



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

AUG 05 2019

Ms. Laura Crowder, Director
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Dear Ms. Crowder,

Enclosed is the final report for the Title V permit fee evaluation conducted by my staff during the Spring of 2019. I would like to thank you and your staff for the cooperation and support given to my staff in conducting the evaluation. We were pleased to learn that the Division of Air Quality was able to use the report to successfully recover the \$1 million in permit fees that was removed from the Title V permit fee account in FY2017. I look forward to continued collaboration in the Title V permit program.

If you have any questions regarding the report, please do not hesitate to contact me at 215-814-2500, or Danielle Baltera of my staff at 215-814-2342.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cristina Fernandez".

Cristina Fernandez, Director
Air and Radiation Division

Enclosure

U.S. EPA Region III Air & Radiation Division
Final Report on the
West Virginia Division of Air Quality Title V Permit Program Fees

I. Background

Title V of the Clean Air Act (CAA or the Act), 42 United States Code (U.S.C.) §7661-7661f) and 40 Code of Federal Regulations (CFR) Parts 70 (state/local program requirements) and 71 (EPA program requirements) sets forth the elements of a mandatory operating permit program which authorizes the operation of major emitting stationary sources of air pollution. The Title V *operating* permit program (Title V) introduced with the CAA amendments of 1990 (P.L. 101-549) was in addition to the other Title I and Title IV *preconstruction* permitting programs found in the CAA (PSD, nonattainment NSR, 112(j), acid rain).

The permits under Title V were intended to be developed, implemented, and enforced by permitting authorities (state and local governmental agencies) who have been delegated such authority by EPA through formal public notice and comment procedures, as outlined in Title V of the Act and implemented through 40 CFR Part 70. In §502(d) of the CAA, Congress directed the EPA to be the permitting authority for Title V subject sources when program delegation was not possible or where an EPA identified program deficiency precluding full program approval was not corrected timely by the state or local government seeking program approval. For those delegated programs, the Act tasked EPA with ongoing program oversight responsibilities in accordance with the framework laid out in Title V and implemented through rule in 40 CFR Part 70. The West Virginia Department of Environmental Protection (WVDEP) Title V Operating Permit program received full approval on October 3, 2001. See 66 FR 50325.

Specific and detailed fee provisions were included by Congress in §502(b)(3) of the Act in order to assure that the permitting authority has an adequate, dedicated, and permanent funding stream to develop, implement, and enforce the Title V program. CAA §502(b)(3) established an annual fee (or mix of fees) to be collected from Title V subject sources of at least \$25/ton of “regulated pollutants” emitted. While \$25/ton was presumed to be an adequate funding basis upon which to develop, implement, and operate all facets of an approvable program, a provision was also made in that same section of Title V to allow a lesser amount to be collected by a permitting authority, contingent upon a demonstration of adequacy by the permitting authority. The elements of a fee demonstration required to be made by each program for full delegation is found in 40 CFR Part 70.9, “Fee Determination and Certification.” To assure adequacy of funding into the future, Congress required that the \$25/ton “presumptive minimum” be adjusted annually for inflation. The Part 70 presumptive minimum fee rate (\$/ton) effective for the 12-month period of September 1, 2018 through August 31, 2019 is \$51.06. Assuring that a delegated permitting authority continues to properly implement the program after initial program approval is part of the ongoing oversight role of EPA, an oversight role that allows for delegation to be revoked should EPA find significant deficiencies in program implementation, including the mandatory fee elements of any approved program, as outlined in §502(i) of the CAA.

This report summarizes items discovered during EPA Region 3’s review and evaluation of the current WVDEP Title V fee program. This review resulted in the identification of strengths, weaknesses, and recommendations as part of the ongoing Region 3 EPA oversight of WVDEP’s Title V program.

II. History

The EPA Office of Inspector General issued an audit report in October 2014¹ which recommended that 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. EPA agreed with all recommendations and provided corrective action plans that meet the intent of the recommendations. The Office of Air Quality Planning Standards (OAQPS), updated and issued the Title V fee guidance on March 27, 2018² and EPA Region 3 committed to complete one Title V fee evaluation annually using financial expertise until all Region 3 states and locals have been completed.

