



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

April 25, 2019

Honorable Basil Seggos  
Commissioner  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1010

Dear Commissioner Seggos:

*Basil*

I am pleased to transmit the results of the U.S. Environmental Protection Agency Region 2 Office's ("EPA's") fourth evaluation of the title V Operating Permit Program (OPP) being implemented by the New York State Department of Environmental Conservation (NYSDEC).

The EPA conducts an evaluation (audit) of the NYSDEC's approved OPP every four years as part of its oversight responsibilities. The basis for the EPA's evaluation is the requirements of title V of the Clean Air Act (CAA), EPA's regulations implementing the CAA which are codified at 40 C.F.R. part 70 and the NYSDEC's OPP as approved on February 5, 2002. As part of the 2018 evaluation, we followed up on each of our recommendations from the 2014 title V permit program evaluation report to determine whether the NYSDEC has made progress toward resolving the identified issues. The 2018 evaluation also addresses additional observations made during the EPA's review of select title V draft and proposed permits issued by the NYSDEC since the 2014 audit. Like the 2014 audit, the 2018 audit covers both the permitting and funding (fee) components of the NYSDEC's OPP.

We are pleased to note that the NYSDEC has taken steps to address some of the action items identified in the 2014 audit. The EPA commends the NYSDEC for developing the Permit Review Report (PRR) Guidance and Division of Air Resources (DAR)-17 Emissions Capping Guidance to foster consistency across the regional offices. The EPA recognizes the improved quality in title V permits and PRRs because of this effort. The EPA is also encouraged by the fact that the NYSDEC has accepted delegation for several federal regulations since 2014 and has incorporated the applicable requirements from non-delegated federal regulations in some of title V permits issued since 2014. We would like to recognize the NYSDEC for using its website effectively to publish title V public notices, draft title V permits and PRRs, and to provide the public with online access to the current and draft version of all title V permits and PRRs. Also, we appreciate the NYSDEC's cooperation in improving the process for handling case-by-case RACT determinations.

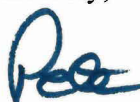
Nonetheless, we have identified certain areas that still warrant improvement. Major findings from our audit report are briefly discussed below. Please refer to Sections II and III of the audit report for detail. The NYSDEC needs to ensure that the DAR-17 Emissions Capping Guidance is consistently followed by all regional offices so that limitations on the potential to emit established in all title V permits are federally and practically enforceable. Also, the EPA recommends that the NYSDEC continue to ensure that the PRR Guidance is consistently followed by all regional offices. The NYSDEC needs to incorporate applicable requirements from all federal regulations into its title V permits in an enforceable manner, including all of the required elements of the Compliance Assurance Monitoring rule.

With respect to the title V funding component, this evaluation indicates that, despite the 2015 fee increase and the newly instituted \$2,500 base fee, the title V revenues are still insufficient to cover the costs of the NYSDEC's OPP. The title V program fund has a cumulative deficit of \$22,830,330, as of April 1, 2018, which is an increase of about 34% from the cumulative deficit noted in the 2014 audit report. The NYSDEC continues to supplement its title V program with funding from the State General Fund (SGF). As you know, CAA Section 502(b)(3)(i) and 40 C.F.R. Section 70.9 require that air permitting agencies with approved OPP to collect fees sufficient to cover permit program costs. The NYSDEC's title V fee deficiency issue that was noted in the 2014 audit report remains a concern for this evaluation. This draft audit report contains recommendations and ideas to generate additional revenues and increase the NYSDEC's title V funding.

We wish to thank you and your staff, especially Robert Stanton, Kristine Kelly and CathyJo Rogers for the cooperation and support given to my staff in conducting this evaluation, and I look forward to our continued collaboration and success in the implementation of the NYSDEC OPP. If you have any questions, please give me a call or have your staff call Ms. Suilin Chan, Chief, Permitting Section, Air Programs Branch, at (212) 637-4019 or at [chan.suilin@epa.gov](mailto:chan.suilin@epa.gov).

*Best  
Wishes!*

Sincerely,



Peter Lopez  
Regional Administrator

Enclosure: CD

cc: Robert Stanton, NYS DEC



**U.S. Environmental Protection Agency  
Region 2**

**Title V Operating Permit Program Evaluation**

**New York State Department of  
Environmental Conservation**

**FINAL REPORT**

**April 25, 2019**

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### ATTACHMENTS

**Attachment 1** - NYSDEC Letter Response, dated February 25, 2015

EPA 2014 Title V Audit Report/SECTION IV. Summary of Action Items; EPA Letter to NSYDEC, dated September 29, 2015

**Attachment 2** - NYSDEC Response to Title V Program Review Questionnaire SFY 2018

**Attachment 3** - NYSDEC Permits Included in the Response to EPA’s 2018 Questionnaire

**Attachment 4** – NYSDEC Guidance on Content of the PRR, dated July 13, 2016

**Attachment 5** – NYSDEC Operating Permit Program - Cash Flow Reports SFY 2014/2018

**Attachment 6** - NYSDEC Operating Permit Information from Cash Flow Reports in EPA’s table and Responses to EPA’s Questions on Operating Permit Program Account and Operating Permit Level of Effort

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**Attachment 7** - NYSDEC Operating Permit Program – Operating Permit Program Level of Effort SFY 2014 to SFY 2018

**Attachment 8** - Semi-Annual Title V Permit Data Report New York State  
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**Attachment 9** - July 16, 2018 Meeting Agenda and Attendees List

**Attachment 10** - NYSDEC Title V Program Cumulative Deficit as of April 1, 2018

**Attachment 11** - 6 NYCRR Part 201 Regulations Filed June 7, 1996

## I. INTRODUCTION

The Environmental Protection Agency (EPA) Region 2 oversees four separate air permitting authorities with approved Clean Air Act (CAA) title V operating permits programs. We conduct an audit every year of one of the four air permitting authorities, resulting in each program being audited every four years. The EPA recently conducted the fourth title V program review evaluation (2018 audit or 2018 evaluation) of the title V program implemented by the New York State Department of Environmental Conservation (NYSDEC or DEC). The NYSDEC implements a fully approved title V program.

The objectives of this 2018 evaluation are: 1) assess whether the NYSDEC's title V program is being implemented consistent with the requirements of title V of the CAA and the EPA's implementing regulations and the approved NYSDEC title V program; 2) identify areas of NYSDEC's title V program that need improvement; and 3) identify areas where the EPA's oversight role can improve. Based on our experience, the program audit combined with the EPA's on-going oversight review of draft and proposed title V permits issued by the NYSDEC provides a reasonable assessment of the NYSDEC title V program.

The NYSDEC issues title V permits to approximately 384 facilities through its nine regional offices. Additional staff located at the NYSDEC's Central Office provide administrative support as well as technical support to the overall title V program implementation. In the 2018 program audit, the EPA revisited the issues identified in the November 25, 2014 title V program review (2014 audit) report. Please refer to Section II of this report for detail. Also, this 2018 audit report addresses issues identified during our routine oversight review of draft and proposed title V permits and during the audit. Please refer to Section III of this report for detail. The 2018 evaluation was conducted in three stages.

### Stage One

In the first stage, the EPA sent the NYSDEC a two-part questionnaire (the 2018 Questionnaire).<sup>1</sup> The first part focused on the progress the NYSDEC has made in addressing the concerns identified by the EPA in the 2014 review. The second part was designed to cover additional concerns from the EPA's review of draft and proposed title V permits issued by the NYSDEC since the 2014 audit. The NYSDEC responded to the 2018 Questionnaire on May 22, 2018.<sup>2</sup>

### Stage Two

The second stage of the evaluation was an in-person meeting on July 16, 2018, in the NYSDEC's Central Office in Albany, NY. The meeting discussion focused on many title V program specific issues from a list<sup>3</sup> the EPA prepared and shared with the NYSDEC in advance of the in-person meeting. A summary of the discussion is included in Sections II and III of this report.

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<sup>1</sup> The EPA's 2018 Questionnaire was sent to the NYSDEC on April 20, 2018. *See* Attachment 3.

<sup>2</sup> *See* Attachment 3.

<sup>3</sup> *See* Attachment 9 for Meeting Agenda and Attendees List.

### Stage Three

The third stage of the 2018 program evaluation was follow-up discussions related to the title V fee issues. The EPA made follow-up phone calls and exchanged e-mails with the NYSDEC's staff with expertise in the title V fee program to clarify the EPA's understanding of the various aspects of NY's title V fee program. The additional documents and clarifications provided by the NYSDEC were helpful to the EPA's completion of this report.

EPA Region 2 would like to acknowledge the cooperation and hospitality of the NYSDEC's staff and management during this title V program evaluation. We appreciate the willingness of staff and management to discuss the issues brought up by the EPA during the in-person meeting, and to share their experiences regarding the implementation of the NYSDEC's title V program. Also, we would like to thank Kristine Kelly and CathyJo Rogers of the Division of Air Resources/Bureau of Quality Assurance for their help and clarification on the title V fee related questions.

Based on the EPA's evaluation, the NYSDEC implements a comprehensive title V program and has made some significant improvements to its permits and Permit Review Reports (PRR)<sup>4</sup> since the 2014 audit. However, there are additional opportunities for refinement. Please refer to Section IV of this report for a detailed list of recommendations that can better the NYSDEC's title V program. Some of the items or recommendations listed may require follow-up action from the NYSDEC. The EPA will continue to support the NYSDEC's effort in implementing a sound title V program in the State of New York.

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<sup>4</sup> 40 CFR § 70.7(a)(5) requires title V air permitting authorities to provide a statement of basis. For the NYSDEC issued title V permits, the PRR is the equivalent of a statement of basis.

## II. FOLLOW-UP FROM THE 2014 TITLE V PROGRAM EVALUATION

In the 2014 audit report, the EPA provided a summary of issues or discussion items ("Section IV Summary of Action Items") that needed follow up action by the NYSDEC. On February 25, 2015, the NYSDEC provided a response to the list of action items. Both documents can be found in Attachment 1. As part of the 2018 audit, we evaluated the progress the NYSDEC has made in addressing each of those action items. Action items from the 2014 audit report that were discussed in the EPA's September 29, 2015 letter are listed below along with a discussion of the status of the issue, informed by DEC's response to the 2018 Questionnaire<sup>5</sup> and the EPA's review of select title V permits issued since the 2014 audit.

### A. Rationale for Gap-Filling Monitoring in Permit Record

**2014 EPA Action Item 2:** DEC should identify all gap-filling monitoring in the "Basis for Monitoring" section of the PRR with a brief discussion of the selected monitoring.

***2015 Department Response Action Item 2** - DEC agrees with this Action Item. As indicated in DEC's response to Action Item 1, DEC is currently working to revise internal guidance which instructs permit writers how to properly develop a PRR. The revised document will emphasize the level of detail that must be included in the Basis of Monitoring portion of the PRR to address all gap-filling monitoring conditions contained in a Title V permit. At a minimum, this will include identification of all gap-filling monitoring conditions along with a brief discussion of the selected monitoring.*

**2018 EPA Evaluation of Action Item 2:** As part of our 2018 evaluation, we requested the NYSDEC to provide four permit review reports (PRRs)<sup>6</sup> for title V permits issued since the 2014 audit that address and discuss the gap-filling conditions included in the corresponding permits. 6 NYCRR 201-6.4(b)(2) and 40 CFR §70.6(a)(3)(B) require the permitting authority to include in permits periodic monitoring, testing, or recordkeeping sufficient to determine compliance with an applicable requirement when the applicable requirement does not directly require such monitoring. Adding such periodic monitoring, testing, or recordkeeping provisions in permit is called "gap-filling."

The purpose of a PRR<sup>7</sup> is to set forth the legal and factual basis for the draft permit conditions. The PRR explains the rationale for decisions made in the permitting process and for arriving at the stipulated permit conditions. A determination of the need to impose gap-filling requirements is one such decision. Our review of the "Basis for Monitoring" sections of the four PRRs provided by the NYSDEC reveals that none of the PRRs identifies those conditions that contain gap-filling requirements. Absent such information, it is difficult to

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<sup>5</sup> See Attachment 2.

<sup>6</sup> The four PRRs provided by the NYSDEC are for the following permits: Owens-Corning Insulating Systems – Feura Bush (4-0122-00004); Sumitomo Rubber USA LLC (9-1464-00030); Kings Plaza Energy LLC (2-6105-00301); and Pearl River Campus LLC (3-3924-00025). See Attachment 3.

<sup>7</sup> 40 CFR §70.7(a)(5). See footnote 4, above and Section III.A of this 2018 audit report (Permit Review Report Content) for additional discussion related to the purpose of the PRR.



draw any conclusion as to whether the permit includes gap-filling requirements or on the appropriateness of those gap-filling requirements. However, we note that the “Basis for Monitoring” section of NYSDEC’s guidance on the content of PRRs dated July 13, 2016<sup>8</sup> (NYSDEC PRR Guidance) requires that gap-filling monitoring requirements be addressed in the PRR.

