



FINAL Report:
Oregon Department of Environmental Quality
Title V Program Review

EPA Region 10
June 7, 2006

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Executive Summary

Overview

In response to a 2002 Inspector General audit of EPA's Title V program, EPA is reviewing all state and local Title V programs. 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 Oregon Department of Environmental Quality (ODEQ) Title V program. Region 10 greatly appreciates ODEQ's cooperation in completing this important effort.

ODEQ is a state air pollution control agency with statewide jurisdiction except in Lane County, Oregon, and in Indian country. ODEQ promulgates regulations, provides guidance documents and forms and issues permits to approximately 140 sources.

EPA's review, which began in March 2004, is based on a questionnaire, permit, form and guidance reviews and on-site interviews. EPA's review of ODEQ's program also included a review of ODEQ's Title V fee management system. The review addresses the following topic areas:

- Permit Preparation and Content
- Monitoring
- Public Participation and Affected State Review
- Permit Issuance/Revision/Renewal
- Compliance
- Resources and Internal Management Support (including program fee management)
- Title V Benefits
- Document Review (Rules/Forms/Guidance)

The program review report is formatted consistent with the program review questionnaire. Within each of the topic areas, the report describes good practices, concerns, and other notable observations. A summary of the key observations related to Title V benefits, good practices, and concerns is provided below.

Summary of Title V Benefits Identified

In response to the program review questionnaire and during the on-site interviews, ODEQ identified a number of benefits that have resulted from the implementation of the Title V program in Oregon. The notable benefits identified by ODEQ reflect the value that can come from responsible implementation of such a comprehensive air quality program. See Section H of this report for a list of the Title V benefits that ODEQ has realized.

Summary of Good Practices

Each section of this report includes a description of good practices that were identified during the program review pertaining to that particular topic. In general, we included in the report only those good practices that are unique to ODEQ or seem particularly worth noting and passing along to other permitting authorities. ODEQ'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. Particularly notable good practices are summarized below.

- ODEQ issued their initial Title V permits in a timely manner and, in fact, was the first program in the country to issue all of their initial permits.
- Throughout the implementation of the Title V program, ODEQ has created guidance, forms and models that are excellent resources for Title V.
- When nearly finished issuing their initial round of permits in 1998, ODEQ undertook a comprehensive review of their Title V program in an attempt to resolve many issues that were identified during the first round of permitting, exhibiting a commitment to quality permits.
- Each permitting office uses a thorough peer review process for permit development.
- ODEQ uses a variety of resources to enhance their public review process.
- ODEQ offers a permit “hand-off” meeting with each source after permit issuance.
- ODEQ requires compliance certification on a permit term-by-permit term basis.

Summary of Concerns

Each section of this report describes concerns that were flagged by EPA during the program review. Some concerns identified in this review will need to be resolved as ODEQ renews their operating permits; others will need to be resolved as ODEQ updates their Title V program. The following summary indicates concerns that warrant earnest attention. EPA will work with ODEQ to address these concerns and will schedule followup activities as needed.

- On November 1, 2005, a number of environmental groups filed a petition requesting EPA to determine that ODEQ's Title V program does not meet Clean Air Act requirements because state law exempts agricultural operations. ORS 468A.020 and OAR 340-200-0020 provide that state air pollution laws, including ODEQ's Title V regulations, do not apply to certain agricultural operations and activities. EPA is currently reviewing the petition to determine whether the agricultural exemption in Oregon raises legal concerns about the status of EPA's previous approval of ODEQ's Title V program.
- EPA is concerned with ODEQ's interpretation regarding “supersession” of expired air contaminant discharge permits (ACDPs).
- ODEQ's rules do not require certain non-major sources to obtain Title V permits as is required under Title V and Part 70.
- Of the 91 permit renewals that ODEQ has processed, 31 have taken longer than the 18 month target stipulated by Part 70.
- ODEQ's deviation reporting rules, as written, do not require the prompt reporting of all deviations.
- Some of ODEQ's permits and review reports did not sufficiently and clearly address periodic monitoring requirements.
- The list of changes in Oregon's program that can be made by administrative amendment should be narrowed.

