



**Montana Department of Environmental Quality (MDEQ)
Title V Program Review**

Conducted by

**United States Environmental Protection Agency (USEPA)
Region 8**

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Executive Summary

In June 2014, the United States Environmental Protection Agency (EPA) conducted the third round review of the Montana Department of Environmental Quality's (MDEQ) Title V operating permits program. This review was accomplished via a conference call with MDEQ as opposed to the site visits conducted during the first two reviews. The first round of the program review was conducted in fiscal year 2003. EPA issued the final report for the first round in May 2004. The second round review was conducted in fiscal year 2008. EPA issued the final report for the second round in August 2008. The third round evaluation (like the previous evaluations) consisted of a discussion of MDEQ's responses to the program evaluation questionnaire. The questionnaire was developed during the second review and revised slightly for the third round (the first round questionnaire was more expansive than the second and subsequent third round evaluation questionnaires). The evaluation also consisted of a title V program fee audit questionnaire.

The goal of the third round evaluation was to review any concerns raised by MDEQ or EPA in the prior evaluation (second round), to determine how any unaddressed concerns might be addressed, to identify any good practices developed by MDEQ that may benefit other permitting authorities and EPA, document any areas needing improvement, and learn what assistance EPA can provide.

EPA Concerns from the Second Round Evaluation:

Visual Survey Language – During the second round review, EPA recommended that MDEQ revise the Visual Survey Language (VSL) in Title V permits. The language at the time required facilities to conduct a visual survey of emitting units for any excessive emissions. Excessive emissions were defined as any visible emissions which meet or exceed 15% opacity. EPA was concerned that the language did not specify how the observer should quantify the opacity. As a result of EPA's second round review comments, MDEQ has revised the VSL used in their Title V permits.

Prompt Deviation Reporting – EPA recommended that MDEQ revise the “prompt deviation reporting” language. EPA's concern was that reporting deviations under ARM 17.8.1212(3)(b) as part of routine reporting at least every six months has been deemed by the courts *not* to be prompt. MDEQ has revised this language based on EPA's recommended language.

Title V fee Audit – MDEQ provided detailed information about Title V revenues and expenses by making available MDEQ's financial specialist and samples of fee tracking forms and computer generated reports. However, EPA recommended that MDEQ design an additional report that explicitly identifies Title V operating permit revenues and expenses in a simpler format than is currently used. As a follow up to the second round review comments, the MDEQ can now generate the report if requested.

EPA Concerns from the Third Round Evaluation:

Visual Survey Language-While the VSL was modified following the second round review, MDEQ requested assistance in further refining the VSL. MDEQ noted that the modified VSL allowed some permittees to perform Method 9 sampling on a semiannual schedule. To assist MDEQ, EPA provided MDEQ the *Region 7 Policy on Periodic Monitoring for Opacity*. The Region 7 policy allows for visual observations that are qualitative as opposed to quantitative.

Conclusions

MDEQ has provided all of the necessary information to EPA during this review and has addressed issues raised by EPA. MDEQ's field experience and knowledge of air permitting has assisted EPA in understanding the challenges faced by the state. No significant deficiencies were noted during this review.

Introduction

EPA conducted this program evaluation as part of its obligation to oversee and review state programs that have been approved by EPA, and in response to recommendations from an audit conducted in July 2002 by the Office of Inspector General.

The state of Montana operates a fully EPA approved program that allows it to implement the requirements of title V of the Clean Air Act (CAA), including the issuance of operating permits. EPA has a statutory responsibility to oversee the programs it approved by performing oversight duties, including occasional program reviews. Such responsibilities include overseeing the activities of the State program to ensure that local, regional, and national environmental goals and objectives meet minimum requirements outlined by the federal regulation.

Objective of the Program Review

Following the completion of the first and second round reviews for states in Region 8, EPA nationally committed to a third round of reviews. While the questionnaire used for the first round reviews was developed by a “national workgroup” for national consistency, the second and third round review questionnaires were developed by the Regions to emphasize Regional priorities that were identified during the first round reviews.

Region 8 consulted with other Regions about the approach and format of the questionnaire and the extent of the follow-up review of State programs. Region 8 concluded that the follow-up reviews do not need to be as extensive as the first round reviews, but should build on the findings and recommendations of the first round review.

The main objectives of the third round reviews are to conduct a follow-up to the first and second round reviews by: 1) ensuring that areas of concern identified by EPA during the first and second rounds have been addressed or are being addressed satisfactory; 2) ensuring that the MDEQ concerns have also been addressed or are being addressed to MDEQ’s satisfaction; 3) identifying and documenting new good practices that can benefit other permitting authorities; 4) identifying and documenting areas of concerns that need improvement; and 5) getting feedback on how EPA can be of service to the permitting authorities.

Program Review Process

In June 2014, the United States Environmental Protection Agency (EPA) conducted the third round review of MDEQ’s Title V operating permits program. This review was accomplished via a conference call with MDEQ as opposed to the site visits conducted during the first two reviews. The first round of the program review was conducted in fiscal year 2003. EPA issued the final report for the first round in May 2004. The second round review was conducted in fiscal year 2008. EPA issued the final report for the second round in August 2008.

