



Final Report:
Idaho Department of Environmental Quality
Title V (Tier I) Program Review

EPA Region 10
January 14, 2004

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Executive Summary

Overview

In response to a 2002 Inspector General audit of EPA's Title V program, EPA has committed to reviewing all state and local Title V programs by the end of federal fiscal year 2006. The objective of the reviews is to identify good practices that other agencies can learn from, document areas needing improvement, and learn how EPA can help improve state and local Title V programs and expedite permitting.

This report documents EPA Region 10's review of the Idaho Title V program, which is called the "Tier I" permit program in Idaho. The review process began in May 2003. The Idaho Department of Environmental Quality (IDEQ) completed an EPA questionnaire on the operation and management of IDEQ's Title V program in advance of on-site interviews, which were conducted on July 22 and 23, 2003. In addition to the information obtained through the questionnaire and interviews, EPA reviewed seven issued Title V permits, as well as IDEQ's application form and guidance and reporting forms and guidance. EPA's review of Idaho's program also included a review of IDEQ's Title V fee management system.

We granted Idaho full approval of its Title V program effective November 5, 2001. 66 FR 50574 (October 4, 2001). At that time, we determined that Idaho's statutes and regulations met the requirements of the Clean Air Act and EPA's Part 70 regulations. IDEQ has not submitted to EPA any revisions to its approved Title V program since that time, although EPA is aware that IDEQ has revised its rules relating to Title V fees and IDEQ has advised EPA that it will submit the rule changes to EPA as a revision to its Title V program. The focus of this review has been on IDEQ's implementation of its EPA-approved Title V program and we have assumed that, except with respect to Idaho's fee rules, Idaho's statutes and regulations relating to the Title V program remain unchanged.

The report is formatted consistent with the program review questionnaire. Within each of the eight topic areas (Sections A through H), the report describes good practices, concerns, and other notable observations. A summary of the key observations is described below. Note that EPA's and IDEQ's permitting terminology differs: EPA's Title V permit is called the Tier I permit by IDEQ and EPA's Statement of Basis is called the Technical Memorandum by IDEQ. This report will use the terms Technical Memorandum and Title V for consistency. Also note that references to EPA's or IDEQ's new source review (NSR) program generally includes major and minor construction permitting programs.

In response to the program review questionnaire (see Section H) and during the on-site interviews, IDEQ identified an impressive list of benefits that have resulted from the implementation of the Title V program in Idaho. The notable benefits identified by IDEQ and summarized below reflect the value that can come from responsible implementation of such a comprehensive air quality program.

§ IDEQ staff gained a better understanding of a number of programs that are folded into Title V permits, including New Source Performance Standards (NSPS), State Implementation Plan (SIP) requirements, and minor and major new source review (NSR).

§ Permit writers improved their skills in devising monitoring terms that assure compliance and writing enforceable permit terms, as well as their knowledge of applicability criteria for NSPS, NSR, and other Clean Air Act programs. IDEQ believes these skills will carry

over into its other air permitting programs.

- § Drafting and issuing Title V permits resulted in more complete information and knowledge about the universe of Idaho facilities, facility operations, and stationary source emission inventories.
- § Permittees are devoting more resources (staff, environmental management systems, and controls) and attention (compliance monitoring and maintenance) to assuring compliance with their permits and the applicable requirements.
- § Improved compliance, resulting from the issuance of Title V permits, has resulted in emission reductions.
- § Permits issued by the individual IDEQ regional offices in the past were at times inconsistent. IDEQ's effort to create a central permitting group (for all air permitting) that can collaborate on permitting issues appears to have identified the need for and improved the consistency of Title V permits and will potentially do the same for other permitting programs.
- § The Title V program has improved IDEQ's records management, the enforceability of potential to emit limits, and the identification of source categories with pervasive or persistent compliance problems.
- § The fees collected through the Title V program have improved training, allowed more resources for equipment and on-site travel, and provided a stable funding source for IDEQ.
- § The Title V program is responsible for putting together and documenting the requirements of the CAA in one permit document. As such, it provides great benefit to the regulated community, IDEQ, and the public in providing a single comprehensive listing of a facility's air quality obligations.

Region 10 is very impressed with IDEQ's candor in their responses and greatly appreciates IDEQ's cooperation in completing this important effort.

Summary of Good Practices

In general, we included in the report only those good practices that are unique to Idaho or seem particularly worth noting and passing along to other permitting authorities. IDEQ's implementation of the Title V program includes many other good practices that are not specifically discussed in the report because they are widely used among Title V permitting authorities. The most notable good practices are summarized under six topic areas: Permit Issuance, Permit Quality, Fee Management, Compliance, Compliance Certification Form, and General Implementation.

Permit Issuance

All permits in the initial round were issued by the end of 2002 except for the INEEL permit, which was held up due to a pending National Emission Standard for Hazardous Air Pollutant (NESHAP) applicability determination by EPA. Given that IDEQ had issued only a handful of permits before 2002 and the fact that many state and local agencies are not expected to complete issuance of the initial round of permits until December 2003, this was an impressive accomplishment, particularly given that the

permits are generally well written (see concerns and suggestions noted below for possible improvements to the permits). A key factor in IDEQ's success in getting so many permits issued in such a short period of time appears to be the commitment by upper management in IDEQ to the permit issuance goal. Two other factors likely contributed to this success: (1) the use of stakeholder workshops and a pilot operating permit group to develop standard formats and address other issues common to all Title V permits; and (2) the centralization of IDEQ's permitting staff which facilitated collaboration and communication among permit writers and in turn helps maintain the consistency of program decisions and equity among Title V facilities. Although the workshops and pilot group may have caused delays in the early years of Idaho's program, that work likely allowed for an expedited permitting process during 2002. IDEQ's new structure of three permit leads, each covering two regions of the state, will challenge IDEQ to find good techniques for ensuring consistency among permit writers and regions.

Permit Quality

IDEQ's permit format is very consistent from permit to permit and seems well-designed to assist inspectors and plant staff in assessing compliance with permit terms. Keeping all of the requirements that pertain to a single emission unit in a single location in the permit allows for easy field use - less page turning to review requirements for a particular emission unit. The summary tables for emission units, emission limits, and other requirements are particularly helpful for quick reference and navigating the permit. Most permit provisions are appropriately standard from permit to permit and clearly identify the legal basis. Consistency in language among permits, where appropriate, better ensures equity among permittees, simplifies permit review for regulators and the public, and reduces the risk of unintended changes in the meaning of provisions.

Fee Management

IDEQ appears to have a very effective and user-friendly computer-based time keeping system called the "STARS accounting system." The system tracks the different air program codes and keeps 10 to 15 funding mechanisms separated, which helps ensure that Title V costs and fees are kept separate from other IDEQ costs and fees, as is required by EPA's Title V regulations. The database is updated weekly, making the Title V data available for employees and management on nearly a real-time basis.