Action Item 2 remains a concern for the EPA in the 2018 audit. The PRR must identify all conditions that include gap-filling monitoring and must provide the rationale for the monitoring selected. It would be helpful in identifying the gap-filling requirements in the permits if the respective permit conditions containing gap-filling requirements cited to NYSDEC’s gap-filling authority at 6 NYCRR 201-6.4(b)(2). While the EPA commends the NYSDEC for including the gap-filling section in its PRR Guidance, it appears that the NYSDEC needs to make additional efforts to ensure that the PRR Guidance is being followed. Furthermore, the EPA suggests that NYSDEC examine whether changes to the NYSDEC PRR Guidance are necessary to better articulate, for the permit writers, what the PRR should include related to gap-filling monitoring requirements.

## **B. Emission Information**

**2014 EPA Action Item 1:** For permit modifications, DEC should provide in the public notice the change in emissions for each pollutant emitted by the emission unit(s) involved in the permit modification.

**2015 Department Response to Action Item 1** - *DEC agrees with this Action Item. While many permit modifications contain emission change information in the public notice, DEC intends to develop a procedure to ensure all public notices for significant modifications of Title V permits include emission changes for all regulated pollutants involved in the modification. Developing such a procedure involves not only the Division of Air Resources (DAR) staff, but Division of Environmental Permits (DEP) staff as well, as DEP staff is responsible for public notice preparation of all DEC permits. DEC intends to develop such a procedure by the end of 2015.*

**2018 EPA Evaluation of Action Item 1:** Our review of some recent public notices (PNs) shows that the PNs contain information on emission changes. Moreover, our review of the PRRs of recently-issued permits indicates that a majority of the PRRs provide the specific emission rates (in tons per year (tpy) or pounds per year (lb/yr)) for the potential to emit (PTE) of a facility, as opposed to the range in tons per year. However, as the EPA noted during the in-person meeting, and in the context of our formal comments on draft or proposed permits, we have identified PRRs that do not include emission information for all pollutants emitted by a facility in the PTE column of the “Emission Summary” table of the PRR or that include the actual emission rates instead of the PTE.

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<sup>8</sup> See Attachment 4.

The NYSDEC has adequately resolved this concern from the 2014 audit. We encourage the NYSDEC to continue its practice of including the PTE (in addition to the actual emissions) of all pollutants emitted by the facility in the PTE column of the “Emission Summary” table of the PRR.

### C. Capping Limits

**2014 EPA Action Item 1:** DEC should substantiate in either the public notice or the PRR all capping limits (i.e., limits on the potential to emit (PTE)) that render applicable requirements no longer applicable to the source.

***2015 Department Response Action 1-** DEC agrees with this Action Item. DEC substantiates capping limits and the avoidance of applicable requirements in public notices and Title V permits. Also, as previously noted in the Department response to Rationale for Gap-Filling Monitoring in Permit Record Action Items 1 and 2, DEC is revising internal guidance which instructs permit writers how to properly develop a PRR. A portion of this guidance will address how capping limits should be described in a PRR.*

**2018 EPA Evaluation of Action Item 1:** As part of our 2018 evaluation, we requested the NYSDEC to provide four permits and their corresponding PRRs<sup>9</sup> that have capping limits and that were issued after the 2014 audit.<sup>10</sup> Our review of these four PRRs, as well as PRRs of other recently-issued permits, reveals that in some instances in the PRR the emission units to which the capping limits apply are not identified and monitoring requirements are not specified or justified, and in some other instances the justification for the capping limits is entirely omitted from the PRR.<sup>11</sup> The capping limits and the rationale for the corresponding compliance demonstration methods should be documented in the PRR. In instances where the NYSDEC determines that there is no need to include periodic monitoring or testing to assure compliance with an emission limit, no need to set limits on production or operation, or no need to include the emission factors that the facility should use to verify compliance with the permitted limitations, the rationale for those determinations must be documented in the PRR.

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<sup>9</sup> The revised internal guidance mentioned by the NYSDEC in the “2015 Department Response Action 1” was issued on July 13, 2016. See Attachment 4, Division of Air Resources Internal Guidance (DAIG) DAIG-10 dated July 13, 2016 (NYSDEC PRR Guidance). As stated by the NYSDEC in 2015, this guidance provides permit writers instructions on the content of the PRR, including discussing and justifying the capping limits. See Attachment 4, NYSDEC PRR Guidance, Basis of Monitoring Section. Thus, although in our 2014 evaluation report we stated that DEC should substantiate the capping limits in either the public notice or PRR, our **2018 EPA Evaluation of Action Item 1**, reflects our understanding that the NYSDEC PRR Guidance requires that capping limit be substantiated in the PRR. Thus, in our **2018 EPA Evaluation of Action Item 1**, we focused on whether the NYSDEC addresses the capping limits in the PRRs.

<sup>10</sup> The four permits & PRRs provided by the NYSDEC are: Owens-Corning Insulating Systems – Feura Bush (4-0122-00004); Sumitomo Rubber USA LLC (9-1464-00030); Pearl River Campus LLC (3-3924-00025); and Kings Plaza Energy LLC (2-6105-00301). See Attachment 3.

<sup>11</sup> See for example the PRR for Pearl River Campus LLC (3-3924-00025) which can be found in Attachment 3.

While the EPA acknowledges that the NYSDEC has made significant efforts to address this issue since the 2014 audit, NYSDEC needs to ensure that every PRR documents the capping limits consistent with the NYSDEC PRR Guidance.

**2014 EPA Action Item 2:** All permits with capping limits should be issued with appropriate monitoring, recordkeeping and reporting requirements.

***2015 Department Response Action 2** - DEC agrees with this Action Item. DEC issues Title V permits with capping limits that contain appropriate monitoring, recordkeeping and reporting requirements. However, DEC recognizes that its guidance describing how to write federally enforceable capping limits (Air Guide 10) is outdated and needs revision. DEC has drafted revisions to this guidance and expects to propose such revisions in 2015.*

**2018 EPA Evaluation of Action Item 2:** The revised guidance alluded to in the NYSDEC's 2015 response was issued on March 30, 2017 and is titled “DAR-17/Federal Enforceability of Air Pollution Control Permits”<sup>12</sup> (DAR-17 Guidance). This new guidance states that it “describes the procedures and requirements for developing federally enforceable permit conditions that must be used by permit writers when implementing NYSDEC’s operating permit program.” The DAR-17 Guidance discusses the need to include in the permit, compliance demonstration methods (or techniques) and limits on production or operation. The DAR-17 Guidance provides that, to be enforceable, limits on the PTE must be accompanied by production or operational limitations. It also states that each limitation included in the permit must be listed as a separate condition that can be enforced independently from other conditions in the permit. This new guidance is consistent with the EPA's established guidance that, for emission caps to be enforceable as a practical matter, the limits on the PTE must be clearly defined and be accompanied by the compliance demonstration method (i.e., monitoring, periodic testing, recordkeeping and reporting requirements).

The DAR-17 Guidance addresses this Action Item. However, based on our review, there are still instances where the appropriate monitoring, recordkeeping or reporting requirements were not established in title V permits with capping limits. Further, our review reveals that some permits with capping limits do not include production or operational limits. And in other instances, the permit lacks monitoring to assure compliance or a clear compliance demonstration method. For example, we noted that while some permits include the percent (%) capture efficiency as permit limits, they do not include any monitoring or recordkeeping requirements to assure continuous compliance with the permitted percent capture efficiency limits. Consistent with DAR-17 Guidance as well as EPA guidance,<sup>13</sup> a clear methodology used in verifying compliance with the emission caps is specifying the emission factors (e.g., lb/MMBTU, lb/kW-hr, g/BHP-hr, g/kW-hr, ppm) or emission rates (e.g., lb/hr) that the facility should use in combination with the actual production or operation parameters to determine the actual monthly or annual emissions.<sup>14</sup> We are pleased to note that the majority

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<sup>12</sup> DAR-17 Guidance can be found at <http://www.dec.ny.gov/chemical/109133.html>

<sup>13</sup> See Footnote 15 below.

<sup>14</sup> See DAR-17 Guidance, at page 5 and 6.

of permits we reviewed specify 1) the emission factors or emission rates that the facility should use to verify compliance with the limits on the PTE; and 2) the methodology for calculating the actual emissions to verify compliance with the capping limits. However, there are still instances where some permits omitted these two items and thus lack clarity regarding the compliance determination technique. Also, some permits do not specify each limitation as a separate permit condition.

For example, the permit for Pearl River (one of the four permits provided by the NYSDEC for the 2018 audit), contains three conditions, listed below, that establish limits on the NO<sub>x</sub> emissions resulting from emergency generators (EG or generators) and a boiler to avoid the applicability of 6 NYCRR 231-6 (“Modifications to Existing Major Facilities in Nonattainment Areas and Attainment Areas of the State within the Ozone Transport Region”) to these emission sources. These three conditions of the Pearl River permit, Conditions 60, 61 and 62, cite to 6 NYCRR 201-7 as their origin of authority. A discussion of each of these 3 permit conditions is presented below:

Condition #60 of the Pearl River permit establishes a limit for the PTE of NO<sub>x</sub> emission resulting from two diesel-fired EGs. It reads as follows:

“Monitoring Description: Combined NO<sub>x</sub> emissions will be less than 2.5 tons per year on an annual total rolled monthly determined by fuel use as a surrogate. Fuel burned will not exceed 19,900 gallons per year. Records to be kept on site and made available for inspection.

Work Practice Type: Process Material Throughput  
Process Material: Fuel Oil  
Upper Limit: 19,900 gallons per year  
Reference Test Method: EPA Approved  
Monitoring Frequency: Monthly  
Averaging Method: Annual Maximum Rolled Monthly  
Reporting Requirements: Annually (Calendar)”

From Condition #60, it’s unclear whether the condition was intended to establish a limit of 2.5 tons of NO<sub>x</sub> or a fuel use limit on the two generators combined. In either case, the permit (including Condition #60) is not consistent with the DAR-17 Guidance because it does not include the NO<sub>x</sub> emissions limit in tpy and the operational limit in gallons per year as two separate permit conditions. The “Parameter Monitored” item which appears in other conditions was omitted from Condition #60. Given that fuel use is being monitored as a surrogate for NO<sub>x</sub> emissions, an emission factor and fuel monitoring requirements should be specified in the permit to ensure that NO<sub>x</sub> emissions from fuel use are calculated in a consistent manner to demonstrate compliance. However, the permit included neither. It is unclear how the facility should verify compliance with the NO<sub>x</sub> emission limit without the NO<sub>x</sub> emission factor and the requirement to monitor fuel use. Further, the permit needs to specify how the facility will monitor the fuel usage (e.g., fuel meter, delivery invoices).

Condition #61 establishes a limit on the PTE of NO<sub>x</sub> emissions resulting from a boiler. It reads as follows:

“Monitoring Description: NO<sub>x</sub> emission shall not exceed 24.1 tons per year on a rolling monthly annual total calculated from the fuel use.

Work Practice Type: Parameter or Process Material  
Process Material: Fuel Oil  
Parameter Monitored: Fuel  
Upper Limit: 24.1 tons per year  
Reference Test Method: EPA Approved  
Monitoring Frequency: Monthly  
Averaging Method: Annual Maximum Rolled Monthly  
Reporting Requirements: Annually (Calendar)”

In Condition #61, while the “Upper Limit” item establishes a “24.1 tons per year” limit, the “Parameter Monitored” item indicates that the facility would monitor fuel oil. It is unclear whether the facility is required to monitor fuel use or NO<sub>x</sub> emissions. Further, the boiler cited in Condition #61 is authorized to combust fuel oil and natural gas but there is no monitoring requirement (e.g., fuel meter (for liquid and gaseous fuel), delivery invoices) for fuel use. So, it is unclear if the limit of 24.1 tpy is for NO<sub>x</sub> emissions generated by the boiler while combusting fuel oil alone. While there is a NO<sub>x</sub> (lb/MMBTU) emission factor mentioned elsewhere in the permit, Condition #61 makes no reference to that emission factor. The permit is not clear on how the facility should calculate the boiler’s actual NO<sub>x</sub> emissions resulting from fuel oil combustion.

Condition #62, which establishes a limit on the PTE of NO<sub>x</sub> emissions resulting from one diesel fired EG, reads as follows:

“Monitoring Description: Combined NO<sub>x</sub> emissions are limited to 4000 pounds per year and surrogate fuel burned will be used to compute emissions. Records must be maintained on site.

Work Practice Type: Process Material Throughput  
Process Material: Fuel Oil  
Upper Limit: 4,000 pounds per year  
Reference Test Method: EPA Approved  
Monitoring Frequency: Monthly  
Averaging Method: Annual Maximum Rolled Monthly  
Reporting Requirements: Annually (Calendar)”

The “Upper Limit” item establishes a “4,000 pounds per year” limit. However, since no “Parameter Monitored” is specified, it is unclear what the facility is required to monitor under Condition #62. Also, the permit omitted the NO<sub>x</sub> emission factor and a limit on fuel oil usage for the EG. It is unclear how the facility should calculate the actual NO<sub>x</sub> emissions to verify compliance with the capping limit based on the EG’s fuel usage. Further, from this

condition or elsewhere in the permit it is unclear how the facility is supposed to monitor the fuel usage.

