



FINAL Report:
Spokane County Air Pollution Control Authority
Title V Program Review

EPA Region 10
August 22, 2006

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Introduction

This report documents the Title V program review for Spokane County Air Pollution Control Authority, a local air pollution control agency with jurisdiction in Spokane County, Washington.

Overview and Review Objective

In response to recommendations in a 2002 Office of Inspector General audit, EPA has set an aggressive national goal of reviewing all state and local Title V programs by the end of fiscal year 2006. Specifically, EPA has developed an action plan for performing reviews of state and local Title V programs and has committed to continuing the Title V fee reviews begun in 1998. The objective of the broader program reviews is to identify good practices that other agencies can learn from, document areas needing improvement, and learn how EPA can help improve state and local Title V programs and expedite permitting.

EPA Region 10 completed a review of the Idaho Title V program in January 2004, and the Oregon Department of Environmental Quality and Lane Regional Air Pollution Authority (located in west-central Oregon) programs in June 2006. In addition, Region 10 is in the process of completing the program reviews for Northwest Clean Air Agency (located in northwestern Washington), Puget Sound Clean Air Agency (located in western Washington), the Washington Department of Ecology and the Alaska Department of Environmental Conservation.

We would like to acknowledge and express EPA's appreciation for the cooperation and patience of SCAPCA management and staff throughout all stages of our review of the Title V program. Receiving the timely and complete questionnaire response in advance of the on-site interviews was very helpful, allowing EPA to narrow the focus of our on-site interviews. SCAPCA's efforts to make management, staff, and a room available to EPA for the interviews also helped make the on-site time very productive.

General SCAPCA Title V Program Background

SCAPCA is a local air pollution control agency with jurisdiction in Spokane County, Washington. SCAPCA promulgates its own suite of air pollution control regulations which are supplemented through adoption of state and federal regulations. For the air operating permit program, the agency relies on the State of Washington Title V regulations, WAC 173-401. SCAPCA has one part-time Title V permit writer, who also serves as the agency's Professional Engineer for review of construction permits. Peer review had been provided by the agency director. Industrial facility compliance inspection activities are primarily handled by one additional staff member. Title V permits have been issued to all 10 initial Title V sources in Spokane County, with the last one issued in January 2003. The agency is presently busy with permit renewals, modifications and revisions.

SCAPCA's initial Title V program was submitted on November 1, 1993, and received interim approval from EPA effective December 9, 2004. Subsequent revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999 received full approval effective September 12, 2001. Later in 2001, EPA determined that SCAPCA's program (and the Washington Department of Ecology rules) did not meet the requirements of Title V and Part 70 because Washington's rules exempted insignificant emissions units from certain permit content requirements. A subsequent program revision submitted by Ecology on September 26, 2002 was approved effective January 2, 2003. As noted earlier, SCAPCA relies on rules developed by Ecology for implementation of the Title V program in Spokane County.

Since EPA's visit to SCAPCA in July 2005, the agency director has resigned and SCAPCA conducted an extended search for a replacement director while the permits manager served as acting director. A new director was hired in June 2006.

Program Review Basis

EPA's review of SCAPCA's Title V program, which began in July 2005, is based on answers provided by SCAPCA, review of selected permits, statements of basis, forms and guidance, as well as on-site interviews of SCAPCA personnel. EPA's review of SCAPCA's program also included a review of SCAPCA's Title V fee management system. All of this information was analyzed with regard to Part 70 regulations and policies, as well as SCAPCA and Ecology regulations.

A questionnaire, developed by EPA Headquarters with input from the Regions and revised by Region 10 to include a table titled State/Local Title V Program Fiscal Tracking Evaluation Document (the protocol developed by EPA in 1997 and used in previous Title V fee program reviews), was sent to and completed by SCAPCA in advance of Region 10's on-site visit to the agency. We reviewed the completed questionnaire (Attachment I) and other available information, prior to the on-site visit.

The permits reviewed were chosen to represent different industry sectors. We also selected permits that were issued fairly recently, to provide a more accurate depiction of the current status of SCAPCA's Title V program. The permits reviewed were:

- Melcher Manufacturing Company, Inc. (May 18, 2004: AOP-15-RENEWAL #1)
- Inland Empire Paper Company (November 16, 2004: AOP-1 {RENEWAL #1})
- Avista Corporation, Northeast Combustion Turbine Facility (July 21, 2004: AOP-17)
- Mutual Materials Company (March 1, 2004: AOP-7 – Renewal Permit #1)

While on site at the SCAPCA office, July 18-19, 2005, we interviewed the director of the agency, the permits manager and the Title V permit writer. We discussed SCAPCA's Title V fee program with management and the finance manager. The purpose of the interviews was to confirm and clarify what we learned from our review of the permits and questionnaire and to ask questions that developed during our pre-visit review.

