



**Final Report:  
Lane Regional Air Protection Agency  
Title V Program Review  
(2<sup>nd</sup> Round)**

**EPA Region 10**  
*August 9, 2017*

## **Executive Summary**

This report documents the second review of the title V permitting program at the Lane Regional Air Protection Agency, a local air pollution control agency with jurisdiction in Lane County, Oregon. Region 10 completed its first review of LRAPA's title V program in June 2006.

Region 10 prepared this report based on information provided by LRAPA, review of six recently issued or modified permits, and interviews conducted at LRAPA's office in Springfield, Oregon on April 18-19, 2017.

In general, we found that LRAPA's title V permitting program has improved significantly since 2006. We are satisfied with 24 of 35 concerns identified in the original report. Of the eleven other concerns, we find that there has been noticeable improvement, though further work is still necessary.

We also identified eight new concerns and have made five suggestions for improvement. These new concerns are a result of the increased sophistication of LRAPA's permitting program.

In particular, (this is not a complete list) LRAPA can benefit from improving the level of detail in its statements of basis (which it calls review reports), ensuring that all emission limitations include the compliance demonstration method, and ensuring that permits assure compliance with all applicable requirements, taking special care when there are multiple, overlapping requirements that apply.

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## Attachments

- 1 Program Review Kickoff Letter and Information Request, December 21, 2016
- 2 Program Review Information Request Response, January 13, 2017

## **I. Introduction**

This report documents the second review of the title V permitting program at the Lane Regional Air Protection Agency (LRAPA or “the agency”). The first title V program review for LRAPA was completed in June 2006.

### **LRAPA’s Title V Program**

LRAPA is a local air pollution control agency with jurisdiction in Lane County, Oregon. Lane County is located in central-western Oregon and includes the cities of Eugene and Springfield. LRAPA issues title V permits to eighteen sources, which is about fourteen percent of the sources with title V permits in the State of Oregon. Approximately nine percent of Oregon’s population resides in Lane County. Nearly 50 percent of Lane County is forestland managed by the United States Forest Service. Wood products remains the primary industry in the area.

Most of Lane County is classified as attainment or unclassifiable for all criteria pollutants. Oakridge, a community of about 3,200 people located 40 miles east of Eugene, is classified as a moderate nonattainment area for both PM<sub>10</sub> and PM<sub>2.5</sub>. The Eugene/Springfield area operates under maintenance plans for CO and PM<sub>10</sub>.

The Oregon Department of Environmental Quality (ODEQ) has jurisdiction in all of the other counties in Oregon.<sup>1</sup> The Environmental Protection Agency Region 10<sup>2</sup> is the title V permitting authority in Indian country and on the outer continental shelf (more than 3 miles off the Oregon coastline).

LRAPA implements Oregon’s title V regulations, which are found in Division 218 of the Oregon Administrative Rules (OAR). Region 10 granted LRAPA full approval of its title V program, effective November 27, 1995. We have not approved any revisions to Oregon’s title V program since 2002.

LRAPA has a staff of about fifteen full time employees. Three permit writers share responsibility for writing title V permits, as well as other air quality permits. There are several other staff who are responsible for title V compliance or provide support to the title V program.

### **Program Review Objective and Overview**

The EPA regions initiated the title V program reviews in response to recommendations in a 2002 audit by EPA’s Office of Inspector General. The objectives of broader program reviews (as opposed to individual permit reviews) are to identify good practices that other agencies can learn from, document areas needing improvement, and learn how the EPA can help state and local title V authorities to improve their programs and expedite permitting.

The EPA set an aggressive initial national goal of reviewing all state and local title V programs with ten or more title V sources. LRAPA was one of ten title V programs Region 10 reviewed as part of the first round between 2004 and 2007.

Here is the list of agencies reviewed in the first round along with the final report date and an approximate number of title V sources they regulated at that time:

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<sup>1</sup> LRAPA is the only local air permitting authority in Oregon.

<sup>2</sup> In this report, the term “EPA” refers to the United States Environmental Protection Agency as a nationwide agency. The term “Region 10” and the first person plural (we/us/our) refer to EPA Region 10.

<b><u>Permitting Authority (first round)</u></b>	<b><u>Report Date</u></b>	<b><u>Permits</u></b>
Idaho Department of Environmental Quality	January 2004	59
Oregon Department of Environmental Quality	June 2006	111
Lane Regional Air Protection Agency (OR)	June 2006	19
Spokane Regional Clean Air Agency (WA)	August 2006	10
Puget Sound Clean Air Agency (WA)	September 2006	35
Washington Department of Ecology	September 2006	27
Northwest Clean Air Agency (WA)	September 2006	21
Alaska Department of Environmental Conservation	September 2006	158
Olympic Regional Clean Air Agency (WA)	September 2007	15
Southwest Clean Air Agency (WA)	September 2007	12

In response to a follow-up review by the Office of Inspector General, Region 10 committed to repeat the reviews of all title V programs with 20 or more title V sources every four years beginning in 2007. The second round commitment covered each of the four state programs in Region 10 (Alaska, Idaho, Oregon and Washington) as well as two local agencies (Puget Sound Clean Air Agency and Northwest Clean Air Agency). In September 2016, we fulfilled our commitment and completed the last of the required second round reviews. Region 10 has decided to continue second-round reviews for the remaining agencies that were reviewed in the first round, but not yet reviewed for a second time, beginning with LRAPA.

Below is the list of agencies reviewed thus far in the second round along with the final report date. All of the program review reports can be found on Region 10's air permitting website.

<b><u>Permitting Authority (second round)</u></b>	<b><u>Report Date</u></b>
Idaho Department of Environmental Quality	September 2007
Puget Sound Clean Air Agency (WA)	September 2008
Northwest Clean Air Agency (WA)	September 2013
Washington Department of Ecology	September 2014
Alaska Department of Environmental Conservation	September 2015
Oregon Department of Environmental Quality	September 2016

In the first title V program review we covered all major elements of a title V program. In the second round of program reviews, we elected to focus on issues specific to each permitting authority's implementation of its permitting program. Of particular interest is how each authority has addressed the concerns identified in the first review. We are also interested in the permit issuance progress, resources, compliance assurance monitoring (which is required to be added during permit renewal for most sources) and how programs have integrated new requirements and rules into their permits and program.

To prepare for this review, Region 10 requested specific information from LRAPA (Attachment 1). Region 10 reviewed LRAPA's emailed response (Attachment 2) which included, as requested: a staff list, financial records, and an update regarding each of the concerns raised in 2006.

We also reviewed past permit issuance data LRAPA reported to the Title V Operating Permits System and a selection of recently issued or recently modified permits. Permits selected for review were issued or modified within the last three years to provide a more accurate depiction of how LRAPA permits changed since the first program review. The permits reviewed include:

<u>Permit No.</u>	<u>Company Name</u>	<u>Date Issued</u>
208850	International Paper Company	10/04/2016
206117	Jasper Wood Products, LLC	01/14/2015
204402	Kingsford Manufacturing	08/01/2016
204740	Lane County Short Mountain Landfill	07/18/2016
207506	SFPP, L.P. Eugene Terminal	01/25/2016
207510	Swanson Group Manufacturing, LLC	02/26/2016

While on site at LRAPA's office in Springfield, Oregon on April 18-19, 2017, Region 10 staff interviewed permit writers, the finance and human resources manager, and the title V document coordinator. The purpose of the interviews was to clarify and discuss what we learned from the review of agency permits and LRAPA's response to our request for an update about the program. Region 10 and LRAPA discussed permit issuance progress, program resources (and the fee program), general program implementation topics, and specific issues identified during the previous review of LRAPA's program as well as compliance assurance monitoring.

### **Program Review Report**

This program review report is presented in four main sections:

- I. Introduction
- II. Follow-up to 2006 Program Review
- III. Additional Review
- IV. Summary of Concerns and Recommendations

Section I presents some background regarding LRAPA's title V program as well as an overview of Region 10's program review plan. Section II presents Region 10's evaluation of LRAPA's progress in resolving concerns identified in the 2006 program review. Section III presents additional observations from Region 10's review of LRAPA's individual permits including the application of compliance assurance monitoring. Finally, Section IV summarizes Region 10's second-round concerns and presents Region 10's recommendations for resolving any outstanding issues.

## II. Follow-up to 2006 Program Review

In the initial title V program review, finalized in June 2006, Region 10 provided observations delineated into nine separate topic areas labeled A through I. In each section, we identified good practices, concerns and other observations. Following that initial report, we asked LRAPA to respond to the concerns identified. In May 2008, LRAPA responded to Region 10 addressing the concerns we identified. LRAPA's 2008 response is included in the agency's update found in Attachment 2.

This section of the review report presents Region 10's evaluation of the progress LRAPA has made in addressing the concerns identified in the initial program review. Each of our original concerns is listed below, followed by LRAPA's original 2008 response and 2017 update, and followed by our 2017 second-round (Round 2) evaluation.

### Section A. Title V Permit Preparation and Content

A-1.a 2006 EPA Concern: More detail is needed in the review reports.<sup>3</sup> In some cases, review reports do not have a date or list the street address of the subject facility, making linkage to the permit version or facility difficult to figure out. In some cases there are discrepancies among the permit application, the permit and the review report that are not explained in the review report.

2008 LRAPA Response: *We agree that the identity of a facility should be clear to those who may read a review report, that reports should be consistent with or explain information that differs from the permit application, and that report versions should relate NSR and Title V permit actions that affect the applicable requirements at the subject facility. Discussing/informing LRAPA staff of EPA's concern; training and use of DEQ's model permits; drafting written guidance as warranted; mentoring and QA of draft review reports/permits will address this concern.*

2017 LRAPA Update: *This effort is ongoing.*

2017 Evaluation: In our permit review, Region 10 did not discover any review reports that omitted information so fundamental that we could not identify the source, its location, or the dates that the permit is valid.

Although we are satisfied with LRAPA's response to this concern, we have a suggestion to improve the clarity of the agency's review reports. We noticed that LRAPA uses the same permit number when it revises or renews permits. Changing the permit number (for example, by referencing the year or date of issuance or when the application was received) would make it easier to understand which version of the permit is current and whether the permit has been renewed or modified.

A-1.b 2006 EPA Concern: LRAPA review reports often simply recite the requirements of the permit rather than explaining the basis for creating the requirement or how monitoring terms assure compliance. This issue is discussed in more detail below in Section C, Monitoring.

2008 LRAPA Response: *As LRAPA receives and reviews Title V permit applications, it will describe its evaluation of the applicable requirements and basis for the permit*

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<sup>3</sup> LRAPA uses the term "review report" for the statement of legal and factual basis required by 40 CFR 70.7(a)(5).