For the reasons discussed above, and illustrated by Conditions 60, 61 and 62, Action Item 2 remains a concern for the EPA in 2018. To ensure that the PTE capping limits are federally and practically enforceable (see DAR-17) and that the non-applicability of major new source review or of other SIP approved or federal air regulations is effective, the NYSDEC needs to ensure that each permit writer drafts capping conditions that are consistent with the NYSDEC regulations, including 6 NYCRR 201-6.4 (a)-(c) and 201-7, and with the DAR-17 Guidance. The NYSDEC must continue to ensure that in all title V permits it issues limitations on the PTE and the compliance demonstration methods (e.g., monitoring, testing, recordkeeping and reporting requirements) are clearly defined. See 40 CFR § 70.6 and EPA's Policy Guidance.<sup>15</sup>

#### **D. Federal Enforceability**

##### **1. Non-Delegated Federal Standards**

**2014 EPA Action Item 1:** DEC should include all non-delegated federal standards in the title V permits to be issued by all 9 NYSDEC regional offices.

***2015 Department Response - DEC agrees with this Action Item and will continue to include all non-delegated federal standards in the title V permits it issues.***

**2018 EPA Evaluation of Action Item 1:** As part of our 2018 evaluation we requested the NYSDEC to provide title V permits issued by NYSDEC since the 2014 audit that include

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<sup>15</sup> There is a substantial amount of EPA guidance and administrative decisions relating to PTE and PTE limits. See generally, e.g., Yuhuang Chemical Inc. Methanol Plant Title V petition response Order, No. VI-2015-03 which can be found at [https://www.epa.gov/sites/production/files/2016-09/documents/yuhuang\\_response2015\\_0.pdf](https://www.epa.gov/sites/production/files/2016-09/documents/yuhuang_response2015_0.pdf) at p. 13-15; Yuhuang Chemical Inc. Methanol Plant Title V petition response Order, Nos. VI-2017-d VI 2017-135 April 2, 2018 which can be found at [https://www.epa.gov/sites/production/files/2018-04/documents/yuhuang\\_ii\\_order\\_3-19-18.pdf](https://www.epa.gov/sites/production/files/2018-04/documents/yuhuang_ii_order_3-19-18.pdf); Hu Honua Bioenergy Facility Title V petition response Order, No. IX-2011, February 7, 2014 which can be found at [https://www.epa.gov/sites/production/files/2015-08/documents/hu\\_honua\\_decision2011.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/hu_honua_decision2011.pdf); Cash Creek Generation, LLC, Title V petition response Order, No. IV-2010-4 June 22, 2012 which can be found at [https://www.epa.gov/sites/production/files/2015-08/documents/cashcreek\\_response2010.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/cashcreek_response2010.pdf); John Seitz and Robert Van Heuvelen, "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" (Jan. 22, 1996); John S. Seitz, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act" (January 25, 1995); Kathie Stein, "Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits" (January 25, 1995); and Memorandum from Terrell E. Hunt, EPA Guidance on Limiting Potential to Emit in New Source Permitting, June 13, 1989 which can be found at <https://www.epa.gov/sites/production/files/2015-07/documents/limitpotl.pdf> "Extension of January 25, 1995 Potential to Emit Transition Policy," John S. Seitz, Director, Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement (August 27, 1996); "Second Extension of January 25, 1995 Potential to Emit Transition Policy and Clarification of Interim Policy," John S. Seitz, Director, Office of Air Quality Planning and Standards, and Eric V. Schaeffer, Director, Office of Regulatory Enforcement (July 10, 1998), "Third Extension of January 25, 1995 Potential to Emit Transition Policy," John S. Seitz, Director, Office of Air Quality Planning and Standards, and Eric V. Schaeffer, Director, Office of Regulatory Enforcement (Dec. 20, 1999).

conditions reflecting requirements from federal standards for which the DEC has not taken delegation, referred to here as non-delegated federal standards (e.g., New Source Performance Standards (NSPS), National Emission Standards for Hazardous Pollutants (NESHAP)). Our review of the four permits<sup>16</sup> provided by the NYSDEC and other recently-issued permits indicates that there is little improvement in addressing the issues the EPA raised in the 2014 audit report concerning NYSDEC's inclusion of the applicable requirements from non-delegated federal standards in title V permits.

As we stated in our 2014 audit report and the follow up letter to NYSDEC dated September 29, 2015, while a state has discretion in deciding when or if to take delegation of a federal standard, that does not excuse a State from including all applicable requirements<sup>17</sup> in title V permits it issues or from enforcing them. CAA §§ 502(b)(5)(A), (B), and (E) and 502(d)(1). 40 CFR § 70.4(b)(3)(i) requires the permitting authority to "[i]ssue permits and assure compliance with each applicable requirement of this part by all part 70 sources."

A primary purpose of title V is to provide each major facility with a single permit that includes all CAA requirements applicable to the facility. To accomplish this purpose, permitting authorities must incorporate applicable requirements in sufficient detail such that the public, facility owners and operators can clearly understand the requirements with which the facility must comply. The requirements that must be included in each title V permit are emission limitations and standards, as well as operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance; they also include all necessary testing, monitoring, recordkeeping, and reporting requirements to ensure compliance with the permit. CAA §§ 504(a) and (c), 40 CFR § 70.6 and 6 NYCRR 201-6.4. Based on our review, in multiple instances, the NYSDEC incorporates conditions which cite to non-delegated standards, such as NSPS Subpart IIII "Standards of Performance for Stationary Compression Ignition Internal Combustion Engines," NSPS Subpart JJJJ "Standards of Performance for Stationary Spark Ignition Internal Combustion Engines," NESHAP Subpart ZZZZ "National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines," and NESHAP JJJJJ "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources," as their regulatory authority with no specificity identifying the emission unit(s) that are subject to the standard(s). Here are examples of such permit conditions: "Applicable Federal Requirement: 40 CFR 60 NSPS, Subpart IIII" or "Applicable Federal Requirement: 40 CFR 63 NESHAP, Subpart ZZZZ." Furthermore, instead of specifying the applicable requirements from these standards, the permit merely directs the permittee to the regulation(s) to figure out what requirements apply to the subject emission units. Language used in those conditions include: "Facilities that have stationary compression ignition internal combustion engines must comply with applicable portions of

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<sup>16</sup> The four permits provided by the NYSDEC are: Owens-Corning Insulating Systems – Feura Bush (4-0122-00004); Sumitomo Rubber USA LLC (9-1464-00030); Pearl River Campus LLC (3-3924-0025); and United Riverhead Terminal (1-4730-00023). *See* Attachment 3.

<sup>17</sup> From EPA's November 25, 2014 audit report: "The EPA regulations at 40 CFR §70.2 define applicable requirements to include, among other things, any standard or other requirement under section 111 and 112 of the Act as they apply to emissions units in a part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates)."

40 CFR 60 NSPS, Subpart IIII” or “Facilities that have reciprocating internal combustion engines must comply with applicable portions of 40 CFR 60 NESHAP, Subpart ZZZZ.” The NYSDEC’s practice as described above does not comport with the part 70 regulations. This is a recurring issue that was raised in prior program evaluations. *See* EPA’s September 29, 2015 letter to the NYSDEC in Attachment 1.

The permit for United Riverhead Terminal, for example, which is one of the four permits provided by the NSYDEC, simply states at Condition 31: “Facilities that have reciprocating internal combustion engines must comply with applicable portions of 40 CFR 63 subpart ZZZZ.” Neither this nor other permit conditions indicate which emission sources are subject to 40 CFR part 63 subpart ZZZZ, what limits apply or how the facility will demonstrate compliance. Furthermore, Condition # 32 of this permit states: “The Department has not accepted delegation of 40 CFR Part 63 Subpart ZZZZ. Any questions concerning compliance and/or enforcement of this regulation should be referred to USEPA Region 2, 290 Broadway, 21st Floor, New York, NY 10007-1866; (212) 637-4080. Should the Department decide to accept delegation of 40 CFR Part 63 Subpart ZZZZ during the term of this permit, enforcement of this regulation will revert to the Department as of the effective date of delegation.”

To comply with the CAA requirement, the NYSDEC must incorporate all applicable requirements into its title V permits. 40 CFR § 70.6 and 6 NYCRR 201-6.4. We note, for instance, that NSPS IIII, NSPS JJJJ, NESHAP ZZZZ and NESHAP JJJJJ (standards for which the NYSDEC has declined to accept delegation) are applicable to numerous emission units located at various title V sources throughout New York State. Also, as explained in EPA’s 2014 audit report and reiterated in this report, 40 CFR § 70.4(b)(3)(i) requires the permitting authority to “issue permits and assure compliance with each applicable requirement and requirement of this part by all part 70 sources.” See CAA §§ 502(b)(5)(A), (B) and (E) and 502(d)(1). Based on our recent communications with the NYSDEC, it is our understanding that the NYSDEC acknowledges our concern and is exploring options to revise the above-mentioned language.

Nevertheless, as an encouraging note, in the Sumitomo Rubber permit, the NYSDEC incorporated non-delegated federal requirements with the appropriate level of detail. Applicable requirements from the following non-delegated federal standards were included: NSPS JJJJ; NESHAP ZZZZ and JJJJJ. We also note that, besides Sumitomo Rubber, some other permits that we reviewed since the 2014 audit also properly included permit requirements from NSPS IIII, NSPS JJJJ, NESHAP ZZZZ and NESHAP JJJJJ.

The EPA recognizes that trying to determine how federal standards apply to facilities can be laborious and time consuming, especially when initially developing permit conditions from newly promulgated standards. Thus, to help sources determine the requirements of specific regulations, such as NSPS IIII, NSPS JJJJ, NESHAP JJJJJ,<sup>18</sup> NESHAP JJJJJJ, and NESHAP

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<sup>18</sup> The NYSDEC has not accepted delegation for NESHAP JJJJJ “Brick and Structural Clay Products Manufacturing.”



ZZZZ, the EPA has developed implementation tools that are available online.<sup>19</sup> These tools can be helpful for both facilities and permitting authorities when developing either permit conditions for a specific title V permit, or templates that can be customized to include applicable requirements from certain federal standards (after some minor adjustments) for any permit. In addition to the EPA's implementation tools, there are EPA guidance documents available online<sup>20</sup> that are meant to help facilities comply with the stationary engine rules. We believe this guidance also may be helpful to the NYSDEC in the development of permit conditions and templates for NSPS IIII, NSPS JJJJ, NESHAP JJJJJ, and NESHAP ZZZZ that may be helpful to NYSDEC. EPA is aware that certain NYSDEC regional offices have developed permit conditions to reflect requirements from NSPS IIII, NSPS JJJJ, NESHAP JJJJJ, or NESHAP ZZZZ and have been including them in title V permits issued by those regions. NYSDEC may wish to look into providing a sharing platform so that regional offices can share their expertise with each other and permits requiring conditions for said non-delegated federal standards could be handled more efficiently and consistently across all NYSDEC regional offices. We encourage the NYSDEC to develop templates, which will enable the inclusion of applicable requirements from non-delegated standards into its title V permits in an efficient and expeditious manner. The EPA notes that NYSDEC's title V application requires the facility, pursuant to 6 NYCRR 201-6.2(d)(4), to include very low-level citations (e.g., part, subpart, paragraph, subparagraph, clause, subclause) from each applicable federal requirement in addition to basic information such as size of emission unit, year of construction, proposed monitoring. We believe all this information would be helpful to NYSDEC in developing the permit conditions to address the applicable non-delegated standards to which the facility is subject.

As discussed above Action Item 1 remains a concern for the EPA in 2018. The NYSDEC must incorporate, into its title V permits all applicable requirements and assure compliance with each applicable requirement.

**2014 EPA Action Item 3:** If DEC intends to accept delegation of the 11 federal standards noted in EPA's June 4, 2014 letter, the EPA requests a commitment to incorporate them into 6 NYCRR 200.10 and the corresponding tables within 6 months of the date of this report.

**2015 Department Response to Action Item 3 - DEC disagrees with this Action Item.** DEC intends to accept delegation of all federal standards in EPA 's June 4, 2014 letter, with the exception of 40 CFR § 63 Subpart JJJJJJ -Area Source Industrial, Commercial, and Institutional Boilers. DEC is undergoing the rule making process to incorporate the remaining 10 federal standards by reference into 6 NYCRR Part 200.10 and the corresponding tables. While DEC is working to have the Part 200.10 revisions finalized as expeditiously as possible, it can make no commitment as to when those rule revisions will be

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<sup>19</sup>The EPA implementation tools for NSPS IIII, NSPS JJJJ, NESHAP JJJJJ, and NESHAP ZZZZ can be found at <https://www.epa.gov/stationary-sources-air-pollution/epa-regulation-navigation-tools>; The EPA implementation tools and guidance documents for NESHAP JJJJJ can be found at <https://www.epa.gov/stationary-sources-air-pollution/compliance-industrial-commercial-and-institutional-area-source#Implementation>.