The first round review was conducted in response to the 2002 Office of Inspector General audit recommendations that EPA: examine ways it can improve permitting authorities’ Title V operating permit programs and expedite the permit issuance rate; note and document good practices which other agencies can learn from; assess deficiencies in the program; and to learn

how EPA can help the permitting authorities improve their overall program. In meeting these goals, EPA developed a questionnaire that was sent to each permitting authority and followed up with on-site visits to conduct interviews and file reviews. The findings of MDEQ Title V operating permit program's review were outlined in the May 2004 final report with the main categories as follows: a) programmatic areas where MDEQ has improved in the past five years; b) programmatic areas where improvements can be made; and c) programmatic areas where MDEQ needs additional assistance from EPA.

The second round review focused primarily on: 1) assessing and documenting MDEQ progress in areas where EPA had previously identified as areas needing improvements; 2) assessing permitting authorities' evaluation of EPA's effort in providing additional assistance to improve its Title V operating programs; 3) identifying continued improvements in the program's previously identified strong attributes; 4) identifying new good practices by the State since the first round review and 5) conducting a Title V operating permit program fee audit.

The format of the third round review differed than the first two rounds. EPA provided a standard Title V questionnaire (Attachment 1) and fiscal tracking questionnaire (Attachment 2) to MDEQ as has been done in the previous two reviews. In addition, since the third round program review was conducted via conference call, not in person, a follow-up list of questions based on MDEQ's third round review questionnaire responses was also forwarded to the state (Attachment 3) in advance of the call.

As mentioned above, a separate questionnaire was provided by EPA to MDEQ for the title V fee audit (State/local Title V Program Fiscal Tracking Evaluation Document). The purpose of the fee audit is to determine whether the following are satisfied:

- Sources are being billed in accordance with fee requirements and are paying the required fees;
- Division of expenses is identified by MDEQ between title V and non-title V programs;
- Features are integrated into MDEQ's accounting/financial management system which will identify title V revenue and expenditures separate from other funding, and which certify the disposition of title V funds;
- Title V fees collected from sources are used by MDEQ to pay for the entire title V program; and
- No such fees are used as CAA Section 105 grant matching.

During the third round review, EPA found that MDEQ had addressed the major issues identified by EPA as needing improvement during the first two reviews. The issues addressed included incorporating "credible evidence busting language" into its operating permits, improving "testing frequencies" language on a case-by-case basis, and prominently listing all regulatory citations in the permit.

Program Review Procedure

EPA sent the third round review questionnaire and the Title V fee audit questionnaire to MDEQ on March 24, 2014. MDEQ submitted an electronic copy of the completed questionnaires to EPA on April 28, 2014. After the review of MDEQ's responses to both the Title V program review and Title V fee audit questionnaires, EPA sent an e-mail on June 18, 2014 to MDEQ with additional questions to be discussed during the conference call. The conference call took place on June 24, 2014.

During the conference call, EPA's Montana Air Permit Coordinator (Robert Duraski) and Colorado Air Permit Coordinator (DJ Law) spoke with MDEQ's staff. MDEQ's staff in attendance were: Julie Merkel; Air Permitting Section Supervisor and Ed Warner; Lead Permitting Engineer.

During the June 24, 2014 conference call, EPA staff began the review by briefly stating that the purpose of the review was to conduct a follow-up to the previous reviews. EPA informed MDEQ that EPA's main objectives of conducting an on-going review of States' program are twofold. First, EPA seeks to continue to effectively perform its regulatory oversight obligation under the Clean Air Act. Second, EPA hopes such periodic reviews will improve communication and the relationship between the agency and MDEQ and thus continue to improve State's Title V operating program. EPA and MDEQ then discussed topics as listed in the follow-up questionnaire.

Follow-up to Second Round Review

Visual Survey Language – During the second round review, EPA recommended that MDEQ revise the VSL in Title V permits. The language at the time required facilities to conduct a visual survey of emitting units for any excessive emissions. Excessive emissions were defined as any visible emissions which meet or exceed 15% opacity. EPA commented that the language did not specify how the observer should quantify the opacity. EPA recommended MDEQ revised the language by requiring EPA Method 9 be used to quantify the opacity if the observer sees *any* emissions during a visual survey. Prior to the third round review, MDEQ staff raised concerns about “any visible emissions” triggering a method 9 test, believing this was excessive under some conditions. EPA agreed that the staff's concerns needed to be addressed and raised the issue during the third round review. The results of these discussions are discussed below under the *Third Round Review Findings and Comments*.

Prompt Deviation Reporting – EPA recommended that MDEQ revise the “prompt deviation reporting” language. The language at the time stated “...to be considered prompt, deviations shall be reported as part of routine reporting requirements under ARM 17.8.1212(3)(b) and, if applicable, in accordance with the malfunction reporting requirements under ARM 17.8.110, unless otherwise specified in an applicable requirement.” EPA commented that reporting deviations under ARM 17.8.1212(3)(b) as part of routine reporting at least every six months has been deemed by the courts *not* to be prompt. See *NYPIRG v. EPA*, 427 F.3d 172, 184-185 (2nd Cir. 2005) in which the court concludes that quarterly reporting may or may not be “prompt,” depending on the circumstances, but semi-annual reporting is a separate CAA requirement, and

therefore prompt reporting must be more frequent than semi-annual. MDEQ has revised this language based on EPA's recommended language.

