation services in 12 different languages.³⁴

2022 EPA Evaluation – EPA finds NYSDEC's public notification process adequate and encourages NYSDEC to continue its public notification practices.

D. Environmental Justice

NYSDEC, in the context of the Title V permitting process, follows the Commissioner Policy 29 (CP-29) guidance for incorporating Environmental Justice (“EJ”) practices into the permitting review process. NYSDEC also adheres to the provisions of Section 7(3) of the Climate Leadership and Community Protection Act (CLCPA), which provides that state agencies cannot make permitting decisions that would disproportionately burden disadvantaged communities. NYSDEC requires that each Title V applicant, in actions for which public review is required, to develop and implement an Enhanced Public Participation Plan (EPPP). The EPPP includes a stakeholder list and identifies the need for translating the public notices or fact sheets into other languages. A general translation leaflet developed by NYSDEC which can be included within the EPPP notices provides the communities with information on the 12 different languages for which translation is offered. The EPPP involves holding informational meetings with the community. One of the NYSDEC tools available to help anticipate the Potential Environmental Justice Areas (PEJAs) (i.e., where the EJ issues may arise) are the Interactive Maps that are publicly available via the DEC Info Locator tool.³⁵ NYSDEC has an Office of Environmental Justice (“OEJ”) that is responsible for the oversight and coordination of the EJ activities related to permitting, including Title V permitting. The OEJ staff determines when an EJ assessment is necessary and is also responsible for the implementation of the CP-29. Thus, NYSDEC's Title V permit writers rely on the OEJ staff in addressing EJ concerns.

calculations used to assess pre-control and post-control PTE should be also provided by the permittee in its application and should be readily available to the public.”

³⁴See “Language Access Chart” which can be find at <https://www.dec.ny.gov/about/85156.html>

³⁵The Interactive maps can be found at <https://gisservices.dec.ny.gov/gis/dil/>.

2022 EPA Evaluation – EPA commends NYSDEC for emphasizing the importance of public participation by requiring Title V applicants to develop and implement an EPPP, by creating a special OEJ office within NYSDEC, and by providing a mapping tool, with the goal of ensuring that potentially impacted communities, such as EJ communities, are aware of their ability to participate in the permitting process and opportunities to do so. The EPA’s recommendation is that NYSDEC continue its processes that address targeted potential EJ concerns.

E. Affected States and Indian Tribes Review

For the purpose of meeting the notifications requirement for Title V permitting actions, NYSDEC determines which States or Tribal Nations qualify as “Affected States” based on the pertinent definitions of this term in 40 C.F.R. §70.2 and 6 NYCRR 201-2.1(b)(4). NYSDEC notifies the affected States or Tribal Nations via a letter that briefly discusses the proposed Title V permitting action, and also includes the web links to the NYSDEC web site where the related draft permit and PRR are available. The letter is accompanied by a copy of the public notice.

2022 EPA Evaluation – NYSDEC is doing a fine job notifying the affected States and Tribal Nations of its Title V permitting actions and EPA encourages NYSDEC to continue this effort.