Compliance

One of the goals of the Title V program is to improve compliance at permitted facilities and thereby reduce air emissions. The Title V process resulted in the discovery of a number of compliance issues in Idaho. Of the approximately 50 permits issued by IDEQ, approximately 30 permits have compliance schedules and of those, approximately half may involve violations of the Prevention of Significant Deterioration (PSD) requirements. Although the level of past non-compliance is of concern, the fact that IDEQ identified many compliance issues and plans to resolve them is certainly a good practice. In general, IDEQ's approach to addressing potential non-compliance issues discovered during the Title V permit issuance process was to include a compliance schedule in the Title V permit requiring the facility to apply for and obtain a single facility-wide permit meeting the requirements of Idaho's NSR program and Tier II permit program (Idaho's non-Title V federally enforceable operating permit program). The requirements of this facility-wide permit will then be incorporated into the Title V permit at permit renewal or in a permit reopening. This innovative approach turned out to be a good approach for keeping the Title V permitting process moving (see concerns noted below for possible side-effects of deferring resolution of such compliance issues). Resolution of these compliance issues will likely be translated into potentially large reductions in emissions. IDEQ will need to follow through on bringing facilities into compliance through the NSR/Tier II permitting process to truly realize the potential emission reductions.

Compliance Certification Form

We strongly support IDEQ's compliance certification form to the extent it requires the permittee to certify its compliance status on a permit term-by-permit term basis. Requiring a permittee to show the permitting authority more detail of the process the permittee went through to review the compliance status of the facility will minimize the likelihood that potential noncompliance issues are overlooked.

We believe this effort will in turn improve compliance overall. It is difficult to argue that this approach imposes a greater burden on permittees because permittees, as part of their obligation to conduct a reasonable inquiry into their compliance status, should be going through this same process even with a shorter, blanket certification form.

General Implementation

IDEQ employs several good practices that relate to Title V implementation, including effective use of IDEQ's web site; review of draft permits by compliance/inspection staff; permit handoff meetings with the permittee soon after permit issuance; and, the use of inspection/compliance checklists. IDEQ uses its web site to post press releases, legal notices, Title V permits, Technical Memoranda, and documents archived after completion of the public comment process. Involving compliance staff in permit development is a good means of ensuring the permit terms are clear and enforceable. The handoff meetings with permittees likely result in a better understanding of permit requirements, which in turn should improve compliance rates. Compliance/inspection checklists help ensure more thorough field inspections. Recently, IDEQ developed a Title V compliance reporting training module that was used both internally, to instruct staff on reviewing compliance reports, and externally, to communicate to industry IDEQ's compliance reporting expectations.

Summary of Concerns

The concerns identified in this program review have been summarized under six topic areas: Workload, Public Involvement, Compliance, Compliance Monitoring, Technical Memorandum and Standard Application Form.

Workload

Idaho's implementation of the Title V program has been through several distinct phases. Very few Title V permits were issued in the early years of the program whereas a large number of Title V permits were issued during 2002. Because of the large number of Title V permits with compliance schedules that require non-complying facilities to apply for and obtain an NSR and/or facility-wide Tier II permit on a set time schedule, IDEQ has a significant upcoming workload in its NSR and Tier II permitting programs. Because the same IDEQ staff is responsible for issuing Title V, Tier II and NSR permits, there will undoubtedly be competing priorities for IDEQ's permitting staff: issuing modifications to Title V permits, acting on renewal applications for Title V permits within the 18 month deadline; issuing facility-wide NSR/Tier II permits for noncomplying facilities; and keeping up with NSR and Tier II applications for other facilities. This workload will need to be carefully managed by IDEQ management. Because the Title V program is a fully self-funded program, it is important that the responsibilities of the NSR and Tier II programs not interfere with the timely issuance of Title V permits. IDEQ's decision to stagger the expiration dates for the first round of Title V permits should assist in managing the workload of IDEQ's permits staff.

Public Participation

EPA has reviewed an August, 2003, ruling of Idaho Board of Environmental Quality (Idaho Board)

regarding the right of an environmental organization to intervene in an appeal of a Title V permit where the organization commented on the permit, but did not itself appeal the permit. At this time, EPA does not believe the ruling interferes with the public participation requirements of the Clean Air Act and EPA's Part 70 regulations. On December 17, 2003, EPA received a copy of another order issued by the Idaho Board in which the Board granted a motion brought by a Title V permittee challenging the right of an environmental organization to appeal a Title V permit on which the organization submitted public comments. EPA will be reviewing the order to determine whether Idaho's public participation procedures, as interpreted by the Idaho Board, continue to meet the requirements of the Clean Air Act and EPA's Part 70 regulations with respect to representational standing for organizations.

Compliance

Given the large number of Idaho Title V permits with compliance schedules, EPA anticipates that at least some of the violations discovered through the Title V permit issuance process will be classified as "high priority violations" (HPVs), as described in EPA's "Policy of Timely and Appropriate Enforcement Response to High Priority Violations," dated December 22, 1998 (HPV Policy). As such, EPA expects that such violations will be identified, tracked, and addressed consistent with the HPV Policy. EPA notes with concern that Idaho law prohibits IDEQ from bringing an administrative or civil proceeding to recover for a violation more than two years after the director of IDEQ had knowledge or ought reasonably to have had knowledge of the violation. See Idaho Code § 39-108(4). Although the Idaho Attorney General's Office has stated that this provision does not prohibit IDEQ from seeking injunctive relief where violations have continued for more than two years with the actual or constructive knowledge of IDEQ, this provision could preclude IDEQ from assessing penalties for HPVs at Title V facilities in a manner consistent with the HPV policy. EPA notes with concern that IDEQ does not appear to assess penalties at all to facilities that do not pay Title V fees on time. EPA will continue to monitor IDEQ's enforcement program and the impact of this statute of limitations provision on IDEQ's ability to implement and enforce the Title V program consistent with the requirements of the Clean Air Act and EPA's Part 70 regulations.

Compliance Monitoring

All Title V permits must include testing, monitoring, recordkeeping, and reporting sufficient to assure compliance with all applicable requirements. Although IDEQ included basic monitoring provisions in the initial round of Title V permits, there is much room for improvement as IDEQ begins to issue permit renewals and issues new Title V permits. In developing monitoring guidance and acting on permit renewals, IDEQ should re-examine monitoring decisions made in initial permits and, where appropriate, expand on the monitoring and compliance assurance provisions. Many permits relied on monitoring of a single parameter to ensure compliance where it is not obvious that a single parameter alone is adequate. In many cases monitoring was very limited and, in some cases, no monitoring was included for an applicable requirement, especially in the case of short term particulate matter and opacity emission limits. In such cases, the Technical Memorandum did not provide adequate justification for the decision to include little to no monitoring. The individual permit reviews performed as a part of this project contain a broad spectrum of suggestions for improving the monitoring conditions that should be considered during permit renewals. Region 10 considers this an important issue that IDEQ should address as it renews existing Title V permits and issues new Title V permits.