*conditions, particularly the monitoring terms. LRAPA commits to make an ongoing effort to increase the clarity, consistency, and content of its review reports.*

*Discussing/informing LRAPA staff of EPA's concern; training and use of DEQ's model permits; drafting written guidance as warranted; mentoring and QA of draft review reports/permits will address this concern.*

2017 LRAPA Update: *This effort is ongoing.*

2017 Evaluation: This issue requires further attention. Although LRAPA generally includes some discussion of applicable requirements in its review reports, the agency does not discuss the applicability of federal standards in its review reports and rarely discusses potentially applicable requirements that do not apply. Summarizing applicability determinations in the review report for all potentially applicable requirements will ensure that the agency makes accurate decisions and improve the public's understanding of the source.

- A-1.c 2006 EPA Concern: Better discussion in the review report is needed regarding carry over and/or modification of terms from ACDPs.<sup>4</sup> This is especially important because ODEQ has interpreted its regulations to mean that the Title V permit replaces the ACDP and that ACDPs expire once a Title V permit is issued. The review reports specify the ACDP terms that were carried over into the Title V permit, but do not explain under what authority conditions in ACDP's were created, what procedures apply to revisions to those ACDP conditions when they are later housed only in Title V permits, and if the procedural and substantive ACDP and/or Title V permit revision procedures were followed. For example, the Weyerhaeuser review report (Pg. 42-43) has a discussion of why LRAPA did not carry over permit terms from the ACDP to the Title V permit. The discussion does not indicate whether the ACDP was revised in a separate process and then carried over into the Title V permit or whether the ACDP permit in effect was revised in the Title V permit issuance process. The review report should make that clear. In addition, if the latter (Title V permit issuance is revising the ACDP), the review report needs to show that LRAPA met the procedural and substantive requirement for revising the ACDP. This is especially important for conditions created under new source review (NSR) authority, which requires an air quality analysis and sometimes a technology review to create and revise the requirements. In addition, because permit term numbers change during the permit revision process, it is difficult to track the origin of, and changes to, ACDP permit terms backwards in time. A detailed record of change is necessary.

2008 LRAPA Response: *LRAPA is revising its permitting rules to be consistent with the changes ODEQ made to address EPA's concern regarding ACDP permit conditions/terms that are applicable requirements and/or affect NSR applicability to a Title V facility. The proposed revisions to LRAPA's rule that specifically address this issue are LRAPA Title 37, Air Contaminant Discharge Permits, Sections 37-0020 and 37-0082(1)(B). Additionally, at renewal we intend to add an explanation in review reports that states the conditions/requirements in Title V permits from a construction ACDP or*

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<sup>4</sup> LRAPA issues air contaminant discharge permits (ACDPs) as part of its SIP-approved permitting program. ACDPs can serve as preconstruction review or operating permits.

*are SIP-based continue to be applicable to the facility (source), except when those provisions are modified through LRAPA's ACDP application procedures.*

2017 LRAPA Update: *Similar to DEQ review reports, LRAPA now includes a condition-by condition list of changes to the permit terms.*

2017 Evaluation: In some review reports we noted that LRAPA had included a table that documented changes to the permit on a condition-by-condition basis. Region 10 encourages LRAPA to continue this practice.

In our permit review, we rarely found title V permit conditions that cited ACDP conditions as their origin. We would expect this if LRAPA issues mostly unconditional ACDPs, relying on SIP rules or federal standards for emission control. If so, LRAPA should briefly explain in the permitting history section of its review reports why ACDPs do not result in any title V permit conditions. On the other hand, if LRAPA is incorporating conditions from ACDPs into title V permits without citing the specific ACDP as the underlying authority, LRAPA should add the correct citation. Otherwise, LRAPA risks superseding conditions in SIP-approved permits through revision of the title V permit

- A-1.d 2006 EPA Concern: Review reports do not adequately explain the basis for revisions to the Title V permit and what terms of the permit are being revised. This issue is discussed in more detail below in Section E, Permit Issuance/Revision/Renewal.

2008 LRAPA Response: *See previous response. Moreover, use of DEQ's permit template, training and discussing the results of EPA's review and concerns within our permitting group should resolve this issue.*

2017 LRAPA Update: *Similar to DEQ review reports, LRAPA now includes a condition-by condition list of changes to the permit terms.*

2017 Evaluation: See the responses to Concerns A-1.c and E-2.

- A-2.a 2006 EPA Concern: The permits should better identify the authority for the permit terms. This is done well in many cases, but EPA also identified several concerns: In some cases, no authority is identified (for example, Kingsford, conditions 7, 13, 18, 19, 23, 24, 29, 31, 32, 34, 35, 37, 40).

2008 LRAPA Response: *LRAPA permit writer, Max Hueftle, added the rule citations to those permit conditions EPA identified in the Kingsford permit. It will likely take one Title V permit renewal cycle to check other permits for needed rule citations. Additionally, LRAPA is putting in place QA procedures to screen Title V permits for this and other concerns identified by EPA.*

2017 LRAPA Update: *LRAPA staff attended April 19, 2007 training at the DEQ Inspector's Forum. LRAPA will continue to ensure that its permit writers are including specific rule citations for all Title V permit conditions.*

2017 Evaluation: Although there are occasional errors and omissions in citing the authority of permit conditions, we no longer consider this topic a concern that warrants follow up.

A-2.b 2006 EPA Concern: In other cases, a high level citation is used for a section of the permit. For example, LRAPA Title V Program Review Page 9 NSPS requirements in the SFPP Eugene Terminal permit were, in many cases, broadly cited, even though the detailed language from the NSPS was included in the permit. Each permit condition should identify the authority for the condition.

2008 LRAPA Response: *The use of broad citations occurred during initial implementation and issuance of some of LRAPA's Title V permits. LRAPA no longer broadly cites applicable requirements. However, there may be permits that have not been revised (been open) that need to be checked and updated. These corrections will continue as we receive permit applications or open permits for renewal, to add newly adopted rule amendments, etc.*

2017 LRAPA Update: *This effort is ongoing.*

2017 Evaluation: In the permits we reviewed, we found that LRAPA no longer relies on high-level citation to incorporate NSPS and NESHAP requirements. We no longer consider this a concern that warrants follow up.

A-2.c 2006 EPA Concern: In some cases, the citations in the permit are out of date. For example, the citations in the Sierra Pine facility permit do not reflect the renumbered OAR sections, even though the permit was revised in 2002.

2008 LRAPA Response: *Since EPA has brought this to our attention, we re-check and update citations as needed for each Title V permit when it is open for review.*

2017 LRAPA Update: *This effort is ongoing.*

2017 Evaluation: Based on both our permit review and conversations with LRAPA permit writing staff, we believe that LRAPA is making regular efforts to include the latest versions of state and local regulations in its permits. We no longer consider this a concern that warrants follow up.

A-2.d 2006 EPA Concern: 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, LRAPA 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

2008 LRAPA Response: *We are unclear on how to cite the authority of two versions of the same rule (SIP approved rules versus rules pending submittal and/or SIP approval). We would hope that EPA does not intend for a Title V permit to include two versions of a rule in a permit condition. It would be useful to see an EPA example that uses one of the LRAPA's permits to demonstrate how to include permit terms (language) for "state only" and SIP approved rules, including the corresponding cited authority. With this guidance, we can begin addressing this concern as we work on Title V permit applications for initial issuance, modification, and renewal.*

2017 LRAPA Update: *This is a challenge, especially given the increasing number of local/state-adopted rules that have been submitted to EPA over the past decade for inclusion in the SIP but have not yet been approved. Additionally, some SIP updates completed at the state level (DEQ) apply in Lane County until LRAPA adopt rules that are at least as stringent.*

*The standard condition in the model Title V permit was revised to make it clear that “All conditions in the permit are federally enforceable, meaning they are enforceable by LRAPA, DEQ, EPA and citizens under the Clean Air Act except Conditions 7, 8, 9, G5, and G9 (LRAPA Title 43 – Asbestos) are only enforceable by LRAPA.*

2017 Evaluation: This issue requires further attention.

In our permit review, we noticed that some permits included LRAPA SIP requirements and others included Oregon SIP requirements for the same or similar types of equipment. During our staff interviews with LRAPA, permit writers explained that this occurs when there is a gap between approval of LRAPA’s rules into the SIP and approval of ODEQ’s rules into the SIP. Oregon state law requires LRAPA to develop rules regulating emissions of air pollutants that are at least as stringent as those developed by ODEQ. If LRAPA issues a permit after ODEQ has enacted such a rule but before LRAPA has, LRAPA includes the more stringent ODEQ rule in the permit.

However, part 70 and OAR 340-218 require LRAPA to include all applicable requirements in permits, not just the most stringent. If there are multiple requirements that apply (such as a more stringent ODEQ requirement and a less stringent LRAPA requirement), then either LRAPA must include all of them in the permit or the agency may create a streamlined condition to include in the permit. The streamlined requirement may be identical to the most stringent requirement if it assures compliance with the subsumed requirement(s). All subsumed applicable requirements shall be identified as the underlying applicable requirements of the streamlined condition. If any one of the subsumed requirements is federally enforceable, then the streamlined condition is federally enforceable

- A-3 2006 EPA Concern: The inapplicable requirements (permit shield) section of certain permits (e.g. Kingsford permit condition 102(h)) contains “federal applicable requirements currently determined not applicable to the permittee” but does not identify the rationale for the determination, which is required under Part 70 and ODEQ rules. The Oregon regulations and federal regulations should be discussed similarly, identifying a reason for inapplicability, as indicated in ODEQ’s model permit. The source is not shielded from the provisions in (h) because the permit does not contain a summary of the rationale. Also, the permit shield for the Clean Air Act itself (CAA sections 129, 183(e) and 183(f)) is not appropriate. These statutes require EPA to promulgate regulations and do not directly regulate sources. The shield should be granted for the relevant implementing regulations, not for the authorizing statutes.

