



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Air Quality

Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues

Report No. 15-P-0006

October 20, 2014



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Abbreviations

CAA	Clean Air Act
CFR	Code of Federal Regulations
CPI	Consumer Price Index
EPA	U.S. Environmental Protection Agency
Florida DEP	Florida Department of Environmental Protection
Illinois EPA	Illinois Environmental Protection Agency
Indiana DEM	Indiana Department of Environmental Management
Louisiana DEQ	Louisiana Department of Environmental Quality
NACAA	National Association of Clean Air Agencies
New York State DEC	New York State Department of Environmental Conservation
NOD	Notice of Deficiency
OAQPS	Office of Air Quality Planning and Standards
OAR	Office of Air and Radiation
Ohio EPA	Ohio Environmental Protection Agency
OIG	Office of Inspector General
Pennsylvania DEP	Pennsylvania Department of Environmental Protection
South Coast AQMD	South Coast Air Quality Management District
Texas CEQ	Texas Commission on Environmental Quality

Cover photo: A smokestack at a coal-fired power plant. (EPA photo)

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At a Glance

Why We Did This Review

We conducted this evaluation to determine whether the U.S. Environmental Protection Agency's (EPA's) oversight of state and local Clean Air Act Title V programs' fee revenues is effective in identifying and obtaining corrective actions for issues related to collecting, retaining and allocating fee revenues. Title V was expected to, among other things, improve compliance and enforcement of states' air pollution programs. Title V permit fees are used to implement and enforce the permitting program, including acting on new permit applications and revisions or renewals of existing permits; monitoring facility compliance; taking enforcement actions for noncompliance; performing monitoring, modeling and analysis; tracking facility emissions; and preparing emissions inventories.

This report addresses the following EPA goals or cross-agency strategies:

- *Addressing climate change and improving air quality.*
- *Protecting human health and the environment by enforcing laws and assuring compliance.*
- *Launching a new era of state, tribal, local and international partnerships.*

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Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues

What We Found

We found significant weaknesses in the EPA's oversight of state and local Title V programs' fee revenue practices. While some EPA regions had worked to resolve issues, we found annual Title V program expenses often exceeded Title V revenues, and both had generally been declining over the 5-year period we reviewed (2008–2012). For example, our survey of nine of the nation's largest permitting authorities showed that annual Title V revenues were not sufficient to cover annual Title V expenses 62 percent of the time from 2008 to 2012. Specifically, we noted a \$69 million shortfall out of \$672 million in expenses incurred by these authorities from 2008–2012. Also, four of the nine permitting authorities used or said they could use non-Title V revenue to fund their Title V programs, a practice not allowed by the Code of Federal Regulations (CFR) under the 40 CFR Part 70. In some instances the EPA was aware of these issues, but corrective actions had either not been taken or were insufficient. EPA's oversight has been hampered by:

- Lack of a national strategy for conducting oversight of Title V fees.
- Outdated guidance.
- Lack of financial or accounting expertise among EPA program staff.
- Reluctance by some regions to pursue formal corrective actions.

Weaknesses in the EPA's oversight of Title V revenues and expenditures jeopardize program implementation and, in turn, compliance with air regulations for many of the nation's largest sources of air pollution.

The agency's weaknesses in identifying and obtaining corrective actions for Title V revenue sufficiency and accounting practices, coupled with declining resources for some permitting authorities, jeopardizes state and local Title V program implementation. These weaknesses also increase the risk of permitting authorities misusing funds and operating in violation of the requirements of 40 CFR Part 70. Periodic monitoring of facility compliance, one aspect of Title V used by the EPA and authorized Title V programs to protect human health and the environment, could be adversely impacted by insufficient funding.

Recommendations and Planned Agency Corrective Actions

We recommend that the EPA assess, update and re-issue its 1993 Title V fee guidance as appropriate; establish a fee oversight strategy to ensure consistent and timely actions to identify and address violations of 40 CFR Part 70; emphasize and require periodic reviews of Title V fee revenue and accounting practices in Title V program evaluations; address shortfalls in staff expertise as regions update their workforce plans; and pursue corrective actions, as necessary. The agency agreed with all recommendations and provided corrective action plans that meet the intent of the recommendations.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

October 20, 2014

MEMORANDUM

SUBJECT: Enhanced EPA Oversight Needed to Address Risks
From Declining Clean Air Act Title V Revenues
Report No. 15-P-0006

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Janet McCabe, Acting Assistant Administrator
Office of Air and Radiation

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The EPA offices having primary responsibility over the issues evaluated in this report are the Office of Air and Radiation's Office of Air Quality Planning and Standards and the applicable air offices in the 10 EPA regions.

Action Required

The agency agreed with all eight recommendations and provided acceptable planned corrective actions and completion dates that meet the intent of these recommendations. These recommendations are resolved; therefore, no further response is needed for these recommendations. All recommendations are considered open, with agreed to corrective actions pending. Please update the EPA's Management Audit Tracking System as you complete the planned corrective actions. Please notify my staff if there is a significant change in the agreed-to corrective actions. Should you choose to provide a response to this final report, we will post your response on the OIG's public website, along with our memorandum commenting on your response. You should provide your response as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended.

We will post this report to our website at <http://www.epa.gov/oig>.

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Chapter 1

Introduction

Purpose

We conducted this evaluation to determine whether the U.S. Environmental Protection Agency's (EPA's) oversight of state and local Clean Air Act (CAA) Title V programs' fee revenue practices is effective in identifying and obtaining corrective actions for issues related to collecting, retaining and allocating fee revenues in accordance with the Code of Federal Regulations (CFR) in 40 CFR Part 70.

Background

Purpose of CAA Title V Operating Permits

In 1990, Congress enacted permitting requirements designed to reduce violations and improve enforcement of air pollution laws for the largest sources of air pollution. The CAA operating permit program covers the most significant sources of air pollution in the United States. The more complex sources—such as large petroleum refineries and chemical production plants—can have hundreds or even thousands of emission points. A properly implemented Title V program provides assurance of major source compliance, and also reduces air pollution emissions, increases regulatory certainty and improves air quality.

Title V permits contain all of the air quality requirements for an individual major source. Title V does not generally impose new air quality control requirements. Instead, it requires permits to contain monitoring, reporting and recordkeeping provisions to ensure that affected sources, federal and state regulators, industry, and the public know the air quality requirements the source must meet to comply with the CAA. The regulations that establish minimum Title V program standards for permitting authorities are in 40 CFR Part 70.

Title V permits, also referred to as operating permits, are legally enforceable documents that permitting authorities issue to major stationary sources—and a limited number of smaller sources—of air pollution that allow these sources to operate. Most Title V permits are issued by 117 state, local and territorial permitting authorities that have been approved by the EPA.

According to the timeline established by the CAA Amendments in 1990, all initial Title V permits should have been issued by 1997. Permits were to be renewed every 5 years thereafter. As of June 30, 2012, there were more than 15,000 Title V permits in the United States.

Title V Fees Sufficiency Requirements

Each permitting authority with an EPA-approved Title V program is required by the CAA to establish and collect fees from owners of major stationary sources sufficient to fund all reasonable Title V program costs. Permitting authorities are required to use those fees solely for permit program costs. As required under Title V, in 1992 the EPA issued rules and regulations in 40 CFR Part 70 for implementing state¹ air quality permitting systems. In the preamble to the 40 CFR Part 70 final regulation, the EPA described the requirement to establish an adequate permit fee schedule as a key provision of Title V. In regard to Title V fees, 40 CFR Part 70 requires that:²

(a) *Fee Requirement.* The state program shall require that the owners or operators of Part 70 sources pay annual fees, or the equivalent over some other period, sufficient to cover the permit program costs. The state program shall also ensure that any fee required by this section will be used solely for permit program costs.

(b) *Fee schedule adequacy.* The state program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs.

Generally, according to Part 70, permit program costs include:

- Preparing regulations and guidance for implementing and enforcing the permit program.
- Reviewing and acting on permit applications, revisions or renewals.
- Permit development.
- Compliance and enforcement (to the extent that these activities occur prior to the filing of an administrative or judicial complaint or order).
- Emissions and ambient monitoring, modeling and analysis.
- Preparing inventories and tracking emissions.

The EPA's Part 70 regulations provide flexibility in the type of fees that permitting authorities collect as Title V revenues. A permitting authority's fee schedule may include emissions fees, application fees, service-based fees, other types of fees or any combination thereof. However, according to the EPA's preamble to Part 70, the true measure of the adequacy of a program's fee schedule is whether the fee schedule results in the collection of adequate revenues to support all of their permit program costs.

While the basic measure of fee schedule adequacy is collection of enough fees to cover all permit program costs, the CAA and Part 70 allowed for permitting

¹ Under 40 CFR Part 70, the permitting authority can be a state air pollution control agency, local agency, other state agency, or other agency authorized by the EPA Administrator to carry out a permit program under Part 70. It can also be the EPA Administrator in the case of an EPA-implemented program.

² 40 CFR 70.9 fee determination and certification.

authorities to adopt a presumptive minimum fee schedule. In approving initial fee structures, EPA considered program funding to be adequate if fees were collected at or above the presumptive minimum rate per ton (initially \$25 per ton of regulated pollutants, adjusted according to the Consumer Price Index (CPI)). However, Part 70 states that adequacy of the presumptive minimum fee rate is rebuttable. According to Part 70, if the EPA determines—either through comments received or of its own initiative—that there are “serious questions”³ regarding whether the fee schedule is sufficient to cover all permit program costs, the EPA shall require the permitting authority to submit a detailed accounting that its fee structure meets the requirements of Part 70.

The EPA stated that the presumption of fee adequacy based upon adoption of the presumptive minimum fee would be most useful during the initial round of program approvals. In its preamble to Part 70, EPA indicated that it expected the utility of the presumptive minimum fee would diminish as a means of determining fee schedule adequacy as permit programs developed and permitting authorities—as well as the EPA—gained a greater expertise in estimating program financial needs and fee revenues. The presumptive minimum fee rate (\$/ton) for the 12-month period September 1, 2013, through August 31, 2014, is \$47.52.

According to the EPA’s 1993 Operating Permits Program fee schedule guidance:⁴

- Only funds collected from Part 70 sources may be used to fund a state’s Title V permits program. Legislative appropriations, other funding mechanisms such as vehicle license fees, and Section 105 funds cannot be used to fund these activities.
- The fee revenue is to cover the reasonable direct and indirect costs of the permits program. This revenue may not be used for any purpose except to fund the permits program. However, Title V does not limit state discretion to collect fees pursuant to independent state authority beyond the minimum amount required by Title V.

The EPA’s 1993 fee schedule guidance also allowed permitting authorities significant flexibility in establishing a fee structure as long as revenues are sufficient to cover all reasonable direct and indirect costs of the permit program. The agency also noted in its guidance document that changes in fee structure would be “inevitable.” The EPA noted that changes may be required in response to periodic audits or from a revised number of Part 70 stationary sources of air pollution.

³ 40 CFR 70.9 (b)(5)(ii).

⁴ Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V. August 4, 1993, memorandum from the Director, EPA Office of Air Quality Planning and Standards to EPA Air Division Directors, Regions 1–10.

Authority for EPA Oversight of Fees and Revenue

CAA Title V authorizes the EPA to monitor whether a state is adequately administering and enforcing its EPA-approved permitting program.⁵

Pursuant to Section 7661a(i)(1):

[whenever] the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, ... the Administrator shall provide notice to the State.

Legal obligations are only triggered once notice is given to the state (i.e., once the EPA initiates its formal enforcement authority). Whenever the EPA Administrator makes a determination that a permitting authority is not adequately administering or enforcing a Part 70 program (or any portion thereof), the Administrator is required to notify the permitting authority of the determination and the reasons. Upon issuance of a Notice of Deficiency (NOD), if the state does not correct the deficiencies within 18 months, the EPA is required to take over and administer the Title V program.⁶ Among the reasons that the EPA may consider as inadequate the administration or enforcement of a Part 70 program are a permitting authority's failure to collect, retain or allocate fee revenues consistent with 40 CFR Part 70.9.⁷

Responsible Offices

Both the EPA's Office of Air and Radiation (OAR) and the EPA's regions are responsible for overseeing EPA-approved Title V programs. Specifically:

OAR: OAR—through its Office of Air Quality Planning and Standards (OAQPS)—establishes overall policy and performs some Title V fee oversight functions, often in concert with EPA regions. OAQPS' functions include:

- Developing national Title V program rulemakings, policy and guidance.
- Reviewing public petitions asking the EPA to object to state-issued Part 70 Title V permits.
- Responding to congressional and executive branch requests for information.