Technical Memorandum

All Title V permits must be accompanied by a statement that sets forth the legal and factual basis for the permit conditions. This statement of basis, which IDEQ refers to as the Technical Memorandum, is a useful tool for explaining the permit conditions, documenting IDEQ's decisions and considerations, and helping the regulated facility and the public fully comprehend the permit requirements. IDEQ should

work to improve the content of the Technical Memoranda for its permits when IDEQ issues permit renewals and new permits. Although the basic structure and format of the Technical Memoranda seems like a good approach (*i.e.*, addressing applicable requirements sequentially), much of the text in the Technical Memoranda is a simple restatement of the permit requirements, with little additional explanation of the basis of the requirements. This is particularly true for testing, monitoring, recordkeeping, and reporting requirements, where the permitting authority is required to consider what terms and conditions are needed to assure compliance with applicable requirements.

Standard Application Form

IDEQ's standard Title V application form and instructions do not request information on or include several items of information that are required by IDEQ and EPA regulations to be submitted as part of a Title V application, such as identification of applicable requirements and statement of methods used to determine compliance. This could explain the high rate of incomplete applications submitted by Idaho facilities: IDEQ staff estimated that 80% of applications submitted lacked information needed to draft and issue a Title V permit. IDEQ did not formally identify such applications as incomplete, but instead requested that the facilities submit additional information. IDEQ should revise its standard application form before facilities are required to submit renewal applications to help ensure that all necessary information is provided in the permit application.

Summary of Other Observations

Training

In the 1990s, Region 10 hosted annual Title V workshops for permitting authorities in Region 10. Because of budget considerations and reductions in Region 10's Title V staff, Region 10 has not held such workshops for several years. IDEQ expressed interest in additional training opportunities for its staff, but noted that restrictions on out-of-state travel for state employees make it difficult for IDEQ staff to take advantage of some training opportunities. Region 10 is willing to work with IDEQ to identify and/or create additional training opportunities for IDEQ staff that acknowledge IDEQ's travel restrictions. This could include a workshop or interactive discussion among IDEQ permit writers and EPA staff, possibly with the participation of permit writers from other Title V permitting authorities in Region 10. Areas of interest identified by IDEQ staff included permit-related compliance training; NSR training, including the interrelationship of NSR and Title V; and drafting more comprehensive Technical Memoranda.

Introduction

In response to recommendations in a 2002 Office of Inspector General audit, EPA has re-examined ways it can improve state and local Title V programs and expedite permit issuance. Specifically, EPA has developed an action plan for performing reviews of state and local Title V programs and has committed to continuing the Title V fee reviews begun in 1998. The objective of the broader program reviews is to identify good practices that other agencies can learn from, document areas needing improvement, and learn how EPA can help improve state and local Title V programs and expedite permitting. EPA has set an aggressive national goal of reviewing all state and local Title V programs by the end of fiscal year 2006. Region 10 committed to performing one program review during fiscal year 2003.

We selected Idaho to be the first of thirteen Title V programs in Region 10 we reviewed based on a number of factors: IDEQ has issued all but one of the first-round of Title V permits; most of the Idaho permits were issued within the last year, a time frame when Region 10 was not as actively involved in reviewing Title V permits as in past years; and, during 2002, Region 10 began but did not finish a review of IDEQ's Title V fee program. This program review is a comprehensive look at IDEQ's Title V program and consists of three parts: pre-visit review; on-site interviews; and report writing. The original letter kicking off the review in Idaho is included as Attachment I.

A questionnaire, developed by EPA Headquarters with input from the Regions, was sent to and completed by IDEQ in advance of Region 10's on-site visit to the agency. Included with the questionnaire was a three-page table titled State/Local Title V Program Fiscal Tracking Evaluation Document, which is the protocol developed by EPA in 1997 and used in previous Title V fee program reviews. We reviewed the completed questionnaire and fee protocol (Attachment II) prior to the on-site visit. We also reviewed IDEQ's forms for applications (Attachment III) and reporting (Attachment IV), as well as seven permits issued by IDEQ and the related Technical Memoranda (statements of basis). The permits reviewed were:

Potlatch, Lewiston (069-00001)
Mountain Home Air Force Base, Mountain Home (039-00001)
Potlatch, St. Maries (009-00030)
Idaho Freshpak (051-00017)
TASCO, Nampa (027-00010)
JR Simplot, Pocatello (077-00006)
Ash Grove Cement, Inkom (005-00004)

While on site at IDEQ's offices, we interviewed three permit writers; a lead engineer who had been closely involved in most aspects of Idaho's Title V program during the last few years; and the manager of IDEQ's permits division. We also discussed IDEQ's Title V fee program with IDEQ's finance management and staff. The purpose of the interviews was to confirm and clarify what we learned from our review of the permits and questionnaire and to ask questions that developed during our pre-visit review. During the on-site review, we also spent some time speaking to all six IDEQ Title V permit writers about the general observations we had regarding the permit reviews.

We granted Idaho full approval of its Title V program effective November 5, 2001. 66 FR 50574 (October 4, 2001). At that time, we determined that Idaho's statutes and regulations met the requirements of the Clean Air Act and EPA's Part 70 regulations. IDEQ has not submitted to EPA any revisions to its approved Title V Program since that time, although EPA is aware that IDEQ has revised its rules relating to Title V fees and IDEQ has advised EPA that it will submit the rule changes to EPA as a revision to its Title V program. The focus of this review has been on IDEQ's implementation of its EPA-approved Title

V program and we have assumed that, except with respect to Idaho's fee rules, Idaho's statutes and regulations relating to the Title V program remain unchanged.

EPA's review team included six Region 10 staff members, including legal and engineering support, and one Headquarters (OAQPS) staff member. Each EPA reviewer documented his or her comments in a review memorandum. Key elements of the individual reviews, as well as observations from the on-site interviews, are highlighted and discussed in the report, which is formatted consistent with the main questionnaire used in the review.

The fee protocol information is addressed in the Resources and Internal Management Support section of this report.

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

A draft version of this report was sent to IDEQ for their review and input. EPA will take IDEQ's comments and concerns into consideration in issuing the final report. Region 10 staff are available to discuss in greater detail any of the comments identified in this report.