<sup>20</sup> The EPA guidance documents for NSPS IIII, NSPS JJJJ and NESHAP ZZZZ can be found at <https://www.epa.gov/stationary-engines/guidance-and-tools-implementing-stationary-engine-requirements>

*finalized. DEC must comply with the requirements of the State Administrative Procedure Act (SAPA) for all rulemakings, including those to incorporate federal standards by reference. SAPA contains various legal procedural requirements and timeframes regarding publication, public notice and comment. To ensure compliance with SAPA, DEC cannot alter the requirements of SAPA nor specify a date by which it will finalize revisions to Part 200.10. In the meantime, as previously noted in the Department 's response to Action Item 1, DEC will continue to include all non-delegated federal standards in the Title V permits it issues.*

**2018 EPA Evaluation of Action Item 3:** Our review of 6 NYCRR 200.10 “Federal standards and requirements”<sup>21</sup>, which identifies the federal rules for which NYSDEC accepted delegation, reveals that the NYSDEC accepted delegation for 9 out of 11 federal standards noted in the EPA’s June 2014 letter. The two remaining standards noted in our letter for which the NYSDEC has not yet accepted delegation are as follows: 40 CFR Part 63 (NESHAP) Subpart J “Major Source Polyvinyl Chloride and Copolymers,” and NESHAP Subpart JJJJJ “Area Source Industrial, Commercial, and Institutional Boilers.” Also, the EPA’s June 2014 letter mentioned two NESHAP standards that were vacated at the time in 2014, NESHAP Subpart JJJJJ “Brick and Structural Clay” and NESHAP Subpart KKKKK “Clay and Ceramics.”<sup>22</sup> As EPA informed the NYSDEC during the in-person meeting, the two standards mentioned above are no longer vacated.

We encourage the NYSDEC to take delegation of the remaining standards noted in the EPA’s June 2014 letter and all other NESHAP and NSPS that apply to sources at title V facilities in the State of New York, and to finalize the Part 200.10 revisions as expeditiously as possible and to submit them to EPA as a SIP revision.

## 2. Case-By-Case RACT Variances (Limits)

**2014 EPA Action Item 5:** DEC should commit to designating RACT variances that have not been approved into the SIP by EPA on the state-only section of the title V permit, or inform EPA of a different method of designation, or list only existing SIP limits in the permit but denote those for which source-specific RACT variances have been submitted to EPA for approval.

**2015 Department Response to Action Item 5-***DEC disagrees with this Action Item.*

**2018 EPA Evaluation of Action Item 5:** Since the 2014 audit, the EPA and the NYSDEC have worked cooperatively to improve the process for handling case-by-case NO<sub>x</sub> or VOC RACT limits that have not yet been approved into the SIP by the EPA. We are placing Action Item 5 in abeyance, pending continuing progress on this issue.

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<sup>21</sup> 6 NYCRR 200.10 can be found at

[https://govt.westlaw.com/nyccr/Document/I4e8c43a8cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nyccr/Document/I4e8c43a8cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

<sup>22</sup> See final rule, 40 CFR Part 63, Subparts JJJJJ and KKKKK, at 80 Fed. Reg. 65470 (Oct. 26, 2015); proposed amendments to final rule, 40 CFR Part 63, Subpart KKKKK, at 83 Fed. Reg. 42066 (Aug. 20, 2018), and remand of 40 CFR Part 63, Subpart JJJJJ, *Sierra Club v. EPA*, 895 F.3d 1 (D.C. Cir. July 6, 2018).

## **E. Title V Fee Program**

**2014 Action Item 1:** Explore ways that may allow the title V program to be funded solely with title V fee revenues.

**2015 Department Response to Action Item 1** - DEC agrees with this Action Item and will explore various possibilities.

**2018 EPA Evaluation of Action Item 1** - In response to the 2018 Questionnaire and in discussion during the in-person meeting, the NYSDEC advised that, since the 2014 audit, it has begun requiring a base fee of \$2,500 for each facility subject to title V. This base fee was not part of the title V fee revenues before state fiscal year (SFY) 2015. In addition, starting with SFY 2015, the graduated fee schedule was adjusted upward. No other changes have been made to the title V fee program.

CAA § 502(b)(3)(i) and 40 CFR § 70.9 require title V permit fees to be sufficient to cover the title V program costs and be used solely to cover permit program costs. The information provided by the NYSDEC indicates that for SFY 2014/2015, SFY 2016/2017 and SFY 2017/2018 the NYSDEC has not collected sufficient fee revenue to cover the costs of the title V permitting program. This funding issue is not new. The NYSDEC has been using the State General Fund (SGF) to supplement the funding requirement of its title V program since 2006. The issue was also identified in EPA's 2014 title V program audit report.

The lack of sufficient fee revenue to fund the State's title V program is not unique to the State of New York. Nationwide, decreasing emissions from title V sources have impacted the title V fees collected by the permitting authorities, and the NYSDEC is not immune to this trend.

The EPA's Office of Inspector General (OIG) conducted an evaluation of the title V fee sufficiency issue in nine of the nation's largest permitting authorities (including NYSDEC) that oversee 45% of the nation's active title V permits. The OIG report, dated October 20, 2014, "found significant weaknesses in the EPA's oversight of state and local title V programs' fee revenue practices."<sup>23</sup> On March 27, 2018, in response to an October 20, 2014 OIG report, the EPA issued two guidance documents<sup>24</sup> which reflects the EPA's response to the OIG's recommendations.

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<sup>23</sup> EPA OIG Report, "Enhanced EPA Oversight Needed to Address Risk from Declining Clean Air Act Title V Revenues", October 20, 2014 p.1, which can be found at <https://www.epa.gov/sites/production/files/2015-09/documents/20141020-15-p-0006.pdf>

<sup>24</sup> The "Updated Guidance on EPA of Fee Schedules for Operating Permit Programs Under Title V" ("updated fee schedule guidance") can be found at [https://www.epa.gov/sites/production/files/2018-03/documents/fee\\_schedule\\_2018.pdf](https://www.epa.gov/sites/production/files/2018-03/documents/fee_schedule_2018.pdf) and "Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70" (title V evaluation guidance) can be found at [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_eval_2018.pdf). The EPA 2018 guidance documents state, among other things, that "an air agency must submit a 'detailed accounting' demonstrating that the fee schedule is adequate to cover costs if the EPA determines-based on the EPA's own initiative or based on comments rebutting a presumption of fee sufficiency-that there are serious questions regarding whether the fee schedule is sufficient to cover costs."

In an effort to generate more title V revenues, in 2015 the NYSDEC successfully sought legislative support to increase the graduated per ton fee schedule and instituted a \$2,500 base fee. The per ton fee was increased roughly between 25% to 31% above the pre-2015 level. As a result of the fee increase, there was a surplus in SFY 2015/2016 only; that surplus was in the amount of \$797,037. However, the 2015/2016 surplus is insufficient to bring the account balance to zero. Even with this surplus, the NYSDEC's title V program's cumulative balance carried over since program inception reaches a deficit of \$ 22,803,330.98 as of April 1, 2018.<sup>25</sup> This is an increase of about 34% from the cumulative deficit of \$17,084,690 noted in the NYSDEC's 2015 response. *See* Table 1 below.

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*See* updated fee schedule guidance at page 3, and title V evaluation guidance at pages 3 and 9.

<sup>25</sup> *See* Attachment 10.

**Table 1 – OPP Cost Information -SFY 2014/2015 through 2017/2018**

[Extracted from NYSDEC Operating Permit Program Account (OPPA) Cash Flow Reports]

<b>Sate Fiscal Year</b>	<b>SFY 2014/2015</b>	<b>SFY 2015/2016</b>	<b>SFY 2016/2017</b>	<b>SFY 2017/2018</b>
Total number of title V Sources which paid fees	398	402	390	384
Annual Emissions (tons) for which fees were paid	99,745	94,984	80,779	66,619
No. of FT Employees	<b>41</b>	<b>42</b>	<b>42</b>	<b>43</b>
Total Annual Fees Revenue Collected from title V Sources “R”, which are a combination of per ton fee and a \$2,500 base fee.	<b>\$5,344,174</b>	<b>\$8, 193,546</b>	<b>\$6,673,147</b>	<b>\$5,396,214</b>
OPP Total Expenses (or Disbursements) or “TE”	<b>\$8,256,115</b>	<b>\$7,396,509</b>	<b>\$7,821,381</b>	<b>\$7,851,718</b>
Shortfall or Difference Between “R” and “TE	- \$2,911,941	\$797,037	-\$1,148,234	-\$2,455,504
Beginning of SFY OPPA balance or cumulative deficit	Negative \$17,084,690	Negative \$19,996,630	Negative \$19,199,593	Negative \$20,347,827

Table 1 is a summary of the information<sup>26</sup> provided by the NYSDEC regarding their title V revenues, expenses, and the operating permit program account (OPPA) balance or the cumulative deficit for SFY 2014/2015 through 2017/2018.

All title V revenues collected by the NYSDEC from title V facilities are deposited into the OPPA. According to the NYSDEC, title V revenue is expended from the OPPA to solely<sup>27</sup> pay for the title V program costs or expenditures using appropriate accounting tools. The money from the SGF covers all title V program costs from the beginning of the SFY, which is April 1<sup>st</sup>, until the title V fees are received in September. Then, title V revenues are deposited into the OPPA, as they are received, thereby reducing the deficit in the OPPA. Nonetheless, given the magnitude of the negative balance in the OPPA, the collected fee revenue cannot bring the OPPA into balance. As a result, money from the SGF continues to supplement the OPPA.

According to the NYSDEC, the SGF money used to cover the title V program expenses do not have to be paid back. There is no mechanism in the current New York State law for

<sup>26</sup> See Attachment 5.

<sup>27</sup> As discussed at section E (Title V Fee Program)/2018 EPA Evaluation of Action Item 7 of this report, some activities, such as the DOH activities, paid by the NYSDEC from the OPPA do not seem to qualify as title V program expenses.

repaying the money from the SGF. The SGF supplement is authorized each fiscal year as part of the Enacted Budget for the Operating Permits Program.<sup>28</sup>

The expenses shown in Table 1 are those expenses that are paid for through the OPPA, with title V fees and SGF. As shown in Table 1, for 3 out of 4 SFYs (2014/2015 through 2017/2018) the collected title V fees were insufficient to cover the title V expenses for that fiscal year.

The NYSDEC also provided information on the costs of the “OPP Level of Effort”<sup>29</sup> (OPPLE). The title V costs presented in the OPPL tables<sup>30</sup> are significantly higher than the costs in the OPPA. The NYSDEC stated that the OPPA balance or the cumulative deficit represents “the cash expenses against the Operating Permit Program Account and not the Level of Effort costs.”<sup>31</sup> The number of FTEs for which OPPL costs were calculated are higher than the number of FTEs included in the OPPA costs calculation. According to the NYSDEC, the number of FTEs included in the OPPL represent the actual amount of title V work performed in the respective SFY. Table 2 below contains information on the number of FTEs that appears in the OPPA and the number of FTEs doing direct title V work, based on the OPPL. As explained by the NYSDEC, the additional FTEs used for the OPPL calculations are paid out of other funding sources, such as the SGF, and all staff that perform title V activities “code their time to title V task codes regardless of what fund is used to pay their salary.”<sup>32</sup>

**Table 2: Number FTE from SFY 2014/2015 to SFY 2017/2018**

<b>Sate Fiscal Year (SFY)</b>	<b>SFY 2014/2015</b>	<b>SFY 2015/2016</b>	<b>SFY 2016/2017</b>	<b>SFY 2017/2018</b>
<b>No. of FTEs included in the OPPA</b>	<b>41</b>	<b>42</b>	<b>42</b>	<b>43</b>
<b>Estimated No. of FTE doing title V work, based on the OPPL reports</b>	<b>96</b>	<b>97</b>	<b>95</b>	<b>90</b>

<sup>28</sup> The following explanation regarding the SGF was provided by the NYSDEC “Loan language is included as part of the Enacted Budget each fiscal year which allows expenditures from the OPP account even when there is an insufficient cash balance. As an example, 2018-19 loan language is in the Revenue Article VII bill (S7509-C/A9509-C) Part BBB Section 1: The state comptroller is hereby authorized and directed to loan money in accordance with the provisions set forth in subdivision 5 of section 4 of the state finance law to the following funds and/or accounts:” Then there is a list of eligible funds/accounts including: “20. Operating permit program account (21451).” See Attachment 6.

<sup>29</sup> “OPP Level of Effort” is an account of the actual FTEs dedicated to title V program implementation.

<sup>30</sup> See Attachment 7.

<sup>31</sup> See Attachment 6, “Responses from NYSDEC on NYSDEC Operating Permit Program Account and Operating Permit Level of Effort.”

