



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

September 28, 2022

Michael Cronin, P.E.
Director, Bureau of Stationary Sources, Division of Air Resources
New York State Department of Environmental Conservation
625 Broadway, Albany, NY 12233-3254

Dear Mr. Cronin:

The U.S. Environmental Protection Agency Region 2 Office ("EPA") will be conducting the fifth audit of the New York State's Operating Permit Program (OPP) in the next few months. In this audit, we will focus on some of the outstanding issues from the 2018 audit and issues identified during EPA's oversight review of draft and proposed permits issued by the New York State Department of Environmental Conservation ("NYSDEC") since the 2018 audit. It should be noted that during our July monthly meeting, both NYSDEC and EPA agreed to find common grounds, consistent with the Part 70 regulations, in addressing the following two issues from previous program audits: 1) inclusion and implementation of non-delegated federal standards in operating permits; and 2) implementation of the revised Part 201-3 provisions in the operating permits before those changes were incorporated into NY's Operating Permits Program.

This letter defines the scope of our audit. A virtual meeting will be scheduled with you and your staff to clarify issues and initiate discussion of potential resolution to address them. To facilitate our assessment of the New York's OPP and therefore our meeting discussion, a questionnaire with questions specific to the New York program is enclosed with this letter. Please provide a response to the questionnaire within 60 days of the date of this letter. We will draft a report to document our findings as well as any mutual agreement made with NYSDEC during this audit. We will contact you in the near future to arrange for a mutually convenient date for the virtual meeting.

We appreciate in advance the cooperation that NYSDEC will offer to complete this audit. We look forward to receiving your response to the questions included in the enclosed questionnaire.

Sincerely yours,

Suilin W. Chan, Chief
Permitting Section
Air Programs Branch

Enclosure

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1. Gap Filling Monitoring

- a. Please provide two examples of any permit review reports (“PRR”)¹written since the last audit, which identify and document the rationale for gap-filling monitoring requirements included in the permit. Please specify the relevant PRR page number(s) that present the gap-filling monitoring rationale.
- b. Please provide the condition number(s) related to the two examples specified above where gap-filling monitoring requirements were added to the permit since the last audit.

2. Emission Limitations on the Potential to Emit (Capping Limits)

- a. Please provide two examples of PRRs written since the last audit which identify and document the rationale for the capping limits included in the permit. Please specify the PRR page number that include capping limit monitoring rationale.
- b. Please provide the condition number(s) related to the two examples specified above where capping limits were added to the permit since the last audit.

3. Title V Fee Program

- a. Since the last audit, were there any changes made to the title V fee program? Is NYSDEC still applying the 2015 graduated per ton fee schedule and the \$2,500 base fee?
- b. What is the title V program’s cumulative deficit as of the date of the NYSDEC response to this questionnaire?
- c. Please describe the actions that NYSDEC has taken since the last audit for ensuring that the title V program expenses are covered solely by the title V emissions-based fee revenues.
- d. Please describe which ones of the revenue generating ideas presented in the last audit report (or any other title V revenue generating ideas) has the NYSDEC explored to determine their appropriateness for the NYSDEC to adopt?
- e. Please provide a copy of the Department of Health reports submitted to NYSDEC since 2019 showing how their activities that were paid for by the title V funds relate to the title V permitting program.
- f. Please confirm that since the last audit, the NYSDEC has continued to use money from the State General Fund to cover the title V program expenses that cannot be paid by the title V fees.

¹ 40 CFR § 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.

g. Please provide the information indicated in the following table:

Table 1 – Operating Permit Program (“OPP”) Cost Information -State Fiscal Year (“SFY”) 2018/2019 through 2021/2022

Sate Fiscal Year	SFY 2018/2019	SFY 2019/2020	SFY 2020/2021	SFY 2021/2022
Total number of title V Sources which paid fees				
Annual Emissions (tons) for which fees were paid				
No. of Full Time Employees who perform title V permitting work and are paid from OPP account.				
Total Annual Fees Revenue Collected from title V Sources “R”, which are a combination of per ton fee and a \$2,500 base fee.				
OPP Total Expenses or “TE”				
Difference Between “R” and “TE”				

- h. What is the current (as of the date of the DEC response to this questionnaire) percentage of title V permit applications that are awaiting a final action beyond their applicable deadline(s), or “backlogged?”
- i. Please describe the steps that NYSDEC has taken since the last audit to improve its title V permit issuance rate.