Title V fee Audit – MDEQ provided detailed information about Title V revenues and expenses by making available MDEQ's financial specialist and samples of fee tracking forms and computer generated reports. However, EPA recommended that MDEQ design an additional report that explicitly identifies Title V operating permit revenues and expenses in a simpler format than is currently used. Such a report should also track the number of "Full time Employees" (FTEs) supported by Title V fees at any particular time. EPA noted that such a report is needed to satisfy the requirement that permitting authorities demonstrate "how required fee revenues are used *solely* to cover the costs of meeting the various functions of the permitting program." 40 CFR 70.9(d). The MDEQ can now generate the report upon request.

Third Round Review's Findings and Comments

Visual Survey Language

Background: During the second round review, EPA noted that the VSL in MDEQ's permits included the following:

"Once per calendar week during daylight hours, Facility shall visually survey the Emitting Unit for any sources of excessive emission. For the purpose of this survey, excessive emissions are considered to be any visible emissions, which meet or exceed 15% opacity..."

EPA commented that:

"Because 15% opacity in the above language cannot be quantified by conducting only a visual survey. Quantification of opacity can only be achieved by conducting EPA approved Method 9 opacity reading. EPA recommends revising the language as follows "for the purpose of this survey, excessive emissions are considered to be any visible emissions, which meet or exceed a Method 9 established 15% opacity" or similar language."

Prior to the third round review, MDEQ requested assistance in further refining the VSL. To clarify the language per EPA's request during the second round review, MDEQ allowed the permittee the choice between performing a Method 9 test when any visible emissions were observed *or* simply performing semiannual Method 9 test with no visible emission trigger. Since most sites have no visible emissions, the first option of performing a Method 9 test when emissions were observed was considered adequate.

MDEQ's concern related to sites that routinely had visual emissions. Such facilities would naturally opt to collect semiannual Method 9 test since the option to "perform a Method 9 test when any visual emission are observed" would require performing a Method 9 test every time they performed a visual survey. MDEQ also pointed out that semiannual Method 9 test may not satisfy the "continuous compliance" requirement of the CAA.

To assist MDEQ, EPA proposed MDEQ consider adopting EPA's *REGION 7 POLICY ON PERIODIC MONITORING FOR OPACITY*. The Region 7 policy allows for visual observations that are qualitative as opposed to quantitative. If the observer simply notes an increase in the emissions at a site, this observed increase would be used to trigger a Method 9 test. MDEQ will consider the idea and offered to forward any proposed change in the VSL to EPA. EPA forwarded the Region 7 policy for consideration to MDEQ following the meeting.

Issues affecting the Title V program that MDEQ considered particularly important.

MDEQ stated in the questionnaire that:

“Permit appeals and the resources that it takes to engage in the litigation process is becoming more and more of an issue for the Department. Specifically, appeals and special interest in coal-fired EGUs has become an issue.”

In the discussion with EPA staff, MDEQ stated that the major challenges faced were from organizations questioning the power plant's Continuous Air Monitoring plans. The issue was the validity of a linear correlation between the PM measurement and opacity adopted in these permits. The problem was the “Goodness of Fit,” or R^2 value, was low implying that the linear correlation did not predict the PM well given the opacity. The monitoring plans were changed to the satisfaction of the petitioners by requiring Continuous Emission Monitoring Systems (CEMS) for PM. Addressing these appeals consumed a substantial amount of MDEQ's staff hours.

MDEQ then mentioned that another power plant permit just completed its public review and no comments were received. MDEQ feels the lessons learned from the previous appeals helped them prepare the most recent permit in such a way that appeal concerns with monitoring were adequately addressed.

Percent of Title V permits expired before they can be renewed

The States response to the questionnaire was:

“100% expired before they could be renewed. (All renewals were posted final after the previous versions' expiration date)”

EPA discussed the timeliness challenges MDEQ encountered when renewing permits. MDEQ explained that the permittee is allowed to submit their renewal application eighteen to 6 months prior to expiration. The permittee has commonly submitted applications close to the 6 month limit which greatly reduces the time MDEQ has to review and finalize the renewal.

When MDEQ reviewed their permit database they noted that 100% of the renewals were completed within eighteen month of the actual date the permit was submitted. Based on this data, if the renewal applications were submitted closer to the “eighteen months prior to

expiration” as opposed to being submitted closer to the “6 month prior to expiration” requirement, a large fraction of the renewals would have been renewed prior to expiration.

While the permit renewals are submitted in accordance with the regulations and MDEQ has approved 100% of the renewals within eighteen months of the submittal date, methods to ensure the permittees submit renewals closer to the “eighteen months prior to expiration” date are being investigated by the MDEQ.

MDEQ Organization and Staffing

At the time of the review, the MDEQ Air Permitting Section was located in the Air Resources Management Bureau, under the Air Permitting, Compliance and Registration Program. The Air Permitting Section works closely with the Air Compliance Section and Technical Support Section. The Air Permitting Section is generally responsible for construction and operating permitting programs. At the time of the review, MDEQ had a staff of 5 permit writers, 1 lead permit engineer and 1 program manager. Two positions were vacant. The staff shifts as required between Title V, NSR and minor permits. An organization chart is provided as Attachment 4.