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

A. Title V Permit Preparation and Content

Good Practices

1. IDEQ used stakeholder workshops and a pilot operating permit group to develop the permit format and address other issues relating to permit issuance during the initial stages of Title V program. Although this approach may have caused some of the early delays in issuing permits, it eventually allowed IDEQ to move very quickly and efficiently through their permitting workload during this past year.
2. Creating a central office of permit writers appears to have facilitated collaboration and communication among permit writers. This helps to ensure consistency in program implementation, which in turn helps maintain the defensibility of program decisions and equity among Title V facilities. IDEQ's approach of using a single staff person to review all permits and ensure consistency appears to have been very helpful during the push to issue so many permits using so many permit writers in 2002. The centralized permit program structure will more readily facilitate the transfer of the permit writing skills acquired through implementation of the Title V Program.
3. IDEQ's Air Quality Operating Permit Application Form and Instructions for facility and emissions information are thorough and well-designed to elicit important information about the facility, its emission units, and its emissions. The question on control and ownership of other facilities in Idaho (regardless of distance) seems well-designed to fully assess where more information is needed to determine whether to aggregate the permittee with other facilities under common control with the permittee. See concerns and suggestions noted below regarding other aspects of IDEQ's application form and instructions.
4. IDEQ's permit format is very consistent from permit to permit and seems well-designed to assist inspectors and plant staff in assessing compliance with permit terms. In fact, IDEQ asked for input on their draft permits from their own compliance inspectors. Keeping all of the requirements that pertain to a single emission unit in a single location in the permit allows for easy field use - less page turning to review requirements for a particular emission unit. The summary tables for emission units, emission limits and requirements are particularly helpful for quick reference and navigating the permit.
5. Many permit provisions are appropriately standard from permit to permit, such as provisions in the facility-wide requirements section of the permit and the general provisions section of the permit. Consistency in language among permits, where appropriate, better ensures equity among permittees, simplifies permit review for regulators and the public, and reduces the risk of unintended changes in the meaning of provisions.
6. Permits consistently identified the specific authority (legal basis) for each applicable requirement and permit condition, making it easier to track the history of the requirement.
7. In general, permit terms are clearly written and closely follow the regulatory provisions on which they are based.
8. IDEQ's Technical Memorandum (Statement of Basis) generally follow the permit format, providing specific explanations for many portions of the permit (see concerns noted below for

suggested improvements to the Technical Memorandum).

Concerns

1. IDEQ's standard Title V application form and instructions do not request information on or include several items of information that are required by IDEQ and EPA regulations to be submitted as part of a Title V application, such as identification of applicable requirements and statement of methods used to determine compliance. This could explain the high rate of incomplete applications submitted by Idaho facilities: IDEQ staff estimated that 80% of applications submitted lacked information needed to draft and issue a Title V permit. IDEQ did not formally identify such applications as incomplete, but instead requested that the facilities submit additional information. IDEQ should revise its standard application form before facilities are required to submit renewal applications to help ensure that all necessary information is provided in the permit application.
2. Standard language on the cover of Title V permits states that "This permit incorporates all applicable terms and conditions of prior air quality permits issued by IDEQ for the permitted source...." This language could be interpreted to suggest that issuance of the Title V permit provides a shield for compliance with *all* previously-issued air quality permits for the facility. This language should be removed because it is not accurate as a general statement. EPA's Part 70 regulations and IDEQ regulations make clear that the Title V permit does not provide a permit shield for a previously-issued permit unless the previously-issued permit is specifically identified in the Title V permit or specifically determined in the Title V permit not to be applicable to the facility.
3. Although our permit reviews identified only a few gaps in the incorporation of requirements, such as NSPS, NESHAPs and SIP, the technique for incorporating those requirement could have been streamlined and clarified in some cases. The wording in the regulations often include and repeat general applicability language (*e.g.*, Each owner or operator of a new or modified diammonium phosphate process line...). Incorporated into a particular section of the permit, the wording can be much more concise. At the same time, the wording in the regulation often needs to be clarified. For instance, the term "administrator" means EPA Administrator unless that particular NSPS or NESHAP provision has been delegated to the state, in which case the term "administrator" means the IDEQ Administrator. A number of general provisions in the NSPS and NESHAP regulations should be included for all emission units that are subject to them, including 40 CFR 60.4(a) and (b); 60.7(b), (c), (d) and (f); 60.11(a), (b), (c), (d) and (g); 60.12; 60.13; 61.10(c); 61.12(c) and (e); 61.14(b) and (f); 61.19; 63.4(b); 63.6(e), (f)(1,2) and (h)(1,2,6,7); 63.7; 63.8; 63.9(e), (f), (g) and (h); 63.10 (b), (c), (d) and (e); and 63.11. Note that the subparts in Part 63 generally include a table listing the general provisions that apply. Also note that some of the one-time requirements may or may not apply depending on whether they have already been performed.

As an example of a SIP requirement, in the Simplot permit, the permit incorporated the ambient monitoring requirement found in 40 CFR 52.675, but did not include the emission limits and emission monitoring from that provision. It is possible that the permit writer determined that the emission limits and emission monitoring requirements could be streamlined with other, more stringent SIP requirements applicable to the Simplot facility. This decision was not, however, discussed in the Technical Memorandum. Moreover, even in the case of streamlining, all applicable requirements must be included in the permit. Please also see the more detailed comments on streamlining in paragraph 7 below.

4. The permits reviewed included several one-time or past requirements that had either been

completed prior to issuance of the Title V permit or were required by the Title V permit to have been completed before the Title V permit issuance date. Where requirements have not been completed on time, they should be addressed in a compliance schedule that is part of the Title V permit. Where requirements have already been completed at the time of permit issuance, it is good practice to determine whether the requirements are obsolete and if so omit them from the permit, explaining the decision in the Technical Memorandum. EPA recognizes that the effort of issuing so many permits last year may not have allowed enough time to look into the compliance status for such one-time or past requirements.

5. Because Idaho does not currently have delegation of the NSPS standards, permittees must provide reports and notifications to EPA as well as to IDEQ (because IDEQ has adopted the NSPS as a matter of state law). The Title V permit or Technical Memorandum should make this dual notification obligation clear. Obtaining delegation of the NSPS standards would obviate the need for dual reporting in most cases.
6. In several cases, permits included only the current state-adopted version of an air quality regulation and not the version that was still approved in the SIP at the time the Title V permit was issued. In other words, Idaho had revised its regulation, but EPA had not yet approved the revised version into the SIP. In such cases, the permit must identify the current state-adopted version as a “state only” provision and must also include the SIP-approved version, although the permit can state that the current state-adopted version will become federally enforceable and the former SIP-approved version will automatically no longer be in effect upon EPA approval of the revised regulation as part of the SIP. Note that this problem has since ceased to be an issue in currently issued permits because EPA approved the current state-adopted version of Idaho’s air quality regulations effective February 18, 2003.
7. In some cases, IDEQ appears to have attempted to streamline permit requirements where two requirements apply to an emission unit but one requirement appears to be more restrictive. Streamlining can be accomplished consistent with the requirements of Title V and EPA’s Part 70 regulations. See Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards to the Regional Air Directors, entitled “White Paper Number 2 for Improved Implementation of the 40 CFR Part 70 Operating Permits Program,” pp. 6-19, dated March 5, 1996. It does not appear, however, that IDEQ always followed the criteria for streamlining, such as carefully documenting in the Technical Memorandum that compliance with one requirement ensures compliance with the other requirement in all cases and including in the citation of authority in the permit for the streamlined permit term citations to all applicable requirements that are subsumed in the streamlined permit term.
8. The Title V permits reviewed included many cross-references to other regulations, permit conditions, applications, and, in some cases, entirely different documents. Cross-referencing can be an effective way to streamline permit writing and reduce the size of the permit, but it can undermine the goal of having a single document that clearly presents and explains all of the applicable requirements that apply to a Title V facility. In deciding whether to include a cross-reference in a Title V permit, we encourage IDEQ to carefully weigh these competing considerations.
9. In some instances where limits were carried over from NSR or Tier II permits, the averaging period was identified as a monitoring requirement, rather than as part of the emission limit itself. Properly identifying the averaging period for emission limits is important when the limit is taken to avoid a program, such as the NESHAP and PSD programs.