2008 LRAPA Response: *During initial implementation of the Title V program, LRAPA was not aware that the permit shield provisions are for rule standards/terms that would or could otherwise apply to the facility. Several subject facilities listed and applied for a laundry list of every conceivable regulation or authority that did not apply at the time of the application submittal. At renewal or modification, LRAPA will remove the over-broad*

*use of the permit shield and attached shield listings (regulations/and or statutes) from its Title V permits. Currently, none of the LRAPA Title V permitted facilities have received an acceptable permit shield from a rule, or portion thereof.*

2017 LRAPA Update: *LRAPA now only specifies inapplicable requirements that could reasonably be thought to apply to a certain source. In some permits, the condition has been removed entirely.*

2017 Evaluation: *When we discovered permit shields in our review, the permit included a brief explanation of how potentially applicable requirements were found not to apply to the source. We did not discover any lengthy “laundry list” permit shields. We no longer consider this a concern that warrants follow up.*

- A-4.a 2006 EPA Concern: *Some LRAPA permits leave out important language regarding the reporting of permit deviations. We note that these provisions are included in ODEQ’s model permit. Permits must state that: All permit deviations must be promptly reported, including excess emissions. See OAR 340-218-0050(3)(c)(B). “Prompt” must be defined in the permit or in the regulations.*

2008 LRAPA Response: *Since EPA’s review of LRAPA’s Title V program, LRAPA has worked with DEQ staff to address prompt reporting requirements for permit deviations. Our proposed revisions to LRAPA Title 36 align reporting for excess emission events with the DEQ and federal requirements including requirements for immediate reporting “all other excess emissions”. Regarding “prompt” reporting definitions for other permit terms, LRAPA’s use of OAR 218 and DEQ’s Model Permit A (conditions 34, 35 and 38) and Model Permit B (40, 41 and 44) defines prompt reporting for permit deviations that do not result in excess emissions, except when a definition of “prompt” has been added to a site-specific applicable requirement.*

*Additionally, DEQ currently has a draft addendum that details the criteria for reporting excess emissions. DEQ intends to issue its finalized addendum for all its Title V permits. Likewise, LRAPA will issue this addendum to the Title V permits issued in Lane County. With this permit addendum, LRAPA will be mailing out EPA’s information regarding “prompt” deviation reporting.*

2017 LRAPA Update: *The EQC (Environmental Quality Commission) adopted DEQ’s proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern. DEQ also changed the general reporting requirements in the Title V permit template.*

2017 Evaluation: *We are satisfied with ODEQ and LRAPA’s rule changes and no longer consider this topic a concern that warrants follow up.*

- A-4.b 2006 EPA Concern: *All instances of deviations from permit requirements must be clearly identified in the semi-annual monitoring report. See OAR 340-218-0050(3)(c)(A).*

2008 LRAPA Response: *Permitted Title V facilities report deviations for each permit condition/term (applicable requirement). The information is reported on the same forms used by DEQ (R1002 and R1003), which require a condition-by-condition (with subparts) designation of continuous or intermittent compliance status certification by the reporting official.*

2017 LRAPA Update: *Nothing to follow up.*

2017 Evaluation: Standard permit language now requires including deviations to be identified in the semiannual monitoring report. We no longer consider this a concern that warrants follow up.

- A-4.c 2006 EPA Concern: All permit deviations must be identified and taken into consideration in the annual compliance certification. See 40 CFR 70.6(c)(5)(iii)(c) and OAR 340-218-0080(6)(c)(C).

2008 LRAPA Response: *Discussing/informing LRAPA staff of EPA's concern; training and use of DEQ's model permits; drafting written guidance as warranted; mentoring and QA of draft review reports/permits will address this concern.*

2017 LRAPA Update: *This effort is ongoing.*

2017 Evaluation: Standard permit language now requires including deviations to be identified in the semiannual compliance certification. We no longer consider this a concern that warrants follow up

- A-5 2006 EPA Concern: Because LRAPA does not currently have delegation of the NSPS standards, permittees must provide NSPS reports and notifications to EPA as well as to LRAPA (because LRAPA has adopted the NSPS as a matter of state law). The Title V permit or review report should make this dual notification obligation clear. Obtaining delegation of the NSPS standards would obviate the need for dual reporting in most cases.

2008 LRAPA Response: *LRAPA will add an explanation regarding NESHAPS and NSPS dual notification requirements in its review reports. In addition, LRAPA's proposed rule revisions include adopting these federal regulations by reference. Upon LRAPA Board adoption, we will submit a rule delegation request to EPA.*

2017 LRAPA Update: *LRAPA has submitted updates to federal standards but has not received delegation. LRAPA specifies in permits that reports must be submitted to EPA directly in cases where EPA retains authority or specifies certain reporting (e.g., CEDRI).*

2017 Evaluation: Region 10 no longer considers this topic a concern.

- A-6 2006 EPA Concern: EPA remains concerned that ODEQ and LRAPA interpret ODEQ's 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.

2008 LRAPA Response: *Because LRAPA has adopted the DEQ Title V regulations by reference, the DEQ's rule changes to clarify and legally assure that ACDP terms remain in force and applicable in Oregon despite the expiration of Title V permit address this EPA concern. The specific amendments to Oregon's DEQ rules that address this concern include:*

*340-218-0010(A) - Oregon Title V Operating Permits do not replace Air Contaminant Discharge Permits issued to the source even if the ACDP(s) have expired.*

*340-218-0010 (B)-TACT, RACT, BACT, and LAER requirements established in an ACDP must be incorporated into the Oregon Title V Operating Permit and any revisions to those requirements must follow the procedures used to establish the requirements initially.*

*340-218-0010 (C) - Requirements established in ACDPs for the purpose of avoiding being subject to specific programs must also be included in the Oregon Title V Operating Permits and any revisions to those requirements must follow the procedures used to establish the requirements initially.*

*Also, see above response to concern 1.c.*

2017 LRAPA Update: *The EQC adopted DEQ's proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern.*

2017 Evaluation: The rules adopted by Oregon will help ensure that underlying requirements do not inadvertently expire and that the correct procedures are used to revise underlying requirements. However, during our permit review we found very few conditions with ACDP permit requirements as the cited authority. Clear citations to underlying construction permits might help flag conditions in the Part 70 permit that must be revised first (or concurrently) in the underlying permit. Region 10 has in the past objected to Part 70 permits wherein the incorrect process was used to modify underlying requirements. Oregon should be sure to use the appropriate permit revision process to change underlying requirements.

We no longer consider simple supersession to be an ongoing issue, but we are concerned about proper citation of title V permit conditions that have ACDP conditions as their origin. See Concern A-1.c for more detail on this issue.

## **Section B. General Permits**

Oregon has not issued any general permits, so this topic was not covered during the program review.

## **Section C. Monitoring**

C-1 2006 EPA Concern: Review reports should better document the monitoring imposed in the permit. For example, condition 28 in the Kingsford permit indicates that periodic monitoring relies on a test once per permit term (Conditions 29 and 87), and relies on opacity monitoring (Condition 31) between tests to assure the source continues to operate as well as during the test. The review report does not explain if there is a correlation

between the testing and opacity to confirm that opacity will assure compliance or otherwise explain the basis for this monitoring decision. If monitoring is selected from guidance in ODEQ documents, then the review report should indicate that and explain why the selection is appropriate.

2008 LRAPA Response: *Discussing/informing LRAPA staff of EPA's concern; training and use of DEQ's source testing and CEMS procedures manual; and reference to EPA monitoring guidance will address this concern. In addition, LRAPA will develop QA procedures to screen review reports for information that describes the basis of monitoring that is not imposed by an applicable requirement.*

2017 LRAPA Update: *This effort is ongoing.*

2017 Evaluation: Based on our permit review, we found that LRAPA consistently adds periodic monitoring to ensure compliance with standards and limits, as required by 40 CFR 70.6(a)(3)(i)(B) and OAR 340-218-0050(3)(a)(C), but the agency does not typically explain periodic monitoring decisions in its review reports. Following Oregon's monitoring guidance may help to ensure consistency, however, both the use and departure from the guidance should be explained in the review report. LRAPA should also consider developing conditions that require follow-up when monitoring identifies a potential compliance issue. Such follow-up could include investigation and remediation of the issue and/or increased monitoring until the issue is resolved. Region 10 is willing to share examples of such requirements.

- C-2 2006 EPA Concern: The permit(s) have requirements concerning minimum data availability for continuous emissions monitoring systems. For example, condition 151 in the Weyerhaeuser Springfield permit sets minimum data availability requirements for continuous emission monitoring systems (CEMs) and continuous opacity monitoring systems (COMs) required. The permit does not contain a specific statement of authority for this condition (the permit refers generally to OAR 340-218-0050(1), which requires permits to contain emission limitations and standards, including operational requirements that assure compliance with applicable requirements). Nor does the review report discuss the basis and purpose of this condition. It is, therefore, difficult to determine if this condition is based on an applicable requirement or whether it is created under the Title V permit. If the latter, Part 70 permits can contain narrowly drawn exceptions to monitoring requirements created under the authority of Title V and Part 70 under certain conditions. Importantly, such provisions cannot apply to any monitoring provision that is itself an "applicable requirement." For example, no such general relief from monitoring requirements exists for NSPS monitoring provisions and neither the permitting authority nor EPA has the authority to create such an exemption absent Federal rulemaking. Similarly, if the requirement to have a CEM is imposed by an LRAPA rule or in a permit to construct, the Title V authority cannot be used to create data availability requirements. Rather, the underlying applicable requirement must first be revised to include such a data availability requirement. Title V authority can be used to create data availability requirements only for monitoring that is itself created under Title V authority. ODEQ has recognized this in its discussion in ODEQ's August 5, 1999, Title V Program Review (see page 18-19, item 12). As indicated above, however, it is difficult to tell from the LRAPA permits and review reports whether this condition applies to CEMs required only

by the Title V permit, or whether the CEMs are otherwise required by applicable requirements (e.g. an existing ACDP or SIP requirement).

2008 LRAPA Response: *We understand and agree with EPA's comment.*

*Discussing/informing LRAPA staff of EPA's concern; training and use of DEQ's source testing and CEMS procedures manual; and reference to EPA monitoring guidance will address this concern. In addition, LRAPA will develop QA procedures to screen permit conditions for terms that differ from rule specific (and ACDP specific) monitoring requirements.*

2017 LRAPA Update: *LRAPA uses DEQ's Continuous Monitoring Manual and permit templates, and strives to correctly cite authority and explain the purpose of permit conditions in the review reports.*

2017 Evaluation: We no longer consider this a concern that warrants follow up.

#### **Section D. Public Participation and Affected State Review**

D-1 2006 EPA Concern: Several permit terms allow departure from established permit conditions if an alternative is approved by the LRAPA. For example, Weyerhaeuser permit condition 151(a) authorizes LRAPA to allow backup or standby monitoring that differs from the backup/standby monitoring specified in the permit if LRAPA approves the alternative in writing. This effectively allows the permittee and LRAPA to change an enforceable permit condition through an off-permit process and is contrary to the permit revision procedure of Part 70 and ODEQ's rules. Such a change would typically be processed as a minor permit modification (unless it is a relaxation in reporting or recordkeeping, which must be processed as a significant modification). Another example from the Kingsford permit (condition 26), includes a statement that LRAPA can waive testing. This type of requirement would reduce the stringency of the permit without going through any public review. Generally, the permit itself should describe the criteria by which testing can be reduced, making the option transparent.

2008 LRAPA Response: *LRAPA agrees that these permit terms need immediate correction and appreciates EPA's diligence in reviewing its Title V permits. Max Hueftle, LRAPA permit writer, has corrected the Title V permits that EPA noted with this concern. In addition, Max Hueftle and the LRAPA operations manager will provide training, peer review, and supervisor QA to address, as well as avoid, the re-appearance of this concern.*

2017 LRAPA Update: *LRAPA has worked to remove such allowances from permits and also has eliminated them from drafts if suggested by permittees or permit writing staff.*

2017 Evaluation: In our permit review, we did not find examples of conditions that allow the establishment of alternative monitoring without going through a permit revision. We no longer consider this a concern that warrants follow up.