4. Permit Review Report Content

Please provide two examples of any PRRs that were written since the last audit that contain an explanation of the applicability and non-applicability of federal standards. Please specify the relevant PRR page number(s) that present the applicability and non-applicability of federal standards discussion.

5. Compliance Assurance Monitoring (“CAM”)

- a. Please provide two examples of any title V permits that include CAM requirements which were added to the permits since the last audit. Please specify the conditions number for those CAM requirements.
- b. Also, please provide the PRRs corresponding to the two permits described above. Please indicate the PRR page numbers that include the CAM related discussion.
- c. Please describe the process that is used by the permit writers to determine if CAM is necessary?

- d. What is the approximate number of sources that now have CAM monitoring in their permits?
- e. Has the Department ever disapproved a source's proposed CAM plan?

6. Monitoring in title V permits

- a. Please describe how does the NYSDEC ensure that the title V permits contain adequate monitoring (i.e., the monitoring required in §§ 70.6(a)(3)) if monitoring is not specified in the underlying standard or CAM?
- b. Has NYSDEC developed criteria or guidance regarding how monitoring is selected for permits? If yes, please provide the guidance.
- c. Do you provide training to your permit writers on monitoring (e.g., periodic and/or sufficiency monitoring; CAM; monitoring QA/QC procedures for CEMS; test methods; establishing parameter ranges; etc.)?

7. Documenting Changes Made in Permit Modifications

Please provide three examples of PRRs and Public Notices for permit revisions that were written since the last audit. Please indicate the page number and/ or section that include the relevant description(s) identifying the permit revisions.

8. Title V Permit Renewals

Please provide two examples of title V permit renewal applications submitted since the last audit that the NYSDEC considers are good examples of title V renewal applications that meet the 6 NYCRR 201-6.2 and 40 CFR § 70.5 application content requirements.

9. Insignificant (Exempt) Activities (Emission Sources)

Please provide three examples of any title V permit applications submitted since the last audit which the NYSDEC considered to have contained the necessary information for determining what requirements (i.e., federal standards) apply to the insignificant or exempt emission sources. Please specify the relevant application page number(s) that include the above-described information.

10. Public Participation

- a. Draft Title V Permit Modification for Public Comment
 - i. When public noticing draft title V permit modifications or revisions, how does NYSDEC identify which portions of the permit are being revised? (e.g., include a narrative description of change, specify the condition number, etc.). Please explain and provide specific examples.
 - ii. Also, how does NYSDEC clarify in the public notice that only the revisions are subject to comment? Please explain and provide specific examples.
- b. Availability of Permit Related Documents During Public Review

- i. What is NYSDEC's procedures for the public to obtain permit-related information (e.g., permit applications, deviation reports, etc..) especially during the public comment period?
- ii. How long does it typically take to respond to requests for permit-related information during the public comment period?
- iii. Who is responsible for providing that information to the public?
- iv. Have comments been received on the availability (or non-availability) of such information from the public?
- v. Has NYSDEC ever extended the public comment period due to the public's delay in receiving all available information?
- vi. Is NYSDEC considering or working on developing a web access system to expand the types of permit-related documents made available for the public? If so, please explain.
- vii. Does NYSDEC charge the public for copies of permit-related documents? What is the cost?
- viii. Are there exceptions to this cost (e.g., the draft permit requested during the public comment period, or for non-profit organizations)?