The current evaluation, documented in this report, started in 2018. The scope of the current review focuses narrowly on fee sufficiency and revenue and expense tracking adequacy and does not address implementation of the Title V program as a whole. This was addressed in a separate Title V program evaluation, issued by EPA Region 3 on June 1, 2015.

III. West Virginia Title V Operating Permit Program Fee Evaluation

Origins, Purpose, and Method

In November 2018, EPA Region 3 contacted the West Virginia Division of Air Quality (WVDAQ) to discuss a Title V program fee evaluation for state fiscal year 2018 (FY 2018). The purpose of the evaluation was to determine if sufficient fee revenue was being collected to cover the costs of the WVDAQ Title V permit program and whether the systems used by the WVDAQ are adequate to track and account for the collections, retention, management of revenues and expenses of the program.

To accomplish these goals, the EPA posed to WVDAQ a total of 40 Title V fee program related questions by electronic mail dated December 19, 2018. These questions, some multi-part, were divided among eight general areas. These eight areas included: (1) Accounting Framework; (2) Current Title V Resources; (3) Calculation of Fees; (4) Tracking of Collections; (5) Billing Process; (6) Revenue Allocated; (7) Current Program Costs (FTE and Overhead); and (8) Cost of “Effective” Program (Resources to address backlog/renewals). WVDAQ responded timely to these questions. Upon review of the responses, Region 3 had additional questions which WVDAQ answer via electronic mail and then a discussion was held on March 26, 2019 by phone. The questions posed can be found in Appendix A. Response to the questions and additional exhibits mentioned in Appendix A are provided only electronically in association with this report due to their size.

FY 2018 WVDAQ Fee Evaluation General Findings

Title V permittees pay fees directly to the WVDAQ as the administering air quality agency, the program acts much like a commercial enterprise. EPA has recognized that State governments can choose from generic types of funds such as trust funds to manage their Title V programs. WVDAQ is currently funding the Title V program primarily through Certified Emission Statement (CES) Fees which are

¹ <https://www.epa.gov/oig/reports/2014/20141020-15-P-0006.pdf>

² https://www.epa.gov/sites/production/files/2018-03/documents/fee_eval_2018.pdf
https://www.epa.gov/sites/production/files/2018-03/documents/fee_schedule_2018.pdf

deposited into a general account, specified for Title V Fees (Fund 9310). Title V revenue is expended from that same fund to pay for Title V program costs using appropriate accounting tools. In general, we found that the WVDAQ has the ability to collect fee revenue to fund the Title V program and that its financial tracking systems are generally adequate to track and account for revenue and expenditures related to the Title V permitting program.

Fee Calculation

West Virginia's regulations allow them to collect two types of air permitting fees, a CES fee or a certificate to operate (CTO) fee. These fees are collected based on whether the facility is a "major Title V source," a "deferred Title V source," or a "non-Title V source" and those fee requirements are stipulated at 45CSR§30-8 and 45CSR§22, respectively. While deferred and non-Title V sources are mentioned, EPA's main objective was to ensure major Title V program related fees were adequate to implement a robust air permitting program.

Unlike other approved Title V programs in neighboring states that incorporate fees for Title V permit renewals, permit applications, and a base fee in addition to an emissions fee, West Virginia's Title V program does not allow for the imposition of any other operating permit fees on a facility; thus, it relies heavily on its CES fees. However, application fees that are collected for major Title V sources and "deferred Title V" sources covered by the preconstruction permitting program, such as minor NSR permits (Regulation 13 permits) and fees collected as a result of permitting sources subject to the Maximum Achievable Control Technology (MACT) and the New Source Performance Standards (NSPS) programs, may also be used to fund the Title V operating permit program.

CES Fees:

CES fees are West Virginia's operating permit fees and those fees cover "major Title V sources" and "deferred Title V sources." Deferred Title V sources are facilities subject to MACT and NSPS that are not yet major Title V sources. These sources are generally small emitters of air pollution and are expected to stay that way and never be subject to Title V. These minor sources, if not exempted by the MACT or NSPS from Title V, are subject to Title V, are not required to have a Title V permit, but must pay CES fees under West Virginia's fee structure. Fees generated from deferred Title V sources are part of the Title V Fund, 9310 – DAQ Title V.