EPA Regions: EPA regional offices are primarily responsible for overseeing individual Title V permitting authorities. Regional oversight activities include:

- Review of permitting authority submittals and revisions to permitting authority programs.
- Periodic review of permitting authority programs.
- Review and comment on draft permits.
- Review of monitoring or other reports required by permits.

⁵ 42 U.S.C. § 7661a(i).

⁶ 42 U.S.C. § 7661a(i)(4); 40 CFR 70.10(b)(4).

⁷ 40 CFR 70.10.

- Title V program evaluations and fee audits.
- Responses to public petitions.
- Informal communications with permitting authorities (including periodic phone calls and meetings).
- Making findings of program deficiencies and issuing NODs.

In 2003, OAQPS provided guidance to Regional Air Division Directors for conducting program evaluations. The guidance included a questionnaire to use for reviewing permitting authorities. The questionnaire included evaluation questions related to Title V revenue and accounting practices. The 2003 guidance states that it would be acceptable to do both a program evaluation and a fee review at the same time. The guidance also allows for preparation of a common report and provides that if previous fee and overall program reviews indicated no problems it is not necessary to conduct a fee review for a particular program.

OAR's National Program Guidance from 2010 to 2014 included expectations for regions to conduct program evaluations of state operating permit programs. The 2014 guidance contains a commitment that each region conduct one Title V program evaluation annually and complete a report within the fiscal year.

Scope and Methodology

We sought to determine whether the EPA's oversight of state and local Title V programs' fee revenue practices has been effective in identifying and obtaining corrective actions for issues related to collecting, retaining and allocating fee revenues in accordance with federal regulations. To do so, we obtained and reviewed applicable federal laws, regulations and guidance related to CAA Title V fee adequacy and the EPA's related oversight responsibilities.⁸ We also interviewed OAQPS managers and staff to identify additional oversight activities for the Title V programs.

We obtained and reviewed EPA regions' program evaluation reports. We reviewed reports completed by the regions on their state and local agencies' permitting programs since the inception of the Title V program. We analyzed the reports to gain an understanding of how EPA regions have used program evaluations to oversee Title V fee and expenditure implementation and accounting for their permitting authorities. In all, we reviewed 121 program evaluation reports completed by the 10 EPA regions from September 2003 to January 2013.

We conducted a survey of all 10 EPA regions to further assess the extent of their oversight activities of Title V program fees and accounting. We also developed and administered an electronic survey to obtain operational, performance, financial (i.e., fee structure, revenues and expenses), and other data directly from

⁸ This evaluation focused on EPA oversight of Title V fee revenues and expenses, and did not evaluate all aspects of the EPA's oversight of state and local agencies' Title V programs.

nine of the nation's largest state and local permitting authorities.⁹ Prior to its use, we provided the draft survey to OAQPS and the six regions that oversee the permitting authorities for their comment and input, and revised the survey based on their comments. The survey was used to collect information on:

- Permitting authorities' operations, including size of the permitting authority, number of permits, employment, and 2008–2012 trends in revenues and expenses.
- How the permitting authorities assess performance, including performance statistics related to inspections and enforcement actions.
- Communications between the EPA and the permitting authority related to Title V fee accounting and revenue issues and program performance.
- The adequacy of EPA Title V fee accounting and revenue guidance.
- Permitting authority activities funded by Title V revenues.
- The sufficiency of a permitting authority's current and future Title V funding.
- The anticipated impact on state and local agencies' Title V resources of having to issue Title V permits for greenhouse gas emissions.¹⁰

Our sample covered nine permitting authorities that oversee 45 percent of the nation's active Title V permits. These nine permitting authorities oversaw 6,727 of the 15,104 Title V permits as of June 30, 2012. The nine permitting authorities are overseen by six EPA regions. Table 1 lists the permitting authorities, the EPA region that oversees each authority, and the number of active permits overseen by each authority.

⁹ We selected nine of the nation's largest permitting authorities (by total permits). We limited the sample to no more than three permitting authorities from any one EPA region. This was to ensure that we did not overemphasize a particular EPA region, while capturing the larger permitting authorities in the country. The selection was based on OAQPS data on active Title V permits as of June 30, 2012.

¹⁰ We asked this question prior to the June 23, 2014, United States Supreme Court decision addressing the application of stationary source permitting requirements to greenhouse gases (*Utility Air Regulatory Group v. Environmental Protection Agency* (No. 12-1146)). As a result of the Supreme Court decision, the EPA will no longer apply or enforce the requirement that a source obtain a Title V permit solely because it emits or has the potential to emit greenhouse gases above major source thresholds. Therefore, we do not believe the anticipated impact on state and local Title V programs' resources will be as significant as had been estimated prior to the Supreme Court decision.

Table 1: Active Title V permits for the nine permitting authorities surveyed as of June 30, 2012

Permitting authority	EPA region	Number of active permits
New York State Department of Environmental Conservation	2	398
Pennsylvania Department of Environmental Protection	3	808
Florida Department of Environmental Protection	4	435
Illinois Environmental Protection Agency	5	490
Indiana Department of Environmental Management	5	611
Ohio Environmental Protection Agency	5	543
Louisiana Department of Environmental Quality	6	738
Texas Commission on Environmental Quality	6	2,275
South Coast Air Quality Management District (covers the Los Angeles, California, area)	9	429
Total		6,727

Source: Office of Inspector General (OIG) analysis of EPA Title V permit data, 2012.

After reviewing and analyzing survey responses, we interviewed representatives from each of the nine permitting authorities to clarify any responses that appeared incomplete or unclear. We also obtained additional supporting documentation as needed to confirm the responses. We conducted follow-up interviews with each of the six regions responsible for overseeing the nine permitting authorities to obtain their views on the Title V fee information we obtained. We relied on data obtained from permitting authorities through our survey and interview processes, and did not independently verify all of the data provided to us by the permitting authorities. The information we obtained does not constitute a finding of deficiency as defined in 40 CFR Part 70.

We conducted this performance audit from June 2012 to July 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Prior Reports

- **EPA OIG Report No. 2002-P-00008, *EPA and State Progress in Issuing Title V Permits, March 29, 2002.*** The OIG identified key factors, including insufficient resources, that caused delays in issuing Title V permits by selected state and local agencies. The OIG recommended that EPA regions be required to expeditiously conduct fee protocol reviews and ensure that state and local agencies act on review findings.
- **EPA OIG Report No. 2003-P-00005, *EPA Region 6 Needs to Improve Oversight of Louisiana’s Environmental Programs, February 3, 2003.*** The OIG found that Region 6 staff had not followed headquarters’

1998 guidance for conducting Title V fee audits and were unaware as to whether Louisiana employees were properly charging personnel costs.

- **EPA OIG Report No. 2005-P-00010: *Substantial Changes Needed in Implementation and Oversight of Title V Permits If Program Goals Are To Be Fully Realized*, March 9, 2005.** The OIG found that, in 2003, OAR shifted emphasis from regional permit reviews to program evaluations of state and local agencies' Title V programs, regions had not completed all of the program evaluations for the state and local agencies they oversee, and the EPA had issued a NOD in an instance where the state or local agency did not collect sufficient Title V fees.
- **EPA OIG Report No. 12-P-0113, *EPA Must Improve Oversight of State Enforcement*, December 9, 2011.** The OIG found that while the EPA's national goal called for states to inspect 100 percent of Title V major sources every 2 years, states inspected an average of 89 percent of these facilities in the 2-year period, and only eight states met the EPA's 100-percent goal. Also, the OIG found that the EPA set a national goal that states enter 100 percent of high-priority violations into EPA data systems within 60 days, but states only entered 35 percent of high-priority violations in that time frame and only two states met the 100-percent goal.

Chapter 2

EPA Needs to Improve Oversight of Title V State and Local Program Fee Revenue Practices

We found significant weaknesses in the EPA’s oversight of state and local Title V programs’ fee revenue practices for identifying and obtaining corrective actions to collect, retain and allocate fee revenues in accordance with 40 CFR Part 70. While some EPA regions have worked to resolve these issues, annual Title V program expenses often exceeded revenues for the permitting authorities surveyed. Specifically, annual Title V revenues were not sufficient to cover annual Title V expenses 62 percent of the time from 2008 to 2012 for the permitting authorities we surveyed. Of the \$672 million in expenses incurred over a 5-year period by these authorities, we noted a \$69 million shortfall in revenues raised over that same time period. This shortfall strained Title V account balances, and four of the nine authorities used or said they could use non-Title V revenue to fund their Title V programs. EPA regions’ proposed corrective actions for some instances had either not been taken or were insufficient to correct the problems. EPA oversight has been hampered by:

- Lack of a national strategy for conducting Title V fee oversight.
- Outdated guidance.
- Lack of financial or accounting expertise among program staff.
- Reluctance by some regions to pursue formal corrective actions.

The EPA’s weaknesses in identifying and obtaining corrective actions for issues related to Title V revenue sufficiency and accounting practices, coupled with declining resources for some permitting authorities, jeopardize effective state and local Title V program implementation. It also increases the risk of permitting authorities misusing funds and operating in violation of 40 CFR Part 70. Compliance monitoring—one aspect of Title V used by the EPA and authorized Title V programs to protect human health and the environment—could be adversely impacted by insufficient funding.

EPA Has Placed Less Emphasis on Oversight of Title V Revenues, Expenses and Accounting in Recent Years

Since the 1990 CAA Amendments first required Title V operating permits for major stationary sources, the EPA has overseen development, approval and implementation of Title V programs using a variety of oversight activities. For example, the EPA conducted the following activities to oversee permitting authorities on issues related to Title V revenues, expenses and accounting:

- Review of state and local regulations during the initial Title V program approval process.
- Response to public petitions.
- Communications with state and local agencies.
- Independent fee audits.
- Periodic Title V program evaluations.
- Issuance of NODs.

However, the EPA's oversight of Title V program revenues, expenses and accounting has changed over the years, with the agency lately placing less emphasis on overseeing these aspects of the Title V program.

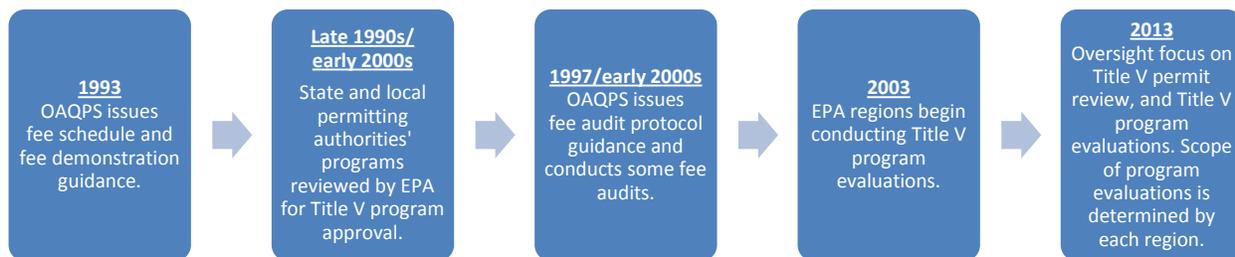
The EPA issued several Title V guidance documents in 1993. The fee schedule guidance provided guidance related to Title V fees in the following areas:

- General principles.
- Activities expected to be funded by permit fees.
- Flexibility in fee structure design.
- Initial program approvability criteria.
- Future adjustments to fee schedule.

The fee demonstration guidance provided a general framework for permitting authorities to identify Title V program areas, functions and tasks performed within the permit program, and estimate annual cost. The agency then evaluated Title V revenues, expenses and accounting during review and approval of state and local Title V programs. While the EPA allowed permitting authorities significant flexibility in establishing a fee structure sufficient to cover all reasonable direct and indirect costs of the permit program, the EPA stated in its 1993 fee schedule guidance that states are obligated to update and adjust their fee schedules periodically if they are not sufficient to fund the reasonable direct and indirect costs of the permit program.

EPA regions also conducted independent fee audits of selected permitting authorities in the late 1990s and early 2000s. In 2003, the EPA shifted its oversight emphasis toward Title V program evaluations, and encouraged EPA regions to conduct fee audits on an as-needed basis as part of their Title V program evaluations. In the program evaluations, the EPA evaluated aspects of Title V program implementation and included a limited review of program revenues, expenses and accounting. After the initial round of evaluations, most regions began moving away from the program evaluation guidance and placed less emphasis on evaluating Title V program revenues, expenses and accounting structures. Figure 1 shows how the EPA's Title V oversight has evolved, specifically as it relates to Title V revenues, expenses and accounting.