Introduction

General ODEQ Title V Program Background

ODEQ is a state air pollution control agency with Title V authority statewide except in Lane County and Indian country. A local agency, Lane Regional Air Protection Agency is the Title V permitting authority in Lane County, while EPA is the Title V permitting authority in Indian country. EPA granted ODEQ full approval of their Title V program effective November 27, 1995, 60 FR 50106 (September 28, 1995). At that time, we determined that the State of Oregon's statutes and regulations met the requirements of the Clean Air Act and EPA's Part 70 regulations. Oregon was the first permitting authority in the country to issue all of their initial Title V permits; totaling 140 affected sources. There are about 15 people at ODEQ, totaling approximately 14 FTE, that spend at least part of their time processing Title V permits.

Prior to Title V, ODEQ had a state operating permit program, which was approved as part of the Oregon SIP. These federally enforceable state operating permits were referred to as ACDPs. The ACDP permit system has been retained for non-major sources, and modified to accommodate 40 CFR Part 70 (Part 70) requirements and EPA policies for major sources. Various types of ACDPs are issued depending on the size and type of the source. Oregon rules require that a plant site emission limit (PSEL) be established for certain facilities via the ACDP. Permits issued by ODEQ under the authority of Part 70 are referred to as Title V air operating permits, rather than ACDPs. New and modified Title V sources are issued an ACDP for the project and after the project is completed, the terms of the project ACDP are added to the Title V permit through permit revisions.

Review Objective

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. ODEQ is the third program review in Region 10.

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

Review Basis

The program review is based on answers ODEQ provided to an EPA questionnaire, review of four issued permits and review reports (called statements of basis by EPA), review of application and reporting forms and guidance, and interviews with ODEQ representatives during a site visit on July 7 and 8, 2004. This information was analyzed with regard to Part 70 regulations and policies, ODEQ regulations, and results from a joint ODEQ-EPA Title V program review conducted in 1999 (e.g. the ODEQ model permit). The original letter kicking off the review is included as Attachment I. A questionnaire, developed by EPA Headquarters with input from the Regions and revised by Region 10 to include a table titled State/Local Title V Program Fiscal Tracking Evaluation Document (the protocol developed by EPA in 1997 and used

in previous Title V fee program reviews), was sent to and completed by ODEQ in advance of Region 10's on-site visit to the agency. We reviewed the completed questionnaire and fee protocol (Attachment II) prior to the on-site visit. We also reviewed ODEQ's forms for applications and reporting, as well as four permits issued by ODEQ and/or their related review reports.

While on site at the ODEQ office, we interviewed the air permitting program manager, the Title V program lead and two permit writers. We discussed ODEQ's Title V fee program with 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.

EPA's review team included six Region 10 staff members, including legal and technical support. Key elements of each individual's observations, as well as observations from the on-site interviews, are highlighted and discussed in the report. The report addresses the following topic areas:

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

The fee protocol information is addressed in the Resources and Internal Management Support section of the 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 ODEQ or seem particularly worth noting and passing along to other permitting authorities. ODEQ's implementation of the program includes many other good practices that are not specifically discussed in the report because they are widely used among other Title V permitting authorities. A summary of concerns is also provided that identifies those issues that will need to be addressed.