10. IDEQ includes in its permits as a general provision in Title V permits a permit shield provision that closely follows IDEQ and EPA's Part 70 regulations. The IDEQ permit term, however, simply recites the permit shield provision without identifying which, if any, requirements have been determined not to apply to the facility. Because no requirements are identified in the permit as having been determined to be inapplicable to the facility, a requirement for obtaining the permit shield, there is in fact no permit shield for inapplicable requirements, but this is not as clear as it could be in IDEQ permits. IDEQ permits should either clearly identify what requirements have been determined to be inapplicable to the facility or should state that there is no permit shield for inapplicable requirements. Requirements identified as inapplicable in the Technical Memorandum or other documents do not have the permit shield.
11. Many of the Title V permits reviewed included mass emission limits, both short term and long term. The permits generally required emission inventories and often specified the use of emission factors in preparing the emission inventories, even in situations where emission monitoring or test data should be available. Actual emission measurement data is generally considered more representative of emissions than the published, generic emission factors that apply to broad classes of emission units. In those cases where continuous emission monitors and test data are available that data should be used for emission inventory purposes.
12. All Title V permits must be accompanied by a statement that sets forth the legal and factual basis for the draft permit conditions. This statement of basis, which IDEQ refers to as the Technical Memorandum, is a useful tool for explaining the permit conditions, documenting IDEQ's decisions and considerations, and helping the regulated facility and the public fully comprehend the permit requirements. IDEQ should work to improve the content of the Technical Memoranda for its permits when IDEQ issues permit renewals and new permits. Although the basic structure and format of the Technical Memoranda seems like a good approach (*i.e.*, addressing applicable requirements sequentially), much of the text in the Technical Memoranda is a simple restatement of the permit requirements, with little additional explanation of the basis of the requirements. This is particularly true for testing, monitoring, recordkeeping, and reporting requirements, where the permitting authority is required to consider what terms and conditions are needed to assure compliance with applicable requirements. This is also true for requirements incorporated from Tier II permits (see Concern #13 below). Including information from the Technical Memorandum for the Tier II permit conditions into the Technical Memorandum for the Title V permit would better explain the legal and factual basis for the permit conditions carried over from the Tier II permit into the Title V permit.

As another example, the Mountain Home AFB permit required IDEQ to apply EPA's non-road engine rules and guidance that EPA had previously provided to IDEQ. The Technical Memorandum should have been very clear about how the rule and applicable policy were being implemented. Specifically, it should have documented exemptions allowed and IDEQ's determination of associated ground equipment as non-road engines.

13. Some permits identified emissions as "fugitives" in situations where it was not clear from the Technical Memorandum or the permit that the source was in fact a source of fugitive emissions, and not a point source. For instance, in some instances, operations inside of buildings were identified as "fugitive," when in fact such emissions are generally considered point source emissions. Determining which emissions are fugitive emissions and which are point source emissions is important in determining which emissions are counted in determining the applicability of the PSD and Title V programs.
14. Several permits required the development of operations and maintenance (O&M) manuals. This can be a good extension of the compliance assurance concept that Title V fosters. In such cases,

there did not appear to be any mechanism for ensuring the manual is adequate, such as a review and approval process, nor was the O&M manual incorporated into the Title V permit. This may be appropriate given the often detailed nature of most O&M manuals and the need to revise O&M manuals frequently to ensure they remain current. In such cases, however, IDEQ should include in the permit as enforceable provisions the key elements of the facility's operation and maintenance procedures that are important for ensuring compliance with applicable requirements.

There are also many situations where the permit, or at least the O&M manual, should require that the operation of equipment follow manufacturer's specifications. IDEQ should use their judgment in deciding when this is appropriate.

15. IDEQ staff and management described some of the training opportunities that are available. Due to travel restrictions, however, only a few staff members are permitted to travel to training opportunities outside the State of Idaho. This policy substantially limits training opportunities for IDEQ staff because many of the national Title V workshops are held in only a handful of locations and generally in larger cities to allow easier access by a larger number of states. EPA notes that training of Title V staff is an expense of the Title V program that is covered by collection of Title V fees.

Other Observations

1. The only permit in the initial round that has not been issued by IDEQ is the permit for the INEEL facility. Issuance of this permit was delayed pending EPA's resolution of the applicability of NESHAP requirements. That issue has been resolved, and IDEQ is processing the INEEL permit again.
2. In the 1990s, Region 10 hosted annual Title V workshops for permitting authorities in Region 10. Because of budget considerations and reductions in Region 10's Title V staff, Region 10 has not held such workshops for several years. IDEQ expressed interest in additional training opportunities for its staff, but noted that restrictions on out-of-state travel for state employees make it difficult for IDEQ staff to take advantage of some training opportunities. Region 10 is willing to work with IDEQ to identify and/or create additional training opportunities for IDEQ staff that acknowledge IDEQ's travel restrictions. This could include a workshop or interactive discussion among IDEQ permit writers and EPA staff, possibly with the participation of permit writers from other Title V permitting authorities in Region 10. Areas of interest identified by IDEQ staff included permit-related compliance training; NSR training, including the interrelationship of NSR and Title V; and drafting more comprehensive Technical Memoranda.

B. General Permits

IDEQ has not developed or issued any general permits.

C. Monitoring

Good Practices

3. One permit reviewed involved the application of the compliance assurance monitoring (CAM) requirements. In general, the permit writer did a good job of capturing the CAM requirements in the permit.

Concerns

1. All Title V permits must include testing, monitoring, recordkeeping, and reporting sufficient to assure compliance with all applicable requirements. Although IDEQ included basic monitoring provisions in the initial round of Title V permits, there is much room for improvement as IDEQ begins to issue permit renewals and new permits. In developing monitoring guidance and issuing permit renewals and new permits, IDEQ should re-examine monitoring decisions made in initial permits and, where appropriate, expand on the monitoring and compliance assurance provisions. Many permits relied on monitoring of a single parameter to ensure compliance where it is not obvious that a single parameter alone is adequate. In many cases, no monitoring was included for an applicable requirement or monitoring was very limited, especially in the case of short term particulate matter and opacity emission limits. In such cases, the Technical Memorandum did not provide adequate justification for the decision to include no or very limited monitoring. The permit reviews performed as part of this project contain a broad spectrum of suggestions for improving the monitoring conditions that should be considered during permit renewals. Region 10 considers this an important issue that IDEQ should address as it renews existing Title V permits and issues new Title V permits. Region 10 staff are available to discuss this in more detail with IDEQ staff and to work with IDEQ on developing comprehensive monitoring provisions for Title V permits.
2. IDEQ does not have any written guidance for determining appropriate monitoring and other compliance assurance measures for Title V permits. Some permitting authorities, such as the Oregon Department of Environmental Quality (ODEQ), have developed monitoring guidance for permit writers to use in issuing Title V permits and EPA believes this has been a very effective means of establishing a consistent approach to monitoring. Now that IDEQ has almost completed issuance of the initial Title V permits, we encourage IDEQ to consider developing written guidance for Idaho permit writers to consider in determining appropriate monitoring and compliance assurance measures in permit renewals and newly issued permits. In developing such guidance, we encourage the IDEQ permits staff to solicit input from compliance inspectors and enforcement personnel, as well as to seek examples from other state and local permitting authorities.
3. Although the permit format was relatively consistent, we did observe inconsistencies in the monitoring requirements. Monitoring decisions must be case-specific in Title V permitting; however, similar operational and emission control scenarios should result in similar monitoring requirements. The fact that IDEQ has no guidance, even general guidance, regarding monitoring expectations appears to have resulted in individual permit writers applying differing monitoring strategies for similar sources.
4. Where testing was required in permits, the permit did not always require simultaneous monitoring and recording of the compliance assurance parameters. Similarly, where particulate emission