As of July 1, 2015, and every July 1st of each year thereafter, the annual Title V fees are fixed at \$28/ton, +/- \$2/ton of regulated air pollutants emitted, plus an annual inflation adjustment based on the Consumer Price Index (CPI).³ The +/- \$2/ton is the only major adjustment to Title V fees approved by the state legislature, and any further adjustment of the base fee structure requires legislative action.

West Virginia's annual air quality fee program coincides with the state's FY, which runs from July 1st to June 30th. For FY 2018, the CES fee was adjusted to **\$49.67/ton** of regulated air pollutant emitted. For major Title V sources, the actual emissions for FY 2018 were reported through West Virginia's State and Local Emissions Inventory System (SLEIS). For deferred Title V sources, the actual emissions for FY 2018 were submitted to West Virginia via Certified Emissions Statement Invoices.

³ Emissions from all sources at the facility are to be counted, including point source, fugitive, and accidental releases. Total emissions should be rounded to the nearest ton. In determining fees, actual emissions of each regulated pollutant more than 4,000 tons per year should be reported, but fees are capped at 4,000 tons per regulated pollutant.

CTO Fees:

Facilities that are not “major Title V sources” or “deferred Title V sources” are subject to state rule 45CSR22 and only pay a CTO fee. The CTO fee is an annual fee based on the type of industrial source (Group) the facility belongs to, rather than a tons per year emission fee. West Virginia has a published schedule of CTO fees for several different industrial source categories. In addition to the CES fees, major and deferred Title V sources are also subject to the CTO fee. These source are required to pay either the CTO fee or the CES fee, whichever is higher, never both.

Example CES Fee Calculation:

As noted previously, sources are categorized by Group under 45CSR§22 and each Group has an associated annual fee.

Emission based Fees (CES Fees) = Total Emissions (tons) x Fee Per Ton (\$/ton)

Total Emissions = Actual emissions for the previous calendar year, rounded to the nearest ton (tons)
Total Emissions = a combined total (tons) of the following regulated pollutants:

Table 1. Regulated Pollutants*	
Regulated Pollutant	Pollutant Description (tons)
PM	Total particulate matter emission including condensable and filterable PM (includes PM hazardous air pollutants (HAPS))
SO ₂	Sulfur dioxide emissions
TRS	Reduced sulfur compounds and total reduced sulfur emissions
NO _x	Nitrogen oxide emissions
Pb	Lead emissions
VOC	Volatile organic compounds (includes VOC HAPS)
HAPS	Other hazardous air pollutants excluding PM HAPS and VOC HAPS
Class I, II	Class I and Class II substances emissions
<i>*Emissions of each regulated pollutant are capped at 4,000 tons per year, per 45CSR§30-8.2</i>	

Fee Per Ton (\$/ton) = Title V Operating Permit Fee, which is the base fee set by 45CSR§30-8.1.b, adjusted by the Secretary per 45CSR§30-8.1.c, and further increased by the CPI riser per 45CSR§30-8.4. As noted previously, West Virginia’s CES fee for FY 2018 was adjusted to **\$49.67/ton**.

Title V Fees Collected

For FY 2018, 180 major and 311 non-major Title V facilities were billed a total of **\$6,142,458**. Of the total amount billed, **\$6,149,917** was collected. The difference of \$7,400 is from permit transfers which cost \$200 per source; there were 37 transfers in FY 2018. **\$45,259** is overdue from 22 sources which is being pursued by WVDAQ’s Enforcement Director. The FY 2018 Title V revenue was **\$6,149,917**.

Table 2. Title V Carryover Balance for FY 2018	
2017 Carryover Balance	\$2,600,911
2018 Title V Fee Revenue	\$6,149,917
Sub-Total	\$8,750,828
2018 Total Expenses	\$5,059,855
2018 Actual Carryover Balance to 2019	\$3,690,973

Overall Program Costs

See Table 3 for a breakdown of FY 2018 Title V Program costs.