A. Title V Permit Preparation and Content

Good Practices

1. ODEQ's original permit format, standard terms, guidance, application/reporting forms and monitoring protocols were established through workgroups. Standardization like this improves consistency and organization. In general, the forms are very helpful in providing the source with guidance in how to fulfill their reporting obligations as well as explaining what procedure is appropriate for a particular type of facility change.
2. When nearly finished issuing their initial round of permits in 1998, ODEQ undertook a comprehensive review of their Title V program in an attempt to resolve many issues that were identified during the first round of permitting. ODEQ again solicited input from permittees, permit writers and EPA. This commitment to quality permits resulted in revised application forms, a streamlined renewal application form (which eliminates redundancies), two model permits and a review report for internal use.
3. ODEQ's two model permits provide staff with two options for permit format. Both formats are well-designed to assist inspectors and plant staff in assessing compliance with permit terms. The summary tables for emission units, emission limits and requirements are helpful for quick reference and navigating the permit. The format locates the applicable requirements, monitoring, testing, recordkeeping and reporting for a single emission unit in a single place, which allows for easy field use and less page turning to review requirements for a particular emission unit. Standard "boilerplate" sections that are not open to revision from permit to permit (without management approval) likely results in processing efficiencies.
4. ODEQ performs a thorough review of available data to confirm the compliance status of each permitted source before permit issuance. ODEQ then works with their sources to resolve compliance issues during the Title V permit development process without allowing that work to unduly delay issuance of permits.
5. Each of ODEQ's permitting office uses peer review by additional staff and managers before taking the draft permit to public comment. Additional review by staff in the ODEQ's central office, with expertise in areas such as maximum achievable control technology or emission inventories, takes place during the public comment period. Proposed and final permits are again peer reviewed by staff and managers. Peer review helps to ensure thorough and consistent permits.
6. The "Information relied on" provision on the permit cover page is a good way of clearly identifying what information from the permittee ODEQ relied on in issuing the permit and emphasizes the point that ODEQ's decisions are made based on information provided by the permittee. Similarly, the explanation in the review report about changes at the facility and to the permit since the permit was last issued is very helpful.
7. The normal delay in approving new regulations into the SIP creates a challenge for permitting authorities to cite existing as well as future regulations, particularly when the rule numbering has changed. ODEQ dealt with this by attaching a cross reference for the different numbering systems of the rules.

8. It is obvious from review of the permits and interviews with permit writers that ODEQ technical staff have a good understanding of air pollution standards and air pollution engineering.
9. ODEQ's review reports (called statements of basis by EPA) generally follow the permit format, providing specific explanations for many portions of the permit.

Concerns

1. EPA remains concerned that ODEQ interprets their regulations to mean that the Title V permit replaces or "supercedes" ACDPs and that ACDPs expire once a Title V permit is issued. In a May 20, 1999, letter from John Seitz to STAPPA/ALAPCO (referred to as the "Hodanbosi letter"), EPA states that "Title V permits may not supercede, void, replace, or otherwise eliminate the independent enforceability of terms and conditions in SIP-approved permits." EPA has also issued a notice of deficiency to a permitting authority on a similar issue (see 67 Federal Register 52615, August 13, 2002). If ODEQ rules are or may be interpreted to allow ACDP conditions to lapse upon expiration of Title V permits or to be modified by procedures that do not meet the requirements for modifying ACDPs, then it is a Title V program deficiency that must be corrected. ODEQ has stated that they believe this is an implementation issue, not a rule deficiency. ODEQ has indicated that they plan to address this issue in all permits by denoting requirements as either state or federal, by identifying the legal basis for each requirement, and by identifying the procedure for revising source specific requirements. EPA believes that a regulatory fix for this issue is important to effectively institutionalize these procedures and ensure that ACDPs remain independently enforceable, notwithstanding the expiration of the Title V permit.
2. The permits should more specifically identify the authority for the permit terms. This is done well in many cases, but EPA also identified several permit conditions that had no citation, had too high of a level of a citation or appeared to be missing a second appropriate citation. In some cases, the citations were wrong or referred to out of date versions of the rules.
3. The permit standard condition describing what provisions of the permit are federally enforceable and what are state-only would be improved by specifying what "federally enforceable" means; that is, that such provisions are enforceable by EPA and citizens under the Clean Air Act. Similarly, the review report could be used to explain which requirements are "state-only" and what is meant by the term.

Other Observations

None

B. General Permits

ODEQ has not developed or issued any general permits.

C. Monitoring

Good Practices

1. Early in the implementation of their program, ODEQ created an application guidebook and Title V Monitoring and Testing Guidance. Later, ODEQ developed model permits and a model review report. These documents, and other internal guidance documents, forms and communications, are excellent resources and serve as a means of ensuring a consistent approach to monitoring in Title V permits.