Figure 1: Overview of evolution of EPA oversight of Title V revenues, expenses and accounting



Source: OIG analysis EPA regions' responses to OIG survey.

As of January 2013—nearly 10 years after the agency began conducting Title V program evaluations—the EPA had completed 119 Title V program evaluation reports. These reports, along with other oversight activities conducted by the agency, identified several potential issues related to the sufficiency of Title V revenues, expenses and accounting practices. For example, the EPA issued two NODs to address insufficient Title V fees for permitting authorities and for not adequately ensuring that collected fees are being used solely for Title V costs. One NOD was a result of the agency's Title V program evaluation process. However, as of 2013, one EPA region no longer conducted Title V program evaluations, and most other regions no longer included reviews of Title V revenues, expenses and accounting as part of their program evaluation efforts.

In response to our survey of 10 EPA regions, six EPA regions identified permitting authorities where the region stated it had resolved past Title V fee adequacy or accounting issues with the permitting authorities. Appendix A provides examples where the agency worked with permitting authorities to address Title V revenue, expense and accounting issues.

EPA Has Not Consistently Identified and Obtained Corrective Actions for Title V Revenue and Accounting Issues

For the nine permitting authorities we reviewed, the EPA had not consistently identified or obtained corrective actions for issues related to sufficiency of Title V revenues or the inappropriate use of non-Title V revenues. We asked all 10 EPA regions to identify any permitting authorities in their region that were not collecting sufficient Title V revenues to cover Title V program costs. None of the EPA's 10 regional offices identified any permitting authorities that were not collecting sufficient Title V revenues.¹¹ However, through our survey, we found

¹¹ EPA Region 2 noted in response to our draft report that, at the time of OIG's survey, the region had anticipated there may have been revenue sufficiency problems at the New York State Department of Environmental Conservation. However, the region had to wait until its 2014 program evaluation to fully evaluate the effects of New

that annual Title V revenues were not sufficient to cover annual Title V expenses 62 percent of the time (28 out of 45 observations) from 2008 to 2012. Further, four of the nine permitting authorities used non-Title V revenues¹² to support their Title V programs. In our view, the fact that the agency did not identify these types of fee sufficiency issues indicates a significant weakness in the agency's oversight process.

Significant Concerns Regarding the Sufficiency of Title V Revenue

In our 2012 survey of EPA regions, we asked them to identify any permitting authorities in their region that were not:

- Properly using Title V revenues solely to cover Title V program costs.
- Collecting sufficient Title V fees to cover Title V program costs.

Region 6 was the only region that identified a permitting authority (Louisiana) that may not have been properly using Title V revenues solely to cover Title V costs. In response to our survey, no regions identified any permitting authorities that were not collecting sufficient Title V revenues to cover program costs. Also, OAQPS personnel told us they were not aware of any permitting authorities where Title V fees were a problem. However, this was not consistent with the information we obtained from the permitting authorities we surveyed. In our view, this is an indication of weaknesses, or gaps in information, in the agency's oversight.

Our survey of permitting authorities indicated that annual Title V revenues have struggled to keep pace with Title V program costs in recent years. We found a general decline in annual Title V revenues and expenditures from 2008 through 2012 in both the combined data and across individual permitting authorities. Permitting authorities can draw down surpluses of Title V revenues carried over from previous years in the event a given year's Title V costs exceed revenues. However, the frequency of occurrences in our sample in which annual Title V costs exceeded annual Title V revenues (62 percent) is a condition that EPA should closely monitor.

We combined all the Title V revenue data and, separately, combined all the Title V program cost data for the nine permitting authorities in our sample. As Table 2 shows, the combined Title V revenues for the permitting authorities we sampled covered about 90 percent of the combined Title V program costs.

York's 2009 Title V fee increase. Region 2's oversight of New York's Title V fees is discussed in more detail in Appendix B.

¹² 40 CFR Part 70 requires Title V owners or operators to pay fees sufficient to cover Title V program costs. It also requires that these fees be used solely for permit program costs. Based on this requirement, we considered any fees paid by sources other than Title V sources—and any fees not used solely for Title V costs—to be non-Title V fees.

Table 2: Combined Title V revenues and costs between 2008 and 2012 for nine permitting authorities surveyed.

Year	Combined Title V revenues	Combined Title V expenses	Percentage of combined Title V costs covered by combined Title V revenues
2008	\$124,913,654	\$133,679,424	93%
2009	123,846,127	139,602,911	89%
2010	120,008,313	137,171,710	87%
2011	112,629,524	135,220,507	83%
2012	121,938,646	126,646,390	96%
Total	\$603,336,264	\$672,320,942	90%

Source: OIG analysis of permitting authorities' responses to OIG survey.

The percentage of total Title V costs covered by total Title V revenues at the permitting authorities we surveyed declined 10 percent between 2008 and 2011 (from 93 percent to 83 percent), rebounding up to 96 percent in 2012. However, in 2012, the combined annual Title V revenue and percentage of combined costs covered by combined revenues both increased.

The trend reversal from 2008–2011 to 2012 was largely accounted for by changes in fee revenue seen at the Texas Commission on Environmental Quality. The Texas change resulted in an increase in 2012 of more than \$9 million in combined Title V revenue shown in Table 2 compared to 2011 revenue. Further, the percentage of 2012 combined Title V costs covered by combined Title V revenue was improved by a reduction in the combined 2012 Title V costs for the permitting authorities by about 6 percent from the 2011 combined total. This may be due to permitting authorities' reductions in staffing. Six of nine permitting authorities we surveyed had experienced reductions in full-time equivalents over the past 5 years.

When breaking out the annual revenue and expense data to the individual permitting authorities, we found that annual Title V revenues were not sufficient to cover all annual Title V expenses 62 percent of the time from 2008 through 2012. The majority of these instances occurred in four permitting authorities:

- Illinois Environmental Protection Agency (Illinois EPA).
- Louisiana Department of Environmental Quality (Louisiana DEQ).
- New York State Department of Environmental Conservation (New York State DEC).
- Pennsylvania Department of Environmental Protection (Pennsylvania DEP).

The data for these four authorities showed that:

- These authorities represented over two thirds of the instances (19 of 28) where permitting authorities did not generate sufficient annual Title V revenues to cover annual Title V costs.

- Annual Title V revenues were not sufficient to cover annual Title V expenses 95 percent of the time from 2008 to 2012 for these authorities.
- Three of the authorities (Illinois EPA, Louisiana DEQ and New York State DEC) did not have sufficient annual Title V revenues to cover annual Title V costs in any of the 5 years from 2008 to 2012.

In addition, Title V expenses for the Indiana Department of Environmental Management (Indiana DEM) exceeded Title V revenues for 3 of the 5 years.

Conversely, four of nine permitting authorities reported annual Title V revenues sufficient to cover annual Title V expenses a majority of the time between 2008 and 2012. These four permitting authorities were:

- Florida Department of Environmental Protection (Florida DEP).
- South Coast Air Quality Management District (South Coast AQMD).
- Ohio Environmental Protection Agency (Ohio EPA).
- Texas Commission on Environmental Quality (Texas CEQ).

Annual Title V revenues exceeded Title V expenses for:

- Four of 5 years (80 percent) at Florida DEP and South Coast AQMD.
- Three of 5 years (60 percent) at Ohio EPA and Texas CEQ.

Table 3 summarizes the frequency of observances from 2008 to 2012 where annual Title V expenses exceeded annual revenues for the nine permitting authorities surveyed.

Table 3: Frequency of occurrences in which annual Title V expenses exceeded annual Title V revenues among surveyed permitting authorities (2008–2012)^a

Permitting authority	Number of years surveyed (2008–2012)	Number of years surveyed that annual Title V expenses exceeded annual Title V revenues	Percentage of years surveyed that annual Title V expenses exceeded annual Title V revenues
Florida DEP	5	1	20%
Illinois EPA	5	5	100%
Indiana DEM	5	3	60%
Louisiana DEQ	5	5	100%
New York State DEC	5	5	100%
Ohio EPA	5	2	40%
Pennsylvania DEP	5	4	80%
South Coast AQMD	5	1	20%
Texas CEQ	5	2	40%
Totals	45	28	62%

Source: OIG analysis of permitting authorities' responses to OIG survey.

^a Appendix D provides figures that include annual Title V revenue and expense amounts for each permitting authority.

Among the permitting authorities we surveyed, seven of nine experienced overall decreases in annual Title V revenues and expenditures from 2008 to 2012. The percentage change in 2012 Title V revenues and expenses (compared to 2008) for each permitting authority in our sample is shown in Table 4.

Table 4: Percent change in 2012 annual Title V revenues and expenses (compared to 2008) for surveyed permitting authorities

Permitting authority	Percent change in 2012 Title V revenue from 2008 Title V revenue	Percent change in 2012 Title V expenses from 2008 Title V expenses
Florida DEP	-21%	-14%
Illinois EPA	-13%	-11%
Indiana DEM	-10%	-12%
Louisiana DEQ	-10% ^a	4%
New York State DEC	-16%	-17%
Ohio EPA	-11%	-17%
Pennsylvania DEP	-21%	-3%
South Coast AQMD	134%	167%
Texas CEQ	6%	-8%

Source: OIG analysis of permitting authorities' responses to OIG survey.

Note: Revenue figures for Illinois are computed without consideration for \$2 million in revenue from a sales tax on sorbents that Illinois EPA reported as Title V revenue in 2012.

^a Revenue figures for Louisiana only include revenue reported by Louisiana DEQ as Title V revenue. As discussed in Appendix C, Louisiana DEQ used non-Title V revenue from its Environmental Trust Fund to cover from \$2.9 million to \$4.1 million of its annual Title V expenditures between 2008 and 2012.

Permitting authorities can draw down surpluses of Title V revenues carried over from previous years in the event a given year's Title V costs exceed Title V revenues. Thus, a Title V revenue deficit for 1 year (or even multiple annual deficits) does not mean that a permitting authority has an inadequate fee structure. However, frequent annual deficits can diminish program account balances built up in previous years. For example, according to New York State DEC personnel, New York's Operating Permit Program account balance was \$3.25 million on April 1, 2008, after unloading expenses to General Fund Appropriations. By the end of 2012, however, the account had a deficit of over \$16 million. Similarly, Pennsylvania DEP reported a Title V account balance of over \$25 million in 2010 but, according to a 2013 Pennsylvania rulemaking, "a deficit of \$7.235 million is projected for the Title V Major Emission Facilities Account by the end of Fiscal Year 2015–2016. Funds sufficient to support the program need to be collected before the fund is in deficit."

As shown in Table 3, three of nine permitting authorities did not have annual Title V revenues sufficient to cover annual program costs at any point during 2008 to 2012. Specifically, from 2008 to 2012:

- Illinois EPA funded about 90 percent of its Title V costs with Title V revenues.
- Louisiana DEQ only funded about 54 percent of its Title V costs with Title V revenues.
- New York State DEC Title V revenues were enough to only support about 56 percent of Title V costs.

Further details on these three permitting authorities are in Appendix B.

This is a trend of concern that signals the need for closer EPA monitoring and review of these permitting authorities' fee structures. The National Association of Clean Air Agencies (NACAA) surveyed state and local Title V programs in August 2011. The results of that survey demonstrate that permitting authorities beyond those we identified may be experiencing Title V revenue shortfalls. Eleven of 32 states (over 34 percent) responded to the NACAA survey that their state permitting authorities did not collect sufficient Title V fees, or other responses in the survey indicated that the fees may have not been sufficient to cover Title V program costs (see Table 5).

Table 5: Selected results of 2011 NACAA survey on Title V fee sufficiency

State	Information from NACAA survey indicating Title V revenue was not or may not be sufficient ^a
Illinois	After fees trended downward by about 2 percent a year over the last several years, the state increased its fees.
Iowa	State-reported fees not sufficient; said reductions made to balance budget.
Kentucky	Eliminated 12 positions and made other cuts.
Michigan	Reported insufficient revenue in survey and made reductions in program.
Missouri	Program cut by 19 percent last 3 years.
New Jersey	Collected fees to only fund 50 percent of program.
Ohio	Funded 90 percent of program.
Massachusetts	Fees cover about 65 percent of program; legislature allocated funds to cover shortfall.
Rhode Island	Budget has been cut 13.5 percent from the fiscal year 2009 budget.
Georgia	Fees have gone down and state cut costs.
Virginia	Fees fund about 70 percent of program.