D-2 2006 EPA Concern: The Kingsford facility review report (Items 67 and 68) states that no comment was received, but 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 in the public comment period. Then if EPA does not object to a permit during the 45-day review period, the public can petition EPA within 60 days after the 45-day

review period ends. LRAPA should revise this language in the review reports to be clear about the EPA petition (appeal) process.

2008 LRAPA Response: *LRAPA has revised the review report language as requested by EPA.*

2017 LRAPA Update: *The following was added to the model Title V review report: "If EPA does not object in writing, any person may petition the EPA within 60 days after the expiration of EPA's 45-day review period to make such objection. Any such petition must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in OAR 340-218-0210, unless the petitioner demonstrates it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period."*

2017 Evaluation: The new wording in the model review report and issued review reports resolves this issue. We no longer consider this a concern that warrants follow up.

D-3 2006 EPA Concern: 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 and LRAPA law meets these requirements, LRAPA 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, LRAPA could help ensure a more meaningful public participation process in Lane County.

2008 LRAPA Response: *LRAPA does not presently have the resources to provide the extra services described by EPA. In addition to turnover in support staff, we are trying to locate a candidate to fill a permit writer vacancy. Somewhat related, we are in the process of posting up-to-date Title V permits and review reports on our website.*

2017 LRAPA Update: *The LRAPA website was updated to include educational items related to Title V (see: <http://www.lrapa.org/198/Title-V-Operating-Permits>). We also explain meaningful public participation as part of informational meetings or hearings on specific permits.*

2017 Evaluation: Region 10 appreciates LRAPA's improved emphasis on public engagement. Although we no longer consider this topic a concern we suggest adding a brief outline of the public review process on the agency's website and links to guidance documents such as *The Proof Is in the Permit*, from the New York Public Interest Research Group (2000).

D-4 2006 EPA Concern: LRAPA 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. LRAPA should carefully balance these interests as it works with permittees during the development and issuance of Title V permits.

2008 LRAPA Response: *LRAPA agrees with EPA's concern, and believes this is a matter of permit writer experience. A permit writer's changes because of permittee comments and/or proposals typically indicate the objectivity and knowledge of a permit writer. Hence, new permit writers need support and training related to this concern so that they are objective and can differentiate regulatory, equipment and application clarification versus the impression that permittee's unduly influence permit writers and/or write their own review reports/permits.*

2017 LRAPA Update: *This effort is ongoing.*

2017 Evaluation: During the onsite program review interviews, we discussed the importance of documenting pre-draft communications with the permittee in the permit record. As long as LRAPA makes the entire record available to the public during the public review process, Region 10 is satisfied with LRAPA's approach for ensuring transparency.

## **Section E. Permit Issuance / Revision / Renewal**

E-1 2006 EPA Concern: The Sierra Pine permit review report explains that numerous changes were made to ACDP conditions. ACDP term numbers were referenced. Presumably the ACDP numbering is changed every time a term is rescinded, or even when a modification to a term occurs. The review report should reference the date of the subject ACDP along with the term that is being addressed. Without the date, or another identifier, it is nearly impossible to track the changes made.

2008 LRAPA Response: *When LRAPA renewed Sierra Pine's Title V permit in March 2008, the associated review report included a more detailed explanation of ACDP and permit term changes, as follows:*

- *Item 14, History of Changes to PSEL from Baseline/1984 Permit to the Title V Operating Permit (Issued 2/97);*
- *Item 15, Adjusted Baseline (Due to 1997 PSD Permit Application);*
- *Item 22, History of Changes to the Facility/PSEL from the 1984 ACDP to the Title V Operating Permit at 167 MMSF (issued 2/97);*
- *Item 23, Changes to the Facility/PSEL since the Title V Permit Issuance;*
- *Item 1, Reference to a 2/15/05 Construction ACDP for a natural gas fired boiler; and*
- *Item 33, General Background Information, which discusses changes that have been made since the last permit renewal*

2017 LRAPA Update: *Similar to DEQ review reports, LRAPA includes a condition-by-condition list of changes to the permit terms.*

2017 Evaluation: In some, but not all, review reports we noted that LRAPA had included a table that documented changes to the permit on a condition-by-condition basis. Region 10 encourages LRAPA to explain each permit condition in the review report. See Concerns A-1.d and E-2 for related concerns.

E-2 2006 EPA Concern: The review report for a particular permit action, such as a permit modification, should explain the basis and authority for the action. In ODEQ's August 5, 1999, Title V Program Review, August 5, 1999, pp. 26, ODEQ stated that the introduction to the review report would identify the reason for the current permit action,

which may be a new Title V permit, administrative amendment, minor permit modification, significant permit modification, or permit renewal. The Kingsford permit, however, was revised through a significant permit modification and reissued in 2003. The language in the beginning of the review report, however, refers to this as a permit action for a new Title V source, which is not correct. Although there is a statement on page 10 of the review report regarding the context of this permit action, discussing it at the beginning of the review report would have better explained the context of the action. In addition, the review report does not clearly identify how the permit, after the significant permit modification, differs from the permit before the modification and under what authority the changes were made.

2008 LRAPA Response: *We recognize that some of LRAPA's review reports appear to be recycled versions of past review reports, resulting in documents that are not easily understood by readers who are unfamiliar with the requirements that triggered the permit application. Although past reports can be a useful tool and starting template, we realize that cutting, pasting, and mixing of new permit action information into an older report needs to result in a new review report that clearly reflects the subject permit action. LRAPA will QA (Supervisor review) its newly drafted review reports to address its own and EPA's concerns regarding the evaluation and documentation for new permit actions.*

2017 LRAPA Update: *This effort is ongoing.*

2017 Evaluation: LRAPA has made significant improvements in this area, but additional efforts are ongoing.

Several of the permits we reviewed had been modified by LRAPA since the last permit renewal. Because LRAPA generally revises permits by including an attachment in the front of the permit and a brief description of the revision on the cover page, we usually found it straightforward to determine the nature of the revision. However, LRAPA does not explain in its review reports why it used a particular process to revise the permit (i.e. administrative amendment, minor modification, or significant modification).

Furthermore, as a result of discussions during our site visit, we discovered that LRAPA does not ordinarily require permit applicants to certify whether permit modifications are minor (as opposed to significant). LRAPA must ensure that it is using appropriate procedures to revise its permits and must document in its review reports why the procedures used are appropriate.

## **Section F. Compliance**

- F-1 2006 EPA Concern: 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. EPA will work with ODEQ to ensure their rules are adequately revised to capture the reporting of all permit deviations as provided in 40 CFR 70.6(a)(3)(iii).<sup>5</sup>

2008 LRAPA Response: *The revisions DEQ made to OAR Division 218-Title V Operating Permits to address the concern EPA raised regarding the reporting of deviations also address the issue for LRAPA. Additionally, LRAPA is currently revising its Title 36, Excess Emissions, to be consistent with OAR Division 214 Reporting Rule, which DEQ revised to address EPA's concerns regarding the reporting requirements for excess emissions, startup, shutdown, maintenance and repair, and an affirmative defense demonstration. Also, see the response to previous concern #4, reporting of permit deviations, in Section A, Title V Preparation and Content.*

2017 LRAPA Update: *The EQC adopted DEQ's proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern. DEQ also changed the general reporting requirements in the Title V permit template.*

2017 Evaluation: We are satisfied with ODEQ and LRAPA's rule changes and no longer consider this topic a concern that warrants follow up.

- F-2 2006 EPA Concern: 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's rules require 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's rules require, 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, LRAPA 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/LRAPA 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-month reporting period. LRAPA should also be aware that on October 24, 2005, the 2<sup>nd</sup> 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. EPA will work with ODEQ to ensure their regulations are revised to adequately require prompt reporting of all deviations.

2008 LRAPA Response: *The above response to concern #1 in this Section F, Compliance, should address/respond to this concern.*

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<sup>5</sup> Although 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.

2017 LRAPA Update: *The EQC adopted DEQ's proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern. DEQ also changed the general reporting requirements in the Title V permit template.*

2017 Evaluation: We are satisfied with ODEQ and LRAPA's rule changes and no longer considers this topic a concern that warrants follow up.

- F-3 2006 EPA Concern: The compliance schedule specified at permit condition 161 in the Weyerhaeuser Springfield permit is not adequate. LRAPA sought to resolve compliance issues prior to permit issuance and this one was the only compliance schedule established in a final operating permit. The required elements of compliance schedules are specified by 40 CFR §70.6(c)(3) and OAR 340-218-0040(3)(n)(C)(iii) and 340-218-0070(4). Condition 161 does not contain an enforceable sequence of actions with milestones leading to compliance. The permit term is vague and it is unclear what the permittee is required to do. Simply stating that the permittee shall meet the applicable requirement by a date six years in the future is not adequate. The review report also does not explain what is required or why the permitting authority determined a compliance schedule of several years was appropriate. The ODEQ model permit indicates the kind of information that should be included in a compliance schedule.

2008 LRAPA Response: *The compliance schedules with corrective action measures and milestones that LRAPA establishes in its stipulated final orders (SFO) would have satisfied the state and federal criteria for allowing a facility to operate under a Title V permit compliance schedule. Unfortunately, the permit reviewed by EPA did not refer to and include an official compliance schedule from an issued SFO, nor did it include an SFO type compliance schedule that requires of facility's that need to re-gain/establish compliance status. This should [have] been done in the case of the Weyerhaeuser Title V permit. Supervisor QA should resolve this issue.*

2017 LRAPA Update: *This effort is ongoing.*

2017 Evaluation: LRAPA does not currently have any title V sources operating under compliance schedules. Should LRAPA need to include a consent decree in a future permit, we hope the agency will include all the necessary elements of a compliance schedule. We are satisfied with LRAPA's response to this concern and no longer consider this topic a concern that warrants follow up.

## **Section G. Resources and Internal Management Support**

- G-1 2006 EPA Concern: On-site interviews indicated that there may be confusion related to allocation of permitting staff time (labor cost) to Title V and non-Title V budgets. Note that activities associated with NSR permit preparation are not Title V fundable activities, even if the project is at a Title V source. Title V permit revisions to accommodate new source review permit terms, and agency activities related to implementation of NSR requirements contained in Title V permits are examples of activities that may be billed to Title V. However, establishing or revising site specific NSR permit terms may not be billed to Title V. LRAPA permitting and accounting staff should examine that aspect of their internal billing system and change it accordingly if need be.

2008 LRAPA Response: *Allocation procedures are reviewed annually with managers and staff as part of the budgeting process. Title V staff now have multiple years experience with the time allocation accounting system.*

2017 LRAPA Update: *This effort is ongoing.*

2017 Evaluation: Based on the most recent on-site interviews, management and staff at LRAPA appear to have a clear understanding of how to allocate labor and capital costs to title V and non-title V budgets. We no longer consider this topic a concern that warrants follow up.