Training

Some of the permit engineers are new and have required on the job training. The permit staff has received adequate training. The MDEQ employees participate in training based on availability. Additionally, the permitting staff participates in training offered in meetings, permit workshops and on the job training. MDEQ has many permittees who have not attended Continuous Air Monitoring (CAM) training, Maximum Achievable Control Technology (MACT) training would also be beneficial.

Fee Audit

EPA did not conduct a formal Title V operating permit fee audit during the first round review. A fee audit was conducted during the second round review. A fee questionnaire was submitted during the third round, but no audit was performed.

During the third round review, EPA and MDEQ discussed MDEQ’s proposed fee increases. The fees in place during the review were:

- \$500 application fee;
- Annual operating of \$800 base administrative fee; plus
- \$38.24/ton of PM₁₀, SO₂, Pb, NO_x, and VOCs emitted per year.

The proposed fee increases were as follows:

- ARM 17.8.504(2)(a): New Title V operating permit from \$500 to \$6500
- ARM 17.8.504(2)(b): Title V operating permit renewal from \$500 to \$4500
- ARM 17.8.504(2)(c): Title V operating permit modification from \$500 to \$3500

During the conference call, MDEQ mentioned that the fees will not be increased. An economic analysis of their cash flow indicated that the program could sustain itself for five years without these increases.

Conclusion

In conclusion, MDEQ implements an effective Title V program that continues to evolve as challenges arise. MDEQ continues to communicate with EPA staff to address issues in proposed permits. The Title V fee review demonstrates MDEQ's ability to continue to operate a program that meets the fee requirements of Part 70. MDEQ has provided all of the necessary information to EPA during these reviews and has addressed issues raised by EPA. MDEQ's Title V program continues to meet the requirements of the Part 70 regulations. No significant deficiencies were noted during this review.

Attachment 1

Title V Third Round State Program Review Questionnaire and Responses by MDEQ

Title V Third Round State Program Review Questionnaire

I. General Questions and Responses to First and Second round Reviews

A. *What has been done in response to EPA recommendations for improvements from the second round program review?*

The following programmatic areas were identified as needing improvement in the previous program review:

1. ***Visual Survey Language*** – The Department has updated visual survey language which is being included in all of the renewals, as appropriate. An example of the updated language is as follows:

Once per calendar week, during daylight hours, (*facility name*) shall visually survey the (*emitting unit*) for any visible emissions. If visible emissions are observed during the visual survey, (*facility name*) must conduct a Method 9 source test. The Method 9 source test must begin within one hour of any observation of visible emissions. If visible emissions meet or exceed 15% opacity based on the Method 9 source test, (*facility name*) shall immediately take corrective action to contain or minimize the source of emissions. If corrective actions are taken, then (*facility name*) shall immediately conduct a subsequent visual survey (and subsequent Method 9 source test if visible emissions remain) to monitor compliance. The person conducting the visual survey shall record the results of the survey (including the results of any Method 9 source test performed) in a log, including any corrective action taken. Conducting a visual survey does not relieve (*facility name*) of the liability for a violation determined using Method 9 (ARM 17.8.101(27)).

Method 9 source tests must be performed in accordance with the Montana Source Test Protocol and Procedures Manual, except that prior notification of the test is not required. Each observation period must be a minimum of 6 minutes unless any one reading is 20% or greater, then the observation period must be a minimum of 20 minutes or until a violation of the standard has been documented, whichever is a shorter period of time (ARM 17.8.1213).

2. ***Prompt Deviation Reporting*** – The Department has updated the prompt deviation language and has incorporated the revised language in at the time of permit renewals. The language is revised as follows:

The permittee shall promptly report deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. To be considered prompt, deviations shall be reported to the Department within the following timeframes (unless otherwise specified in an applicable requirement):

1. For deviations which may result in emissions potentially in violation of permit limitations:

- a. An initial phone notification (or faxed or electronic notification) describing the incident within 24 hours (or the next business day) of discovery; and
 - b. A follow-up written, faxed, or electronic report within 30 days of discovery of the deviation that describes the probable cause of the reported deviation and any corrective actions or preventive measures taken.
2. For deviations attributable to malfunctions, deviations shall be reported to the Department in accordance with the malfunction reporting requirements under ARM 17.8.110; and
 3. For all other deviations, deviations shall be reported to the Department via a written, faxed, or electronic report within 90 days of discovery (as determined through routine internal review by the permittee).

Prompt deviation reports do not need to be resubmitted with regular semiannual (or other routine) reports, but may be referenced by the date of submittal.

3. Title V Fee Audit

The Department will provide reports to EPA as requested to the extent that the Department has the appropriate tools to create such reports. If the Department is not providing reports satisfactory with EPA requirements, the Department will work with EPA to produce the requested information.

B. What key EPA comments on individual Title V permits remain unresolved (EPA to determine this)? What is the State's position on these unresolved comments?

The Department is unaware of any unresolved EPA comments. If there are unresolved EPA comments brought to the Department's attention, the Department will work diligently with EPA to find a satisfactory solution.