EPA's review team included four Region 10 staff members, including legal and engineering support. Key elements of the individual reviews, as well as observations from the on-site interviews, are highlighted and discussed in the report.

Program Review

The program review report is formatted consistent with the program review questionnaire. Within each of the topic areas, the report describes good practices, concerns, and other notable observations. The fee protocol information is addressed in the Resources and Internal Management Support section of this report. The report addresses the following topic areas:

- A. Title V Permit Preparation and Content
- B. General Permits
- C. Monitoring
- D. Public Participation and Affected State Review
- E. Permit Issuance/Revision/Renewal
- F. Compliance
- G. Resources and Internal Management Support
- H. Title V Benefits
- I. Document Review (Rules/Forms/Guidance)

With the exception of Section H, each section of the report highlights and discusses good practices,

concerns and other general observations. In response to the program review questionnaire and during the on-site interviews, SCAPCA identified a number of benefits that have resulted from the implementation of the Title V program. The notable benefits realized by SCAPCA, which reflect the value that can come from responsible implementation of such a comprehensive air quality program, are listed in Section H.

In general, we included in the report only those good practices that are unique to SCAPCA or seem particularly worth noting and passing along to other permitting authorities. SCAPCA's implementation of the program includes many other good practices that are not specifically discussed in the report because they are widely used among other Title V permitting authorities.

A summary of concerns is also provided that identifies those issues that will need to be addressed. Some concerns identified in this review will need to be resolved as SCAPCA revises their operating permits and their program is updated. EPA Region 10 expects SCAPCA to respond to each of the concerns identified in this report. EPA will work with SCAPCA to address the identified concerns and will schedule follow-up as needed.

A. Title V Permit Preparation and Content

Good Practices

1. Overall, the permits and statements of basis are very clearly written and thorough. It is evident from review of the permits and interviews that SCAPCA's technical staff has an excellent understanding of the Title V program, how to incorporate regulatory requirements into permits, and the need to explain decisions made in the permitting process.
2. Many permit provisions are appropriately standard from permit to permit. Consistency in language among permits, where appropriate, better ensures equity among permittees, simplifies permit review for regulators and the public, and reduces the risk of unintended changes in the meaning of provisions.
3. In general, SCAPCA does a great job of identifying insignificant emission units for which monitoring is necessary.
4. At least one of the SCAPCA permits contains applicable requirements that may apply only if certain activities happen at the subject facility, but do not currently apply. This was an innovative and clear technique for addressing these type requirements.

Concerns

1. The table format used by SCAPCA, and other permitting authorities in Washington, can lead to difficulties for permit engineers. Some permit engineers tend to abbreviate necessary wording of rules and requirements in order to fit lengthy text into the narrow columns, which can lead to unclear or incomplete requirements. Formats that do not limit the space for writing a requirement help to ensure the requirement is written with the necessary details and formatting to make the requirement clear. Often, substantial portions of pages are blank because all of the text is in a single column, which unnecessarily lengthens the permit without adding value. In Table 1 of the permits, due to the need to cite multiple regulations in column two, the other columns are under-utilized. While it would likely take a considerable effort to change all of the permits to a text format (see permits issued by Oregon or Idaho), SCAPCA should consider the benefits of making the changes during permit renewals.
2. SCAPCA's statements of basis should contain a discussion of the facility's compliance history. In a December 20, 2001, letter from EPA Region 5 to the Ohio EPA, EPA provided guidelines on the content of an adequate statement of basis that meets the requirements of 40 C.F.R. § 70.7(a)(5). That letter states, among other things, that the statement of basis should include factual information that is important for the public to be aware of including the compliance history of the source such as inspections, any violations noted, a listing of consent decrees into which the permittee has entered and corrective action(s) taken to address noncompliance.
3. SCAPCA's statements of basis should contain a discussion of facility permitting history. This type of discussion is important to allow the reader to analyze what requirements might potentially apply to the source and to serve as a record of facility changes for determining applicability for minor new source review (NSR) and prevention of significant deterioration (PSD) purposes.
4. It would be helpful if the statement of basis included a discussion regarding whether a facility is a major source of hazardous air pollutants.