Source: OIG evaluation of NACAA Title V Fees Survey, State by State Results, September 2011

^a We asked the EPA regions about 12 states that showed indications of fee sufficiency issues per their responses to the 2011 NACAA survey, and we reviewed program evaluations for those states that were completed within the timeframe that the NACAA survey was conducted. EPA regions confirmed that the information provided by six states accurately described the financial situation of the state at the time the NACAA survey was completed, and we were able to confirm the information provided in the NACAA survey for two states through program evaluations. We excluded one state from the table based on additional information provided by EPA Region 9. For the remaining three states, program evaluations had not been completed within the timeframe of the NACAA survey for these states, and the regions responded to our question by addressing the status of the permit backlogs for these states. These three states and their responses to the NACAA survey are included in Table 5.

Some Permitting Authorities Used Non-Title V Revenues to Support Title V Programs

Three of the nine permitting authorities we surveyed reported using what we believe to be non-Title V revenues to fund their Title V program, and one said they could use such non-Title V revenue for their Title V program. According to

the CAA, only funds collected from 40 CFR Part 70 sources may be used to fund a state's permit program. The CAA also requires that any fee collected under Title V be used solely to cover permit program costs. The amounts of non-Title V revenue used by the permitting authorities we surveyed varied, but ranged up to about \$8 million in a given year. State personnel told us their use of non-Title V revenues was due to political and economic desires to avoid significant fee increases on industry sources. Of the authorities we surveyed, we found that:

- Illinois EPA used up to \$2 million annually from a sales tax on sorbents to fund its Title V expenses.
- Louisiana DEQ used funding from its Environmental Trust Fund, characterized as "Non-Title V Air Revenue," to cover from \$2.9 million to \$4.1 million annually of its Title V expenditures between 2008 and 2012.
- New York State DEC used from \$6.2 million to \$8.3 million annually of non-Title V revenue from 2008 to 2012 to cover Title V program expenses. Personnel said the state uses funds from the state's General Fund and other funding sources to cover annual shortfalls.
- Ohio EPA said it could use revenues from solid waste tipping fees to fund its Title V program if needed.

Details are in Appendix C.

EPA's Oversight Is Hampered by Lack of National Strategy and Challenges in Enforcing Part 70 Requirements

While the agency has worked with permitting authorities in the past to address Title V revenue sufficiency and accounting issues, the agency's lack of emphasis on oversight in recent years creates risks that Title V programs are not properly funded, program funds may be misused and programs may not be well implemented. In our view, the EPA's oversight of Title V programs' revenues and expenses has been hampered by:

- Lack of a national strategy for conducting Title V fee oversight.
- Outdated guidance.
- Lack of financial or accounting expertise among program staff.
- Reluctance by some regions to pursue more stringent corrective actions.

Lack of a National Strategy for Conducting Oversight

EPA's lack of a national strategy resulted in inadequate oversight of Title V program fees and accounting for some permitting authorities. The results of our survey of the 10 regions indicated that regions conduct oversight of Title V program fees and accounting differently. For example, Region 4 reported that it conducts three program evaluations per year, with each permitting authority with more than 20 sources being covered on a 4-year cycle. In contrast, Region 10 responded that it has not conducted any program evaluations since 2008.

According to Region 10, “Given, in part, that the permitting authorities have demonstrated a good understanding of the Title V fee management requirements, Region 10 has not made Title V program evaluations a priority since 2008.”

According to our survey of all 10 EPA regions:

- No regions reported conducting oversight of Title V program revenues, expenses or accounting on a routine basis.
- Four of 10 regions only review Title V program revenues, expenses or accounting as part of periodic program evaluation efforts.
- Five of 10 regions only review Title V revenue, expense or accounting information on a targeted or as-needed basis, or do not review this information at all.
- Four of 10 regions rely on program implementation measures, such as permit backlogs, to determine whether permitting authorities are collecting sufficient Title V revenues to cover all program costs.
- One EPA region (Region 10) stated that it no longer conducts Title V program evaluations.

Further, once EPA regions had conducted initial program evaluations, subsequent program evaluations generally covered issues that regional personnel thought were appropriate. Most regions said they did not continue to use OAQPS’ 2003 program evaluation guidance as a template for their reviews. OAQPS told us that much of its attention has been directed toward reviewing petitions on individual Title V permits and issuing greenhouse gas regulations. As a result, OAQPS has not actively overseen program evaluations conducted by the regions on the state and local permitting programs.

Outdated Guidance

Only three of the 10 regions stated that they still follow the 2003 OAQPS program evaluation guidance. This guidance included a limited review of program revenues, expenses and accounting. Fee audits were completed by some EPA regions prior to 2004, but only EPA Region 2 reported that it still performs fee audits as part of its Title V program evaluations. In reviewing EPA regions’ Title V program evaluations, we noted that EPA Region 8 included fee audits as part of its Title V program evaluations.

Even in situations where EPA regions included a review of Title V resources in their program evaluations, the frequency of such evaluations varied across EPA regions. For example, although most regions have completed at least one round of program evaluations for its permitting authorities, Region 9 is still in the initial round of program evaluations. The region, which oversees 43 authorities,¹³ has yet to complete a program evaluation for three of its permitting authorities, including the South Coast AQMD (one of the authorities in our sample, and the

¹³ A Region 9 manager told us the region focuses its Title V program evaluations on permitting authorities with 20 or more Title V sources located in the authority’s jurisdiction, which was 12 authorities, according to OAQPS.

eighth largest permitting authority in the U.S. based on number of active Title V permits as of June 2012).

OAQPS' 1993 Title V fee schedule and fee demonstration guidance has not been updated in over 20 years. Since issuance of this guidance, EPA regions have raised numerous policy questions. For example, managers in Regions 3, 6 and 9 indicated that the circumstances for which Title V funding can be used for preconstruction permit activities has not been clearly addressed.

In the early 1990s, OAQPS issued Title V program guidance related to fee and revenue oversight, including:

- *August 1993 guidance for fee schedules* – Provided the EPA's interpretation of the list of activities that must be funded with Title V fee revenue, as well as the procedure for demonstrating that fee revenues are adequate to support a permit program.
- *November 1993 Title V Fee Demonstration guidance* – Provided that regardless of the type of fee demonstration a permitting authority elected (either a detailed fee demonstration or adopting the presumptive minimum), all permitting authorities were required to submit an initial accounting of how fee revenues will be used solely to cover the costs of the permitting program. This initial accounting, according to the guidance, should include a description of administrative and accounting controls.

Two of the six regions in our sample told us that OAQPS needs to update and clarify its guidance on accounting and fees.

Lack of Financial or Accounting Expertise Among Program Staff

Personnel in multiple EPA regions cited a number of “challenges” that impact their ability to perform effective oversight. These included staffs' lack of financial or accounting expertise. Three of the six regions we spoke to reported that they would like access to an expert in the financial and accounting field to assist them with their financial oversight. In our view, the lack of financial or accounting expertise across EPA regions could be addressed by collaborating and sharing financial expertise among the regions.

Region 2 indicated the region does not have a sufficient number of staff to cover each permitting authority in the region. With four permitting authorities in the region—two being in the Caribbean—the region's Title V full-time equivalents can only conduct a program evaluation on a permitting authority once every 4 years. Further, evaluation of the two Caribbean permitting authorities is further hampered by the lack of travel funds.

Reluctance to Pursue More Stringent Corrective Actions

Some EPA regions expressed a reluctance to take steps toward formally determining whether permitting authorities were meeting 40 CFR Part 70 requirements and then taking action. Personnel in some regions told us they were reluctant to require fee demonstrations due to the potential for such information, once collected, to require formal EPA action, such as issuance of a NOD. A manager in Region 3 told us that the EPA was unlikely to pursue a formal action such as a NOD unless the region believed it would receive cooperation from a permitting authority to address program deficiencies.

Title 42 U.S. Code § 7661a(i)(1) allows the Administrator to make a determination as to whether a permitting authority is adequately administering and enforcing a program. Once the determination is made, certain statutorily mandated consequences, including the issuance of a NOD, follow. However, the decision as to whether to make that determination as an initial matter is a discretionary one.¹⁴ Three court cases have held that while the CAA requires the EPA to issue a NOD when it has determined that a program is not being adequately administered or enforced, this non-discretionary obligation arises only after a discretionary determination by the EPA.¹⁵

Regional permitting staff told us that it would be difficult for the EPA to take over a permitting authority's Title V program if the permitting authority could not correct the problem within 18 months¹⁶ after an NOD was issued. For example:

- A Region 5 manager told us that issuing a NOD would be an “extreme option,” and that his region’s preference for correcting problems at a permitting authority would be creating a workplan for the permitting authority, or using other means.
- A Region 3 manager told us that the CAA and Part 70 do not provide interim options for dealing with Title V program deficiencies. The EPA has used several oversight activities to monitor and encourage compliance with Part 70 requirements, but a Region 3 manager told us it was not in the agency’s best interest to have a “heavy hand” in dealing with state and local agencies, and that it had generally been her position to defer to the states’ and permitting authorities’ ability to manage themselves in regard to Title V fee adequacy issues. She said the only real option the EPA has in forcing corrective actions at a permitting authority is to take back the Title V program after issuing a NOD, which this manager said the EPA is not in a position to do.

¹⁴ *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 330-31 (2d Cir. 2003).

¹⁵ *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 330-31 (2d Cir. 2003); *Public Citizen v. EPA*, 343 F.3d 449, 464 (5th Cir. 2003); *Ohio Public Interest Research Group v. Whitman*, 385 F.3d 792 (6th Cir. 2004).

¹⁶ 42 U.S.C. § 7661a(i)(4); 40 CFR 70.10(b)(4).

- A Region 2 manager told us that he does not believe a NOD would be an effective mechanism for addressing Title V revenue and accounting issues given that the two Region 2 states that are experiencing Title V revenue shortfalls (New York and New Jersey) are already charging a “fairly high fee.” He said that states’ concerns of driving out businesses with even higher fees may prompt states to relinquish their Title V programs to the EPA. According to this manager, his region does not have the resources to take over a Title V program for states the size of New York or New Jersey.

Oversight Weaknesses and Downward Trends in Title V Revenues Jeopardize Program Implementation

The agency’s weakness in identifying and obtaining corrective actions for issues related to Title V revenue sufficiency and accounting practices, coupled with declining resources for some permitting authorities, presents risks to state and local Title V program implementation. These include risks to program quality and a program’s ability to carry out all 40 CFR Part 70 requirements. Seven of nine permitting authorities reported that Title V revenues had declined over the 5-year period from 2008 to 2012, while Title V expenses also declined for seven of the nine permitting authorities over this same period. Appendix D provides Title V revenue and expense trends for permitting authorities we surveyed.

All nine of the permitting authorities we surveyed reported decreasing emissions. For example, the Pennsylvania DEP reported a 50-percent decrease in emissions from 2008 to 2011 (from 1,162,097 to 582,270 tons). New York State DEC reported a 41-percent decrease from 2007 to 2011 (from 232,027 to 137,416 tons). While the trend of decreasing emissions is a positive environmental outcome, we found that the permitting authorities we surveyed relied heavily on such fees to fund their Title V programs. Further, some permitting authorities told us that their workloads had not declined commensurate with the decline in emissions. Reasons given for the decreased emissions included:

- Closure or deactivation of large coal-fired electric generating units.
- The increased availability and low cost of natural gas.
- The installation of air pollution controls.
- The economy.
- Technological advances.
- Permitting requirements.
- Actions taken to comply with regulations.

Some permitting authorities cited reduced emissions as the reason for decreased Title V revenue. Pennsylvania’s DEP staff told us they are projecting a \$4-million cut in Title V revenues by 2016 (from 2012 levels) due to closure of coal-fired power plants. Similarly, Illinois EPA staff said they recently lost several large coal-fired power plants as Title V sources, resulting in a revenue loss of \$294,000 per source.

The trend of decreasing emissions is important to Title V program funding because the majority of permitting authorities have fee structures that rely heavily on emissions. Eight of nine authorities reported to us that the majority of their Title V revenues are from emission fees (all except South Coast AQMD). Such reliance on emissions fees can cause funding issues in some permitting authorities with decreasing emissions, as revenues generated from fees charged per ton of emissions would decrease with emissions. For example, Pennsylvania DEP's 2012 proposal for a revised Title V fee structure is for an \$85-per-ton fee for emissions, up to 4,000 tons annually. However, Pennsylvania DEP staff said that even with an increased base fee rate (to \$85 per ton of emissions, if approved), they are projecting a Title V deficit within 2 to 3 years after the new fee rate is in effect.