C. Have any procedures in Title V changed (e.g., public participation, petitions, communication with EPA) since the second round review? (If so, which ones)

No. The Department has worked more closely with EPA to communicate Title V permit actions/renewals that generate a high level of interest from outside groups, so that EPA is aware of public interest levels. The Department appreciates EPA's input in this regard.

D. What does the state think it's doing especially well in the Title V program?

The Department believes it is doing well in writing clear and concise conditions, with compliance demonstrations, reporting and recordkeeping requirements that are understandable by the facility and the public. This helps the facilities implement the compliance demonstrations, and helps the public understand how the Department is determining compliance with the conditions. The Department also believes it is doing well communicating with facility representatives prior to application submittal and gathering accurate and complete information up front which reduces the incompleteness issues of applications.

E. Are there any issues affecting the Title V program in your state right now that you consider particularly important?

Permit appeals and the resources that it takes to engage in the litigation process is becoming more and more of an issue for the Department. Specifically, appeals and special interest in coal-fired EGUs has become an issue.

1. Which one would you rate as the most important?

Coal-fired EGU Title V permit appeals

2. Are there any EPA policies or regulatory issues that are causing concern?

There are no EPA policies or regulatory issues that are causing concern at this time.

3. How can EPA help?

The continued communication and engagement of EPA with the Department is much appreciated.

II. Permit Issuance

A. Since the second round review, what percent of Title V initial permits have you issued within the regulatory timeframe specified in 40 CFR 70.7(a)(2)?

Approximately 75% of the overall population

B. Since the second round review, what percent of Title V significant permit modifications have you issued within the regulatory timeframe specified in 40 CFR 70.7(a)(2) and (e)(4)(ii)?

Approximately 96% of the Title V significant modifications have been issued within 18 months (as specified in 40 CFR 70.7(a)(2)). Approximately 96% of the Title V significant modifications have been issued within 9 months (as specified in 40 CFR 70.7(e)(4)(ii)). (Note: Only 3 late significant mods were issued in that time frame, and one of the applications was withdrawn so 2 late actions were counted. Those 2 actions took longer than 18 months. All the remaining were completed within 9 months)

C. What percent of Title V permits expire before they can be renewed?

100% expired before they could be renewed. (All renewals were posted final after the previous versions' expiration date)

1. For those permits that could not be renewed before they expired, what are the reasons they could not be renewed prior to their expiration?

According to our regulatory timeframes, a source must submit a renewal application no later than six months prior to expiration. Title V regulatory timeframes in Montana alone require 3.5 months, leaving only 2.5 months for application review, file review, CAM review, and approval, and permit modifications, as necessary. The entire 18 month

issuance timeframe is utilized to issue the permits appropriately. Review, and approval, and permit modifications, as necessary. The entire 18 month issuance timeframe is utilized to issue the permits appropriately. Review, and approval, and permit modifications, as necessary. The entire 18 month issuance timeframe is utilized to issue the permits appropriately.

D. Have unresolved violations created any delay in issuing Title V renewals?

Not significantly

E. Have permittees requested a hold in renewal for any reason?

None have thus far.

F. CAM

1. Are CAM plan requirements slowing the renewal process?

Not with a degree of significance.

a. If so, what is it about CAM that's problematic?

2. Where CAM plans have been inadequate, what have been the main types of inadequacies that have caused difficulties or delays in permit issuance?

The submittal of inadequate or insufficient indicators and lack of data correlation to demonstrate how they can be good indicators of compliance.

3. What difficulties have you had in getting better plans to be submitted?

Facilities have been very cooperative in providing any information requested by the Department. In some cases, if the information is inadequate, the draft permit is issued with what the Department believes are the appropriate parameters. The facility must then provide justification as to why that is not appropriate for their particular situation.

4. Have you had to supplement the CAM technical guidance document (TGC) with state-issued guidance?

No

5. Is CAM training adequate?

CAM training is adequate. However, the Department has many permittees who have not attended the training.

6. Are CAM applicability determinations resource-intensive or difficult?

Generally they are not, however, determinations on older units that have less emission information available (particularly for uncontrolled emissions) may require more resources and research to make a Department determination. In addition, less experienced staff who have not had CAM training, may find the determinations more difficult. Specifically, staff need more training and experience to know what level of detail is required by the Department to check statistical analysis and/or data correlations that are used to support information within the CAM plan.

G. What improvements does the State believe it has made to the management of the Title V permit program, since the second round review, that could be described as best practices and could be of interest to other States?

The Department has worked on developing good working relationships with facility representatives as well as consulting firms to assist in the development of complete and accurate applications sooner in the process. Often times, facility representatives and/or consulting firms come in and talk to us prior to submittal of an application to talk about expectations and requirements of the permit application.

H. What improvements does the state plan to make, if any, in the management of the Title V permit program within the next five years?

The Department plans on the continued development of staff by engaging in training both internally and externally. CAM is an example of a training the Department desires to have for all of the permitting and compliance staff. The Department is also working on promoting collaboration between the permit writers and compliance inspectors prior to permit issuance to ensure that the compliance demonstrations, recordkeeping, and reporting requirements are understandable and accurate. The staff are also working collaboratively to ensure proper CAM plans are in place.