Other Observations

None.

B. General Permits

SCAPCA has not developed or issued any general permits.

C. Monitoring

Good Practices

1. The SCAPCA statements of basis contained a very thorough description of the bases for each permit condition. In particular, the bases for monitoring requirements were addressed clearly and comprehensively.
2. Where applicable, SCAPCA permits list the reasonable precautions that SCAPCA expects permittees to consider and implement through their periodic inspection programs. The list of reasonable precautions was developed through the experience that SCAPCA and permittees have gained over the years and provides good guidance for permittees. This is a very useful element of SCAPCA's permits.

Concerns

1. SCAPCA's permits contain general testing requirements that include the ability to have alternative test methods approved by SCAPCA. The permit cannot authorize approval of an alternative test method outside of the permit revision process. In addition, SCAPCA cannot approve an alternative to the test method that is approved as part of the state implementation plan (SIP). See 40 CFR 51.212.
2. Although SCAPCA requires facilities to develop a monitoring plan detailing how inspections will be performed and how records will be kept, the monitoring plan is not incorporated into the permit. As a result, much of the compliance assurance provisions for various emission units are essentially "off-permit." Furthermore, there are no provisions for SCAPCA approval or oversight of the monitoring plan. There are two options for addressing this issue. First, the entire plan could be attached to the permit and incorporated by reference into the permit. Revisions to the plan could then be incorporated into the permit through the part 70 permit revision procedures. Second, SCAPCA could pull out from the plan and include in the permit the key provisions for assuring compliance with the emission limits, such as the pressure drop range for a scrubber.
3. Some of SCAPCA's permits allow for visible emission observations to monitor compliance with a particulate limit other than opacity. When this approach is used, and any threshold for action other than "any visible emissions" is relied upon, a relationship between the emission limit and opacity should be justified through emission testing or other reliable information. Likewise, available emission testing results should have been used for this purpose. In the case where "any visible emissions" is used, the general concept that something will be visible before a compliance problem exists is generally reasonable justification.
4. The frequency of source testing should generally depend on how close actual emissions are to the standard. More rigorous monitoring, recordkeeping and reporting requirements should generally be required when source tests indicate that actual emissions are very close to emission limits. Under such circumstances, source testing once every five years does not generally provide reasonable assurance of compliance. In addition, even in the case of more frequent source testing, the permit should also generally require monitoring of the same operational parameters that were monitored during the most recent compliant source test to ensure that the equipment is operating in the same manner as it did during the compliant source test. In a peaking plant permit we reviewed, the monitoring, recordkeeping and reporting requirements do not appear adequate to assure compliance with the emission limits, as actual emissions of certain pollutants appear to be very close to the corresponding emission limits.

5. The monitoring, recordkeeping and reporting requirements in permits are numbered such that it is very difficult to cite a particular section of a requirement. In the case of correspondence or enforcement action, it is necessary to cite a more general requirement (e.g. 1M, 2M etc.) and then describe the specific action of interest. It is probably useful to establish a hierarchical numbering structure within each condition.

Other Observations

None.

D. Public Participation and Affected State Review

Good Practices

1. In addition to publishing a public notice in a newspaper of general circulation, SCAPCA uses the Washington Department of Ecology Air Operating Permit Register and also posts the notices on the SCAPCA website. In fact, all of SCAPCA's Title V permits, statements of basis and attachments are posted on their website. Notices are also sent to a list of affected states and tribes.

Concerns

1. Like many of the permitting authorities across the country, SCAPCA provides the permittee with a pre-draft permit for review and comment before the draft permit goes out for public comment. Soliciting the permittee's input on the factual aspects of the permit can help to reduce errors in the permit and help educate the permittee on its obligations under the permit. Working with the permittee on developing the substantive permit requirements through multiple permit iterations can, however, create the impression that the permit issuance process is not an open process. SCAPCA should carefully balance these interests as it works with permittees during the development and issuance of Title V permits.

Other Observations

1. Public involvement is an important part of the Title V process. The Clean Air Act requires states to solicit public comment on draft permits and to provide the public the right to challenge permits in state court. Although SCAPCA meets these requirements, less than 10% of their Title V permits receive comments. SCAPCA does not provide outreach to the public on how the Title V program works or how the public can participate in the review and issuance of Title V permits. Nor does SCAPCA implement any type of environmental justice program or provide notices in languages besides English. By providing basic training to the public on how the Title V program works and how the public can participate in the review and issuance of Title V permits, SCAPCA could help ensure a more meaningful public participation process.