An additional factor was the significant number of permitting authorities that did not have automatic fee increases tied to the Consumer Price Index (CPI).¹⁷ The CAA specifies in §7661a(b)(B)(i) that the total amount of fees collected by a permitting authority from sources subject to Title V requirements must not be less than \$25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program. The CAA also requires that the fee calculated under §7661a(b)(B)(i) be increased (consistent with the need to cover the reasonable costs of the permit program) each year by the percentage that the CPI for the most recent year exceeds the CPI for 1989 (42 U.S.C. §7661a(b)(B)(v)). However, five of the nine permitting authorities we surveyed did not adjust their Title V fees according to the CPI.

Continued declines in revenues, and subsequent potential cuts to program expenses, may strain permitting authorities' ability to cover program costs and carry out all required program activities. Permitting authorities reported to us reductions in expenditures for the following types of Title V program activities:

- Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement (two of nine).
- Staff training related to Title V permitting (one of nine).
- Compliance and enforcement-related activities (inspections, audits, issuance of NOVs, etc.) for 40 CFR Part 70 sources (two of nine).
- Emissions and ambient monitoring associated with Title V sources or permits (one of nine).
- Modeling, analysis, or demonstrations associated with Title V sources or permits (one of nine).
- Preparing emission inventories and tracking emissions for Title V sources (one of nine).

¹⁷ The CPI for any calendar year is the average of the CPI for all urban consumers published by the Department of Labor for the 12-month period ending August 31 of each year.

- Public outreach, notification, public hearings, responses to public comments, and small business assistance related to 40 CFR Part 70 sources (one of nine).

One permitting authority attributed the reduction in its expenditures to efficiency improvements (“right sizing” the organization to conduct more work in less time, with less staff) and others attributed the reductions in expenditures to declining revenues. Permitting authorities also noted the need to shift equipment purchases to non-Title V accounts and make adjustments to indirect rates.

In addition, six of nine permitting authorities reported decreases in staffing, also known as full-time equivalents. Such decreases can negatively impact the permitting authority’s ability to perform all required program functions, including issuing timely permits and conducting site inspections.

Personnel at multiple permitting authorities we interviewed stated that there are political and economic pressures to limit Title V fee increases. The fact that permitting authorities are facing these types of externalities makes the EPA’s role in overseeing Title V fee revenues and expenditures an important one. The agency needs to ensure that such factors are not placing programs at risk of failing to meet 40 CFR Part 70 requirements.

Conclusions

Permitting authorities are facing declining Title V fee revenues resulting from their reliance on emission-based fee structures, as well as other factors listed above. Improved agency oversight of Title V revenues and accounting is key to successful implementation and performance of state and local Title V programs. Improved EPA oversight should minimize future risks to program performance brought about by inadequate fee revenues and potential future demands on permitting authorities as the EPA moves toward regulation of greenhouse gases. The EPA should take steps to improve its oversight of Title V fee and accounting practices; update its fee guidance; develop an oversight strategy; and take appropriate, timely and direct action when accounting and fee sufficiency problems occur over extended periods without effective corrective actions.

Recommendations

We recommend that the Assistant Administrator for Air and Radiation:

1. Assess whether the EPA’s 1993 fee schedule guidance sufficiently addresses current program issues and requirements related to how Title V fees should be collected, retained, allocated and used. Revise the fee guidance as necessary and re-issue to EPA regions.

2. Issue guidance requiring EPA regions to periodically obtain and assess authorized state and local permitting authorities' Title V program revenues, expenses and accounting practices to ensure that permitting authorities collect sufficient Title V revenues to cover Title V program costs.
3. Establish a fee oversight strategy, including a hierarchy of actions and related timeframes, to ensure that EPA regions take consistent and timely actions to identify and address violations of 40 CFR Part 70 Title V fee revenues, expenses and accounting practices.
4. Ensure that EPA regions complete program evaluation reports of authorized state and local permitting authorities within a reasonable period of time following the evaluation, and require that EPA regions publicly issue these program evaluation reports.
5. Require that EPA regions periodically emphasize and include reviews of Title V fee revenue and accounting practices in Title V program evaluations.
6. Require that EPA regions address shortfalls in the financial or accounting expertise among regional Title V program staff as the regions update their workforce plans. This may include resource sharing and collaboration with other EPA regions, or use of outside organizations, as appropriate.
7. Require that EPA regions re-assess permitting authority fee structures when revenue sufficiency issues are identified during program evaluations, and require fee demonstrations as necessary.
8. Require that EPA regions take action on permitting authorities not in compliance with 40 CFR Part 70 by finding them to be inadequately administered or enforced, and issuing the required NODs.

Agency Comments and OIG Evaluation

OAR concurred with all recommendations, and provided acceptable planned corrective actions and completion dates for all recommendations, as clarified at the exit conference and in subsequent communications with the OIG. We consider all eight recommendations to be resolved and open, with agreed-to corrective actions pending.

In general, the EPA believes that its commitment to develop and issue a fee oversight strategy guidance document will be an effective response to the OIG's recommendations. We agree that such a document, which incorporates all of the elements addressed by our recommendations, will be responsive to our report's

recommendations. We amended two recommendations based on agency comments and information provided by OAR at the exit conference, as follows:

- We revised Recommendation 4 to require that EPA regions complete program evaluation reports within a reasonable period of time following the evaluation as opposed to requiring that EPA regions complete these reports within the same fiscal year they were conducted.
- We revised Recommendation 5 to require that EPA regions periodically emphasize and include reviews of Title V fee revenue and accounting practices in Title V program evaluations as opposed to requiring that EPA regions review fee revenue and accounting practices as part of every program evaluation they conduct.

OAR also provided detailed comments in an attachment to its response to the draft report. We made revisions to our report to address OAR's detailed comments where appropriate. Appendix E contains OAR's response to our report recommendations, and its proposed corrective actions, as clarified at the exit conference and in subsequent communications with the OIG.

We provided the nine state and local permitting authorities with excerpts of our draft report as it related to each permitting authority for their review and comment. Seven of nine permitting authorities provided comments on the draft report excerpts, and we made revisions to our report to address their comments as appropriate. Two permitting authorities chose not to provide comments.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	23	Assess whether the EPA's 1993 fee schedule guidance sufficiently addresses current program issues and requirements related to how Title V fees should be collected, retained, allocated and used. Revise the fee guidance as necessary and re-issue to EPA regions.	O	Assistant Administrator for Air and Radiation	9/30/17		
2	24	Issue guidance requiring EPA regions to periodically obtain and assess authorized state and local permitting authorities' Title V program revenues, expenses and accounting practices to ensure that permitting authorities collect sufficient Title V revenues to cover Title V program costs.	O	Assistant Administrator for Air and Radiation	9/30/17		
3	24	Establish a fee oversight strategy, including a hierarchy of actions and related timeframes, to ensure that EPA regions take consistent and timely actions to identify and address violations of 40 CFR Part 70 Title V fee revenues, expenses and accounting practices.	O	Assistant Administrator for Air and Radiation	9/30/17		
4	24	Ensure that EPA regions complete program evaluation reports of authorized state and local permitting authorities within a reasonable period of time following the evaluation, and require that EPA regions publicly issue these program evaluation reports.	O	Assistant Administrator for Air and Radiation	9/30/16		
5	24	Require that EPA regions periodically emphasize and include reviews of Title V fee revenue and accounting practices in Title V program evaluations.	O	Assistant Administrator for Air and Radiation	9/30/17		
6	24	Require that EPA regions address shortfalls in the financial or accounting expertise among regional Title V program staff as the regions updates their workforce plans. This may include resource sharing and collaboration with other EPA regions, or use of outside organizations, as appropriate.	O	Assistant Administrator for Air and Radiation	9/30/17		
7	24	Require that EPA regions re-assess permitting authority fee structures when revenue sufficiency issues are identified during program evaluations, and require fee demonstrations as necessary.	O	Assistant Administrator for Air and Radiation	9/30/17		
8	24	Require that EPA regions take action on permitting authorities not in compliance with 40 CFR Part 70 by finding them to be inadequately administered or enforced, and issuing the required NODs.	O	Assistant Administrator for Air and Radiation	9/30/17		

O = Recommendation is open with agreed-to corrective actions pending.
 C = Recommendation is closed with all agreed-to actions completed.
 U = Recommendation is unresolved with resolution efforts in progress.

Examples of EPA Oversight Actions to Address Title V Accounting or Fee Adequacy Issues

EPA region	Permitting authority	Summary of issue or EPA actions
1	Rhode Island	EPA worked with the state to restore to the proper account Title V fees that were diverted for a short period of time.
	Massachusetts	Early in program EPA identified that fees may become insufficient to fully fund the program. Massachusetts addressed issue by increasing its Title V fees.
2	New Jersey	After initially approving fee structures for each permitting authority based on the presumptive minimum fee rate, EPA found that the initial fee structure for both permitting authorities failed to provide sufficient funding for the Title V program. EPA provided support to New York and New Jersey in the form of letters when new fee legislations were sought from their respective state legislatures.
	New York	
3	Maryland	A 1998 fee audit conducted by EPA found that the permitting authority was spending Title V fee revenues on non-Title V activities. In response, the permitting authority stated that it made adjustments to the administrative structure of its fee program and committed to a fee demonstration.
	District of Columbia	EPA conducted a fee review in 1999 that found (1) the permitting authority's financial management system did not accurately reflect Title V revenues and expenditures; (2) the permitting authority did not bill sources for emission fees, verify annual emission reports submitted by sources, or perform timely follow-up on delinquent accounts receivable; and (3) Title V funds were not accounted for separately in the financial management system.
4	Mississippi	In 2004, the legislature took revenue from the Title V program and placed it the general treasury account. Regional Administrator contacted Mississippi Department of Environmental Quality legislature and informed them Title V monies could only be used for Title V purposes and that the monies had to be replaced. In July 2004, EPA received a letter from Mississippi stating the monies had been returned in full to the Title V account.
	North Carolina	A 2006 accounting error gave the appearance that North Carolina was supplementing Title V revenues with state gas tax monies. Issue was resolved through conference calls with the state program office.
	Florida	In 2007, an unusually high percentage of Title V fees were being distributed to general treasury account for administrative expenses. Region 4 sent out a letter to the permitting authority asking the permitting program to provide any supplemental information to explain why they had such a high percentage set aside for administrative expenses. When EPA received the supplemental information, it was the agency's opinion that the expense was too high and should be eliminated. Subsequent negotiations led to this expense being eliminated from the Florida Title V operating budget and has saved the Title V program over \$500,000 annually.
	Georgia	In 2007, Georgia's program did not have a rollover provision for its Title V account. At end of year, surplus Title V revenue was swept into the general treasury funds account. Region 4 noted this issue in a letter to the permitting authority, and asked what happened to the excess funds from previous years. The region concluded that Georgia was not ensuring Title V revenue was being used solely to cover Title V expenses. EPA negotiated with Georgia to incorporate a rollover provision into their Title V accounting practices.
	Louisville-Metro	In 2009, a permitting authority was billing the Title V account at a percentage much higher than what the region believed was reflective of the amount of Title V work being completed at the permitting authority. Region 4 sent a letter to the permitting authority following the program evaluation asking for supplemental information regarding billing to the Title V account. The permitting authority conducted an internal audit of its work allocation and found that actual work time being billed to the Title V account was much lower than what was being practiced. The permitting authority attributed this to an accounting problem with sick time and vacation codes for personnel working on Title V. The permitting authority made changes to its account coding software and EPA is monitoring the permitting authority's expenses with annual reviews of its budgeting expenses.
5	Wisconsin	Region issued an NOD for Wisconsin in 2004. It was resolved in 2006.
	Michigan	Region 5 requested a fee demonstration in 2009. Michigan passed legislation in October 2011 (first approved fee increase since 2001). Michigan provided updated fee legislation, revised fee sufficiency analysis, and additional program documentation to Region 5. The region is currently reviewing information, but its review is not yet complete.
6	City of Albuquerque	City initiated internal audit of program. As a result, the permitting authority established internal control mechanisms for all purchase actions. A plan was developed to track the purchase and disposition of computer and equipment purchases.
	New Mexico	Accounting issue with tracking year in which Title V fees collected. New accounting system installed that shows fee accruals in the proper fiscal year, as well as specific account receivable payments.
	Louisiana	Identified concerns related to collecting, retaining and allocating fee revenue consistent with 40 CFR 70. After program evaluation in 2008, region requested that Louisiana develop a separate and discrete budget specific to the Title V program to ensure there are adequate funds available to cover fully the Part 70 permitting program. Louisiana committed to provide budget documentation for fiscal year 2009.

Source: Summary of information obtained from EPA regions in response to OIG survey.