testing was required in permits, the permits did not always require simultaneous recording of opacity. These are both good practices to consider because they can help to establish acceptable ranges for compliance assurance parameters and provide a baseline relationship between monitored parameters and emissions that can be used to identify potential performance changes at an emission unit. This ties in with the need for IDEQ to establish acceptable ranges for all compliance assurance parameters and to re-examine those ranges each time a source is tested.

5. Opacity observations are routinely required and in many instances relied upon by IDEQ in Title V permits to indicate compliance with both opacity and grain loading emission limits, which is a common practice among other state and local agencies as well. Idaho's opacity limit generally prohibits opacity in excess of 20% for more than 3 minutes in any 60 minute period. In some cases, Title V permits required the permittee to conduct a Method 9 observation for a period of only six or ten minutes. In such cases, the permit did not specify, however, what would occur if such a Method 9 observation documented, for example, that opacity exceeded 20% for two minutes during a required six minute observation, which would indicate on a proportional basis that the facility would exceed the opacity limit had the observation been conducted for a full 60 minutes. One way to address this ambiguity in the permit is to add language that requires the facility, whenever a single reading is greater than the standard, to conduct a Method 9 opacity observation for a full 60 minutes or until an exceedance is documented.
6. The frequency of testing and monitoring must be specified in the Title V permit. IDEQ appears to have used a general approach to testing and monitoring frequency, whereby the frequency is dictated by how close the previous test or monitoring results were to the emission limit. Although the compliance margin, as indicated by the most recent source test or monitoring, is one factor that should be considered in determining the frequency of testing and monitoring, other relevant factors include the relative variability of an operation and the availability of other appropriate monitoring provisions to ensure compliance between tests. IDEQ should also consider these factors in determining the frequency of testing and monitoring.
7. Many of the Title V permits reviewed included a condition that allowed a source to operate at up to 120% of the operating rate achieved during the most recent passing source test. Establishing a restriction on production can be a useful compliance assurance measure but using a standard margin above the last source test will not ensure compliance in all cases. Such a margin must be established on a case-by-case basis, taking into consideration the variability of the source and how close the measured emission rate during the last source test was to the emission limit. IDEQ has recognized this and advised EPA during the on-site interviews that IDEQ was moving toward a different approach for setting production limits based upon emission testing results. As an example, IDEQ noted the use in a permit of a graduated operational limit using a ratio of the emissions level to the standard when the measured emission rate was greater than 5/6ths of the grain loading standard.
8. In some cases, IDEQ required the same testing or monitoring for several similar or even identical emission units, without explaining in the Technical Memorandum why the same testing or monitoring regime was appropriate. This is especially a concern where past testing has not demonstrated that emission units have similar emissions and operate in a similar manner.

Other Observations

1. As a suggestion for developing more useful and comprehensive compliance assurance provisions for baghouse (fabric filter) control devices, Region 10 shared information with IDEQ staff on triboelectric monitors, which are also known as baghouse leak detection devices. Such devices are sensitive enough to detect even very small leaks in baghouse fabric filters. Given the normal

variation in pressure drop, monitoring pressure drop alone is not effective for detecting smaller holes and tears in bags. A triboelectric monitor is also more likely to detect a leak than a continuous opacity monitor and is much less expensive than an opacity monitor. EPA has been increasingly requiring the use of such devices in NESHAPs and other federal requirements, such as the Federal Implementation Plan for the Astaris facility in Pocatello, Idaho.

D. Public Participation and Affected State Review

Good Practices

2. Overall, IDEQ is following the public notice process as directed by state regulation. Public notices are published in newspapers of general circulation, as well as on the IDEQ website. Where applicable, published notices appear in more than one newspaper. IDEQ also sends public notices to persons who have expressed interest in Title V permits. IDEQ uses its web site to post press releases, legal notices, Title V permits, Technical Memoranda, and documents archived after completion of the public comment process.
3. When IDEQ anticipates the need or interest for a public hearing on a Title V permit, IDEQ schedules a public hearing at the same time it puts the draft permit out for public comment. This can result in a more expeditious overall process than waiting to schedule a hearing until one is requested during the public comment period because 30 days advance notice is required for all public hearings.

Concerns

1. EPA has reviewed a recent Idaho ruling regarding the right of an environmental organization to intervene in an appeal of a Title V permit where the organization commented on the permit, but did not itself appeal the permit. At this time, EPA does not believe the ruling interferes with the public participation requirements of the Clean Air Act and EPA's Part 70 regulations. EPA is aware of another pending case, however, in which the permittee is challenging the right of an environmental organization to appeal a Title V permit on which the organization submitted public comments. EPA will follow that proceeding to ensure that Idaho's public participation procedures continue to meet the requirements of the Clean Air Act and EPA's Part 70 regulations with respect to representational standing for organizations.
2. Public involvement is an important part of the Title V process. The Clean Air Act requires states to solicit public comment on draft permits and to provide public commenters the right to challenge permits in state court. Although Idaho law meets these requirements, IDEQ does not provide outreach to the public on how the Title V program works or how the public can participate in the review and issuance of Title V permits. Although IDEQ occasionally receives comments from the public on Title V permits, IDEQ staff noted that the comments are generally not substantive and expressed concern that Idaho's public review process was ineffective due to the limited number and nature of the comments. By providing basic training to the public on how the Title V program works and how the public can participate in the review and issuance of Title V permits, IDEQ could help ensure a more meaningful public participation process in Idaho. EPA is willing to assist IDEQ in providing public participation training opportunities.
3. IDEQ also does not have any programs focused on environmental justice to help ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws and policies. Although Idaho has a large and increasing Hispanic population, all of the public participation information is provided in English only. Translation of public notices into Spanish could assist this community in participating in the Title V issuance process and further environmental justice goals, especially in cases where Title V facilities are located in areas with significant Hispanic populations. EPA is willing to assist IDEQ in providing environmental

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

Other Observations

1. To date, eight of the approximately 50 Title V permits issued by IDEQ have been subject to legal challenge. One challenge involves a petition by three environmental organizations/individuals asking EPA to object to the permit, as well as an appeal by the same parties of the permit in state proceedings. All other challenges have been appeals filed by permittees in state proceedings. Region 10 will follow with interest the outcome of the challenges and, in particular, any resulting permit revisions.