Salary & Benefits	\$3,899,776
Unclassified	\$582,686
Executive-Administration	\$577,393
Total Program Costs	\$5,059,855

Unclassified costs are all expenses (direct & indirect), not including salaries and benefits, for the Title V program. Executive-Administration expenses are not WVDAQ expenses. These expenses are referred to as “Central Support” costs for WVDEP’s Executive Office, Human Resources Office, Business Operations (i.e., fiscal services), etc., which provide services for WVDEP’s divisions such as the Division of Air Quality. The \$577,393 is the amount allocated to the Title V portion of the fund. To substantiate these expenditures, EPA’s evaluation team reviewed the underlying spreadsheets for the Unclassified and Executive-Administration expenditures, as well as sample invoices from the supporting information provided by WVDAQ. Timesheets were also reviewed to support the Salary & Benefits expenditures. No discrepancies were identified.

Billing Process

Title V facility invoices are sent out via mail on June 30th and payment is expected by July 31st of each year. Each facility must submit their payment with an accompanying payment coupon to the WV State Treasurer’s Office. As payments are received, the treasurer’s office provides daily reports to WVDAQ. Payment information is gathered from these reports and entered into the WVDAQ Rule 30 Fees database, indicating the amount received, the date received, and a deposit tracking number. Agreements have been made between the WVDAQ and the WV State Treasurer’s Office to ensure that fees are deposited into the correct account.

Outstanding Title V Revenue

As specified under 45CSR§30-8.6, fees must be paid on or before July 31st of each year or late fees and/or penalties are assessed. If invoices are not paid on time, a second invoice is sent on October 1st. A five percent (5%) penalty is imposed on facilities for each calendar month or portion thereof in which the fees have not been paid beginning August 1st. Payments must be received by the end of the month or an additional 5% late fee is assessed. Procedures are in place to ensure fees have been paid. Fee checks are performed as part of regular compliance on-site inspections and during annual Title V certification reviews by WVDAQ’s enforcement staff. If fees have not been paid, the Compliance & Enforcement Program Manager is informed and Notices of Violation (NOV) may be issued. WVDAQ maintains a list of all sources that are delinquent in payment.

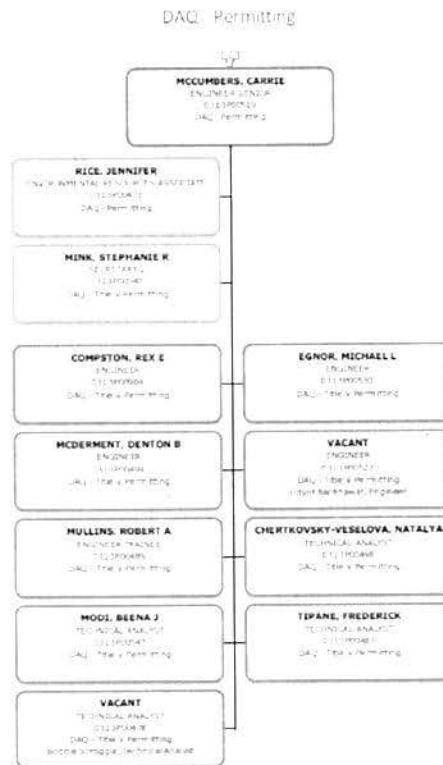
In FY 2018, 30 facilities (6% of total Title V fee sources) did not pay their fees. Eight of the 30 facilities did pay their FY 2018 fees in FY 2019, once they were again notified of the delinquency. The remaining 22 sources were turned over to the Enforcement Program for further action.

The review and assessment of WVDAQ’s general and administrative management for their Title V billing process is complete and comprehensive. WVDAQ’s documentation is organized, detailed, and their monitoring and management of billing activities was very thorough.

Current Staffing Levels

The WVDAQ is adequately staffed to implement a robust Title V operating permit program. WVDAQ has very little staff turnover, unless it is due to retirement, which has enabled them to retain institutional knowledge and expertise. At the time of our Fee Evaluation, the Title V Permitting Program Supervisor was in the process of filling one of two technical vacancies on her staff. There are no plans to fill the second vacancy at this time.