<sup>32</sup> See Attachment 6.

Air permitting agencies with approved permit programs under part 70 must comply with minimum permit program requirements, which among other things, include collecting fees sufficient to fund the program. Section 502(b)(3)(A) of the Act requires permit programs to fund all "reasonable (direct and indirect) costs" of the permit programs through permit fees collected from sources. Similarly, 40 CFR § 70.9(a) requires the collected fees to be sufficient to cover all reasonable permit program costs and requires the fees to be used "solely" for permit program costs.

As discussed above, the information provided by the NYSDEC shows that the fee schedule passed into law by the NYS Legislature in 2015 (a combination of base fee and per ton fee), except for SFY 2015/2016, did not result in the collection of fees in an amount sufficient to meet the fee requirements of the NYSDEC's Operating Permits Program for the subject SFY. While we applaud the NYSDEC's efforts to address the funding shortfall by implementing a base fee and an increased graduated fee schedule, the shortfall and reliance on supplemental income from the SGF continues.

In spite of the fact that all title V permit program expenses are ultimately covered by the SGF during each fiscal year, this practice raises concerns with regard to the NYSDEC's title V fee obligations and remains an issue that must be addressed.

During the in-person meeting, the EPA suggested the following ideas to the NYSDEC that may help generate additional fee revenues. We recommend that the NYSDEC explore these ideas in detail, to determine whether any of them might be appropriate to adopt:

- Establish higher fee rates for hazardous air pollutant emissions;<sup>33</sup>
- Consult title V fee programs of other permitting agencies such as that of the New Jersey Department of Environmental Protection <sup>34</sup> to understand their fee revenue ideas;
- Collect fees for the actual emissions from insignificant emission sources.<sup>35</sup>

Action Item 1 remains a concern for the EPA in 2018. Consistent with the 2018 fee guidance and 40 CFR § 70.9(b)(5) and (c), the EPA sees a detailed accounting or fee demonstration as a useful vehicle for understanding and addressing the revenue shortfall.<sup>36</sup> The EPA strongly

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<sup>33</sup> See "Colorado Department of Public Health & Environment Title V Permitting Program Review, Final Report", September 2013, page 8 which can be found at [https://www.epa.gov/sites/production/files/2016-09/documents/co\\_title\\_v\\_audit\\_2013\\_final.pdf](https://www.epa.gov/sites/production/files/2016-09/documents/co_title_v_audit_2013_final.pdf)

<sup>34</sup> See N.J.A.C. 7:27-22 "Operating Permits" at <https://www.state.nj.us/dep/aqm/currentrules/Sub22.pdf>

<sup>35</sup> Part 70 does not prevent permitting authorities from collection fees from insignificant emission sources. In the 6 NYCRR 201-3, the insignificant emission sources are identified as "exempt and trivial activities."

<sup>36</sup> In its written response to the 2018 Questionnaire, the NYSDEC stated, "the fee increases, and the base fee were implemented in 2015, and remain in effect currently" and that the fee demonstration issue has been discussed informally with the EPA. NYSDEC stated: "To perform a fee demonstration as defined by EPA in 'Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70' dated 3/27/18 requires a prescribed, time-consuming and labor-intensive process. The DEC Annual reports accurately reflect the status of the Title V fee funding and corresponding shortfall. Performing a fee demonstration to reach a known conclusion does not seem to be a prudent use of reduced DEC staff resources for little if any benefit." Attachment 2, NYSDEC Response to Title V Program Review Questionnaire for the State of New York, Fiscal Year 2018, at page 2.

encourages the NYSDEC to take actions, including raising permit fees and increasing the efficiency of the title V program, so that the program expenses can be covered by title V fees alone.

**2014 EPA Action Item 2:** Submit to the legislature a request for CPI adjustment for all Title V fee rates.

*2015 Department Response to Action Item 2 - DEC agrees with this Action Item. Governor Cuomo 's 2015-16 budget includes a fee increase and a Consumer Price Index adjustment for fees. However, DEC Executive cannot control whether this proposed legislation gets passed into law by the legislature.*

**2018 EPA Evaluation of Action Item 2 –** While the graduated per ton fees were increased in 2015, the legislature has not approved any Consumer Price Index (CPI) adjustments since 2015. We encourage the NYSDEC to continue its effort to seek legislative approval for CPI adjustment for all Title V fee rates.

**2014 EPA Action Item 3:** Submit to the legislature a request to eliminate the fee rates that are lower than the maximum fee rate from the variable fee schedule.

*2015 Department Response to Action Item 3 - DEC agrees with the recommendation and the 2015-16 Executive Budget includes a proposal to raise the per ton fees and establish a base fee of \$2,500. However, the proposal continues to have a graduated fee schedule based upon total emissions. DEC cannot control whether this proposed legislation gets passed into law.*

**2018 EPA Evaluation of Action Item 3 -** All of the fee rates in the new graduated fee schedule adopted by the NYSDEC in 2015 are higher than the presumptive minimum fee rates for sources subject to 40 CFR part 70 for SFY 2015 through SFY 2018. At this time, the EPA considers Action Item 3 addressed.

**2014 EPA Action Item 4:** Elaborate on ways to shorten permit review time.

*2015 Department Response to Action Item 4– DEC agrees with this Action Item and would implement any viable measure to shorten permit review times. Currently, new permits and modifications are DEC's highest priority for Title V permit reviews. Permit renewals are DEC's lowest priority; therefore, they generally have the longest review time. Additional staff would enable DEC to cultivate a more vigorous and robust program that would provide the ability to shorten permit review times, especially renewals.*

**2018 EPA follow up Action Item 4:** Please identify the measures that NYSDEC explored and/or employed to reduce or shorten permit review time.

*2018 Department Response to Action Item 4-DEC initiated monthly conference calls with the Regions in 2014 to review the status of all pending Air State Facility and Title V permit applications. These calls, which include Division of Air management, are now quarterly and*



*continue to allow for the identification of issues and roadblocks that can cause permitting delays. In the DEC R2 office, staff from the Air Program and Environmental Permits program hold monthly docketing sessions to resolve issues and track timeframes. Permit applications for new sources/facilities and modifications are DEC's highest priority. A new computer system was explored but shelved due to resource constraints. Continued staff reductions, primarily through retirements of experienced personnel, make this action item a challenge. A final idea to speed permit review is if EPA would evaluate the possibility of running its 45-day review period concurrently with the public's 30-day period.*

**2018 EPA Evaluation of Action Item 4** - In accordance with 40 CFR § 70.7(a)(v)(2), a title V permitting authority shall take final action on each permit application (including a request for a permit modification<sup>37</sup> or renewal) within 18 months, or lesser time approved by the Administrator, after receiving a complete application.<sup>38</sup> During the July 16, 2018 in-person meeting the NYSDEC indicated that about 46% of title V applications (initial, modifications and renewals applications, combined) were pending final action beyond 18 months, or “backlogged.”

In accordance with title V program requirements, title V permits must be renewed every five years. *See* 40 CFR § 70.7. The NYSDEC reported in a TOPS<sup>39</sup> report that as of June 30, 2018 roughly 22% of their active title V permits, due for renewal, were administratively extended (expired permits can be extended upon receipt of a timely and complete renewal application) or “backlogged.”<sup>40</sup> Timely renewals are important for ensuring that title V permits contain all applicable requirements, especially when new applicable regulations were promulgated or became effective since the last permit renewal. In response to the 2018 Questionnaire,<sup>41</sup> the NYSDEC identified competing non-title V workload, and the extensiveness and complexity of the federal rules as issues affecting implementation of the title V program). In its response to the 2018 Questionnaire, the NYSDEC proposed having a synchronized 30-day public comment review and 45-day EPA review as a way to speed up the permitting review. During the in-person meeting, the NYSDEC indicated that it would like to designate this for a future discussion.

The EPA acknowledges that the conference calls and meetings initiated by the NYSDEC Albany central office with their 9 regional offices, and the meetings at the regional offices level, are helpful in addressing permitting issues and thus reducing the permit review times. Also, we share the NYSDEC's concern about staff reductions and retirement of experienced

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<sup>37</sup> Here the term “permit modification” is only meant to include significant modifications.

<sup>38</sup> It appears that under 6 NYCRR 621 the NYSDEC is required to comply with even more stringent deadlines for taking final action on significant modification than Part 70's deadlines.

<sup>39</sup> “TOPS” is the Semiannual Title V Permit Data Report.

<sup>40</sup> *See* Attachment 10.

<sup>41</sup> Section F. Title V program issues & concerns of the 2018 Questionnaire: **EPA's Question:** Are there any issues affecting implementation of the title V program in your state right now that you consider particularly important? And, if so, how can EPA help? **DEC Response:** *As a general issue, the Non-Title V workload competes for staff's time. Rules are often voluminous, complex and difficult to interpret. DEC simply asks for EPA patience... on a case by case basis. See Attachment 2.*

staff. The EPA is willing to explore the idea of synchronizing the 30-day public review and the EPA's 45-day review, if the NYSDEC wishes to consider such a process. Implementation of a synchronized public review would require a Memorandum of Agreement that details the logistics of such an effort is accepted by both agencies.

Action Item 4 remains a concern for the EPA in 2018. The NYSDEC should continue to explore ways to improve its permit review time and its title V permit issuance rate. We encourage the NYSDEC to reach out to the EPA on any issues regarding the interpretation and implementation of federal regulations.

**2014 EPA Action Item 7** - Transfer from the Title V fund to the State General Fund all Department of Health (DOH)'s activities that are not related to title V. For those activities that will be paid out of the title V fund, NYSDEC must specifically identify them with justification for each. NYSDEC must commit to this in writing in its response to this audit report and reflect this commitment in its annual reports.

**2015 Department Response** - *DEC will evaluate with DOH both the level of expenditure of Title V funds, and the activities funded under these funds to assure they are consistent with federal and state requirements.*

**2018 EPA Evaluation Action Item 7:** As part of our 2018 evaluation, we requested the NYSDEC to identify and provide, in a table, the DOH's activities that were paid out of the title V fund for SFY 2014 through 2017. Based on our review of the DOH reports provided by the NYSDEC, we reached the same conclusion that was drawn in the 2014 audit report. The vast majority of the DOH's tasks or activities listed in those reports do not appear to be associated with the implementation of the title V program. During the in person-meeting, the NYSDEC acknowledged that even though in 2015 it committed to evaluate the DOH activities and ensure that only those DOH's activities that are related to the title V permitting program would be funded from title V fees, the NYSDEC has not followed up on this action item. The NYSDEC paid for all the activities included in the DOH reports from title V fund without questioning whether they are related to the title V permitting program. The amounts paid by the NYSDEC for the DOH activities ranged, roughly, between 7.5% to 9.6% of the total expenses of the NYSDEC title V permitting program. According to 40 CFR § 70.9(a), the title V fee revenues should not be used for any purposes other than to fund the title V permitting program. Funding the costs of the DOH activities that lack a clear connection to title V permitting with title V funds calls into question compliance with 40 CFR § 70.9.

Action Item 7 remains a concern for the EPA in 2018. We request that the NYSDEC evaluate and document in writing in each of its future annual reports the relationship between DOH activities that are paid out of the title V fund and the title V permitting program.

### III. 2018 ADDITIONAL TITLE V PERMIT PROGRAM REVIEW

This section presents additional observations from the EPA’s review of the NYSDEC’s title V draft or proposed permits since the 2014 audit as well as permits received in response to the 2018 Questionnaire.

#### A. Permit Review Report Content

The EPA’s regulations implementing title V require that a permitting authority provides “a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutes and regulations). The permitting authority shall send this statement to the EPA and to any other person who requests it.” *See* 40 CFR § 70.7(a)(5). The statement of basis is intended to support the requirements of CAA § 502(b)(6) by providing information to allow for “expeditious” evaluation of the permit terms and conditions, and by providing information that supports the public’s participation in the permitting process. *See* EPA’s April 30, 2014 “Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits.”<sup>42</sup> (EPA April 2014 Guidance).

The statement of basis should provide the permitting authority’s rationale on applicability determinations and technical issues supporting the issuance of the title V permit. It is an essential tool for conducting meaningful permit reviews. The EPA has issued guidance on the required content of a statement of basis on several occasions.<sup>43</sup> The EPA guidance has consistently explained the need for permitting authorities to produce statements of basis with sufficient detail to document their decisions in the permit. As discussed in Section II above, the statement of basis that accompanies each NYSDEC-issued title V permit is called a Permit Review Report (PRR). We note that there is no requirement for preparing a PRR in 6 NYCRR 201-6. However, the NYSDEC PRR Guidance specifies what should be included in the PRR and it tracks closely the EPA’s guidance on the content of a statement of basis.

Based on our review, we found that most of the PRRs include a considerable amount of useful information. However, in some instances the PRRs do not consistently include sufficient information to adequately document the applicability or non-applicability of federal standards such as NSPS and NESHAP. The standards are only listed as an applicable requirement in the PRR with a high level citation. Some PRRs even fail to mention all federal standards that apply to the facility.