Three Permitting Authorities Where Annual Title V Expenses Exceeded Revenues Each Year, 2008–2012

Illinois EPA

Illinois EPA reported Title V annual costs exceeding annual Title V revenues in each year between 2008 and 2012 (see Table B-1). Over the 5-year period, Illinois EPA reported that it funded about 90 percent of its Title V costs with Title V revenues. However, these figures overstate the portion of Title V costs that Illinois is funding with Title V revenue. According to Illinois EPA, beginning on July 1, 2011, the permitting authority received and used up to \$2 million annually from a sales tax on sorbents¹⁸ sold in Illinois. The use of this sorbents tax to fund Title V activities was authorized by state regulation that became effective July 1, 2011. This fee is not part of the Title V fee structure approved by the EPA for Illinois EPA. We considered this fee to be non-Title V revenue because it is not used solely to cover Title V program costs.

Region 5 was not aware of the change in Illinois fee structure to include the sorbent tax. When asked, Region 5 declined to comment on whether use of this tax is an appropriate source of Title V revenue until they obtained more information about Illinois's use of fees from the sorbent tax. The annual Title V revenue and expense information for Illinois EPA is presented in Table B-1, including the sorbent sales tax funding Illinois EPA reported to us as Title V revenue.

Table B-1: Annual Title V revenues and expenses reported by Illinois EPA

Illinois EPA			
Year	Revenue	Expense	% of expense covered by revenue
2008	\$15,468,800	\$17,926,900	86.29%
2009	14,574,900	16,882,100	86.33%
2010	15,624,700	17,145,400	91.13%
2011	14,680,900	16,320,300	89.95%
2012	15,511,500 ^a	15,969,800	97.13%
Total	\$75,860,800	\$84,244,500	90.05%

Source: OIG analysis of Illinois EPA's response to OIG survey.

^a Includes \$2 million from a sales tax on sorbents.

Illinois EPA's reported 2012 Title V revenues were approximately the same as its 2008 revenues, while 2012 Title V expenses declined about 11 percent from 2008 levels. Effective January 1, 2012, Illinois EPA raised its emissions fee to \$21.50 per ton from \$18.00 per ton, and increased the maximum fee that can be charged to a source from \$250,000 to \$294,000.

¹⁸ According to Illinois EPA, the sorbent is an activated carbon emission control technology used primarily in coal-fired power plants with mercury control systems. The tax is a sales tax collected on sorbent purchases. Illinois EPA personnel told us they believe the sorbents are only purchased by major sources, primarily coal-fired power plants.

However, without the \$2 million in 2012 revenue from the sales tax on sorbents, Illinois EPA's 2012 Title V revenue would have declined 13 percent from 2008 levels. It would cover about 85 percent of Title V program costs in 2012.

In 2008 and 2009, Illinois EPA's annual Title V revenues covered 86 percent of annual Title V costs. However, since Illinois in 2011 increased Title V emission fees and enacted regulations that allowed a portion of sales tax on sorbents to be reallocated toward funding Illinois EPA's Title V program, the reported percentage of annual Title V costs covered by annual Title V revenues increased to 97 percent in 2012.

Illinois EPA's Title V program has one of the nation's largest backlogs of Title V permits and permit renewals. According to the EPA's Title V Operating Permits System, Illinois EPA's Title V program has approximately 20 percent of the nation's outstanding initial Part 70 applications. Illinois EPA's Title V program also accounted for approximately 17 percent of the nation's active sources with expired permits. Expired permits are those for which a renewal permit has not been issued by the permitting authority, and the source has not submitted an application for renewal or has not provided timely and accurate information. Illinois EPA officials reported that revenue issues had an impact on their permit issuance and permit backlog. However, they noted that they have hired and trained staff to work on permits.

Although Region 5 has actively worked with Illinois on implementing its Title V program, the region has not focused on oversight of Illinois' Title V revenues, expenses or accounting. According to Region 5's response to our survey, several petitioners filed a petition with the EPA in March 2003 seeking a NOD for Illinois EPA's failure to administer the Title V program. The petition raised issues regarding Illinois' permit issuance rates. It also questioned the state's Title V enforcement and fee sufficiency. Region 5 has not formally responded to the petitioners on the 2003 petition and the petition is reported as pending in the EPA's petition database. In 2012, several petitioners filed an amended petition regarding Illinois' Title V program. They again cited Title V revenue and permit backlog issues. The petitioners requested that Region 5 require Illinois EPA to conduct a Title V fee demonstration. Region 5 told us that it had not requested nor received a fee sufficiency demonstration from Illinois.

EPA Region 5 conducted evaluations of Illinois EPA's Title V program in 2006 and 2010. The region did not identify any issues related to Title V revenue sufficiency or accounting in either evaluation report.

Region 5 told us that it is engaged in a broader oversight effort on Illinois' Title V program. The region said this broader effort is designed to improve permit issuance rates, reduce the state's Title V permit backlog, and improve the enforceability of permits in the state. Region 5 has established a joint workplan with Illinois EPA to address the state's Title V permit backlog. The region told us that fee increases will help in this effort by bringing additional resources into the state's Title V program. However, they said the region does not believe that fees alone are the root cause of the issues. Region 5 cited several reasons that contributed to the Illinois Title V backlog, including staff turnover at Illinois EPA, a statewide hiring freeze, and a cumbersome appeal process. The region stated that it has not focused its attention on fees or fee demonstrations.

New York State DEC

According to data we obtained from the New York State DEC, it funded about 56 percent of its total Title V program costs from 2008 to 2012 with Title V fee revenue (see Table B-2). By 2012, the New York State DEC program had reached a cumulative Operating Permit Program account deficit of over \$16 million.

Table B-2: Annual Title V revenues and expenses reported by New York State DEC

New York State DEC			
Year	Revenue	Expense ^a	% of expense covered by revenue
2008	\$9,455,256	\$17,760,000	53.24%
2009	10,903,197	18,466,000	59.04%
2010	9,404,481	17,405,000	54.03%
2011	8,606,317	14,894,000	57.78%
2012	7,931,334	14,763,000	53.72%
Total	\$46,300,585	\$83,288,000	55.59%

Source: OIG analysis of New York State DEC response to OIG survey.

^a Expenses include New York State DEC, Environmental Facilities Corp., Department of Health and Empire State Development.

EPA Region 2 has worked with New York to address Title V fee sufficiency issues. However, the EPA's oversight and New York's corrective actions have not been able to keep pace with New York's Title V revenue sufficiency problems. According to the EPA, during fee audits in 1999, Region 2 discovered that New York's actual fees collected were less than their initial projection. The issue required state legislative actions to resolve. Region 2 communicated with New York State DEC program personnel via telephone conferences, email and letters to support the permitting authority's request to the state legislature for authority to increase Title V fees. However, despite the efforts by EPA Region 2, New York has not increased its Title V fees enough to sufficiently fund the program.

A 2006 EPA program evaluation report of New York's Title V program again raised questions about the program's Title V revenue sufficiency. The report stated that:

EPA recognizes a need for some level of action to address the apparently widening gap between actual revenue and revenue needed to fully support the program.

Region 2 requested a detailed accounting from New York's permitting authority to demonstrate that its fee schedule met the requirements of 40 CFR Part 70.9(b)(1). According to Region 2 personnel, the detailed accounting was provided to the EPA in the form of an Operating Permit Program Annual Report. It included details on program revenues and expenses.

In 2008, EPA Region 2 wrote a letter to the Chairmen of the New York State Senate Finance Committee and the New York State Assembly Ways and Means Committee supporting additional fees for New York State DEC's Title V program. Region 2 personnel stated that the New York state legislature then raised its Title V fees in 2009. They said this was done partly

due to the EPA’s involvement. The EPA conducted a Title V program evaluation in 2010. However, a comprehensive fee program review was not part of that evaluation. In its 2010 evaluation report, the EPA stated that:

...we were encouraged that the NYSDEC was recently able to work to increase the State of New York’s Title V fees and, as such, have determined that a full fee audit should wait until several cycles have passed.

Based on our review of data included in New York’s legislation, between 2010 and 2012, New York’s Operating Permit Program account balance has gone from an account deficit of about \$6.5 million in 2010 to a deficit of over \$16 million by the end of 2012. New York’s Operating Permit Program account deficit grew nearly 150 percent after the EPA had supported a fee increase in its 2008 letter. According to New York State DEC personnel, the revenue shortfall is primarily a combination of reduced emissions generating less revenue and increased agency costs, primarily associated with increases in staff salaries and fringe benefit costs. EPA Region 2 personnel told us they are scheduled to conduct another program evaluation of New York’s Title V program in 2014.

Louisiana DEQ

In response to our survey, Louisiana DEQ reported annual Title V revenues significantly below annual Title V costs each year from 2008 to 2012. Louisiana DEQ’s annual Title V revenues ranged from 49 to 60 percent of annual Title V costs. Louisiana DEQ funded 54 percent of total Title V costs with Title V revenue over the 5-year period. Also, while Louisiana DEQ’s Title V revenue declined by about 10 percent over the 5-year period, its annual Title V expenses increased by about 4 percent. Table B-3 shows Louisiana DEQ’s Title V revenues and expenses between 2008 and 2012.

Table B-3: Annual Title V revenues and expenses reported by Louisiana DEQ

Louisiana DEQ			
Year	Revenue	Expense	% of expense covered by revenue
2008	\$4,290,966	\$7,150,474	60.01%
2009	4,292,268	7,813,902	54.93%
2010	4,392,472	8,462,470	51.91%
2011	3,928,328	7,974,306	49.26%
2012	3,879,981	7,417,909	52.31%
Total	\$20,784,015	\$38,819,061	53.54%

Source: OIG analysis of Louisiana DEQ response to OIG survey.

In our survey, Louisiana DEQ reported that 100 percent of its Title V fees are emission fees. However, in subsequent follow-up discussions, they said Louisiana DEQ funds its Title V program through a combination of other fees. These include permit application fees and annual maintenance fees. However, the other revenue Louisiana DEQ uses to fund its Title V program were characterized by Louisiana DEQ as “Paid with Non-Title V Air Revenue.” Louisiana DEQ’s and other permitting authorities’ use of non-Title V revenue to fund a portion of their Title V programs is discussed further in Appendix C.

Four Permitting Authorities' Use of Non-Title V Revenues to Support Title V Programs, 2008–2012

Illinois EPA

Illinois EPA used up to \$2 million annually from a sales tax on sorbents to fund its Title V expenses. This represented about 13 percent of the permitting authority's Title V revenue in 2012. Illinois EPA staff told us they believe that only major sources subject to Title V are purchasing the sorbents. Thus, Title V sources are paying this "fee" in the form of a sales tax. The Manager of Illinois EPA's Division of Air Pollution Control in the Bureau of Air estimated that the state collected \$4 million to \$5 million from its sales tax on sorbents in 2012. He also said that about \$2 million was used to fund the Title V program. According to Illinois EPA personnel, the decision to allocate a portion of the sales tax on sorbents to its Title V program was made to limit the amount of the state's emission fee increase on sources in 2011.

Although Part 70 requires that any fee will be used solely for Title V permit program costs, only a portion of Illinois' sales tax on sorbents in 2012 was provided to the state's Title V program. When we asked EPA Region 5 if they considered Illinois' use of sales tax on sorbents to be an appropriate form of Title V revenue or if they had approved its use, they stated that "Region 5 does not have any information on Illinois using sales tax on sorbents for the Title V program."

New York State DEC

New York State DEC used from \$6.2 million to \$8.3 million annually of non-Title V revenue from 2008 to 2012 to cover Title V program expenses. According to New York State DEC personnel, the state uses funds from the state's General Fund and other funding sources to cover annual shortfalls. Our review of New York's Title V regulation revisions in 2008, 2010 and 2012 (as well as information provided to us by New York State DEC) showed that, despite increasing its fee structure in 2009, the New York Title V program deficit has grown from a balance of \$3.25 million in 2008 to a negative balance of over \$16 million by the end of 2012. New York State DEC personnel told us that a "structural problem" in the account existed in 2008, and that the account balance only appeared to be positive in 2008 after unloading expenses to General Fund Appropriations.

Personnel at New York State DEC indicated that political and economic factors were reasons for why the state legislature was not likely to increase Title V fees in the near future. New York State DEC personnel told us that the executive level of state government has so far ensured that the New York State DEC's Title V program receives sufficient funding to cover its expenses, even if part of the funding is not from Title V fee revenues. New York State DEC's use of non-Title V revenue to pay for its Title V program essentially amounts to a subsidy from the state's General Fund to cover costs that are required by the CAA and Part 70 to be covered through fees charged to Title V major stationary sources. Therefore, it appears that the New York State DEC

will continue to rely on using non-Title V funds to pay for a significant, and potentially growing, portion of its Title V program.