Concerns

1. In some instances where ODEQ appropriately added periodic monitoring to permits, the monitoring created in the permit was not clear and in some cases included the wrong testing reference method. In other instances, operational requirements existed in the permit, but the permit lacked monitoring to assure compliance or a clear compliance determination method. Permits for large facilities that include multiple federal standards as well as requirements originating in state construction and operating permits can be very complex. The lack of sufficient periodic monitoring or enforceability of such requirements are serious shortfalls in permit writing and can lead to permit objections. In the future, ODEQ should be more careful to create monitoring that is sufficient and clear and that the applicable requirement and required monitoring are written in an enforceable manner. ODEQ's internal peer review system should help with this. Permit review reports should also be used to explain ODEQ's decisions regarding periodic monitoring.

Other Observations

None

D. Public Participation and Affected State Review

Good Practices

1. In addition to publishing public notices of permit actions in newspapers of general circulation and sending them to their maintained mailing list of interested individuals, ODEQ also posts public notices on their website. When they expects considerable interest, ODEQ will issue a special news release. If requested, ODEQ is willing to develop notices in languages besides English and they provide alternative formats for the blind. ODEQ is working on an email distribution system to enhance public access.

Concerns

1. Several permit review reports, including the model review report, state that the public will have 105 days (45-day EPA review period plus 60 days) from the date the proposed permit is sent to EPA to appeal the permit with EPA. To have standing to petition EPA on a permit, generally, the public must first raise the issue during the public comment period. Then if EPA does not object to the permit during the 45-day review period, the public can petition EPA within 60 days after the 45-day review period ends. ODEQ should revise this language in the review reports to be clear about the EPA petition (appeal) process.
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 Oregon law meets these requirements, ODEQ 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. 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, ODEQ could help ensure a more meaningful public participation process.
3. ODEQ 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. ODEQ should carefully balance these interests as it works with permittees during the development and issuance of Title V permits.

Other Observations

None

E. Permit Issuance / Revision / Renewal

Good Practices

1. ODEQ issued their initial Title V permits in a timely manner and, in fact, was the first program in the country to issue all of their initial permits. This timeliness was achieved through management emphasis on permit issuance, use of organized work goals, and cooperation within the ODEQ Title V program. Experience gained from running a state operating permit program before Title V may have also contributed to timely permit issuance.
2. ODEQ offers a permit “hand-off” meeting with each source after permit issuance. This is a good practice that allows a useful opportunity to answer questions about the permit.

Concerns

1. Of the 91 permit renewals that ODEQ has processed, 31 have taken longer than the 18 month target stipulated by Part 70. EPA plans to track permit renewal progress in the future with set goals and reporting requirements for each EPA region and permitting authority.

Other Observations

None

F. Compliance

Good Practices

1. We strongly support ODEQ's compliance certification form to the extent it requires the permittee to certify its compliance status on a permit term-by-permit term basis. Requiring a permittee to show the permitting authority more detail of the process the permittee went through to review the compliance status of the facility will minimize the likelihood that potential noncompliance issues are overlooked. We believe this effort will in turn improve compliance overall. It is difficult to argue that this approach imposes a greater burden on permittees because permittees, as part of their obligation to conduct a reasonable inquiry into their compliance status, should be going through this same process even with a shorter, blanket certification form.

Concerns

1. Title V, in 40 CFR 70.6(a)(3)(iii), requires the prompt reporting of all permit deviations. ODEQ's Title V rules require prompt deviation reporting in OAR 340-218-0050(3)(c)(B) for deviations that do not cause excess emissions. Deviations that do cause excess emissions are to be reported in accordance with ODEQ's excess emission provisions in OAR 340-214-0300 thru 0360. Section 0300, however, limits the scope of excess emission reporting to only those emissions resulting from breakdown of control or operating equipment, process upset, startup, shutdown, or schedule maintenance. ODEQ's rules, therefore, do not require reporting of deviations that cause excess emissions if they are not associated with one of those events. For example, deviation reporting is not required where an emission unit is not meeting an emission limit, but the control equipment and source are operating normally - a situation that can occur, particularly when a source is subject to a new requirement or tested for the first time. Furthermore, ODEQ's rules, in OAR 340-214-0340(4), require an upset log be kept and, in OAR 340-218-0050(3)(c)(A), included with the annual report; but, the log also appears to only be required for the listed events in OAR 340-214-0300. ODEQ must revise their rules to capture the reporting of all permit deviations as provided in 40 CFR 70.6(a)(3)(iii).¹
2. Title V, in 40 CFR 70.6(a)(3)(iii), requires "prompt" to be defined in relation to the degree and type of deviation likely to occur and the applicable requirements. In OAR 340-218-0050(3)(c)(B), ODEQ requires all deviations which do not cause excess emissions to be reported promptly within seven days of the deviation. For sources that have pre-approved procedures for startup/shutdown or scheduled maintenance, ODEQ requires, in OAR 340-214-0340(4) and 340-218-0050(3)(c)(A)(ii), excess emissions caused by those events to only be reported annually. In OAR 340-214-0340, ODEQ may require a written report within 15 days for any excess emission event, but they may also waive the written report based on the severity of the event. It is difficult to believe that ODEQ intended that deviations such as failing to keep a record, must be reported within seven days, whereas an excess emission event need only be reported at the end of the six-