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<sup>42</sup> The EPA’s April 30, 2014 “Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits” can be found at <https://www.epa.gov/sites/production/files/2015-08/documents/20140430.pdf>

<sup>43</sup> *See* “Title V Policy and Guidance Database” which can be found at <https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index>. Also, EPA has issued guidance on the content of the statement of basis through Orders responding to petitions to EPA to object to proposed title V permits which can be found at <https://www.epa.gov/title-v-operating-permits/title-v-petitions>.

While a majority of these federal standards include a brief general description of the scope of the respective regulation, there are a few citations listed without any description. Here are some examples of the text we found in some of the PRRs reviewed:

“40 CFR Part 63, Subpart DDDDD

This subpart establishes national emission limits and work practice standards for hazardous air pollutants (HAP) emitted from industrial, commercial, and institutional boilers and process heaters located at major sources of HAP emissions. It also establishes requirements to demonstrate initial and continuous compliance with the emission limits and work practice standards.

40 CFR Part 63, Subpart JJJJJ

This regulation covers facilities that own or operate an industrial, commercial, or institutional boiler as defined in §63.11237 that is located at, or is part of, an area source of hazardous air pollutants (HAP), as defined in §63.2, except as specified in §63.11195.

40 CFR Part 63, Subpart ZZZZ

This regulation defines performance standards for stationary reciprocating internal combustion engines.

40 CFR Part 63, Subpart ZZZZ

40 CFR Part 60, Subpart IIII

Standards of performance for stationary compression ignition internal combustion engines.

40 CFR Part 60, Subpart IIII

40 CFR Part 60, Subpart JJJJ

Standards of performance for stationary spark ignition internal combustion engines.

40 CFR Part 60, Subpart GG

40 CFR Part 60, Subpart KKKK”

Further, the PRRs failed to identify the equipment or emission sources subject to the listed standards, or discuss which portions of those regulations apply, and why. Such PRRs do not conform with EPA regulations and guidance or with the NYSDEC PRR Guidance which states that:

“Each PRR should explain the rationale used when developing the permit, determining which requirements apply, and determining how compliance should be demonstrated.”

“Each Facility Specific Regulation description should describe how the requirement applies to the facility and how applicability was determined. The following items should be included in the Facility Specific Requirements section of the PRR:

1. A simplified description of why each regulation is applicable to the facility. The explanation should address how the requirement applies and how applicability was determined.”

The applicability of federal requirements such as NSPS and NESHAP depends on factors including the size/capacity of the emission source or equipment and the date of construction. This information is readily available to the NYSDEC and the applicant. However, unless it is included in the PRR, this information is not readily available to the public and the EPA. Absent the relevant information, the PRR does not serve the purpose of providing the public or the EPA with the NYSDEC’s rationale on those applicability determinations. As stated in the EPA’s April 2014 Guidance, a PRR that does not provide all requisite information that supports public participation in the permitting process does not serve its intended purpose.

Additionally, a PRR without pertinent information on the determination of applicable regulations is not consistent with the NYSDEC PRR Guidance (See Attachment 4), which states:

“Emission unit descriptions should include the type and number of operations and/or equipment they include, the size of the equipment, fuels burned, capacities, and other general information. The type of information provided here should be limited to that which is most pertinent to the determination of applicable regulations, emission limits, operating requirements and compliance methods that apply to the emission unit.

Each process being carried out under each emission unit should be described. The process description should characterize what is going on with the various emission sources within the emission unit (e.g. the process of burning natural gas in a boiler, the process of coating a substrate with primer, etc.). The type of information provided here should be limited to that which is most pertinent to the determination of applicable regulations, emission limits, operating requirements and compliance methods that apply to the process.”

Also, in many instances, we found that the PRRs do not discuss the non-applicability of some NSPS and NESHAP regulations (i.e., discussion of why the emission unit(s) are not subject to otherwise applicable regulations). This is also not consistent with the NYSDEC PRR Guidance<sup>44</sup> that states:

“Each PRR should explain the rationale used when developing the permit, determining which requirements apply, and determining how compliance should be demonstrated. It should also explain why certain requirements were left out of the permit (e.g. non-applicable regulations), especially those that may have been included in a previous version of the permit that are now obsolete.”

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<sup>44</sup> The NYSDEC’s PRR guidance document (Attachment 4 to this audit report) addresses the content of the statement of basis and also requires the inclusion of details or discussion related to non-applicability determination of federal standards.

Although a majority of the PRRs the NYSDEC issues provide information to document permitting decisions, the NYSDEC should take steps to ensure that every PRR adequately documents all permitting decisions, including the applicability or non-applicability of federal standards.

## **B. Compliance Assurance Monitoring**

The EPA developed 40 CFR Part 64 “Compliance Assurance Monitoring” (CAM rule) which requires monitoring for specific emissions units at a facility that is subject to the title V regulations. CAM monitoring is specific to large emissions units at title V facilities that use add-on control devices, and the CAM rule aims to have the owners or operators of the title V sources maintain their control devices at levels that assure continuous compliance with emissions standards. Consequently, the monitoring under the CAM rule is conducted to assure that control devices, once installed, are properly operated and maintained to continue to achieve a specified level of control that complies with the applicable requirement.<sup>45</sup> Title V permits must include CAM provisions where CAM is required. *See* 40 CFR § 70.6(a)(3)(i)(A) and 6 NYCRR 201-6.4(b)(1). The CAM rule allows sources to design CAM plans and propose those plans to the permitting authority for approval. The elements of a CAM plan are described at 40 CFR §§ 64.4 and 64.6(c). Section 64.6(c) states, “If the permitting authority approves the proposed monitoring [CAM plan], the permitting authority shall establish one or more permit terms or conditions that specify the required monitoring in accordance with § 70.6(a)(3)(i) of this chapter.” At a minimum, the permit content shall specify the indicators; the means or devices to measure the indicators; the performance requirements; the definition of what constitutes exceedances or excursions from the indicator range(s) established for CAM; the duty to conduct monitoring; the minimum data availability and averaging period requirements; and the milestones for testing, installation, or final verification.<sup>46</sup>

As part of this title V evaluation, the EPA evaluated terms and conditions stipulated pursuant to the CAM rule to determine if they were properly included in the permit. The EPA asked the NYSDEC to identify four permits with CAM provisions, their corresponding PRRs, and the CAM Plans.<sup>47</sup> The NYSDEC provided the following permits and their PRRs: Owens-Corning Insulating Systems – Feura Bush (4-0122-00004); Sumitomo Rubber USA LLC (9-1464-00030); Adchem Corporation (1-4730-00001); and Ball Metal Beverage Container Corporation (5-4115-00002).<sup>48</sup>

Three of the permits (Owens-Corning, Sumitomo Rubber, and Adchem Corporation) incorporated the elements required by 40 CFR § 64.6(c) within the body of the permit, with

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<sup>45</sup> *See* “What is the Compliance Assurance Monitoring (CAM) rule?”, and “What is Compliance Assurance Monitoring (CAM) monitoring?” which can be found on the EPA website at <https://www.epa.gov/air-emissions-monitoring-knowledge-base/frequently-asked-questions-about-air-emissions-monitoring#whatiscam>

<sup>46</sup> *See* EPA’s “Frequently Asked Questions (FAQs) Concerning the Compliance Assurance Monitoring (CAM) Rule” which can be found at <https://www.epa.gov/air-emissions-monitoring-knowledge-base/frequently-asked-questions-concerning-compliance-assurance>

<sup>47</sup> EPA notes that the CAM Plans were not included in the NYSDEC’s submittal.

<sup>48</sup> *See* Attachment 3.

few exceptions. The permits for Owens-Corning and Sumitomo Rubber did not explicitly define exceedance or excursion as required by 40 CFR § 64.6(c)(2).<sup>49</sup> 40 CFR part 70 was revised to be consistent with the CAM rule. 68 Fed. Reg. 38518 (June 27, 2003). One of the changes was to § 70.6(c)(5)(iii), which requires that the annual compliance certification “identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred.” The compliance certification conditions in the three above-mentioned permits with CAM conditions did not include this compliance certification requirement. A summary of our findings is presented below:

The permit for Ball Metal includes the following condition (Condition #44), which cites to 40 CFR § 64:

“This emission unit [EU: U-10001] is subject to the Compliance Assurance Monitoring Rule (CAM Rule). The owner or operator of this emission unit must submit a plan to the Department for its review and approval showing how they will comply with this rule. The plan must include the following:

- An indicator to be monitored to show compliance with the applicable emission limit or standard.
- The ranges or designated conditions for such indicators, or the process by which such indicators ranges, or designed conditions will be established.
- the performance criteria for the monitoring stated above
- if applicable, the indicator ranges and performance criteria for a CEMS, COMS or PEMS (if used).

The owner or operator of this emission unit shall submit an annual report of the monitoring required above. The report shall include the following:

- summary of information on the number, duration and cause (including unknown cause) of excursions or exceedances, as applicable, and the corrective actions taken;
- summary information on the number, duration and cause (including unknown cause) for monitor downtime incidents (other than downtime associated with zero and span or other daily calibration checks if applicable); and
- a description of the actions taken to implement a Quality Improvement Plan (QIP) during the reporting period. Upon completion of a QIP, the owner or operator shall include in the next summary report documentation that the implementation of the plan has been completed and reduced the likelihood of similar levels of excursions or exceedances occurring.”

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<sup>49</sup> See 40 CFR § 64.6(c)(2) “The means by which the owner or operator will define an exceedance or excursion for purposes of responding to and reporting exceedances or excursions under §§ 64.7 and 64.8 of this part. The permit shall specify the level at which an excursion or exceedance will be deemed to occur, including the appropriate averaging period associated with such exceedance or excursion. For defining an excursion from an indicator range or designated condition, the permit may either include the specific value(s) or condition(s) at which an excursion shall occur, or the specific procedures that will be used to establish that value or condition. If the latter, the permit shall specify appropriate notice procedures for the owner or operator to notify the permitting authority upon any establishment or reestablishment of the value.”

Aside from the above-mentioned condition, it appears that there are no other conditions citing to part 64, there is no CAM plan referenced in the permit or attached to the permit, and there is no discussion in the permit or in its corresponding PRR whether the facility submitted a CAM plan and whether the CAM plan, if one was submitted, was approved by the NYSDEC. As discussed above, 40 CFR § 64.6(c) requires the permitting authority to “establish one or more permit terms and conditions that specify the required monitoring.” *See* 40 CFR § 64.6(c)(1) through (4) above for the minimum content requirement for the permit. The Ball Metal permit neither incorporates the CAM provisions within the body of the permit, nor includes or references an approved CAM plan as an attachment. If Ball Metal’s emission unit is indeed subject to CAM (which was inconclusive based on the information in the permit and PRR), and the omitted CAM plan was an oversight, we do not believe this oversight is reflective of a programmatic issue.

Of the four PRRs reviewed, with the exception of Owens Corning,<sup>50</sup> the CAM applicability section describes, in general terms, the applicability of 40 CFR part 64 and explains, in general terms, the CAM rule requirements and includes a brief discussion of the part 64 exemptions. However, we note that none of the PRRs, except the one for Owens Corning, identify or list the emission unit(s) subject to CAM or discuss why CAM applies to the particular emission unit. Also, the PRRs do not state the rationale upon which the NYSDEC approved the particular CAM plan. This may indicate that either the NYSDEC relies solely on the facility’s justification of the monitoring approach selected and the indicator ranges chosen, or the NYSDEC omitted to include the rationale in the PRRs.

The NYSDEC should address CAM requirements of 40 CFR § 64.6(c) in the body of the permits, as it was done in the Owens-Corning, Sumitomo-Rubber and Adchem Corporation permits and ensure that all permit elements specified at 40 CFR § 64.6(c) are included in each permit that contains CAM provisions. With the exception of Owens-Corning, the approach used in the PRRs for the above-mentioned permits in addressing CAM applicability is also not consistent with the requirements for a statement of basis as stipulated in 40 CFR § 70.7(a)(5).<sup>51</sup> An approved CAM plan is an important part of the monitoring to be used to demonstrate that an emission unit is in compliance with applicable requirements. Thus, the NYSDEC should identify in the PRR, the emission units to which CAM applies, discuss the reasons why CAM applies to them, and provide the rationale for approving the CAM plan.

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<sup>50</sup> The exception we found is the PRR for the Owens-Corning permit. The PRR identifies parameters that have to be monitored for the control devices (electrostatic precipitators) and includes a discussion supporting the adequacy of the selected parameters as indicators of the proper operation of the control devices and compliance with the emission limits.

<sup>51</sup> *See* III. A. of this report for more discussion on the required content of a PRR.