Louisiana DEQ

Louisiana DEQ used non-Title V revenue from its Environmental Trust Fund, characterized as “Non-Title V Air Revenue,” to cover from \$2.9 million to \$4.1 million annually of its Title V expenditures between 2008 and 2012. The non-Title V revenues were made up of permit application fees and annual maintenance fees deposited into the permitting authority’s Environmental Trust Fund that were not designated by Louisiana DEQ as Title V revenue. According to Louisiana DEQ, these non-Title V fees may be used to fund Title V expenses. In response to the draft report excerpts, Louisiana DEQ responded that Louisiana uses these fees to meet its requirements of funding the program expenses. Louisiana DEQ further responded:

The fees are from Title V facilities; however, those funding sources are not considered Title V revenue for reporting purposes since Louisiana uses its emission fees as its dedicated revenue source for Title V reporting purposes.

As noted in Chapter 2, the CAA requires that any fee required under Title V be used solely to cover permit program costs.

EPA Region 6 conducted program reviews of Louisiana DEQ in 2002, 2007 through 2008, and 2011 through 2013. However, EPA Region 6 has only issued one final report, for the 2002 evaluation. Region 6 did not issue a final report for the 2007 evaluation. Instead, Region 6 sent a draft report to the Louisiana DEQ in January 2014 for the evaluation it conducted in 2011 through 2013. In response to our October 2012 survey of regions, Region 6 responded that:

Based upon EPA review and evaluation, EPA Region 6 identified a serious concern that the State is failing to collect, retain, or allocate fee revenue consistent with 40 C.F.R, Part 70 [in its 2002 evaluation]. We discussed the serious concern with the State. The LDEQ has committed to steps to address the concerns regarding collection, retention, and allocation of fee revenue system, the budget, and adequacy of fee.” In addition, the Region conducted a Title V evaluation in 2007 thru 2008. Although that report was not finalized, Region 6 is building off the 2008 findings for the currently ongoing 2012 Audit. One of the serious concerns identified in 2008 was LDEQ’s failure to develop a separate and discrete budget specific to the Title V program to ensure there are adequate funds available to cover fully the Part 70 permitting program.

In the draft report that was provided to the OIG in January 2014, Region 6 recommended that the Louisiana DEQ conduct a fee demonstration. According to the draft report:

Through this review, we [Region 6] find that there are ongoing questions regarding whether the initial program approval fee demonstration with the numerous changes to the fees collected and allocated to the current Title V program accurately reflect and fully support the costs of the program. This

uncertainty, coupled with the continued negative divergence of the direct Title V fees collected versus the CPI adjusted presumptive minimum fee render a new fee demonstration in accordance with the requirements of 40 CFR §70.9(b)(5)(ii) both relevant and recommended as part of EPA's oversight responsibility of the Title V program.

According to Region 6, a final report will be prepared once Region 6 obtains feedback from Louisiana DEQ. That feedback is expected by the end of fiscal year 2014.

Ohio EPA

Ohio EPA charges Title V fees based on the federal presumptive minimum fee level. However, this fee structure, according to Ohio EPA personnel, is unlikely to remain adequate to support Ohio's Title V program. Ohio EPA's 2012 Title V revenues were 11 percent less than 2008 revenues. This occurred despite annual fee increases.

The pressures that declining Title V revenues have placed on Ohio EPA to fund existing full-time equivalent levels, or replace staff after leaving, has caused it to look for other sources of revenue for its Title V program. One source cited by Ohio EPA is revenue from the state's solid waste tipping fees. These are fees charged per ton for disposal of solid waste at Ohio's landfills. The tipping fees are collected from any entity disposing waste in Ohio's landfills. This includes numerous non-Title V sources, as well as members of the public. However, EPA's 1993 guidance for approval of state Title V fee schedules states that:

Only funds collected from part 70 sources may be used to fund a State's title V permits program. Legislative appropriations, other funding mechanisms such as vehicle license fees, and section 105 funds cannot be used to fund these activities.

According to Ohio EPA, revenues from solid waste tipping fees are used to supplement any of Ohio EPA's programs needing funds in a given year. The revenue from tipping fees has been used to fund activities in the air program. The Ohio EPA's Chief of the Division of Air Pollution Control and the Division of Air Pollution Control's Fiscal Officer told us that revenue from solid waste tipping fees has not been used to supplement their Title V funding and has not been used to directly fund Title V activities. However, they said that there are not any state limitations on using tipping fees as a source of revenue to support their Title V program if needed and available.

EPA Region 5 told us that Ohio EPA had expressed concerns that its presumptive minimum fee has not been adjusted (other than annual CPI adjustments) since inception of the program. Region 5 also raised concerns that Title V funding has been adversely impacted in Ohio as large utilities have shut down in response to additional federal regulation.

In its response to the OIG's survey, Region 5 stated that Ohio EPA had "...a number of funds to support Title V activities (e.g., solid waste tipping fees) in the event that a shortfall occurs in any given fiscal year," but did not state that solid waste tipping fees were being used to fund the Ohio EPA Title V program. We asked Region 5 in December 2013 whether it was aware of Ohio's

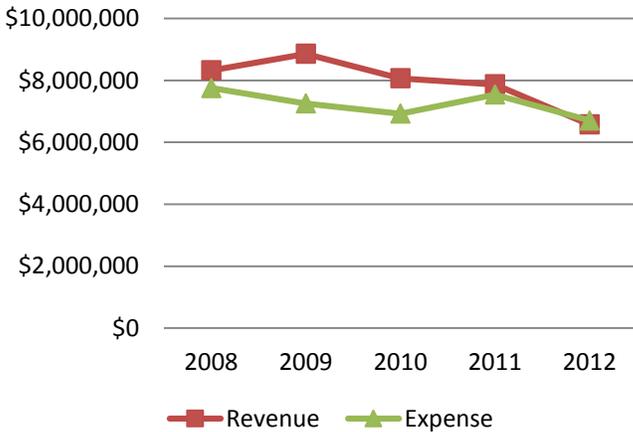
potential use of solid waste tipping fees to pay for Title V activities, and whether the region had approved use of those fees as an allowed source of Title V revenue. The region responded by stating that:

Region 5 has no information indicating that Ohio is using Title V solid waste tipping fees to pay for Title V activities. We also have no information indicating changes to Ohio's program fee structure.

According to Region 5 personnel, Ohio EPA's use of solid waste tipping fees to pay for its Title V program did not come up in the region's most recent Title V program evaluation because the evaluation did not address fees.

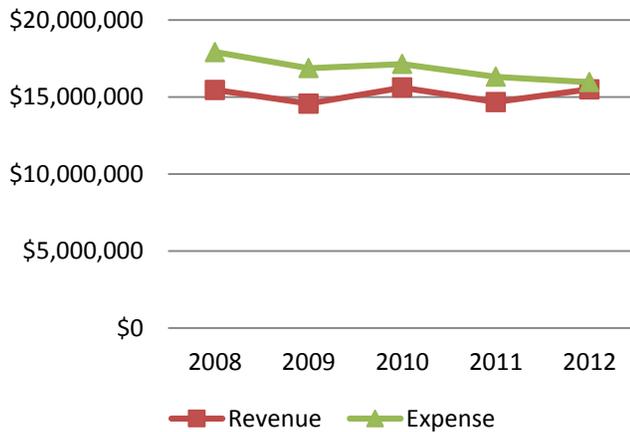
Revenue and Expense Trends Between 2008 and 2012 at Permitting Authorities Sampled

Figure D-1: Annual Title V Revenues and Expenses for Florida DEP (2008–2012)



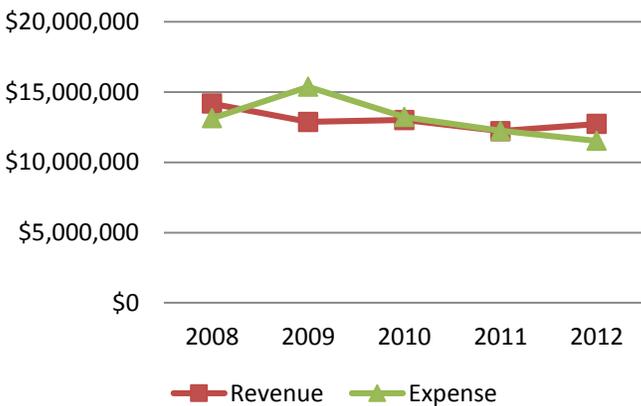
Source: OIG analysis of Florida DEP response to OIG survey.

Figure D-2: Annual Title V Revenues and Expenses for Illinois EPA (2008–2012)



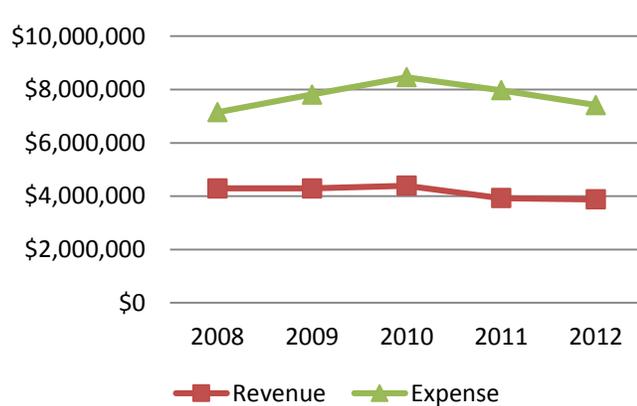
Source: OIG analysis of Illinois EPA response to OIG survey.

Figure D-3: Annual Title V Revenues and Expenses for Indiana DEM (2008–2012)



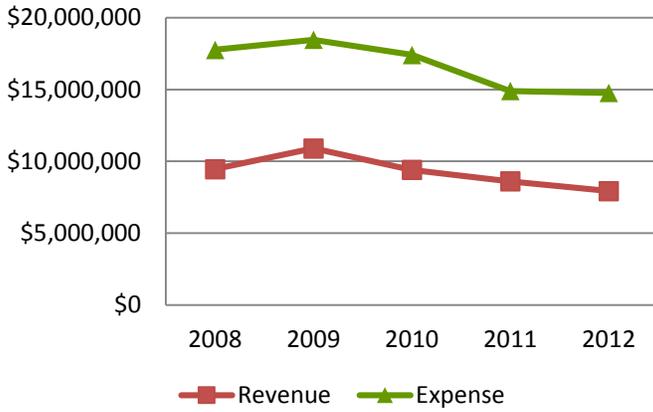
Source: OIG analysis of Indiana DEM response to OIG survey.

Figure D-4: Annual Title V Revenues and Expenses for Louisiana DEQ (2008–2012)



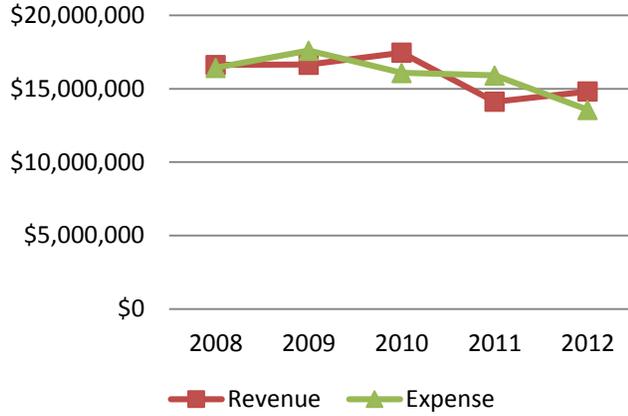
Source: OIG analysis of Louisiana DEQ response to OIG survey.

Figure D-5: Annual Title V Revenues and Expenses for New York State DEC (2008–2012)



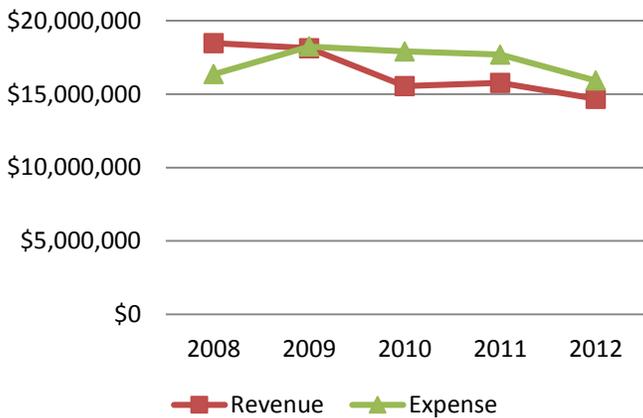
Source: OIG analysis of New York State DEC response to OIG survey.