## **Section I. Document Review (Rules/Forms/Guidance)**

- I-1 2006 EPA Concern: EPA has recently revised the requirements for compliance certification in 40 CFR 70.6(c)(5)(iii) to identify whether compliance with each permit term and condition that is the basis of the certification was continuous or intermittent during the covered period. ODEQ (and LRAPA) must revise their reporting regulations to reflect this change. We note that LRAPA's reporting forms are consistent with the current Part 70 compliance certification language.

2008 LRAPA Response: *For this item, we would like guidance of what EPA means by "intermittent". For example, are intermittent deviations based on the timeframe in specific permit terms (ex. CEMS- hourly or 3 hour averages; visible emission observations- weekly; -12 consecutive months, -annual). In any case, it would seem that any deviation of a requirement would result in intermittent compliance. When would a deviation not result in intermittent compliance with the subject permit condition?*

2017 LRAPA Update: *LRAPA is authorized to implement the Oregon Title V Operating Permit Program in Lane County and refers sources to the use of DEQ rules and forms. DEQ has revised regulations and many of the forms over time.*

2017 Evaluation: Oregon and LRAPA's forms are not required to be submitted for approval. Region 10 is satisfied with LRAPA's response to this concern and no longer considers this topic a concern that warrants follow up.

- I-2 2006 EPA Concern: LRAPA should submit Title V rule changes to EPA for approval. Rule revisions are required to be approved as program revisions.

2008 LRAPA Response: *Since LRAPA has adopted DEQ's Title V rules by reference, the DEQ submitted rule and program revisions to EPA apply to LRAPA. Somewhat related, LRAPA has submitted a rule proposal package for EPA review (and subsequently SIP rule approval) that would align LRAPA's other rules to the State and Federal Title V rules/programs (ex. ACDP terms, emission event reporting, definitions, Major NSR and PSD, request for NESHAP/NSPS delegation).*

2017 LRAPA Update: *No additional follow-up.*

2017 Evaluation: Region 10 no longer considers this topic a concern that warrants follow up.

- I-3 2006 EPA Concern: The regulatory references in the reporting forms need to be updated to reflect the 1999-2001 renumbering and revision of the OAR.

2008 LRAPA Response: *When EPA brought this to LRAPA's attention, permit writer, Max Hueftle, updated the OAR references in the forms.*

2017 LRAPA Update: *LRAPA is authorized to implement the Oregon Title V Operating Permit Program in Lane County and refers sources to the use of DEQ rules and forms. DEQ has revised regulations and many of the forms over time.*

2017 Evaluation: Oregon and LRAPA's forms are not required to be submitted for approval. Region 10 is satisfied with LRAPA's response to this concern and no longer considers this topic a concern that warrants follow up.

- I-4 2006 EPA Concern: In some cases the 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, need to be re-evaluated with respect to the underlying requirements and policies.

2008 LRAPA Response: *LRAPA's forms are identical to DEQ's, however a review of our forms and the information we receive on those forms, may be a good project. From the project, LRAPA could improve instructions and/or guidance, as needed, supply examples and/or details that clarify Title V requirements and policies. However, at this time our priority projects include: 1) address concerns from EPA's Title V program review in new permit actions; address the items identified in EPA's 'state review framework' report on LRAPA's compliance and enforcement program; implement new area source MACT rules; and develop a HAP emission inventory. However, during our day-to-day work, if we find a specific problematic form(s), we will review that form and supply needed instructions, guidance and/or changes.*

2017 LRAPA Update: *LRAPA is authorized to implement the Oregon Title V Operating Permit Program in Lane County and refers sources to the use of DEQ rules and forms. DEQ has revised regulations and many of the forms over time.*

2017 Evaluation: Oregon and LRAPA's forms are not required to be submitted for approval. Region 10 is satisfied with LRAPA's response to this concern and no longer considers this topic a concern that warrants follow up.

- I-5.a 2006 EPA Concern: In addition to the issues discussed elsewhere in this report, EPA has identified the following statutory and regulatory issues in ODEQ's Title V program that also affect LRAPA's program: 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 and LRAPA's Title V program.

2008 LRAPA Response: *In 2007, the Oregon legislature adopted Senate Bill 235, which gives both the Oregon Department of Agriculture (ODA) and the DEQ authority to implement federal air quality standards for agricultural operations in Oregon. DEQ is currently proposing rule amendments to OAR 340-200-0030; 340-200-0040; 340-210-0205; 340-264-0040 that would apply Title V permitting requirements to agricultural*

*operations that are above federal thresholds. A public hearing on these rule changes will occur on May 19, 2008. Following the public hearing and response to public comment, DEQ expects to recommend the proposed rule changes for adoption by the Environmental Quality Commission at their August 21, 2008 meeting. Once adopted, the DEQ plans to submit the amended rules to EPA for SIP approval. This should resolve the 2005 petition to the EPA.*

*When EQC adopts the OAR revisions for agricultural operations, LRAPA expects to confer with its legal counsel regarding rule changes it may need to implement the Title V applicability to agricultural operations.*

2017 LRAPA Update: *The agricultural exemption in ORS 468A.020 was revised to clarify the exemption and does not apply to the extent necessary to implement the Clean Air Act.*

2017 Evaluation: Region 10 is satisfied with Oregon's rule changes and no longer considers this topic a concern that warrants follow up.

- I-5.b 2006 EPA Concern: 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 LRAPA is “streamlining.” As discussed above, this would be contrary to Part 70. ODEQ has 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.

2008 LRAPA Response: *LRAPA does not have any Title V permits with “streamlining of multiple applicable requirements”. Hence, this is a non-issue. If in the future, a Title V applicant requests use of streamlining, LRAPA will consult with EPA before it determines if it will agree to the streamlining of any permit terms.*

2017 LRAPA Update: *No follow-up.*

2017 Evaluation: LRAPA states that agency permit writers do not streamline applicable requirements. During our file review, we did not discover any permits where multiple applicable requirements were streamlined. However, see Concern A-2.d regarding streamlining of overlapping ODEQ and LRAPA requirements.

- I-5.c 2006 EPA Concern: 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 LRAPA’s guidance and forms should also be revised.

2008 LRAPA Response: *LRAPA believes the following current version of OAR 340-218-0020(4)(a) resolves EPA’s concern with the Title V permit exemptions.*

*“(a) All sources listed in 340-218-0020(1) that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA are not required to obtain a Title V permit, except non-major sources subject to a standard under section 111 or section 112 of the FCAA promulgated after July 21, 1992 are required to obtain a Title V permit unless specifically exempted from the requirement to obtain a Title V permit in section 111 or 112 standards.”*

*In addition, we believe LRAPA guidance and/or forms do not have language that either conflicts with Part 70 applicability or misleads potential Title V sources.*

2017 LRAPA Update: *The EQC adopted DEQ’s proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern.*

2017 Evaluation: Region 10 is satisfied with Oregon’s rule changes and no longer considers this topic a concern that warrants follow up.

- I-5.d 2006 EPA Concern: The list of changes that can be made by administrative amendment under ODEQ’s and LRAPA’s Title V programs (OAR 340-218-0150(1)) should be narrowed. ODEQ’s regulations authorize corrections to baseline or PSELs 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.

2008 LRAPA Response: *Response: DEQ no longer lists baseline and PSEL corrections under allowable changes with Title V administrative amendment procedures. This DEQ change also applies to LRAPA’s Title V program. (Removed OAR section was 340-218-0150(1)(i)).*

2017 LRAPA Update: *The EQC adopted DEQ’s proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern. DEQ also changed the general reporting requirements in the Title V permit template.*

2017 Evaluation: Region 10 is satisfied with Oregon’s rule changes and no longer considers this topic a concern that warrants follow up.

- I-5.e 2006 EPA Concern: 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.

2008 LRAPA Response: *The use of the terms “draft” and “proposed permit” is a subtle distinction within the Title V program. LRAPA specifically follows this distinction using “draft” for the public and “proposed permit” when sending the permit package to EPA for its review. LRAPA’s Public Notice in Title 34 is consistent with Part 70 procedures for public comment. For EPA’s review, LRAPA follows the procedures in OAR 340-218-0230, which are also consistent with Part 70.*

2017 LRAPA Update: *The EQC adopted DEQ’s proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern.*

2017 Evaluation: Region 10 is satisfied with Oregon’s rule changes and no longer considers this topic a concern that warrants follow up.

### III. Additional Review

In addition to reviewing concerns identified in the first review, Region 10 requested an update about program resources and permit issuance progress and reviewed several permits that LRAPA recently issued. Region 10 reviewed the following permits as part of this program review:

<u>Permit No.</u>	<u>Company Name</u>	<u>Date Issued</u>
208850	International Paper Company	10/04/2016
206117	Jasper Wood Products, LLC	01/14/2015
204402	Kingsford Manufacturing	08/01/2016
204740	Lane County Short Mountain Landfill	07/18/2016
207506	SFPP, L.P. Eugene Terminal	01/25/2016
207510	Swanson Group Manufacturing, LLC	02/26/2016

While reviewing permits, we made an effort to focus our attention on concerns identified in the first report. However, we also made an effort to identify new concerns and paid special attention to compliance assurance monitoring (CAM) requirements for several reasons. First, because CAM is most often applied at permits renewal we did not see many applications of CAM during our first round of program evaluations. Since then, during permit reviews, we have discovered a consistent lack of documentation regarding both CAM applicability and implementation.

We discussed past concerns in Section II of this report. Concerns regarding CAM and other new topics identified during the program review appear in this section of the report.

#### **New Concerns (and Suggestions)**

1. Based on our permit review, LRAPA appears to perform CAM analyses as a regular part of permit application review, but does not document CAM analyses in review reports. LRAPA must do a better job documenting CAM applicability decisions and, when CAM applies, explaining the adequacy of the approved monitoring. Every review report should address CAM applicability on a unit-by-unit, pollutant-by-pollutant, and limit-by-limit basis. In some cases (e.g. when a unit does not use a control device to comply with a limit or standard), a simple statement regarding CAM applicability may be adequate. Otherwise, the agency may need to discuss the CAM applicability criteria in OAR 340-212-0200. When the agency determines that CAM applies, it should show in the review report how the approved monitoring meets the design criteria in OAR 340-212-210.
2. When additional monitoring is required by the CAM rule, LRAPA should cite as the applicable requirement OAR 340-212-240(3), which requires the permitting authority to establish permit terms or conditions that specify the required monitoring and sets minimum requirements for permit content. We found that LRAPA often cites part 64 as the underlying applicable requirement even though Oregon has its own version of the CAM Rule in OAR 340-212.<sup>6</sup> In addition, it is not clear whether LRAPA includes all the required elements of the CAM plan. By citing OAR 340-212-240(3), LRAPA will not only cite the correct requirement, but will also be more likely to include in the permit all of the required elements of CAM.

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<sup>6</sup> We note that LRAPA has developed its own rule, LRAPA 35-200 through -280. As the two rules are identical, it is a matter of State law whether LRAPA cites the OAR or its own rules.