III. Public Participation

A. What forms of news media do you use to maximize public participation, for implementation of 40 CFR 70.7(h)?

The Department makes use of Newspapers of general circulation in the area of the facility in question as well as the Department's website.

B. Do you have a mailing list for Title V public participation for implementation of 40 CFR 70.7(h)(1)? If so, please provide it.

The Department maintains a general air quality interested parties list (used for rule notices, etc.), as well as lists that are application –specific (maintained by the permitter for that action). In the public notice, information is provided on how to contact the permitter for the particular action. The Department does not have a list specifically for Title V public participation at this time, but would create one if it was requested and deemed to provide significant benefit.

C. Is there a policy which outlines the response to comments procedure or process, such as which comments are responded to, the time-frame for responding, how the permitting authority will respond, to whom, etc.?

An unwritten policy exists

1. *If written, can you provide a copy? If not written, could you describe the policy?*

All comments received are provided with a response in the technical review document of the permit when it is issued as proposed.

IV. Petitions

A. *Since the second round review, to what extent have Title V Petitions:*

1. *Changed how permits are written;*

Two petitions have been filed in Montana since the second round review. However, the petitions were very similar to two Title V appeals, and were withdrawn at the time of the appeal settlements. The petitions did not result in a change in how the Department permits are written

2. *Resulted in re-openings of other permits;*

No permits were re-opened as a result of the petitions. However, the permits will be re-opened as a result of the appeal settlements.

3. *Resulted in an amended permitting process, to address any issues settled through petitions granted in full or in part?*

The permit process has not been amended to address petition issues.

V. EPA Relationship

A. *Is there any EPA policy, on Title V, that is causing problems or confusion?*

Not significantly.

B. *Has the state developed any tools, strategies, or best practices that have assisted in the inclusion of MACT subparts in Title V permits?*

The Department is taking a case-by-case approach to addressing the inclusion of MACT subparts in Title V permits.

C. *Is the issue of startup-shutdown-malfunction (SSM) emissions causing problems or confusion in Title V permit writing?*

SSM emissions for permitted pollutants are being addressed more in Montana Air Quality Permits. However, addressing them in Title V has added to permit processing time and confusion, in some cases.

1. *Has the state developed any tools, strategies, or best practices that have alleviated problems or confusion if either exist?*

The Department has worked on gaining a clear understanding of how SSM emissions are addressed in Title V as well as MAQPs.

D. Do you have any unaddressed training needs? What can EPA do to help?

As previously mentioned, the Department believes the permitting and compliance staff would benefit from CAM training. As mentioned in the second round, MACT training is also a needed resource particularly for those MACTs that affect more than one source category. EPA could assist by sponsoring or providing such training.

Attachment 2
State/local Title V Program Fiscal Tracking Evaluation Questionnaire and MDEQ
Responses

State/local Title V Program Fiscal Tracking Evaluation Document

Basic Questions for All Permitting Authorities	More Detailed Questions – Factors to Support a Permitting Authority’s Answer to the Basic Questions (Note: these are not all-inclusive, and some ideas will not apply in all cases)	Possible Resources Available
1. Title V Fee Revenue		
<p>Can the Permitting Authority show that sources are being billed in accordance with its fee requirements(s), and that sources are paying fees as required? YES</p>	<p>Where are the fee collection authority and the fee rate(s) specified? Is the Permitting Authority including referenced to these fee requirements in its Title V permits? Administrative Rules of Montana Title 17 Chapter 8 Subchapter 1210(2)(f) and ARM 17.8.Subchapter 5 in rules and the operating permit general conditions of every permit.</p> <p>List the fee rate(s) formula applicable for the time period being reviewed. (Include emission based fees, application fees, hourly processing fees, etc.). Fees effective DATE: \$500 application fee; annual operating of \$800 base administrative fee plus \$38.24/ton of PM₁₀, SO₂, Pb, NO_x, and VOCs emitted per year.</p> <p>Does the Permitting Authority anticipate any significant changes to its fee structure? Yes – The Department is prepared to initiate rulemaking for proposed amendments to permit application fees. The proposed Title V increases would be: ARM 17.8.504(2)(a): New Title V operating permit from \$500 to \$6500 ARM 17.8.504(2)(b): Title V operating permit renewal from \$500 to \$4500 ARM 17.8.504(2)(c): Title V operating permit modification from \$500 to \$3500</p> <p>What is the current status in States/locals with requirements to balance income and expenditures of the Title V program annually (i.e. , must rebate any overage of fees, etc.)?There is no regulatory requirement to rebate fees collected in excess of statutory appropriation.</p>	<p>Req’s/Auth: State/local Title V program legislation & regulation</p> <p>Permit ref’s: Permits state has written/submitted to EPA</p> <p>Fee Rate(s): State/local Title V program submittal, and then verify w/Permitting Authority that info is up to date.</p> <p>Billing/Payments: Permitting Authority records. Emission data may be in AIRS. If some fees are hourly, there should be some direct labor tracking mechanism (see accounting system, below).</p>

1. Title V Fee Revenue - Continued

Examine documentation of how the annual fees for sources are determined. Audit several sources' bills for accuracy.