Additionally, at the time of our Fee Evaluation, the Title V permitting staff included the following: a Supervisor or Senior Engineer, two Administrative Staff, three Engineers, one Engineer Trainee, and three Technical Analysts for a total of 10 individuals. The Organizational Chart below, provides some additional information regarding the Title V Permitting staff.



IV. Overall Program Strengths, Findings and Recommendations

EPA’s review identified strengths, findings, and two recommendations as outlined below:

Strengths:

- 1) WVDAQ is well organized and has a good accounting system in place to track revenue and expenses for the Title V program.
- 2) Title V Fee revenue is currently sufficient to support the expenses of the Title V program for the period reviewed.

Findings:

- 1) In reviewing WVDAQ transactions, it was identified that there was a \$1,000,000 expense in FY 2017. After speaking to WVDAQ management, it was explained that the West Virginia Legislature authorized the fund transfer to cover a state budget deficit. The funds were not used for Title V operating permit program costs, as discussed below.

Table 4. Title V Carryover Balance FY 2017	
2016 Carryover Balance	\$2,893,884
2017 Title V Fee Revenue	\$6,152,679
Sub-Total	\$9,046,563
2017 Total Expenses	-\$6,445,652
Legislature Fund Transfer	-\$1,000,000
2017 Actual Carryover Balance	\$2,600,911

In accordance with 40 CFR Part 70.9(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, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs.

Also, in accordance with the CAA §502(b)(3)(C)(iii): "...any fee required to be collected by a State, local, or interstate agency by this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph A."

Additionally, the legislature took money in FY2017 from other Air Quality programs across the board to help balance the state budget, which created an increase in Title V program expenses. Since other programs are now unable to contribute their full portion to shared services, such as Central Support, and because of the recent increased costs associated with Central Support, the Title V program is experiencing an increase in expenses of approximately \$350,000 for 2019 and beyond.

- 2) Title V Fee revenue is currently sufficient to support the expenses of the Title V program for the period reviewed. However, in future years, there is a concern that the program may face a deficit due to declining Title V revenue and increased expenditures.

V. Recommendations

- 1) Title V operating permit fees collected should solely be used for permit program related costs. The state legislature should not be using these funds for unrelated expenses.

WVDAQ Response: As a result of EPA’s preliminary findings, on July 1, 2019, the WV Legislature refunded \$1,000,000 back to the Title V account (House Bill 156).

- 2) In order to keep up with rising expenses and lower revenue from CES fees, WVDAQ may want to consider asking their legislature to increase their CES fee in FY 2021 or consider charging fees in addition to the CES and CTO fees, for example; application fees, operating permit maintenance fees, and/or an hourly fee based on the complexity of the permit being issued. While this is optional, EPA understands that West Virginia’s Legislative process takes time and therefore, good planning is imperative to ensure a shortfall does not occur.

WVDAQ Response: The WVDAQ has already started taking action on the recommendations and has formed a team to review our current fee structure and determine ways to increase Title V revenue in order to prevent a shortfall in the near future.

VI. Contributors

EPA Region III Air & Radiation Division:

Danielle Baltera, Office of Permits

Amy Johansen, Office of Permits

Paula Krall, Office of Partnership Programs & Grants Branch

APPENDIX

WVDAQ Title V Permit Fee Evaluation

Evaluation year: State fiscal year 2018 (July 1, 2017-June 30, 2018)

OBJECTIVES

1. Determine if WVDAQ Title V permit fees are sufficient to support the Title V permit program.
2. Determine if Title V monies collected are spent on allowable costs.