E. Permit Issuance / Revision / Renewal

Good Practices

1. SCAPCA made good progress in issuing permits to their initial Title V sources.
2. SCAPCA has received 4 significant permit modification requests, which were processed on average, within 6 months. None of the modification actions exceeded the Part 70 timeframe of 18 months.
3. When public noticing permit revisions, SCAPCA provides a narrative description of the proposed permit revision in the statement of basis, and presents the permit in an underline/strikeout format so that changes are readily identifiable. In addition, potential commentors are advised that only the portions of the permit that are in underline/strikeout format are subject to review and comment.
4. Of the four renewal applications received by SCAPCA, all were submitted timely and complete. This may in part be due to the fact that SCAPCA mails the renewal application to each facility.

Concerns

1. Permits for three of the four renewal applications received by SCAPCA were issued late, due to resource constraints in prioritizing issuance of the initial permits. SCAPCA feels that with all of the initial permits issued, future renewal permits will be issued on time.

Other Observations

1. SCAPCA would like to see guidance developed by EPA to assist permit writers and sources in evaluating whether a proposed revision qualifies as an administrative amendment, off-permit change, significant or minor revision, or requires that the permit be reopened.

F. Compliance

Good Practices

1. One of the goals of the Title V program is to improve compliance at permitted facilities and thereby reduce air emissions. SCAPCA noted that the permit development process resulted in resolution of a number of compliance issues.
2. We strongly support SCAPCA's compliance certification form to the extent it requires the permittee to certify its compliance status on a permit term-by-permit term basis. Requiring a permittee to show the permitting authority more detail of the process the permittee went through to review the compliance status of the facility will minimize the likelihood that potential noncompliance issues are overlooked. We believe this effort will in turn improve compliance overall. It is difficult to argue that this approach imposes a greater burden on permittees because permittees, as part of their obligation to conduct a reasonable inquiry into their compliance status, should be going through this same process even with a shorter, blanket certification form.

Concerns

1. Like many permitting authorities, SCAPCA requires corrective actions when certain monitored parameters are outside of the acceptable range. This is a practical approach for assuring potential operational problems are addressed promptly. When using this approach, SCAPCA should clarify when a deviation occurs (when the unit is outside the range or if corrective action is not taken), such that the appropriate records are created and reported. Furthermore, SCAPCA should add recordkeeping so each event of operation outside the acceptable range is documented, even if it is not a deviation.

Other Observations

1. The focus of this Title V program review was on SCAPCA's implementation of its Title V program. Accordingly, in conducting this Title V program review, EPA reviewed SCAPCA's compliance certification and semiannual monitoring report forms, but did not review completed forms submitted by Title V facilities to determine the extent of compliance with Title V requirements in SCAPCA's jurisdiction and whether SCAPCA is taking appropriate enforcement actions in response to noncompliance. EPA also conducts periodic reviews of state and local Clean Air Act enforcement programs. These enforcement reviews look at various facets of each agency's compliance and enforcement programs.
2. In the questionnaire, SCAPCA requested more definitive guidance from EPA on compliance certifications.

G. Resources and Internal Management Support

Good Practices

1. SCAPCA has issued all of their initial Title V permits. SCAPCA seems to have been able to avoid and manage staff turnover in the Title V program. In the history of SCAPCA's Title V program, the agency has had only two permit engineers.
2. SCAPCA maintains a spreadsheet-based accounting system that tracks revenues and costs for the Title V program accurately and in detail.

Concerns

1. On-site interviews indicated that there may be confusion related to allocation of permitting staff time (labor cost) to Title V and non-Title V budgets. Activities associated with new source review (NSR) permit preparation are not Title V fundable activities, even if the project is at a Title V source. Title V permit revisions to accommodate NSR permit terms, and agency activities related to implementation of NSR requirements contained in Title V permits are examples of activities that may be billed to Title V. However, establishing or revising site-specific NSR permit terms may not be billed to Title V. SCAPCA permitting and accounting staff should examine this aspect of their internal billing system and change it as needed.
2. On-site interviews also indicated that there may be confusion related to allocation of Title V penalties received by SCAPCA. Penalties cannot be attributed as Title V revenues and used to fund Title V activities. SCAPCA permitting and accounting staff should examine this aspect of their revenue and expenditure accounting system and change it as needed.
3. It appears that SCAPCA's Title V permit engineer has had limited access to Title V training. Because of the limited demand in the geographical area, it is very unlikely that training opportunities will occur in Spokane. Resources must be available for staff to travel to proximate population centers such as Seattle, Portland and Denver to access the latest and complete Title V and related training.
4. SCAPCA's Title V costs have exceeded revenues for a number of years. At the time of EPA's visit to SCAPCA's offices, the program had amassed a \$77,000 deficit, which has been subsidized by local assessment money (from cities and local governments – this is not grant money or Title V money). As EPA advised SCAPCA in a letter dated August 15, 2002 (Attachment II), failure to collect sufficient fees to support a Title V program is a program deficiency that is grounds for withdrawal of SCAPCA's Title V program. EPA's expectation is that SCAPCA revise its fee structure expeditiously so that its Title V program is self-funding.