- Are appropriate (actual or potential) emission records used for \$/ton based fees? How are the Permitting Authority and its sources determining actual emissions for fee purposes? **Actual emissions are used to assess fees and emissions are tracked by the required submittal of annual emissions inventories from each permitted source.**
- Are records kept (and used) for any hourly based fees? **NA**
- Review similar documentation for other types of fee mechanisms. **NA**

Billing

- How is the Permitting Authority notifying sources of the fees owed and due dates for payment? **Bills are mailed to sources annually.**
- Discuss how incoming payments are recorded to the appropriate accounts (receivings tracking). **The invoices are mailed out with the annual bill and are to be returned with fee payment. The invoices contain the appropriate revenue code.**

1. Title V Fee Revenue -- Continued		
	Payments... <ul style="list-style-type: none"> • Are the sources paying the total fees charged each year? Yes • Are they paying on time? Yes, Title V sources generally pay within 60 days of being billed. • If there's a collection problem, how is the Permitting Authority addressing it? Historically there has not been a collection problem with Title V sources. • Are late fees being assessed? If so, are the late fees being credited to the Title V accounts? Any late fee assessment for a Title V source would be credited to the Title V account. 	

2. Title V Expenditures

<p>Is the Permitting Authority identifying division of expenses between Title V and non-Title V programs? YES</p>	<p>What matrix is the Permitting Authority using to differentiate Title V activities from non-Title V activities? The Department differentiates Title V activities from non-Title V activities through the use of separate expense codes.</p> <p>Direct labor:</p> <ul style="list-style-type: none"> • If used by State/local program, review time sheets and instructions given to employees as to how to code information into the time sheet. If time sheets are not used, investigate method that State/local program uses to differentiate Title V and non-Title V direct labor. Task profiles are assigned to an individual to reflect the duties of their position. Task profiles differentiate between Title V and non-Title V direct labor costs. • Ensure that accounting system is set up to utilize the various coding information. Copy of accounting report provided. • Analyze time sheets/instructions (and/or other direct labor differentiation methods) for conformance with the matrix of acceptable Title V activities. See task profiles. 	<p>If used by State/local program, sample time sheets and instructions given to employees; equivalent records for alternate direct labor differentiation methods.</p> <p>Accounting system records showing that administrative/clerical personnel costs are accounted for in the Title V program</p> <p>Accounting system records showing that non-labor costs (travel, equipment, office space costs, etc.) are accounted for in some fashion and a portion is billed to Title V.</p> <p>EPA Guidance includes: “Matrix of Title V-Related and Air Grant-Eligible Activities, Information Document,” Office of Air & Radiation, May 31, 1994</p>
<p>2. Title V Expenditures -- Continued</p>		

	<p>Direct non-labor:</p> <ul style="list-style-type: none">• Does the Permitting Authority utilize an allocation system that separates travel and equipment costs for Title V and non-Title V functions? Yes • If so, are the allocations in accordance with the Permitting Authority's Title V/non-Title V activity separation? Yes • If not, are these included as part of indirect costs? (Direct non-labor needs to be addressed somewhere.) <p>Indirect labor & non-labor:</p> <ul style="list-style-type: none">• How are indirect labor & non-labor costs apportioned between Title V vs. non-Title V accounts? (Indirect costs include parts of secretarial & managerial overhead, paper & supplies, space, utilities, generalized computers, etc., that is not addressed as direct labor/non-labor) Indirect labor costs are apportioned on a percentage of salary and benefits. The current labor indirect rate is 22.96%. Indirect non-labor costs are apportioned on a percentage of the operating expenses. The current non-labor indirect rate is 4.00%. The Department differentiates Title V expenses from non-Title V expenses through the use of separate expense codes.	
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3. Accounting System (i.e., the system that provides for analysis of the Title V program revenue and expenditure information gathered above).		
<p>Has the Permitting Authority integrated features into its accounting/financial management system which will:</p> <ul style="list-style-type: none"> • Identify Title V fee revenues separate from other funding? Yes • Identify Title V expenditures separate from other expenses? Yes • Produce management reports, periodically and as requested, which the Permitting Authority will be able to use to certify as to the disposition of Title V funds? Yes – produce reports from the accounting system as well as management spreadsheet reports. 	<p>Describe the accounting structure that the Permitting Authority uses to differentiate Title V \$ from other funds. [i.e., govt. fund, enterprise fund, etc. -- for more detail on options, see the U of MD report.] The Title V funds are given their own revenue codes separating application fees and operating fees for Title V and non-Title V sources and expenditures are tracked on a Title V non-Title V basis.</p> <p>Does the accounting system have separate categorization for Title V and non-Title V funding and expenses? Yes.</p> <p>If yes, are these features being used to track Title V monies separate from non-Title V monies? Yes</p> <p>If no, does the Permitting Authority keep any separate records that identify Title V monies separate from non-Title V monies? Could such information potentially be integrated into an accounting/financial management system?</p>	<p>Review sample reports/specific reports for the time period being reviewed.</p> <p>For background: <u>Overview of CLEAN AIR Title V Financial Management and Reporting, A Handbook for Financial Officers and Program Managers</u>, Environmental Finance Center, Maryland Sea Grant College, University of Maryland, 0112 Skinner Hall, College Park, MD 20742, January 1997, [Publication Number UM-SG-CEPP-97-02]</p>