3. A practicably enforceable emission limit includes a numerical limit, an averaging period, and a compliance demonstration method. In our permit review, we identified emission limitations that did not include the compliance demonstration method. LRAPA should ensure that each emission limit includes a compliance demonstration method. We note that the compliance demonstration method may be distinct from any required routine monitoring. For example, the compliance demonstration method for a particulate matter emission limit may be EPA Method 5 whereas the permit may specify routine opacity monitoring, periodic equipment inspection and maintenance, limitations on the type or quantity of fuels or raw materials, or any combination of these to indirectly demonstrate compliance with the limit.
4. Although LRAPA is no longer incorporating federal standards into permits by high level reference (see past issue A-2b), the agency's permits do not always include conditions that assure compliance with every applicable requirement from each federal standard. For example, in a permit that identified the RICE NESHAP<sup>7</sup> as an applicable requirement for emergency use engines, the permit may include conditions limiting the hours of operation but no conditions requiring inspection and maintenance. Furthermore, when LRAPA incorporates federal standards from part 60 or part 63, the agency does not always include the applicable general provisions from subpart A of part 60 or 63.
5. Permitting authorities are allowed to paraphrase (rewrite in a more concise way) applicable requirements in permits as long as the permit condition clearly reflects the requirement in the underlying regulation and the permit clarifies that the wording in the underlying requirement is the enforceable language when there is a conflict between the paraphrased and original versions. LRAPA is paraphrasing requirements in some of its permits, but does not clarify that the language in the underlying requirement is the enforceable language when there is a conflict. Region 10 can share example language that we and other permitting authorities have used to ensure paraphrased conditions remain enforceable.
6. Several of the permits we reviewed include the following standard condition

*Unless otherwise specified, the permittee shall retain records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring, instrumentation, and copies of all reports required by the permit. All existing records required by the previous Air Contaminant Discharge Permit shall be retained for five (5) years. [OAR 340-218-0050(b)(B)]*

Oregon and federal regulations (at OAR 340-218-0050(b)(B) and 40 CFR 70.6(a)(3)(ii)(B)) do not include the phrase “unless otherwise specified” and require permittees to retain records of required monitoring for at least five years regardless of what may be otherwise specified.

7. Based on our review of several recently-issued permits, we would like to suggest several improvements for LRAPA's review reports. Descriptions of emission units and emissions

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<sup>7</sup> 40 CFR part 63, subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

should be thoroughly documented. Applicability (and non-applicability) for any potential applicable requirement (including CAM, New Concern #1) should be clearly presented. In the case of complex regulations, such as NSPS and NESHAPs, it may help to go through the standards in detail to demonstrate how compliance with permit terms and conditions will assure compliance with all applicable federal standards. An explanation of the permit condition-by-condition is the most efficient and clear technique for documenting the agency's thinking, particularly regarding the adequacy of monitoring (see past Concern E-1). The public review process and responses to comments must be documented – the review report is an effective tool to ensure those items are addressed.

8. Because Oregon's plant site emission limit (PSEL) program is nationally unique it would be very helpful if LRAPA included an explanation of the PSEL program in each review report or on its website for reference in review reports. Similar to synthetic minor limits, PSELS should be practicably enforceable including, as explained in New Concern #3 above, compliance demonstration methods. This generally means specifying the emission factors (and equations where needed) that must be used to determine emissions as well as associated monitoring and testing, recordkeeping, and reporting requirements. When PSELS are used as enforceable emission limits allowing sources to avoid otherwise applicable requirements, LRAPA should explain this in the review report.
9. (Suggestion) While Region 10 likes the format of the Oregon permits, we have some suggestions for improvements. The tables that describe emission units should have enough information to allow someone to determine which requirements apply and what emissions to expect. The tables that describe and link applicable requirements, permit conditions and monitoring requirements are very useful, but can be improved with consistent labeling of condition numbers for monitoring and inclusion of clear connections between emission units, applicable requirements and monitoring requirements. In tables that include a column for test methods, consider calling that column 'compliance demonstration method', which can list the reference test method if that is the compliance demonstration method, but can also list other, non-reference test methods as well. Narratives that explain applicability, but are clearly not enforceable, should be placed in the review report rather than the permit.
10. (Suggestion) LRAPA posts final part 70 permits and review reports on its agency website. Region 10 suggests LRAPA scan those final permits in a way that allows the permit to be searched. The final permits will be much more useful to the public if they are searchable.
11. (Suggestion) When LRAPA incorporates general provisions from part 60 or 63, it does so by high-level incorporation by reference. This is allowed<sup>8</sup>, but it does not help the permittee, inspectors, or the public understand which elements of the general provisions are applicable requirements. Explicitly including the applicable elements from the general provisions would result in a greater likelihood of compliance by the permitted sources.

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<sup>8</sup> See John S. Seitz's (OAQPS) May 20, 1999 letter to Robert Hodanbosi and Charles Lagges (STAPPA/ALAPCO)

## IV. Summary of Concerns and Recommendations

### Concerns

Many of the concerns identified in the first-round review have been resolved to Region 10's satisfaction, but some still need additional attention. We are satisfied with 24 of 35 concerns identified in the 2006 program review. We believe that LRAPA can improve eleven of the original concerns and eight new concerns. We also shared five suggestions for LRAPA to consider (two of which are included in the discussion of Concerns A-1.a and D-3 from the first-round report).

**LRAPA has made some improvements to its permits and statements of basis, but particular attention is still needed for nine original concerns and eight new concerns.** LRAPA identified several of the original concerns as requiring ongoing effort. We agree. In addition, the following concerns require additional attention:

- LRAPA should add details to review reports, including information on compliance assurance monitoring, applicability (and, where appropriate, inapplicability) of requirements, the basis for additional monitoring, descriptions of emission units, and explanations of permit conditions (A-1.b, C-1, and New Concerns #1 and #7)
- In review reports, LRAPA should explain permit revisions and include ACDP citations to ensure that requirements based on ACDP conditions are not modified inappropriately (A-1.c, A-1.d, A-6, E-1, and E-2)
- All effective versions of Oregon and LRAPA rules must be cited in permits (A-2.d and I-5.b)
- When additional monitoring is required by the CAM rule, LRAPA should cite as the applicable requirement OAR 340-212-240(3), which requires the permitting authority to establish permit terms or conditions that specify the required monitoring and sets minimum requirements for permit content (New Concern #2)
- LRAPA must ensure that all emission limitations include the compliance demonstration method (New Concern #3)
- LRAPA must ensure that permits assure compliance with all federal requirements including the general provisions from subpart A of part 60 or 63 (New Concern #4)
- When paraphrasing (rewriting in a more concise way) applicable requirements in permits LRAPA must clarify that the wording in the underlying requirement is the enforceable language when there is a conflict between the paraphrased and original versions (New Concern #5)
- LRAPA must state clearly that all records required to be maintained under a title V permit must be maintained for at least five years (New Concern #6)
- Because Oregon's PSEL program is nationally unique it would be very helpful if LRAPA included an explanation of the PSEL program in each review report or on its website for reference in review reports. Furthermore, when PSELS are used as enforceable emission limits allowing sources to avoid otherwise applicable requirements, LRAPA should explain this in the review report (New Concern #8)

### Recommendations

LRAPA should provide to Region 10 a response that explains what it plans to do to resolve the concerns summarized in this section, Section IV, of this report. If LRAPA prefers to discuss any of the concerns before responding, we will gladly accommodate that.

## **Attachment 1**

### **Program Review Kickoff Letter and Information Request, December 21, 2016**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

OFFICE OF  
AIR AND WASTE

DEC 21 2016

Mr. Merlyn Hough  
Agency Director  
Lane Regional Air Protection Agency  
1010 Main Street  
Springfield, Oregon 97477

Dear Mr. Hough:

The purpose of this letter is to notify you that the U.S. Environmental Protection Agency, Region 10 plans to perform a second review of the Lane Regional Air Protection Agency's title V operating permit program. This letter kicks off the effort by describing the review process and our proposed schedule. We are also requesting information that will assist us in our program review. Your agency will be the seventh of the second-round program reviews that Region 10 will undertake.

This program review will focus primarily on the following four areas: (1) follow-up on concerns identified during our 2006 review of your program; (2) permit issuance progress and resources; (3) compliance assurance monitoring; and (4) new applicable requirements and rules. We will review a selection of your permits, focusing on those issued more recently. This program review will require involvement of staff and managers from your permitting, technical, finance and compliance groups. We appreciate your cooperation and assistance.

Our tentative schedule is as follows:

Task	Tentative Date
Region 10 sends kickoff letter	Today
LRAPA sends requested information	January 18, 2017
Region 10 visits LRAPA	April 18-19, 2017
Region 10 sends final report	June 30, 2017

Notice that we are avoiding the mid-January to mid-April time frame as we understand LRAPA staff will be focused on air toxics work. The enclosure describes the information we would like to receive in advance, so we can be efficient during the onsite interviews. Please return the information (preferably in electronic form) as early as possible, but no later than the date in the table above, to Geoffrey Glass (glass.geoffrey@epa.gov) who will be leading the review. We will contact you if we need any additional information.

We look forward to working with you and your staff. If you have any questions about the program review, please do not hesitate to call me at (206) 553-1783 or Geoffrey Glass at (206) 553-1847.

Sincerely,

8103 18 3 11



Donald A. Dossett, P.E., Manager  
Stationary Source Unit

Enclosure

cc: Mr. Max Hueftle  
Permit Section Manager, LRAPA

**Title V Program Review  
Lane Regional Air Protection Agency**

**Information Request**

Please send the following information in electronic form as soon as possible, but no later than January 18, 2017, to Geoffrey Glass (glass.geoffrey@epa.gov)

1. A list of the LRAPA staff that work in the title V program, noting their responsibilities (e.g. permit writer, rule writer, inspector, etc.).
2. Information about any title V permits, renewals, or revisions that are recent enough that they are not represented on the LRAPA's website.
3. A list and description of any rule changes that have been made to the LRAPA's title V regulations (e.g. those that affect applicability, implementation, or fees) since November, 1995. If any of the rule changes have been submitted to Region 10 for review, note the date of submittal.
4. Financial records (preferably from your last complete fiscal year) reflecting revenues and expenses that document the LRAPA's ability to fund the operating permit program with title V fees and the LRAPA's ability to ensure that title V fees are used only for title V authorized expenses.
5. An update regarding each of the concerns raised in the 2006 title V program review, noting whether the plan to address the concern was completed and whether the LRAPA is approaching any of the concerns identified in the 2006 title V program review differently than previously communicated to Region 10 on May 2, 2008. Provide a narrative explaining the different approach, if applicable.
6. Any issues or requests that the LRAPA would like to raise to Region 10 regarding any aspect of the title V program.