### **C. Document Changes Made in Permit Modifications**

The lack of clarity in identifying permit modifications is a concern that EPA has raised in comments on several permits during its oversight review. These concerns were also communicated to the NYSDEC during the in-person meeting. Although most of the draft title V permits provide a clear description of the modifications so they can be easily identified, there are recent instances where this was not done. For example, one of the draft permits EPA reviewed failed to include a description of the subject modification. We requested clarification from the NYSDEC during the public comment period. However, the information was not made available to us until after the end of the public comment period, which made it impossible for us to comment on that draft permit within the 30-day comment period. In several other instances, the permit itself did not include a description of the changes and the public notice (PN) and PRR only identified some but not all of the changes. At our request, the NYSDEC eventually clarified all the changes in the permit, which enabled us to review and submit timely comments on those permits. However, in those instances, the public did not have access to the information that NYSDEC later provided to us since the PN and PRR that were made available on NYSDEC's website did not have complete information. The NYSDEC should provide in the PN and PRR a list of the changes to be made to the permit so that the public and EPA can easily identify the proposed changes, thoroughly review them and provide comments as necessary.

The NYSDEC should continue to ensure that the permit modifications are adequately described in the PN and PRR.

### **D. Title V Permits Renewals**

Based on our review, EPA is concerned that some of the renewal permit applications may not be consistently receiving an appropriate level of review from all permit writers in all of NYSDEC's regional offices. 6 NYCRR 201-6.2 and 40 CFR § 70.5 do not make a distinction on the application content requirements for the initial permit and the title V renewal permit. However, based on our review, there are title V permit renewal applications that do not meet the application content requirements of 6 NYCRR 201-6.2. That is, the renewal application omitted information required by the regulation. The current application form (Version 2, 8/23/2016) and instructions (Version 3, 11/21/2016)<sup>52</sup> which directs the applicant to provide information that satisfies the application content requirements of 6 NYCRR 201-6.2 and 40 CFR § 70.5 should be required at all times. This application form ensures that the NYSDEC has all necessary information (e.g., certain relevant emission information at both the emission unit and facility level with supporting emission calculations) to make non-applicability determinations. If the permit renewal application meets the regulatory requirements, it provides all information necessary for processing. Otherwise, the permit renewal decision is based on incomplete or outdated information and, since the application is part of the permit record, the public could be provided with insufficient and incomplete information which could weaken the public participation process.

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<sup>52</sup> The 2016 Application form and instructions can be found at <http://www.dec.ny.gov/chemical/4754.html>

It is essential for NYSDEC to ensure that all title V renewal applications meet the application content requirements at 6 NYCRR 201-6.2 and 40 CFR § 70.5. We recommend that special attention be paid to ensure that the following components are not omitted from the application: emission information (at the emission unit and facility level), supporting emissions calculations, applicable requirements from all federal standards, updated list of exempt or trivial activities.<sup>53</sup> Additionally, EPA recommends that the NYSDEC consider adding CAM Plan to the list of the “Supporting Documentation” found in the current application form. At permit renewal the NYSDEC should review the adequacy of monitoring requirements to ensure that the permit includes applicable federal requirements, as well as SIP approved state requirements that became effective since the last renewal. The EPA recommends that the NYSDEC continue to use the title V permit renewal process to quality assure the PRR and permit. This includes documenting all decision-making, including CAM, and ensuring that the PRR and permit are clear.

### **E. Insignificant Activities**

As stated at 6 NYCRR Part 201-3.1<sup>54</sup> the emission sources listed as exempt or trivial activities (or insignificant activities) at 6 NYCRR 201-3.2 and 3.3 are exempt from permitting provisions of Subpart 201-6 “Title V Facility Permits.”<sup>55</sup>

6 NYCRR Parts 201-3 and 201-6 were part of the New York State Operating Permit Program (NYS OPP) submitted to EPA for approval. EPA granted proposed interim approval to NYSDEC on July 30, 1996. 61 FR 39617. On February 5, 2002, the EPA granted full approval for the NYS OPP.

As discussed below, the current version of 6 NYCRR Parts 201-3 and 201-6 contains several revisions including those related to insignificant activities, which were added after the EPA approved the NYS OPP and were not submitted to the EPA as a title V program revision pursuant to 40 CFR § 70.4(i).

Regarding insignificant activities, the EPA stated the following in the proposed interim approval of the NYS OPP:

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<sup>53</sup> See 6 NYCRR 201-3 (exempt and trivial activities); 40 CFR § 70.5(c) (insignificant activities).

<sup>54</sup> The current version of 6 NYCRR Part 201-3 can be found at [https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=Iaffb9c00b5a011dda0a4e17826ebc834&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=Iaffb9c00b5a011dda0a4e17826ebc834&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)). 6 NYCRR 201-3.1 (c) and (d) provides only the following two instances when otherwise exempt and trivial activities would no longer be considered exempt and trivial activities for permitting purposes:

(c) If the total potential to emit for all exempt and trivial activities at a facility exceeds, or causes the facility to exceed, the major facility threshold, as defined in Subpart 201-2 of this Part, the facility is both subject to the provisions of Subpart 201-6 of this Part and no longer considered exempt or trivial for permitting purposes.

(d) If physical and/or operational restrictions are required to maintain the total potential to emit for one or more of the listed exempt and trivial activities below the title V applicability thresholds described in Subpart 201-6 of this Part, or new source review requirements described in Part 231 of this Title, the activity is no longer considered exempt or trivial for permitting purposes.

<sup>55</sup> The current version of 6 NYCRR Part 201-6 can be found at [https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=Ib03ceac0b5a011dda0a4e17826ebc834&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=Ib03ceac0b5a011dda0a4e17826ebc834&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)).

“f. insignificant activities (40 CFR 70.5): The list of insignificant activities can be found at 6 NYCRR 201–3.2 (“Exempt Activities”) and the list of trivial activities is found at 201–3.3. Activities can only be considered insignificant or trivial if not subject to any applicable requirements<sup>56</sup>. ... In addition, 6 NYCRR 201–6.3(d)(7) provides that emissions from units at major stationary sources shall be considered insignificant as long as they are not subject to any applicable requirements and meet the following criteria.” 61 FR 39617, 39618-39619 (July 30, 1996).

6 NYCRR 201-3.1(b) the “Applicability” section of the NYSDEC’s Part 201-3, filed June 7, 1996, effective 30 days after filing,<sup>57</sup> which was part of the New York’s part 70 regulations submitted to EPA for approval, and on which EPA based its approval of the NYS OPP, included the following provisions, which are consistent with the EPA’s statement in the proposed interim approval:

“(b) *Exempt and trivial activities at title V sources.* Owners and/or operators of stationary sources subject to Subpart 201-6 of this Part may consider the activities listed under section 201-3.2 of this Subpart to be exempt activities unless such activities are subject to an applicable requirement. Exempt activities must be listed in the title V permit application but are exempt from the provisions of this Part. Trivial activities listed under section 201-3.3 of this Subpart are exempt from the provisions of this Part and do not have to be listed in the title V permit application. Exempt and trivial activities may be subject to other Parts of this Title. Trivial activities that are subject to an applicable requirement are not exempt from this Part.”

Further, 6 NYCRR 201-6.3(d)(7), the “Permit Applications” section of the NYSDEC’s Part 201-6, filed June 7, 1996, effective 30 days after filing,<sup>58</sup> which was part of the NYS OPP submitted to EPA for approval, and on which EPA based its approval of the NYS OPP, included the following provisions, which are consistent with the EPA’s statement in the proposed interim approval:

“(7) Insignificant emission levels. Emissions from units at major stationary sources, meeting the criteria below, shall be considered insignificant and will be subject to State enforceable requirements only, as long as they are not subject to any applicable requirements. Emissions that are determined insignificant based on these criteria shall be included in the determination of title V facility permit applicability and in all quantification of emissions for inventory and billing purposes...”

On November 7, 1996, in its final interim approval of the NYS OPP, the EPA in response to a comment related to exempt and trivial activities stated the following:

“*Response.* Exempt and trivial activities are allowed for under the Title V program and are expounded upon in EPA’s first White Paper. During its review of the NY program, EPA reviewed the State’s list of exempt and trivial activities and determined that the lists

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<sup>56</sup> Applicable requirement shall have the meaning of the applicable requirement definition in 40 CFR § 70.2

<sup>57</sup> See Attachment 11.

<sup>58</sup> See Attachment 11.

comply with the requirements and general intent of the provisions of the Title V program. This list can only be revised by NY through the rulemaking process. With respect to the listing of trivial activities provided in EPA's White Paper, it was noted therein that this was not an all-inclusive, comprehensive list, but a "starting-point" that permitting authorities can supplement in their own programs. In addition, there exists a "gatekeeper" for these listed activities in NY's rule that precludes any of the activities listed from being considered as exempt or trivial if such activities are subject to an applicable requirement. EPA's review, together with this gatekeeper, are sufficient to determine that the NY program is approvable with respect to this issue." 61 FR 57591 (November 7, 1996).

As discussed above, with respect to exempt and trivial activities, EPA determined that the NYS OPP was approvable because, among other things, the versions 6 NYCRR Part 201-3 and Part 201-6, which were part of the NYS OPP submitted to EPA for approval, contained provisions that clearly impeded exempt or trivial activities that are subject to any applicable requirement from being exempt from title V permitting requirements.<sup>59</sup> Those approvability criteria are consistent with the EPA's position, expressed in its July 7, 1993 "Questions and Answers on the Requirements of Operating Permits Program Regulations" that activities that are potentially subject to applicable requirements cannot be considered exempt or insignificant sources."<sup>60</sup>

The current versions of 6 NYCRR 201-3 and 201-6, which were adopted by the NYSDEC in 2013 no longer contain those provisions stating that exempt and trivial activities subject to any applicable requirement cannot be exempt from title V permitting requirements, the gatekeeper language upon which EPA approved the NYS OPP with respect to exempt and trivial activities. This change in the NYSDEC's 6 NYCRR 201-3 and 201-6 is at variance with the bases of EPA's approval of the NYS OPP because it appears to no longer disallow exempt and trivial activities that are subject to any applicable requirements from being exempt from title V permitting requirements.

A permitting authority must include in the title V permit, all applicable requirements<sup>61</sup> (i.e., all emission limitations and standards, including operational requirements and limitations, and all necessary testing, monitoring, recordkeeping, and reporting requirements) that apply to all non-exempt emitting activities at an emission source. CAA §§ 504(a) and (c), 40 CFR § 70.6 and 6 NYCRR 201-6. No emission unit subject to an applicable requirement can qualify as an exempt or trivial activity and, thus, be exempt from title V permitting requirements, as appears to be allowed under the current versions of 6 NYCRR 201-3 and 201-6. We seek further discussion with NYSDEC concerning this issue. Specifically, we ask that the NYSDEC direct us to any provision in their current state regulations that provides

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<sup>59</sup> See 61 FR 39617, 39618-39619 (July 30, 1996)

<sup>60</sup> The EPA's July 7, 1993 "Questions and Answers on the Requirements of Operating Permits Program Regulations" can be found at [https://www.epa.gov/sites/production/files/2015-08/documents/bbrd\\_qa1.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/bbrd_qa1.pdf). See Section 5.4, item 2.

<sup>61</sup> Applicable requirement shall have the meaning of the applicable requirement definition in 40 CFR § 70.2

that no emission unit subject to an applicable requirement can qualify as an exempt or trivial activity and, thus, be exempt from title V permitting requirements.

In order to revise a component of an EPA-approved title V program, states must submit the revised regulations to EPA with a request for approval as a title V program revision pursuant to 40 CFR § 70.4(i). The program changes, such as the revisions adopted by the NYSDEC to Parts 201-3 and 201-6, and perhaps to other components of the approved program become effective only upon approval by the Administrator. *See* 40 CFR § 70.4(i)(2)(iv).

NYSDEC must include in the title V permit, all applicable requirements<sup>62</sup> (i.e., all emission limitations and standards, including operational requirements and limitations, and all necessary testing, monitoring, recordkeeping, and reporting requirements) that apply to all non-exempt emitting activities at an emission source CAA §§ 504(a) and (c), 40 CFR § 70.6 and 6 NYCRR 201-6.

In addition, the NYSDEC should ensure that each application contains all information needed to determine the applicability of, or to impose, any applicable federal requirement on the insignificant activities. 40 CFR § 70.5(c) states that “[t]he Administrator may approve as part of a state program a list with insignificant activities and emission levels which need not be included in the permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate fee amount required under the schedule approved pursuant to 40 CFR § 70.9 of this part.”

## **F. Public Participation**

### **1. Web Version of Draft Title V Permits**

Public involvement is an important part of the title V permitting process. The title V public participation requirements are found in 40 CFR § 70.7(h). Title V requires states to solicit public comment on the issuance of initial permits, significant modifications, and permit renewals. The NYSDEC air permit website posts public notices,<sup>63</sup> draft permits, and the relative PRR for the subject modification. The NYSDEC also provides the public with online access to the current final version of all title V permits and their corresponding PRRs. While, most of the draft permits posted on the NYSDEC's website are complete permits, we found this not to be the case in several instances. The version provided on the NYSDEC's website contained only those conditions that were either modified or added as a result of the significant modification. It was not the complete and comprehensive version of the title V permit that would eventually be approved and become the final permit for the facility.