¹Although ODEQ's general excess emission reporting rules are found in Division 214 (Stationary Source Reporting Requirements) rather than Division 218 (Oregon Title V Operating Permits), our concerns about excess emission reporting in items 1 and 2 above are Title V concerns because ODEQ relies on Division 214 to meet the Title V permit deviation reporting requirement. EPA is addressing here only Title V concerns and not any concerns EPA may have with ODEQ's general excess emissions rules for purposes of meeting requirements for SIPS.

month reporting period. ODEQ should also be aware that on October 24, 2005, the 2nd Circuit U.S. Court of Appeals issued a decision holding that prompt must be at least more frequent than biannual because deviations pose greater urgency than general monitoring. ODEQ must revise their regulations to require prompt reporting of all deviations.

3. Although all deviation reports are reviewed by ODEQ staff, there is no documentation of the review. During this program review, EPA and ODEQ discussed some options for documenting ODEQ's review of deviation reports. One option is to write a memo to the file documenting the conclusion of the report review. Another would be to enter the results in their compliance tracking system.
4. Title V, in 40 CFR 70.6(f), allows for the inclusion of a "permit shield" in permits where specific requirements have conclusively been determined to not be applicable. EPA has emphasized to permitting authorities that permit shields should not be included where there is any question about applicability because it limits the agencies' ability to enforce the requirement if it is later determined to be applicable until the permit is reopened and revised to add the applicable requirement. An inappropriate permit shield has become an issue for at least one Title V facility in Oregon. ODEQ should be very thorough when considering permit shields and provide in the review report a concise summary of their decision for any such determination.

Other Observations

1. The focus of this Title V program review was on ODEQ's implementation of their Title V program. Accordingly, in conducting this Title V program review, EPA reviewed ODEQ's compliance certification and semiannual monitoring report forms, but did not review completed forms submitted by Title V facilities to determine the extent of compliance with Title V requirements in ODEQ's jurisdiction and whether ODEQ is taking appropriate enforcement actions in response to noncompliance. EPA also conducts periodic reviews of state and local Clean Air Act enforcement programs. These enforcement reviews look at, among other things, whether the state or local agency is taking timely and appropriate enforcement response to significant violations, including violations at Title V sources; whether the agency is adhering to their compliance monitoring strategy regarding the frequency and scope of inspections; whether the agency imposes clear and enforceable requirements in enforcement actions; and whether the agency's reporting of compliance activity to the national data base is complete and accurate.

G. Resources and Internal Management Support

Good Practices

1. ODEQ appears to have a sound accounting system which effectively tracks Title V revenues and expenses separately from non-Title V revenues and expenses.
2. Late payments are referred to the Oregon Department of Revenue for collection after 90 days. This provides a necessary disincentive for sources who pay late, and relieves ODEQ of the collection burden.