Other Observations

1. SCAPCA has only 0.8 full time employees in the Title V permitting and program development operations. This staff member is also the only Professional Engineer on staff at SCAPCA, and has duties related to signing off on construction permits. It remains to be seen whether 0.8 FTE can sustain the current Title V program, support the NSR permitting efforts and accommodate any changes to the Title V program.
2. SCAPCA requested that EPA should conduct Title V training as in the recent past. Examples include an agency-only 1-day workshop covering a variety of topics, and including legal and industry speakers.

H. Title V Benefits

Benefits Identified by SCAPCA

In response to the program review questionnaire and during the on-site interviews, SCAPCA identified a number of benefits that have resulted from implementation of the Title V program.

1. Some concepts developed through the Title V program are being used in non-Title V permits (e.g., writing clearer and more enforceable NSR conditions, better documentation of the basis for applicable requirements).
2. Drafting and issuing Title V permits resulted in more complete information and knowledge about the universe of facilities. SCAPCA staff and facility operators gained a better understanding of a number of programs that are folded into Title V permits, including new source performance standards (NSPS), SIP requirements, and minor and major NSR.
3. Permit writers improved their skills in devising monitoring terms that assure compliance and writing enforceable permit terms, as well as their knowledge of applicability criteria for NSPS, NSR, and other Clean Air Act programs.
4. In some instances the reviews conducted during permit preparation uncovered compliance issues that were subsequently resolved.
5. Permittees have increased the use of self-audits and environmental management systems as part of compliance efforts. In addition, increased resources devoted to environmental control systems (e.g. maintenance of control equipment and installation of improved control devices) have been noted. In general, facility owners and operators are more aware of compliance obligations.
6. Compliance with Title V permits may have contributed to emission reductions (which could also be due in part to an economic downturn). Emission reductions have also resulted from facilities assuming emission limits to exit the Title V program.
7. Title V fees have improved support of the agency permitting/compliance efforts by providing a stable source of funding when compared to other state programs.
8. Development of Title V permits has also helped to identify smaller emission units at Title V sources.
9. Overall, the Title V program has resulted in a greater awareness by affected facilities of air quality requirements.

I. Document Review (Rules/Forms/Guidance)

Good Practices

1. Having standard forms for reporting deviations, for semi-annual monitoring reports and annual compliance certifications greatly improves the quality of compliance certifications and other reports. In general, the forms are comprehensive and the instructions are helpful in providing the source with guidance in how to fulfill their reporting obligations.

Concerns

1. SCAPCA updates their rules periodically to adjust their fee rates. EPA should be apprised of rule revisions. All rule revisions should be routinely submitted for EPA review and approval, even the routine fee adjustments.
2. On Form A-1, the questions in items 10 and 11 imply that a permittee has a choice regarding whether such changes should be integrated into the permit. A renewal permit should incorporate all off-permit changes made during the prior permit term rather than continue to keep them off-permit.
3. Form A-1 (item 22) and the instructions for the form omit the important qualification that ambient air quality data and air emissions data are not entitled to confidential treatment. These documents should also include the qualification that the information relate to “the production or process” unique to the applicant. It would be helpful to cite to state law on confidentiality (RCW 70.94.205).
4. In the instructions to Form A-1 (item 22), some aspects of claiming information as confidential under 40 CFR Part 2 are summarized. It would seem more appropriate for SCAPCA’s form to focus on the requirements for claiming information as confidential under State law (RCW 70.94.205), rather than federal law, since it is state law that will govern in the first instance (until the permittee is directed to provide the information directly to EPA). In addition, EPA prefers that SCAPCA simply reference federal law and not summarize it.

Other Observations

1. Although the forms for semi-annual monitoring reports and annual compliance certifications are standardized, the forms themselves are tailored by SCAPCA to the particular permittee.