4. Separation of Title V from §105 grant and grant match funding		
<p>Can the Permitting Authority confirm that the Title V fees collected from sources are used to pay for the entire Title V program, and that no Title V fees are used as match to the CAA section 105 Air Program grant? Yes</p>	<p>Determine the federal §105 grant award received, and the amount of state/local funds used during the time period being reviewed. The worksheet provided (PPG Match) demonstrates that the Department collected enough non-Title V revenue to cover the required match without using Title V monies.</p> <p>Determine the Title V fees collected (and Title V funds available, if carryover of Title V fees is allowed by state/local regulations) during the time period being reviewed.</p> <p>Determine Title V expenditures during the time period being reviewed.</p> <p>Ensure that adequate non-Title V state/local funds were available to provide required match to the federal grant.</p> <p>Ensure that sufficient Title V funds were available to pay for the Title V program (i.e.-Title V program is self-supporting)</p>	<p>Grant files -- FSR's for applicable years. (See appropriate EPA Region grant & project manager staff)</p> <p>Permitting Authority accounting system reports showing revenue and expenditure summaries for Title V, grant, and other activities</p>

Attachment 3
Follow-up Questions for the Conference Call

MONTANA TITLE V PROGRAM REVIEW REQUEST FOR MORE INFORMATION

JUNE 18, 2014

In preparation for Montana's Title V Third Round Review conference call, the EPA Staff has outlined some questions and areas of further discussion for the call. Part 1 below contains questions on the State's submittal to the *Program Review Questionnaire*, while Part 2 contains questions on the *Fiscal Tracking Evaluation*.

PART 1: ADDITIONAL QUESTIONS ON MONTANA'S SUBMITTAL TO THE TITLE V THIRD ROUND STATE PROGRAM REVIEW QUESTIONNAIRE

I.A.1. *Visual Survey Language*

The EPA Staff's present understanding of the requirements for opacity monitoring is:

"[The] Source shall conduct either a semiannual Method 9 source test or a weekly visual survey of visible emissions for emitting units listed in this section. Under the visual survey option, once per calendar week, during daylight hours, Source shall visually survey the emitting units listed in this section for any visible emissions. If visible emissions are observed during the visual survey, Source must conduct a Method 9 source test..."

We would like to better understand this requirement and discuss it further on the call next week. Based on our interpretation, we are wondering if this leads a permittee with visible emissions to desire semiannual Method 9 testing as opposed to weekly visual testing since any visible emissions result Method 9 tests. We would like to discuss whether or not semiannual monitoring alone is considered sufficient to demonstrate compliance.

I.E. Are there any issues affecting the Title V program in your state right now that you consider particularly important?

MT states that:

"Permit appeals and the resources that it takes to engage in the litigation process is becoming more and more of an issue for the Department. Specifically, appeals and special interest in coal-fired EGUs has become an issue."

The Staff's questions are:

1. How many appeals have been submitted since the noted increase and have these appeals been successful in that the permit was changed?
2. We would be interested in hearing more about a few of the more complex appeals submitted and how MT developed a final response?

II.C. What percent of Title V permits expire before they can be renewed?

The States response was:

"100% expired before they could be renewed. (All renewals were posted final after the previous versions' expiration date)"

Staff's questions:

1. In order to better understand the issue, we would be interested in knowing how late the permits were as a function of time? For example 50% of the permits were renewed within one month after expiration.
2. Has the state looked at the distribution of permits submitted between the 18 month and six month requirements? For example 30% of renewal applications were submitted nine to six months prior to expiration.

II.C.1 For those permits that could not be renewed before they expired, what are the reasons they could not be renewed prior to their expiration?

MT's response was:

"According to our regulatory timeframes, a source must submit a renewal application no later than six months prior to expiration. Title V regulatory timeframes in Montana alone require 3.5 months, leaving only 2.5 months for application review, file review, CAM review, and approval, and permit modifications, as necessary. The entire 18 month issuance timeframe is utilized to issue the permits appropriately."

The Staff's questions are:

1. We would like to better understand the response to this question and the issues that the state is facing related to delayed permit issuance. For example, is the 2.5 month delay time only due to public and EPA comment periods or are there other delays?
2. Has the state used the electronic Title V tracking database to better understand the delays reported in permit renewals?

II.F.2 Where CAM plans have been inadequate, what have been the main types of inadequacies that have caused difficulties or delays in permit issuance?

MT's response was:

"The submittal of inadequate or insufficient indicators and lack of data correlation to demonstrate how they can be good indicators of compliance."

Staff question:

1. We would like to further discuss any analysis the state has conducted related to this issue to better understand it.

PART 2: ADDITIONAL QUESTIONS ON MONTANA'S SUBMITTAL FOR THE THIRD ROUND STATE/LOCAL TITLE V PROGRAM FISCAL TRACKING EVALUATION DOCUMENT

1 Title V Fee Revenue

Staff request:

1. MT is proposing to change its fee structure. Please describe the new fee structure and how it was developed. What is the anticipated timing for changing the fee structure?

Attachment
Montana Air Permitting Section Organization Chart