11. Application Processing – Quality Assurance

Does NYSDEC have a process for quality assuring the regulatory content of your permits before issuance? Please explain the process and how it is implemented

12. Streamline in title V permits

- a. Does NYSDEC utilize any streamlining strategies in preparing permits such as streamlining multiple applicable requirements on the same emission unit (i.e., listing the requirements of the most stringent applicable requirements)? If so, please describe the streamlining process being implemented.
- b. Please provide two examples of permits that utilized streamlining strategies described above. Please indicate the conditions that included the streamlined requirements. Also, please provide the PRRs for these two permits and indicate the page number of the PRR that include the streamlining rationale.

13. Title V Application Content

- a. For those title V sources with an application on file:
 - i. Do you require the sources to update their applications in a timely fashion if a significant amount of time has passed between application submittal and the time you draft the permit?
 - ii. Do you require a new compliance certification?

- b. Do you verify that the source is in compliance before a permit is issued and if so, how?
- c. In cases where a facility is either known to be out of compliance, or may be out of compliance (based on pending Notice of Violation (“NOV”)), or other evidence suggesting a possible compliance issue), how do you evaluate and document whether the permit should contain a compliance schedule? Please explain and provide specific examples.
- d. In cases where the facility is out of compliance, is a compliance schedule with specific milestones and dates for returning to compliance included in the permit? Please give a specific example.
- e. How does NYSDEC handle a case when either the permitting office or the facility self-reports non-compliance with specific emission limits? Please give a specific example.

14. Public Notification Process

- a. Has the NYSDEC developed mailing lists of people you think might be interested in title V permits you propose (e.g., public officials, environmentalists, concerned citizens)?
 - i. Are elected public officials on this list?
 - ii. How many environmental organizations are on this list?
 - iii. What information do you send to people on the list?
 - iv. How does a person get on the list (e.g., by calling, sending a written request, or filling out a form on the NYSDEC’s website)?
- b. How does the NYSDEC update the mailing list of interested parties for title V permits?
- c. Does NYSDEC reach out to specific communities (e.g., environmental justice communities) beyond the standard public notification processes?
- d. Do you provide public notices in languages besides English? Please list.

15. Public Comments

- a. Has NYSDEC denied any requests to extend the public comment period? If so, what were the reasons for denying them?
- b. Has the public ever suggested improvements to the contents of the public notice, the public participation process, or other ways to notify them of draft permits? Describe.
- c. Have environmental justice communities been more active in commenting on permits in the last two years?

16. Environmental Justice

- a. Does NYSDEC have Environmental Justice (“EJ”) legislation, policy, or general guidance that help direct permitting efforts?

- b. Does NYSDEC have an in-house EJ office or coordinator, charged with oversight of EJ related activities?
- c. Has NYSDEC provide EJ training/guidance to the air permit writers? When?
- d. Do the permit writers have access to demographic information necessary for EJ assessments (e.g., socioeconomic status, minority populations, etc.)? If so, how are the assessments taken into account in the permitting process?
- e. When reviewing an initial or renewal application or a modification, is any screening for potential EJ issues performed? If so, please describe the process and/or attach the relevant guidance.
- f. Are any other EJ factors or additional community information and/or demographics (for example children, elderly) taken into account or considered during the permitting process?
- g. At what point (if any) in the EJ analysis or permitting process do stakeholders become involved?
- h. Describe how NYSDEC make information available to stakeholders and the affected community (e.g., translation of information, understandable and accessible materials, personal contacts, clearly explained technical information including potential risk, distribution of information, public meetings, etc.).

17. Affected States and Indian Tribes Review

- a. How does NYSDEC determine which States qualify as affected States for a particular draft permit?
- b. How does NYSDEC notify affected States or Tribal Nation governments of draft title V permits? Please provide two recent examples of letters and/or permits that were sent to the affected States and/or Tribal Nations.
- c. Are there any patterns to the type of comments submitted on draft title V permits by affected States? Are there particular types of issues that are of interest to the affected States?
- d. Has the NYSDEC ever received comments on draft permits from the Tribal Nations?
- e. Does the NYSDEC review and comment on the adjacent States' title V permits? Please provide a recent example when the NYSDEC felt it was necessary to do so.