E. Permit Issuance / Revision / Renewal

Good Practices

2. All permits in the initial round were issued by the end of 2002 except one, the issuance of which has been delayed pending EPA's resolution of the applicability of the radionuclides NESHAP. Given that IDEQ had issued only a handful of permits before 2002 and the fact that many state and local agencies are not expected to complete issuance of the initial round of permits until December 2003, this was an impressive accomplishment, particularly given that the permits are generally well written (see concerns and suggestions noted in this report for possible improvements to the permits). A key factor in IDEQ's success in getting so many permits issued in such a short period of time appears to be the commitment by upper management in IDEQ to the permit issuance goal.
3. IDEQ is in the process of developing a database to track time lines for Title V, Tier II and NSR permits to help ensure streamlined processing time frames. If this new system is effective, Region 10 would like to hear more about it in order to share the concept with other permitting authorities that might benefit from such a system.
4. Draft permits are reviewed by IDEQ inspectors and/or compliance staff. This is a good practice for ensuring the permit terms are clear and enforceable.
5. IDEQ routinely has a "hand off" meeting with each permittee during which IDEQ goes through the permit with the permittee. This practice likely results in the permittee having a better understanding of the permit requirements, which in turn should improve compliance rates.

Concerns

1. EPA's Part 70 regulations and IDEQ's regulations state that the permitting authority shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request. IDEQ took more than 60 days to take final action on most administrative permit amendments. IDEQ's efforts to get all permits issued by the end of 2002 may have contributed to this delay in acting on administrative permit amendments.

Other Observations

1. None

F. Compliance

Good Practices

2. One of the goals of the Title V program is to improve compliance at permitted facilities and thereby reduce air emissions. The Title V process resulted in the discovery of a number of compliance issues in Idaho. Of the approximately 50 permits issued by IDEQ, approximately 30 permits have compliance schedules and of those, approximately half may involved violations of the PSD requirements. Although the level of past non-compliance is of concern, the fact that IDEQ identified many compliance issues and plans to resolve them is certainly a good practice.
3. Past compliance issues, particularly noncompliance with minor and major NSR requirements, appear to have delayed permit issuance for the first several years of IDEQ's program. In general, IDEQ's approach to addressing potential non-compliance issues discovered during the Title V permit issuance process was to include a compliance schedule in the Title V permit requiring the facility to apply for and obtain a single facility-wide permit meeting the requirements of Idaho's NSR program and Tier II permit program. The requirements of this facility-wide permit will then be incorporated into the Title V permit at permit renewal or in a permit reopening. This innovative approach turned out to be a good approach for keeping the Title V permitting process moving (see concerns noted below for possible side-effects of deferring resolution of such compliance issues) Resolution of these compliance issues will likely be translated into potentially large reductions in emissions. IDEQ will need to follow through on bringing facilities into compliance through the NSR/Tier II permitting process to truly realize the potential emission reductions.
4. We strongly support IDEQ's compliance certification form to the extent it requires the permittee to certify its compliance status on a permit term-by-permit term basis. Requiring a permittee to show the permitting authority more detail of the process the permittee went through to review the compliance status of the facility will minimize the likelihood that potential noncompliance issues are overlooked. We believe this effort will in turn improve compliance overall. It is difficult to argue that this approach imposes a greater burden on permittees because permittees, as part of their obligation to conduct a reasonably inquiry into their compliance status, should be going through this same process even with a shorter, blanket certification form. EPA understands that IDEQ has started the rule development process to incorporate into its compliance certification requirement (IDAPA 58.01.01.322.11.c.ii) changes made to 40 CFR Part 70 on June 27, 2003 (68 Federal Register 38518). IDEQ will need to make these same changes to its compliance certification form.
5. Idaho has in many cases used the terms and language in 40 CFR Part 64, 40 CFR Part 71, and EPA's Part 71 compliance certification form in IDEQ's compliance certification and reporting forms and instructions. This will help ensure consistency with federal requirements.
6. During the summer of 2003, IDEQ developed a Title V compliance reporting training module that was used both internally, to instruct staff on reviewing compliance reports, and externally, to communicate to industry IDEQ's compliance reporting expectations.

Concerns

1. Because of the large number of Title V permits with compliance schedules that require non-complying facilities to apply for and obtain a facility-wide NSR/Tier II permit on set time

schedule, IDEQ has a significant upcoming workload in its NSR and Tier II permitting programs. Because the same IDEQ staff is responsible for issuing Title V, NSR and Tier II permits, there will undoubtedly be competing priorities for IDEQ's permits staff: issuing modifications to Title V permits, acting on renewal applications for Title V permits within the 18 month deadline, issuing facility-wide NSR/Tier II permits for noncomplying facilities, and keeping up with NSR and Tier II applications for other facilities. This workload will need to be carefully managed by IDEQ management. Because the Title V program is a fully self-funded program, it is important that the responsibilities of the NSR and Tier II programs not interfere with the timely issuance of Title V permits. IDEQ's decision to stagger the expiration dates for the first round of Title V permits should assist in managing the workload of IDEQ's permits staff.

2. Given the large number of Title V permits with compliance schedules, EPA anticipates that at least some of the violations discovered through the Title V permit issuance process will be classified as "high priority violations" (HPVs), as described in EPA's "Policy of Timely and Appropriate Enforcement Response to High Priority Violations," dated December 22, 1998 (HPV Policy). As such, EPA expects that such violations will be identified, tracked, and addressed consistent with the HPV Policy. EPA notes with concern that Idaho law prohibits IDEQ from bringing an administrative or civil proceeding to recover for a violation more than two years after the director of IDEQ had knowledge or ought reasonably to have had knowledge of the violation. See Idaho Code § 39-108(4). Although the Idaho Attorney General's Office has stated that this provision does not prohibit IDEQ from seeking injunctive relief where violations have continued for more than two years with the actual or constructive knowledge of IDEQ, this provision could preclude IDEQ from assessing penalties for HPVs at Title V facilities in a manner consistent with the HPV policy. EPA notes with concern that IDEQ does not appear to assess penalties at all to facilities that do not pay Title V fees on time. EPA will continue to monitor IDEQ's enforcement program and the impact of this statute of limitations provision on IDEQ's ability to implement and enforce the Title V program consistent with the requirements of the Clean Air Act and EPA's Part 70 regulations.
3. The instructions to IDEQ's standard form "Semiannual Deviation Summary Table" state that deviations attributable to excess emissions must be reported in accordance with IDAPA 58.01.01.130-136 and are therefore not required to be addressed on the Semiannual Deviation Summary Table. Although the instructions to the Semiannual Monitoring Table do clearly state that ALL deviations must be referenced in the Semiannual Monitoring Table (both those on the Semiannual Deviation Summary Table and other deviations reported at an earlier date, such as excess emissions), the title of the form, "Semiannual Deviation Summary Table," is misleading in that it is not in fact a summary of all deviations. This is compounded language on the Instructions for Title V Semiannual Report, which states, "Check either yes or no to indicate if any deviations from permit conditions are being reported for the given reporting period. If the answer is yes, attach the Semiannual Deviation Summary Table (Form AQ-C3) to this Semi-Annual Report." According to the Instructions to the Semiannual Deviation Summary Table, however, there are situations where a permittee would have had a deviation, but would not need to submit a Semiannual Deviation Summary Table—where the deviation is excess emissions reported in accordance with IDAPA 58.01.01.130-136. Clarifications to the Instructions for Semiannual Deviation Summary Table and the Instructions for Title V Semiannual Report would help avoid confusion. EPA is aware that IDEQ is revising the form to minimize any confusion.
4. IDEQ's Semiannual Deviation Summary Table Form and Instructions describe the term "credible evidence" incorrectly. "Credible evidence" is any evidence that provides credible information relative to whether a facility would have been in compliance with an applicable requirement if the appropriate performance or compliance test or procedure had been performed. In other words, it is evidence other than the reference test method or procedure. For a given applicable