Topic Area 1 – Accounting Framework for Title V Fees

1. What type of accounting framework is used to account for Title V program fees (e.g., general fund, special revenue fund, expendable trust fund, etc)?
2. How are Title V revenue kept separate from all other state generated revenues? Is WVDAQ currently utilizing non-Title V revenues or general appropriations to support the Title V operating permit program or has it done so in the past? If so, please provide details of why non-Title V funds or general appropriations were utilized.
3. How does WVDAQ account for excess monies, if any, collected for the Title V program?
4. What mechanisms is used to differentiate Title V activities from non-Title V activities? Please provide a listing of any codes and their explanation for each specific expenditure and revenue type.
5. Has WVDAQ integrated features into the accounting/financial management system which will identify Title V expenditures separate from other non-Title V permitting program expenses? Please describe.
6. Does WVDAQ keep separate records that identify Title V monies collected from other non-Title V permitting program fees? Please provide a comprehensive listing of all such codes and their description and indicate each of the organizational units within WVDAQ that uses them. Include each revenue code whose funds may be used to support Title V related activities.
7. How does the accounting system produce reports, periodically and as requested, with which WVDAQ is able to certify the disposition of Title V funds? Please describe.

Topic Area 2 – Current Title V Resources

1. What section of your regulation defines the WVDAQ fee collection authority and rates?
2. What is the projected Title V source universe subject to review? Please discuss.
3. Provide a list of Title V permittees and fee revenues generated from each of the permittees for FY2018.
4. Provide examples of the calculations of actual emissions for fee purposes.
5. Provide an example of emission inventory request letter.
6. Is billing done quarterly, annually? Provide source bills.

Topic Area 3 – Calculation of Fees

1. How are fees calculated? Show formula for calculation of emission based fees, application fees, and hourly processing.
2. Are appropriate (actual or allowable) emission records used for dollars-per-ton based fees?
3. How does WVDAQ determine the actual emissions for fee purposes?

Topic Area 4 – Tracking of Collections

1. Discuss how incoming payments are recorded to the appropriate accounts.
2. Are sources paying the total fees charged each year?
3. Are sources paying on time?
4. What procedures are maintained for the collection of outstanding Title V revenues?
5. Are late fees being assessed?
6. How are late fees being credited to the Title V accounts?
7. How do you ensure that a facility has paid all applicable Title V permit fees prior to issuance of the permits?
8. Have all Title V fees been collected for FY2018?
9. If there are uncollected Title V fees, how does WVDAQC pursue the collection of such fees?
10. Does WVDAQC assess late fees on sources that have not paid the appropriate Title V fees? If so, when is the late fee assessed and what is the timeframe for remittance of all the applicable fees?
11. Please provide data detailing actual collections vs. billing or fee tracking for the Title V permitting program. Illustrate what procedures are maintained for collection of outstanding Title V revenues.
12. Provide copies or documentation of examples detailing late fee assessment and recording collection of fee to Title V accounts.

Topic Area 5 – Billing Process

1. Can you show that sources are billed in accordance with your fee requirements?
2. What is the state billing process including notification time frame and receiving and tracking? Please describe.

Topic Area 6 – Revenue Allocated

1. Provide account balances by object/facility codes.
2. Provide specific formulas showing how WVDAQC calculates administrative personnel costs, overhead, and non-labor costs (e.g., travel, training, purchases, etc)
3. How are Title V fees budgeted/allocated by WVDAQC?
4. Provide examples of timesheets for project managers, administrative support staff and management personnel.
5. Provide examples of procurement documents, travel vouchers, training, etc. Please include travel vouchers which illustrate dual purpose travel, e.g., where more than one type of facility was visited.

Topic Area 7 – Current Program Costs (FTE and Overhead)

1. Please provide a spreadsheet for FY2018 documenting annual account receivables and annual expenses for the Title V permitting program. Are current Title V fees sufficient to support the Title V program?

Topic Area 8 – Cost of “Effective Program” (resources to address backlog/renewals)

1. Provide end-of-year accounting reports that illustrate actual and estimate costs of the program. Provide the FTE and itemized cost estimate used to budget your Title V program. Also, include the total amount of Title V fees expended and the total amount billed to facilities for Title V for FY2018.
2. Provide a report that estimates costs of running the program (e.g., direct and indirect program costs that are broken down into specific cost categories. How are these expenditures calculated/tracked?
3. Provide a summary of Title V obligations and encumbrances for FY2018.

Other: Limited transaction testing may be done during the on-site review.