A permitting authority's website, such as the NYSDEC's, is a powerful tool to make title V information available to the public. Clear and comprehensive information would enable the

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<sup>63</sup> The Public Notices are, also, published in a newspaper at the facility's expense.

public and EPA to provide more meaningful comments on draft title V permits. We encourage the NYSDEC to continue to post the entire draft title V permit on its website during the public comment period. In those instances where the NYSDEC does not post the complete draft title V permit on its website during the public comment, the draft permit cover page (i.e., description section) should clearly state that the draft permit includes only the newly added and/or modified conditions. The draft permit should clearly identify which existing conditions were removed because of the modification.

## **2. Availability of Permit Related Documents During Public Review**

While the NYSDEC stated in its response to the 2018 Questionnaire that it makes the application and other supporting materials (the permitting record) available to the public upon request, the EPA has experienced, in a few instances, delays of up to 15 days before the requested information was received. If the permitting records are not expeditiously provided by the NYSDEC upon request, the mandatory 30-day public review period is essentially shortened. Neither the public nor the EPA would have sufficient time to prepare and provide efficient and timely comments. The NYSDEC should ensure that the permit record relating to the draft permit is readily available upon request.

## **G. NYSDEC's Title V Rule Changes**

The NYSDEC informed the EPA that there have been no changes to NYSDEC's Operating Permits Rule, codified at 6 NYCRR 201-6, since the 2014 audit. However, as confirmed by the NYSDEC, prior state revisions to 6 NYCRR 201-6, including those that became effective in 2013, have not been submitted to EPA as a title V program revision. To incorporate newly adopted rule revisions into the state's title V program, the state must submit the adopted revised rule to EPA with a request for approval as a title V program revision pursuant to 40 CFR § 70.4(i). The program changes become effective upon approval by the Administrator. *See* 40 CFR § 70.4(i)(2)(iv). The NYSDEC needs to ensure that all revisions to NYSDEC's Part 201-6, Part 201-3 and other regulations that were part of the approved NYS OPP are submitted to the EPA for approval in a timely manner.

## **H. Quality Assurance Process for Reviewing Draft Permits and PRRs Prior to Public Review**

As stated in its response to the 2018 Questionnaire, the NYSDEC developed a permit manual to guide new permitting staff in developing title V permit conditions. The draft permits are then shared with the permittees prior to public notice so that they may provide comments and corrections to ensure accuracy. To ensure issuance of quality permits, NYSDEC should also keep its standard practice supervisory review of draft permits by permit writers in each regional office. NYSDEC's response to the 2018 Questionnaire indicates that not all draft permits are reviewed by the supervisor of the permit writers in all instances. Having worked with staff from all 9 regional offices, there is no doubt they have the ability to correctly process title V permit applications and implement the NYS OPP. However, supervisory involvement in draft permit and PRR review is important in maintaining consistency among

different permit writers within the same regional office. We also recommend that NYSDEC continue its efforts to periodically update its permit manual.

#### **I. Communications Between the NYSDEC and EPA**

We acknowledge that in the last few years, the NYSDEC has consistently notified EPA of upcoming permits that may be controversial or draw significant public interests. We appreciate this advance notification and encourage NYSDEC to continue this good practice. EPA makes its best effort to prioritize its oversight review of draft and proposed title V permits with controversial projects first, followed by other projects of interest. In most cases, the NYSDEC provides a response to EPA's comments made on draft/proposed title V permits in advance of final permit issuance. However, there had been a few instances where the NYSDEC issued the final permit without addressing all our concerns. While such instances were few, the EPA asks that the NYSDEC remain vigilant in providing a response to the EPA's comments before moving forward with final permit issuance.

#### **IV. SUMMARY OF ACTION ITEMS AND RECOMMENDATIONS**

Based on EPA's 2018 evaluation of the NYSDEC title V permit program, we conclude that the NYSDEC has made some significant improvements to its permits and PRRs to address some of the issues raised in the EPA's 2014 audit. However, attention is still needed to address the remaining issues from the 2014 audit and new concerns identified during the 2018 evaluation. All issues that require follow-up actions from the NYSDEC are summarized below, along with recommendations that would help address EPA's concerns for that particular issue.

**Table 3: Summary of Action Items and Recommendations**

<b>Issues</b>	<b>Actions and Recommendations</b>
<b>FOLLOW-UP TO 2014 PROGRAM REVIEW</b>	
<b>Rationale for Gap Filling Monitoring in Permit Record</b>	<p><b>Section II. A Action Item 2:</b></p> <p>1) In the PRR NYSDEC should identify and document the rationale for all gap-filling monitoring included in the permit.</p> <p><b>Recommendations for Action Item 2:</b></p> <p>a) NYSDEC should identify permit conditions containing gap-filling monitoring requirements. EPA suggests that this may be accomplished by citing to 6 NYCRR 201-6.4(b)(2) as the origin of authority.</p> <p>b) NYSDEC should ensure that each PRR documents the rationale for gap-filling monitoring that was selected.</p> <p>c) NYSDEC may need to make additional efforts to ensure that the PRR Guidance is being followed by its regional offices.</p> <p>d) EPA suggests that NYSDEC examine whether changes to the PRR Guidance are necessary to better articulate what needs to be included in the PRR relative to gap-filling monitoring requirements.</p>
<b>Capping Limits</b>	<p><b>Section II. C Action Item 1:</b></p> <p>1) NYSDEC should ensure that all capping limits and the rationale for the corresponding compliance determination are adequately documented in the PRR.</p> <p><b>Section II. C Action Item 2:</b></p> <p>1) NYSDEC should ensure that all capping limits are federally and practicably enforceable, consistent with NYSDEC's regulations and DAR-17 guidance.</p>



**Table 3: Summary of Action Items and Recommendations - Continued**

Issues	Actions and Recommendations
<b>FOLLOW-UP TO 2014 PROGRAM REVIEW</b>	
<b>Federal Enforceability</b>	
<b>1. Non-Delegated Federal Standards</b>	<p><b>Section II.D.1 Action Item 1:</b></p> <ol style="list-style-type: none"> <li>1) NYSDEC should ensure that title V permits include, in sufficient detail, all applicable requirements, including those from federal regulations for which NYSDEC has not yet accepted delegation.</li> <li>2) NYSDEC should remove language that directs enforcement of permit conditions deriving from non-delegated regulations to EPA.</li> </ol> <p><b>Recommendation for Action Item 1:</b></p> <ol style="list-style-type: none"> <li>a) NYSDEC is encouraged to develop templates to facilitate the inclusion of applicable requirements from non-delegated standards into its title V permits.</li> </ol> <p><b>Section II.D.1 Action Item 3:</b></p> <ol style="list-style-type: none"> <li>1) EPA encourages NYSDEC to take delegation of NESHAP and NSPS that apply to emission units at title V facilities in the State of New York, including standards noted in this report and outstanding items noted in EPA's June 2014 letter. NYSDEC should finalize the 6 NYCRR 200.10 revisions as expeditiously as possible.</li> </ol>
<b>2. Case-By-Case RACT Variances</b>	<p><b>Section II.D.2 Action Item 5:</b></p> <ol style="list-style-type: none"> <li>1) NYSDEC should continue working cooperatively with EPA in handling case-by-case RACT variances.</li> </ol>
<b>FOLLOW-UP TO 2014 PROGRAM REVIEW</b>	
<b>Title V Fee Program</b>	<p><b>Section II.E Action Item 1:</b></p> <ol style="list-style-type: none"> <li>1) NYSDEC should take actions to ensure that title V program expenses are covered solely by title V revenues.</li> </ol> <p><b>Recommendation for Action Item 1:</b></p> <ol style="list-style-type: none"> <li>a) NYSDEC is asked to consider the revenue generating ideas presented in the audit report to determine if they are appropriate for NYSDEC to adopt.</li> </ol> <p><b>Section II.E Action Item 4:</b></p> <ol style="list-style-type: none"> <li>1) NYSDEC should continue to take steps to improve its title V permit issuance rate.</li> </ol> <p><b>Section II.E Action Item 7:</b></p> <ol style="list-style-type: none"> <li>1) For all DOH activities that are paid for by title V funds, NYSDEC should provide justification, in its future annual reports, on how the activities are related to the title V permitting program.</li> </ol>

**Table 3: Summary of Action Items and Recommendations - Continued**

Issues	Actions and Recommendations
<b>2018 ADDITIONAL PROGRAM REVIEW</b>	
<b>Permit Review Report Content</b>	<b>Section III.A Action Item 1:</b> 1) The PRR should adequately document all permitting decisions, including the applicability and non-applicability of federal standards.
<b>Compliance Assurance Monitoring (CAM or Part 64)</b>	<b>Section III.B Action Item 1:</b> 1) NYSDEC should ensure that the title V permit for sources subject to CAM contains a CAM plan the includes all required elements of Part 64.  <b>Section III.B Action Item 2:</b> 2) NYSDEC should ensure that for sources subject to CAM, the PRR identifies each emission unit to which CAM applies, explains why CAM applies, and provides the rationale for approving the CAM plan.
<b>Document Changes Made in Permit Modifications</b>	<b>Section III.C Action Item 1:</b> 1) NYSDEC should ensure that all permit modifications are adequately documented in the PRR and PN.
<b>Title V Permit Renewals</b>	<b>Section III.D Action Item 1:</b> 1) NYSDEC should ensure that all title V renewal applications meet the application content requirements of 6 NYCRR 201-6.2 and 40 CFR § 70.5  <b>Recommendations for Action Item 1:</b> a) NYSDEC should ensure that all applications include emission information (at the emission unit and facility level), emissions calculations, all applicable requirements, and an updated list of insignificant activities (referred to by NYSDEC as trivial or exempt activities) are included in the application. b) NYSDEC should ensure that title V renewals are submitted using the current application form. c) NYSDEC should add CAM Plan to the “Supporting Documentation” list of the application form.

**Table 3: Summary of Action Items and Recommendations - Continued**

Issues	Actions and Recommendations
<b>2018 ADDITIONAL PROGRAM REVIEW</b>	
<b>Insignificant Activities (Sources)</b>	<p><b>Section III.E Action Item 1:</b></p> <p>1) NYSDEC should continue to implement Parts 201-3 and 201-6 as approved by EPA as part of the NYSDEC's title V permit program. Changes to the title V program, including changes to the exempt and trivial activities in Parts 201-3 and 201-6, must be submitted to EPA as a title V program revision.</p> <p><b>Section III.E Action Item 2:</b></p> <p>1) NYSDEC should ensure that insignificant activities, referred to by NYSDEC as exempt or trivial activities, which are subject to any applicable requirement are not omitted from title V permitting, consistent with the NYSDEC's title V permit program approved by the EPA. Those insignificant activities and their corresponding applicable requirements should be included in the title V permits.</p> <p><b>Section III.E Action Item 3:</b></p> <p>1) NYSDEC should ensure that each application contains the necessary information to determine what requirements apply to the trivial or exempt activities.</p>

**Table 3: Summary of Action Items and Recommendations - Continued**

Issues	Actions and Recommendations
<b>2018 ADDITIONAL PROGRAM REVIEW</b>	
<b>Public Participation</b>	
<b>1. Web Version of Draft Title V Permits</b>	<p><b>Section III.F.1 Action Item 1:</b></p> <ol style="list-style-type: none"> <li>1) NYSDEC should continue to post the complete draft title V permit (as opposed to only portions that pertain to the modification) on its website during the public comment period.</li> <li>2) In those instances, where the NYSDEC does not post the complete draft title V permit version on its website during the public comment, the draft permit cover page (i.e., description section) should clearly state that the draft permit includes only the newly added and or the existing modified conditions, and the draft permit should also clearly indicate which ones of current permit existing conditions were removed.</li> </ol>
<b>2. Availability of Permit Related Documents During Public Review</b>	<p><b>Section III.F.2 Action Item 1:</b></p> <ol style="list-style-type: none"> <li>1) NYSDEC should continue to ensure that the permit record that supports the draft permit decision is readily available upon request.</li> </ol>
<b>NYSDEC's Title V Rule Changes</b>	<p><b>Section III.G Action Item 1:</b></p> <ol style="list-style-type: none"> <li>1) NYSDEC should submit all revisions to 6 NYCRR 201-6 to EPA for approval as a title V program revision.</li> </ol>
<b>Quality Assurance Process for Reviewing Draft Permits and PRR Prior to Public Review</b>	<p><b>Section III.H Recommendations:</b></p> <ol style="list-style-type: none"> <li>1) NYSDEC should consider implementing a quality assurance process for all draft permits (and PRRs) by involving the first line supervisors, prior to public review.</li> <li>2) NYSDEC should continue its efforts to periodically update its permit manual.</li> </ol>
<b>Communications Between the NYSDEC and EPA</b>	<p><b>Section III.I Recommendation:</b></p> <ol style="list-style-type: none"> <li>1) NYSDEC should ensure that it provides a response to EPA's comments on permits.</li> </ol>