Concerns

1. At the time of the program review, ODEQ was weighing their options for addressing a Title V budget shortfall. ODEQ was considering fee increases as well as work reductions. It is important to address projected shortfalls because Title V mandates that the program be fully funded with Title V fees.
2. During our discussions with ODEQ staff, there was some confusion regarding whether to charge criminal investigation costs to Title V. Similar to other enforcement costs, the costs associated with criminal investigations of Title V requirements, including the issuance of notices, findings, and letters of violation, as well as the development and referral of cases to prosecutorial agencies, should be charged to Title V up until the filing of an indictment or complaint.
3. Certain construction approvals are included on the Title V fundable activity list. During the Title V program review, ODEQ staff stated that those activities can be Title V or non-Title V activities. When co-processing construction approvals with Title V revisions, some of the costs can be charged to Title V. To avoid accounting confusion by staff, ODEQ should consider a simple guidance to explain how to decide whether the activity is eligible to be charged to Title V.

Other Observations

1. ODEQ noted that increases in insurance and state retirement costs can be significant and that basing fee increases on the consumer price index may not accurately reflect the true cost of doing business.
2. ODEQ has a policy document called “Environmental Justice - Principles and Implementation.” It is admirable when a state program has proactively developed an environmental justice program to ensure equitable environmental protection. It appears that in the permitting program, however, implementation of the policy is more reactive than proactive. We encourage ODEQ to address environmental justice concerns early in the process, rather than in response to public comments.

H. Title V Benefits

Benefits Identified by ODEQ

In response to the program review questionnaire and during the on-site interviews, ODEQ identified a number of benefits that have resulted from implementation of the Title V program. We note that program improvements attributable to full implementation of Title V in Oregon may be less than what other state/local agencies experience because ODEQ had a comprehensive state operating permit program before the advent of Title V.

3. ODEQ staff have a better understanding of New Source Performance Standard, SIP and new source review requirements and how to design enforceable monitoring terms to assure compliance and ensure better consistency among regulated sources.
4. ACDP requirements were identified that were not based on the regulations and “cleaned up” before the Title V permit was written.
5. A variety of Title V permit writing skills and techniques are being used in drafting non-Title V permits (e.g., prevention of significant deterioration, new source review, ACDP).
6. Drafting and issuing Title V permits has resulted in more complete information and knowledge about the universe of facilities, their operations, and their emissions.
7. Occasionally, permit preparation uncovered compliance issues that were subsequently resolved. Improved compliance, resulting from the issuance of Title V permits, has resulted in significant emission reductions. Some emission reductions occurred when sources were identifying and quantifying their emissions; some as a result of the testing and monitoring in the Title V permit; and some after companies made reductions to avoid operation too near an emission limit.
8. 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. The facility owners and operators became more aware of the requirements and, in some cases now, have environmental staff reporting directly to the responsible official.
9. In some cases, the use of environmental management systems has resulted in sources operating more efficiently and reducing their fuel requirements; other have switched to lower polluting materials and fuels.
10. Specific to ODEQ, plant site emission limits were reviewed during the Title V process, leading to improved emission inventories, monitoring and compliance.
11. Title V fees have stabilized funding and improved support of the agency permitting/compliance staff through increased funding of training, travel, and supplies.

I. Document Review (Rules/Forms/Guidance)

Good Practices

1. Having standard compliance certification and reporting forms greatly improves the quality of compliance certifications and other reports. In general, the forms are comprehensive and the instructions are helpful in providing the source with guidance in how to fulfill their reporting obligations.
2. ODEQ worked with EPA to develop a Title V Implementation Agreement which describes the responsibilities and procedures by which the Title V air operating permit program will be administered in Oregon. This is a useful document for clarifying roles and specific or unique procedural arrangements and communications between EPA and ODEQ.