requirement, the monitoring required in the Title V permit is often not the reference test method or procedure, but is often credible evidence. For example, for an opacity standard, Method 9 may be the reference test method, but the permit might require a continuous opacity monitor or weekly readings for any visible emissions. That monitoring is “required” by the Title V permit but is credible evidence, not a direct measurement of compliance with the standard.

5. In the questionnaire, IDEQ stated that Idaho’s SIP excess emission provisions (IDAPA 58.01.01.130-136) provide relief from penalties and injunctive relief and excuse noncompliance. As EPA stated when it approved Idaho’s excess emission provisions, however, EPA believes that “Idaho’s rules make clear that emissions in excess of emissions limits are considered violations and are not automatically excused. Instead, section 131 contains criteria to be used in determining whether the Department should take enforcement action to impose penalties for excess emissions.” See 67 FR 52668 (August 13, 2002). EPA came to this conclusion based on its review of Idaho’s excess emissions provisions, discussions with the Idaho Attorney General’s Office, and discussions with IDEQ staff several years ago. IDEQ should review its excess emission provisions with the Idaho Attorney General’s Office and confirm to EPA in writing how IDEQ interprets Idaho’s excess emission provisions and what steps IDEQ will take to ensure that the Title V permits staff understands IDEQ’s interpretation of the excess emission provisions.

Other Observations

1. See Concern #16 and Other Observation #2 in Section A of this report regarding resources and training.

G. Resources and Internal Management Support

Good Practices

2. IDEQ appears to have a very effective and user-friendly computer-based time keeping system called the “STARS accounting system.” The system tracks the different air program codes and keeps 10 to 15 funding mechanisms separated, which helps ensure that Title V costs and fees are kept separate from other IDEQ costs and fees, as is required by EPA’s Title V regulations. The database is updated weekly, making the Title V data available for employees and management on nearly a real-time basis.
3. The permit writers seem to have a good sense of where to charge their time. The only exception to this is where permits staff were developing Title V and Tier II permits simultaneously; in that case, they must use their judgment to distribute their time between tasks and charge accounts.
4. IDEQ reported that the turnover during this past fiscal year has been minimal even though IDEQ does not feel it offers competitive salaries. IDEQ attributes the low turnover to the variety of work (Title V, NSR, Tier II, enforcement support, and special projects) that is provided to staff. To the extent that IDEQ staff turnover continues to be low, this will be a notable achievement. Early on in the Title V program, keeping experienced staff was a big challenge for many state and local agencies.
5. The collection of an adequate level of fees is critical to effective implementation of the Title V program. IDEQ takes the time to review, and revise if necessary, the emission inventories that are submitted by Title V facilities for fee purposes. From a resource standpoint, this can be a good practice for ensuring that adequate fees are being paid (See the concerns below for other ways the payment of fees can be assured).

Concerns

1. IDEQ permit staff members are not dedicated to the Title V program only and are also responsible for processing NSR and Tier II permits. This is a common practice in smaller state and local air agencies and in fact can be an efficient use of staff expertise. Because the Title V program is a fully self-funded program, however, it is important that the responsibilities of the NSR and Tier II programs not interfere with the timely issuance of Title V permits.
2. Because the Clean Air Act requires that Title V fees fully cover the cost of the Title V program, it is important to ensure that the revenues projected for the program are in fact available. Although there is no indication that IDEQ is not collecting enough revenue to adequately run its Title V program, IDEQ does not appear to assess interest to facilities that do not pay Title V fees on time, nor does IDEQ appear to even collect past due fees in all cases (as, for example, where a facility failed to submit a Title V application for several years). IDEQ’s failure to impose consequences on facilities that do not pay their fees could over time result in actual Title V revenues falling short of projections so that Title V fees are not sufficient to support the program.

Other Observations

1. See Concern #16 and Other Observation #2 in Section A of this report regarding resources and training opportunities.

2. IDEQ noted that the EPA Headquarters web site has become much more difficult to navigate, making the information available through that web site (including EPA's policy and guidance) difficult to access and use. Region 10 will ensure the EPA office responsible for the web site is aware of IDEQ's concerns.

H. Title V Benefits

Benefits Identified by IDEQ

In response to the program review questionnaire and during the on-site interviews, IDEQ identified an impressive list of benefits that have resulted from the implementation of the Title V program. The notable benefits identified by IDEQ and summarized below reflect the value that can come from responsible implementation of such a comprehensive air quality program.

3. IDEQ staff gained a better understanding of a number of programs that are folded into Title V permits, including NSPS, SIP requirements, and NSR.
4. Permit writers improved their skills in devising monitoring terms that assure compliance and writing enforceable permit terms, as well as their knowledge of applicability criteria for NSPS, NSR, and other Clean Air Act programs. IDEQ believes these skills will carry over into its other air permitting programs.
5. Drafting and issuing Title V permits resulted in more complete information and knowledge about the universe of Idaho facilities, facility operations, and stationary source emission inventories.
6. Permittees are devoting more resources (staff, environmental management systems, and controls) and attention (compliance monitoring and maintenance) to assuring compliance with their permits and the applicable requirements.
7. Improved compliance, due to Title V permits, has resulted in emission reductions.
8. Permits issued by the individual IDEQ regional offices in the past were at times inconsistent. IDEQ's effort to create a central permitting group (for all air permitting) that can collaborate on permitting issues appears to have identified the need for and improved the consistency of Title V permits and will potentially do the same for other permitting programs.
9. The Title V program has improved IDEQ's records management, the enforceability of potential to emit limits, and the identification of source categories with pervasive or persistent compliance problems.
10. The fees collected through the Title V Program have improved training, allowed more resources for equipment and on-site travel, and provided a stable funding source for IDEQ.
11. The Title V Program is responsible for putting together and documenting the requirements of the CAA in one permit document. As such, it provides great benefit to the regulated community, IDEQ, and the public in providing a single comprehensive listing of a facility's air quality obligations.

Attachment I

Kickoff Letter to IDEQ

Attachment II

Completed Questionnaire and Fee Protocol

Attachment III

IDEQ Application Form, Instructions and Checklist

Attachment IV

IDEQ Reporting Forms and Instructions