## **Attachment 2**

**Program Review Information Request Response,  
January 13, 2017**



Title V Program Review  
Lane Regional Air Protection Agency

LRAPA Reply (01/13/17) to EPA Information Request (December 21, 2016)

1. *A list of LRAPA staff that work in the title V program, noting their responsibilities (e.g. permit writer, rule writer, inspector, etc.).*

LRAPA Staff Name	Title V Responsibilities
Merlyn Hough	Title V Compliance and Enforcement Supervisor, Director
Colleen Wagstaff	Title V Permit Coordinator, Compliance and Enforcement Coordinator, Title V Invoicing, EPA Reporting (TOPs, HPV/FRV, ICIS-Air)
Max Hueftle	Title V Permit Writer, Permit Section Manager, Emission Inventory (NEI), Rule Writer, Title V Invoicing, Small business assistance
Beth Davis	Title V permit writer
Katie Eagleson	Title V permit writer, Source testing coordinator
John Morrissey	Title V inspector
Kim Singleton	Title V inspector

2. *Information about any title V permits, renewals, or revisions that are recent enough that they are not represented on the LRAPA's website.*

None – the LRAPA website is updated when new permits are issued and when permits are issued for renewals or modifications.

3. *A list and description of any rule changes that have been made to the LRAPA title V regulations (e.g., those that affect applicability, implementation, or fees) since November 1995. If any of the rule changes have been submitted to Region 10 for review, note the date of submittal.*

None – LRAPA is authorized to implement the Oregon Title V Permitting Program in Lane County. Please refer to DEQ's rule changes submitted to Region 10 for OAR divisions 218 and 220.

4. *Financial records (preferably from your last complete fiscal year) reflecting revenues and expenses that document the LRAPA's ability to fund the operating permit program with title V fees and the LRAPA's ability to ensure that title V fees are used only for title V authorized expenses.*

*Funding the program:* The following three tables provide the agency summary of revenues and expenditures for each fund for the 2015-2016 fiscal year, the period from July, 1 2015 to June 30, 2016.

Lane Regional Air Protection Agency

2015-2016

Title V

Budget Summary

Year 2012-2013 Actual	Year 2013-2014 Actual	Year 2014-2015 Budgeted	Year 2014-2015 Projected
170172	333965	436880	471977
170172	333965	436880	471977
526163	544247	562240	548480
526163	544247	562240	548480
696335	878212	999120	1020457
304324	339685	407500	426000
43046	51550	88980	85170
0	0	0	0
0	0	0	0
0	0	0	0
347370	391235	496480	511170
15000	15000	15000	15000
362370	406235	511480	526170
333965	471977	487640	494287
696335	878212	999120	1020457
163793	138012	50760	22310

Beginning Fund Balance

Beginning Fund Balance 494290 494290 494290

Beginning Fund Balance 494290 494290 494290

Revenues

Permit Fees 557640 557640 557640

Total Revenues 557640 557640 557640

Total Resources 1051930 1051930 1051930

Expenditures

Personnel Services 498930 498930 498930

Materials & Services 96580 96580 96580

Equipment

Debt Service

Contingency & Reserves 0

Total Expenditures 595510 595510 595510

Transfers to (from) Other Funds 15000 15000 15000

Total Expenditures and Transfers 610510 610510 610510

Ending Fund Balance

Total Ending Fund Balance 441420 441420 441420

Total Requirements 1051930 1051930 1051930

Net Fund Increase (Decrease) -52870 -52870 -52870

22

Lane Regional Air Protection Agency

2015-2016

Title V Budget

Revenues Detail

Year 2012-2013 Actual	Year 2013-2014 Actual	Year 2014-2015 Budgeted	Year 2014-2015 Projected
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526163 544247 562240 548480

0 0

526163 544247 562240 548480

Permit Fees

Title V Fees 557640 557640 557640

Construction Review Fees

Total Revenues 557640 557640 557640

Expenditures & Transfers Detail

Personnel

Salaries 374060 374060 374060

LRAPA Benefit Plan 63470 63470 63470

Other Fringe Benefits 61400 61400 61400

Total Personnel 498930 498930 498930

Materials & Services

Computer Supplies 6000 6000 6000

Office/Lab Supplies 14000 14000 14000

Postage 5000 5000 5000

Insurance 6900 6900 6900

Printing 5490 5490 5490

Public Notices 1000 1000 1000

Telephones 3860 3860 3860

Utilities 4070 4070 4070

Publications 500 500 500

Training 1900 1900 1900

Contract Services 0 0 0

Professional Dues 1900 1900 1900

Legal & Accounting 13900 13900 13900

Public Education Supplies 4800 4800 4800

Rent 0 0 0

Repairs of Buildings & Equipment 7260 7260 7260

Building Maintenance 2290 2290 2290

Vehicle Operating Expense 6050 6050 6050

Fares 3300 3300 3300

Food, Lodging & Sustenance 8360 8360 8360<sup>23</sup>

43046 51550 88980 85170

Total Materials & Services 96580 96580 96580

**Lane Regional Air Protection Agency**

2015-2016

**Title V Fund Budget  
Expenditures & Transfers Detail  
(Continued)**

Year 2012-2013 Actual	Year 2013-2014 Actual	Year 2014-2015 Budgeted	Year 2014-2015 Projected		Proposed by Budget Officer	Approved By Budget Committee	Adopted by LRAPA Board
0	0			General Contingency/Equipment Replacement Rese	0	0	0
<b>347370</b>	<b>391235</b>	<b>496480</b>	<b>511170</b>	<b>TOTAL EXPENDITURES</b>	<b>595510</b>	<b>595510</b>	<b>595510</b>
				<b>Transfers to (from) Other Funds</b>			
15000	15000	15000	15000	To (From) Other Funds	15000	15000	15000

*Ensuring that the title V fees are used only for title V authorized expenses:*

- LRAPA uses an electronic timesheet that specifies program elements specific to title V including: Small Business Assistance Title V, Source Test Title V, Title V Programs, and Administrative Title V.
- The Director, Finance Manager, Board of Directors, Budget Committee all provide periodic oversight of varying degrees to ensure the title V fees are used only for title V authorized expenses.
- LRAPA conducts an annual audit of its financial statements through an independent auditing firm. The audit is conducted in accordance with auditing standards generally accepted by the United States of America (GAAP) and the standards applicable to financial audits contained in the Government Auditing Standards Board (GASB), issued by the Comptroller General of the United States.

5. An update regarding each of the concerns raised in the 2006 title V program review, noting whether the plan to address the concern was completed and whether the LRAPA is approaching any of the concerns identified in the 2006 title V program review differently than previously communicated to Region 10 on May 2, 2008. Provide a narrative explaining the different approach, if applicable.

A. Title V Permit Preparation and Content

#	EPA concern	LRAPA response	2017 Follow-up
1.a	<p><i>All Title V permits must be accompanied by a statement that sets forth the legal and factual basis for the draft permit conditions. LRAPA refers to the statement of basis as the review report. Aside from documenting the technical and legal basis for permit conditions, the review report should be used to document the agency's decision process for use by future permit writers, enforcement staff, the company and the public. LRAPA should work to improve the content of the review report for its permits when LRAPA issues permit renewals and new permits. Some specific EPA concerns in this regard are: More detail is needed in the review reports. In some cases, review reports do not have a date or list the street address of the subject facility, making the linkage to the permit version or facility difficult to figure out. In some cases, there are discrepancies among the permit application, the permit and the review report that are not explained in the review report.</i></p>	<p>We agree that the identity of a facility should be clear to those who may read a review report, that reports should be consistent with or explain information that differs from the permit application, and that report versions should relate NSR and Title V permit actions that affect the applicable requirements at the subject facility. Discussing/informing LRAPA staff of EPA's concern; training and use of DEQ's model permits; drafting written guidance as warranted; mentoring and QA of draft review reports/permits will address this concern.</p>	<p>This effort is ongoing.</p>
1.b	<p><i>LRAPA review reports often simply recite the requirements of the permit rather than explaining the basis for creating the requirement or how monitoring terms assure compliance. This issue is discussed in more detail below in Section C, Monitoring.</i></p>	<p>As LRAPA receives and reviews Title V permit applications, it will describe its evaluation of the applicable requirements and basis for the permit conditions, particularly the monitoring terms. LRAPA commits to make an ongoing effort to increase the clarity, consistency, and content of its review reports. Discussing/informing LRAPA staff of EPA's concern; training and use of DEQ's model permits; drafting written guidance as warranted; mentoring and QA of draft review reports/permits will address this concern.</p> <p>Thus far our efforts to address EPA's concern include: Max Hueftle, LRAPA permit writer, acting as mentor</p>	<p>This effort is ongoing.</p>

#	EPA concern	LRAPA response	2017 Follow-up
		and peer reviewer for our previous permit writer Doug Erwin; Sandra Lopez, Ops Manager, attended the EPA Title V training workshop, April 17-18, 2007, Seattle; and all three LRAPA permit writers (S. Lopez, M. Hueftle, D. Erwin) attended a DEQ Title V training, April 19, 2007, Eugene.	
1.C	<p><i>Better discussion in the review reports is needed regarding the carryover and/or modification of terms from ACDPs. This is especially important because ODEQ has interpreted its regulations to mean that the Title V permit replaces the ACDP and that ACDPs expire once a Title V permit is issued. The review reports specify the ACDP terms that were carried over into the Title V permit, but do not explain under what authority conditions in ACDPs were created, what procedures apply to revisions to those ACDP conditions when they are later housed only in Title V permits, and if the procedural and substantive ACDP and/or Title V revision procedures were followed. For example, the Weyerhaeuser review report (Pg. 42-43) has a discussion of why LRAPA did not carry over permit terms from the ACDP to the Title V permit. The discussion does not indicate whether the ACDP was revised in a separate process and then carried over into the Title V permit or whether the ACDP permit in effect was revised in the Title V permit issuance process. The review report should make that clear. In addition, if the latter (Title V permit issuance is revising the ACDP), the review report needs to show that LRAPA met the procedural and substantive requirement for revising the ACDP. This is especially important for conditions created under new source review (NSR) authority, which requires an air quality analysis and sometimes a technology review to create and revise the requirements. In addition, because permit term numbers change during the revision process, it is difficult to track the origin of and changes to ACDP permit terms backward in time. A detailed record of change is necessary.</i></p>	<p>LRAPA is revising its permitting rules to be consistent with the changes ODEQ made to address EPA's concern regarding ACDP permit conditions/terms that are applicable requirements and/or affect NSR applicability to a Title V facility. The proposed revisions to LRAPA's rule that specifically address this issue are LRAPA Title 37, Air Contaminant Discharge Permits, Sections 37-0020 and 37-0082(1)(B). Additionally, at renewal we intend to add an explanation in review reports that states the conditions/requirements in Title V permits from a construction ACDP or are SIP-based continue to be applicable to the facility (source), except when those provisions are modified through LRAPA's ACDP application procedures.</p> <p>Based on EPA's review, we are including explanations/reasons for Title V permit actions (ex., incorporation of a modified ACDP or construction ACDP, Title V modification for the incorporation of new applicable requirements, monitoring, etc.) in our review reports. As noted above, this includes a description of ongoing ACDP permit terms that apply to the facility and its affect on NSR applicability, etc. However, unless a facility's review report needs to include specific information for the purposes of NSR, LRAPA is not revising its past review reports to include additional information. We believe that this would conflict with permit timeliness and reduce the amount of time we have to focus on more prevalent EPA concerns such as the monitoring terms discussed above in item b.</p>	<p>Similar to DEQ review reports, LRAPA now includes a condition-by condition list of changes to the permit terms.</p> <p>See also item 6 in this table, below.</p>