Concerns

1. On November 1, 2005, a number of environmental groups filed a petition requesting EPA to determine that ODEQ's Title V program does not meet Clean Air Act requirements because state law exempts agricultural operations. ORS 468A.020 and OAR 340-200-0020 provide that state air pollution laws, including ODEQ's Title V regulations, do not apply to certain agricultural operations and activities. EPA is currently reviewing the petition to determine whether the agricultural exemption in Oregon raises legal concerns about the status of EPA's previous approval of ODEQ's Title V program.
2. ODEQ should submit Title V rule changes to EPA for approval. Rule revisions are required to be approved as program revisions.
3. ODEQ's Title V program (OAR 340-218-0020(4)) exempts non-major sources subject to 40 CFR Parts 60, 61 and 63 (Clean Air Act Sections 111 and 112) unless they are "affected sources" or subject to Clean Air Act Section 129(c). Part 70 now requires permits for some non-major sources subject to the 111 and 112 standards. ODEQ has acknowledged that they must revise their rules to ensure such sources are subject to Title V permitting. Similar language in ODEQ's guidance and forms should also be revised to reflect this. ODEQ staff indicated that they were not aware of any sources using the current rule language to avoid the Title V program.
4. EPA has interpreted Part 70 to allow the "streamlining" of multiple applicable requirements that apply to the same emission unit if the permitting authority determines that compliance with the more stringent limit assures compliance with the overlapping, subsumed limit and certain other procedural safeguards are met. See White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, March 5, 1996, pp. 6 to 17 (White Paper No. 2). The subsumed requirement, however, must be cited as authority for the streamlined permit term. A source violating the more stringent permit term may be subject to enforcement action for violation of one or more subsumed requirements to the extent that violation of the subsumed limit is documented. OAR 340-218-0050(3)(a)(B) specifically addresses streamlining of monitoring and testing requirements. EPA is concerned, however, that the phrase "monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining" could be interpreted as requiring that only the most stringent requirement be included in a Title V permit when ODEQ is "streamlining." As discussed above, this would be contrary to Part 70.

ODEQ agrees that the subsumed requirements must be cited as authority in the Title V permit and that ODEQ will continue to follow White Paper No. 2 when streamlining requirements. ODEQ has also suggested that OAR 340-218-0050(3)(a)(B) could be revised to strike the last phrase of that provision: "... that are not included in the permit as a result of such streamlining." Such a rule revision would help to ensure proper streamlining of requirements in permits.

5. The list of changes that can be made by administrative amendment under Oregon's Title V program (OAR 340-218-0150(1)) should be narrowed. ODEQ's regulations authorize corrections to baseline or PSEs to be made by administrative amendment when more accurate emission data is obtained but the correction does not increase actual emissions. Even though actual emissions may not increase, such a change can affect applicability of air quality control requirements and is not appropriately made through an administrative amendment. ODEQ's regulations also allow to be made by administrative amendment a change in the date for reporting or source testing for extenuating circumstances. This provision is overly broad.
6. When most of the public participation requirements were moved to division 209, some inadvertent changes were made. The requirement under Title V to prepare a written response to comments and to keep a record of comments and make them available to the public has been moved from a separate section into the section describing public hearings and meeting procedures (now OAR 340-209-007). These requirements, however, apply to all actions requiring public comment under Title V, not just public hearings. Also, in consolidating the information contained in the public notice for all programs, some of the requirements for the Title V program were lost. OAR 340-209-0040 should more specifically explicitly address several of the Title V requirements in 40 CFR 70.7(h) (description of public comment procedures and the time and place of any hearing and procedures for requesting a hearing). Finally, OAR 340-209 uses the terms "proposed permit" and "proposed permit action" in several places to mean the permit that went out for public comment at the state level [see OAR 340-209-0050(1) and 0080(4)]. Under the Title V program, the permit that goes out for public comment is defined in ODEQ's and EPA's regulations as the draft permit. The proposed permit is the permit sent to EPA for review.
7. In some cases, ODEQ's forms and/or the reporting guidance has text that deviates from the language of the applicable reporting requirements or do not adequately capture the regulatory requirements. For example, forms and guidance related to deviation reporting, permit modifications, compliance certification, insignificant emissions units, and CEMS data availability should be re-evaluated with respect to the underlying requirements and policies.
8. The regulatory references in the reporting forms should be updated to reflect the 1999-2001 renumbering and revision of the OAR as well as any subsequent revisions to the ODEQ regulations.

Other Observations

1. Some program revisions may have been submitted to EPA, but not acted on. EPA should act on any pending program updates (e.g. fees, rules, and etc).
2. ODEQ noted that there hasn't been a regional Title V workshop for several years. Given that several new aspects of the Title V program are now being implemented, ODEQ suggests we organize one. ODEQ suggested several possible topics including compliance assurance monitoring, review reports, and deviation reporting. Region 10 is considering the timing and format for such a workshop.