Figure D-6: Annual Title V Revenues and Expenses for Ohio EPA (2008–2012)



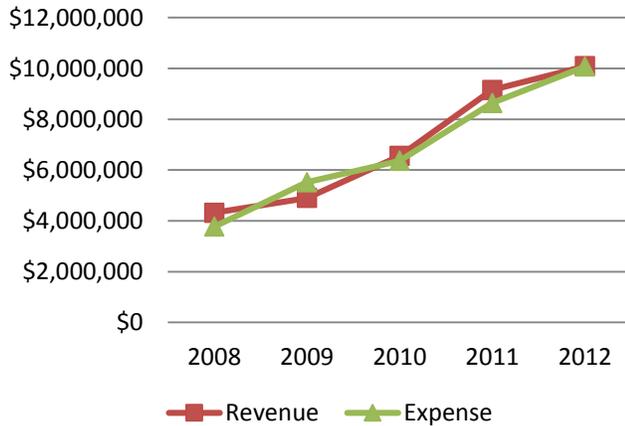
Source: OIG analysis of Ohio EPA response to OIG survey.

Figure D-7: Annual Title V Revenues and Expenses for Pennsylvania DEP (2008–2012)



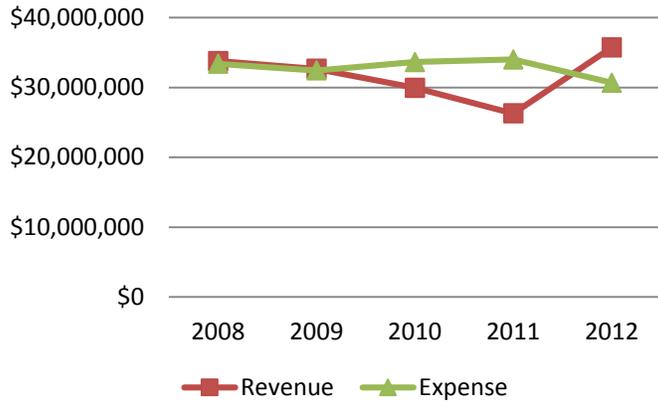
Source: OIG analysis of Pennsylvania DEP response to OIG survey.

Figure D-8: Annual Title V Revenues and Expenses for South Coast AQMD (2008–2012)



Source: OIG analysis of South Coast AQMD response to OIG survey.

Figure D-9: Annual Title V Revenues and Expenses for Texas CEQ (2008–2012)



Source: OIG analysis of Texas CEQ response to OIG survey.

Agency Response to Draft Report

August 22, 2014

MEMORANDUM

SUBJECT: Response to Office of Inspector General (OIG) Draft Report No. OPE-FY12-0009 “Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues,” dated July 22, 2014

FROM: Janet G. McCabe
Acting Assistant Administrator

TO: Carolyn Copper
Assistant Inspector General
Office of Inspector General

Thank you for the opportunity to review and comment on the Office of Inspector General’s (OIG’s) draft report titled, “*Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues*” (Project No. OPE-FY12-0009) (Draft Report). The OIG has identified some issues regarding the EPA’s oversight of fee programs implemented by EPA-approved operating permit programs and we respond to those in this memo. We also want to emphasize, however, that EPA’s oversight has been successful in addressing fee program concerns that have arisen over time. Moreover, fee oversight is only one aspect of the EPA’s oversight of the complex state operating permit programs, which have been successful in issuing over 15,000 operating permits, furthering the overarching goals of improving compliance with air pollution requirements and public involvement in the permitting process.

Over the last two decades, the EPA has provided useful and relevant guidance to implementing authorities and regions to ensure proper administration and oversight, respectively, of fee programs for the operating permits programs. For example, the 1993 OAR guidance on operating permit program fees addressed, among other things: the state legal authority necessary to implement required program elements, including fee programs; the specific state permitting activities that are required to be covered by permit fee revenue; the requirement that states charge permit fees that are sufficient to fund the reasonable direct and indirect permit program costs; the requirement that fees be used solely to cover permit program costs (which is sometimes referred to as the ban on using non-title V funds to cover program costs); the option for states to rely on the statutory presumptive minimum fee for purposes of determining adequate funding levels; the flexibility available to states to charge permit fees to sources on different bases, including for emissions-based fees, service-based fees and other types of fees; a program evaluation (audit) checklist for the EPA regions to use when auditing state operating permit programs, which included items related to fee program administration; the interplay between state grants under the Clean Air Act (CAA) Section 105 and title V fees; and program accounting guidance, including title V fund accounting using Generally Accepted Accounting Principles for

government, which addresses accounting fund structures, tracking direct and indirect costs, and segregation of title V funds from other governmental funds.

The CAA and the EPA's title V operating permit rules provide the framework and specific authorities associated with the EPA's oversight of title V permit programs. Through the OAR's National Program Guidance, the EPA regions, which implement key aspects of the EPA's oversight strategy, have committed to undertake one state permit program evaluation per year, which often includes a fee assessment component. Due to the program evaluations and fee assessments conducted so far, each region has historical knowledge of the adequacy of each state's fee revenues, its compliance with various requirements related to fee administration, and of other permit program implementation issues that are unrelated to fees, such as whether the state is timely issuing permits, the quality of the issued permits, and the state's compliance and enforcement program for permits. This knowledge informs regional decisions about when to focus on fees or other issues related to performance as part of their reviews.

Below are the OAR's responses to the OIG's specific recommendations. As a general matter, the EPA agrees that a guidance document that discusses the fee aspect of the oversight program evaluation in additional detail would be useful. The EPA expects to develop such a guidance in part through assessing the 1993 fee schedule guidance and by either updating that document or issuing a separate fee oversight strategy document. This fee oversight strategy guidance is expected to be responsive to the OIG's recommendations below. Lastly, in the attachment, we provide additional detailed comments. We appreciate the changes the OIG made in response to our earlier comments. Several of our suggested clarifications or corrections were not addressed, however, and we urge the OIG to consider those suggestions again, to ensure that the report is as accurate and complete as possible.

Recommendation 1: “Assess whether the EPA’s 1993 fee schedule guidance sufficiently addresses current program issues and requirements related to how Title V fees should be collected, retained, allocated and used. Revise the fee guidance as necessary and re-issue to EPA regions.”

Response 1: Although the 1993 fee schedule guidance, and several other existing fee guidances, provide a useful framework for addressing state fee program issues, we agree to assess our existing fee guidance and to re-issue, revise, or supplement such guidance, as necessary. This effort may be completed independently or in conjunction with actions responsive to recommendations below.

Planned Completion Date: Fiscal Year (FY) 2017, Quarter (Q) 4

Recommendation 2: “Issue guidance requiring EPA regions to periodically obtain and assess authorized state and local permitting authorities’ Title V program revenues, expenses and accounting practices to ensure that permitting authorities collect sufficient Title V revenues to cover Title V program costs.”

Response 2: As noted above, the OAR agrees that revised guidance would be helpful to guide the EPA regional offices in performing fee assessments either as part of or separate from a title V

program evaluation. The OAR intends to develop and issue a guidance document that sets forth a fee oversight strategy. In developing this guidance document, the EPA will consider¹⁹ the scope and frequency of fee assessments and their relationship to the National Program Guidance element that currently provides for each region to conduct at least one title V program evaluation each year.

Planned Completion Date: Fiscal Year (FY) 2017, Quarter (Q) 4

Recommendation 3: “Establish a fee oversight strategy, including a hierarchy of actions and related timeframes, to ensure that EPA regions take consistent and timely actions to identify and address violations of 40 CFR Part 70 Title V fee revenues, expenses and accounting practices.”

Response 3: We commit to working with the regions to develop a guidance document that includes a fee oversight strategy including, for example, a fee review checklist that will provide a framework for the EPA regions to use when performing fee assessments for state permit programs. The CAA and the EPA’s implementing regulations already set forth the specific hierarchy of actions, including certain aspects of that process that are discretionary on the part of the EPA. Nonetheless, the EPA anticipates describing not only methods for performing a fee assessment, but also methods for resolving fee issues that do arise.

Planned Completion Date: Fiscal Year (FY) 2017, Quarter (Q) 4

Recommendation 4: “Ensure that EPA regions complete program evaluation reports of authorized state and local permitting authorities within the fiscal year the evaluation was conducted²⁰, as called for by National Program Guidance, and require that EPA regions publicly issue these program evaluation reports.”

Response 4: The OAR agrees that the program evaluation reports should be completed within a reasonable period of time following the evaluation. However, since the evaluations are sometimes completed at the end of the fiscal year, it is not reasonable to always expect that the evaluation report is completed within the same fiscal year as the evaluation. The OAR commits to working with the EPA regions to identify a reasonable timeframe in which to complete the evaluation reports. In addition, the EPA will explore opportunities²¹ to provide for public posting on the Internet of the evaluation documents.

Planned Completion Date: Fiscal Year (FY) 2016, Quarter (Q) 4

¹⁹ In a subsequent communication, OAR agreed with substituting the word “address” for “consider” in the sentence to confirm that “...the EPA will address the scope and frequency...”

²⁰ During the exit conference OIG accepted OAR’s commitment to require regions to complete their program evaluation reports “within a reasonable timeframe” as meeting the intent of our recommendation, and amended the text of Recommendation 4 accordingly.

²¹ In a subsequent communication, OAR agreed to revise this sentence to confirm that “EPA will establish a method for public posting on the Internet of the evaluation documents and include such posting as part of the fee oversight strategy guidance we develop.”

Recommendation 5: “Require that EPA regions emphasize and include reviews of Title V fee revenue and accounting practices in all Title V program evaluations.”²²”

Response 5: The OAR agrees that fee assessments should be performed periodically as part of the EPA program oversight functions, and the EPA anticipates addressing²³ that as part of the fee oversight guidance document.

Planned Completion Date: Fiscal Year (FY) 2017, Quarter (Q) 4

Recommendation 6: “Require that EPA regions address shortfalls in the financial or accounting expertise among regional Title V program staff as the regions update their workforce plans. This may include resource sharing and collaboration with other EPA regions, or use of outside organizations, as appropriate.”

Response 6: The OAR agrees to develop and issue guidance describing a fee oversight strategy to assist regional staff in conducting title V fee oversight. In addition, the EPA will work with the regions to identify where and how financial and accounting expertise can be accessed when needed.

Planned Completion Date: Fiscal Year (FY) 2017, Quarter (Q) 4

Recommendation 7: “Require that EPA regions re-assess permitting authority fee structures when revenue sufficiency issues are identified during program evaluations, and require fee demonstrations as necessary.”

Response 7: The OAR expects to consider these elements²⁴ as part of the development and issuance of the fee oversight strategy guidance document described above.

Planned Completion Date: Fiscal Year (FY) 2017, Quarter (Q) 4

Recommendation 8: “Require that EPA regions take action on permitting authorities not in compliance with 40 CFR Part 70 by finding them to be inadequately administered or enforced, and issuing the required NODs.”

Response 8: The CAA and EPA’s implementing regulations set forth the specific hierarchy of actions, including certain aspects of that process that are discretionary on the part of the EPA. The EPA has enforcement discretion under the CAA, and, as identified in Appendix A to the Draft Report, the EPA has successfully resolved numerous issues without actions that the OIG is suggesting that the OAR require of the EPA regional offices. The EPA believes that its

²² During the exit conference, we agreed that in lieu of requiring regions to include a review of Title V fee revenue and accounting practices in “all” Title V program evaluations we would accept OAR’s commitment to require regions to include a review of Title V fee revenue and accounting practices periodically at reasonable intervals in its program evaluations.

²³ In a subsequent communication, OAR clarified its proposed corrective action plan to confirm that “... the EPA will address that as part of the fee oversight (strategy guidance) ...”

²⁴ In a subsequent communication, OAR clarified its response to Recommendation 7 to confirm that “The OAR will address these elements as part of the development and issuance of the fee oversight strategy guidance document described above.”

commitment to develop and issue a fee oversight strategy guidance will be an effective response to these recommendations. The EPA regions have made findings of deficiencies related to fees in the past (described herein) and the OAR believes the EPA regions will do so in the future, when appropriate and necessary to ensure compliance with the CAA.

Planned Completion Date: N/A²⁵

If you have any questions regarding this response, please contact Anna Marie Wood, Director, Air Quality Policy Division in the Office of Air Quality Planning and Standards at (919) 541-3604.

Attachment

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²⁵ In a subsequent communication, OAR confirmed that its planned completion date for its corrective action for Recommendation 8 is Fiscal Year (FY) 2017, Quarter (Q) 4.

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