#	EPA concern	LRAPA response	2017 Follow-up
1.d	<i>Review reports do not adequately explain the basis for revisions to the Title V permit and what terms of permit are being revised. This issue is discussed in more detail below in Section E, Permit Issuance/Revision/Renewal.</i>	See previous response. Moreover, use of DEQ's permit template, training and discussing the results of EPA's review and concerns within our permitting group should resolve this issue.	Similar to DEQ review reports, LRAPA now includes a condition-by-condition list of changes to the permit terms.  See also item 6 in this table, below.
2.a	<i>The permits should better identify the authority for the permit terms. This is done well in many cases, but EPA also identified several concerns: In some cases, no authority is identified (for example, Kingsford, conditions 7, 13, 18, 19, 23, 24, 29, 31, 32, 34, 35, 37, 40).</i>	LRAPA permit writer, Max Hueftle, added the rule citations to those permit conditions EPA identified in the Kingsford permit. It will likely take one Title V permit renewal cycle to check other permits for needed rule citations. Additionally, LRAPA is putting in place QA procedures to screen Title V permits for this and other concerns identified by EPA.	LRAPA staff attended April 19, 2007 training at the DEQ Inspector's Forum. LRAPA will continue to ensure that its permit writers are including specific rule citations for all Title V permit conditions.
2.b	<i>In other cases, a high level of citation is used for a section of the permit. For example, NSPS requirements for the SFPP Eugene Terminal permit were, in many cases, broadly cited, even though the detailed language from the NSPS was included in the permit. Each permit condition should identify the authority for the condition.</i>	The use of broad citations occurred during initial implementation and issuance of some of LRAPA's Title V permits. LRAPA no longer broadly cites applicable requirements. However, there may be permits that have not been revised (been open) that need to be checked and updated. These corrections will continue as we receive permit applications or open permits for renewal, to add newly adopted rule amendments, etc.	This effort is ongoing.
2.c	<i>In some cases, the citations in the permit are out of date. For example, the citations in the Sierra Pine facility permit do not reflect the numbered OAR sections, even though the permit was revised in 2002.</i>	Since EPA has brought this to our attention, we re-check and update citations as needed for each Title V permit when it is open for review.	This effort is ongoing.
2.d	<i>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, LRAPA had revised its regulation, but EPA had not 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-</i>	We are unclear on how to cite the authority of two versions of the same rule (SIP approved rules versus rules pending submittal and/or SIP approval). We would hope that EPA does not intend for a Title V permit to include two versions of a rule in a permit condition. It would be useful to see an EPA example that uses one of the LRAPA's permits to demonstrate how to include permit terms (language) for "state only"	This is a challenge, especially given the increasing number of local/state-adopted rules that have been submitted to EPA over the past decade for inclusion in the SIP but

#	EPA concern	LRAPA response	2017 Follow-up
	<p><i>adopted version will become federally enforceable and the former SIP-approved version will be automatically no longer in effect upon approval of the revised regulation as part of the SIP.</i></p>	<p>and SIP approved rules, including the corresponding cited authority. With this guidance, we can begin addressing this concern as we work on Title V permit applications for initial issuance, modification, and renewal.</p>	<p>have not yet been approved. Additionally, some SIP updates completed at the state level (DEQ) apply in Lane County until LRAPA adopt rules that are at least as stringent.</p> <p>The standard condition in the model Title V permit was revised to make it clear that “All conditions in the permit are federally enforceable, meaning they are enforceable by LRAPA, DEQ, EPA and citizens under the Clean Air Act except Conditions 7, 8, 9, G5, and G9 (LRAPA Title 43 – Asbestos) are only enforceable by LRAPA.</p>
3	<p><i>The inapplicable requirements (permit shield) section of certain permits (e.g. Kingsford permit condition 102(h)) contains “federal applicable requirements currently determined not applicable to the permittee” but does not identify the rationale for the determination, which is required under Part 70 and ODEQ rules. The Oregon and federal regulations should be discussed similarly, identifying a reason for inapplicability, as indicated in ODEQ’s model permit. The source is not shielded from the provisions in (h) because the permit does not contain a summary of the rationale. Also, the permit shield for the Clean Air Act itself (CAA sections 129, 183(e) and 183(f)) is not appropriate. These statutes require EPA to promulgate regulations and do not directly regulate sources. The shield should be granted for the</i></p>	<p>During initial implementation of the Title V program, LRAPA was not aware that the permit shield provisions are for rule standards/terms that would or could otherwise apply to the facility. Several subject facilities listed and applied for a laundry list of every conceivable regulation or authority that did not apply at the time of the application submittal. At renewal or modification, LRAPA will remove the over-broad use of the permit shield and attached shield listings (regulations/and or statutes) from its Title V permits. Currently, none of the LRAPA Title V permitted facilities have received an acceptable permit shield from a rule, or portion thereof.</p>	<p>LRAPA now only specifies inapplicable requirements that could reasonably be thought to apply to a certain source. In some permits, the condition has been removed entirely.</p>

#	EPA concern	LRAPA response	2017 Follow-up
	<i>relevant implementing regulations, not for the authorizing statutes.</i>		
4.a	<i>Some LRAPA permits leave out important language regarding reporting of permit deviations. We note that these provisions appear in ODEQ's model permit. Permits must state that: All permit deviations must be promptly reported, including excess emissions. See OAR 340-218-0050(3)(c)(B). Prompt must be defined in the permit or in the regulations.</i>	<p>Since EPA's review of LRAPA's Title V program, LRAPA has worked with DEQ staff to address prompt reporting requirements for permit deviations. Our proposed revisions to LRAPA Title 36 align reporting for excess emission events with the DEQ and federal requirements including requirements for immediate reporting "all other excess emissions". Regarding "prompt" reporting definitions for other permit terms, LRAPA's use of OAR 218 and DEQ's Model Permit A (conditions 34, 35 and 38) and Model Permit B (40, 41 and 44) defines prompt reporting for permit deviations that do not result in excess emissions, except when a definition of "prompt" has been added to a site-specific applicable requirement.</p> <p>Additionally, DEQ currently has a draft addendum that details the criteria for reporting excess emissions. DEQ intends to issue its finalized addendum for all its Title V permits. Likewise, LRAPA will issue this addendum to the Title V permits issued in Lane County. With this permit addendum, LRAPA will be mailing out EPA's information regarding "prompt" deviation reporting.</p>	The EQC adopted DEQ's proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern. DEQ also changed the general reporting requirements in the Title V permit template.
4.b	<i>All instances of deviations from permit requirements must be clearly identified in the semi-annual monitoring report. See OAR 340-218-0050(3)(c)(A).</i>	Permitted Title V facilities report deviations for each permit condition/term (applicable requirement). The information is reported on the same forms used by DEQ (R1002 and R1003), which require a condition-by-condition (with subparts) designation of continuous or intermittent compliance status certification by the reporting official.	Nothing to follow-up.
4.c	<i>All permit deviations must be identified and taken into consideration in the annual compliance certification. See 40 CFR 70.6(c) (5) (iii) (c) and OAR 340-218-0080(6) (c) (C).</i>	Discussing/informing LRAPA staff of EPA's concern; training and use of DEQ's model permits; drafting written guidance as warranted; mentoring and QA of draft review reports/permits will address this concern.	This effort is ongoing.
5	<i>Because LRAPA does not currently have delegation of the NSPS standards, permittees must provide NSPS reports and</i>	LRAPA will add an explanation regarding NESHAP[s] and NSPS dual notification requirements in its review	LRAPA has submitted updates to federal

#	EPA concern	LRAPA response	2017 Follow-up
	<p><i>notifications to EPA as well as to LRAPA (because LRAPA has adopted the NSPS as a matter of law). The Title V permits or review reports should make this dual notification clear. Obtaining delegation of the NSPS standards obviate the need for dual reporting in most cases.</i></p>	<p>reports. In addition, LRAPA’s proposed rule revisions include adopting these federal regulations by reference. Upon LRAPA Board adoption, we will submit a rule delegation request to EPA.</p>	<p>standards but has not received delegation. LRAPA specifies in permits that reports must be submitted to EPA directly in cases where EPA retains authority or specifies certain reporting (e.g., CEDRI).</p>
6	<p><i>EPA remains concerned that ODEQ and LRAPA interpret ODEQ’s regulations to mean that the Title V permit replaces or “supersedes” 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 supersede, 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.</i></p>	<p>Because LRAPA has adopted the DEQ Title V regulations by reference, the DEQ’s rule changes to clarify and legally assure that ACDP terms remain in force and applicable in Oregon despite the expiration of Title V permit address this EPA concern. The specific amendments to Oregon’s DEQ rules that address this concern include:</p> <p>340-218-0010(A) - Oregon Title V Operating Permits do not replace Air Contaminant Discharge Permits issued to the source even if the ACDP(s) have expired.</p> <p>340-218-0010 (B)-TACT, RACT, BACT, and LAER requirements established in an ACDP must be incorporated into the Oregon Title V Operating Permit and any revisions to those requirements must follow the procedures used to establish the requirements initially.</p> <p>340-218-0010 (C) - Requirements established in ACDPs for the purpose of avoiding being subject to specific programs must also be included in the Oregon Title V Operating Permits and any revisions to those requirements must follow the procedures used to establish the requirements initially.</p> <p>Also, see above response to concern 1.c.</p>	<p>The EQC adopted DEQ’s proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern.</p>

B. General Permits -EPA did not note any items, as LRAPA has not issued General Title V permits.

C. Monitoring

#	EPA concern	LRAPA response	2017 Follow-up
1	<p><i>Review reports should better document the monitoring imposed in the permit. For example, condition 28 in the Kingsford permit indicates that periodic monitoring relies on a test once per permit term (Conditions 29 and 87), and relies on opacity monitoring (Condition 31) between tests to assure the source continues to operate as well as during the test. The review report does not explain if there is a correlation between the testing and opacity to confirm that opacity will assure compliance or otherwise explain the basis for the monitoring decision. If monitoring is selected from guidance in ODEQ documents, then the review reports should indicate that and explain why the selection was appropriate.</i></p>	<p>Discussing/informing LRAPA staff of EPA’s concern; training and use of DEQ’s source testing and CEMS procedures manual; and reference to EPA monitoring guidance will address this concern. In addition, LRAPA will develop QA procedures to screen review reports for information that describes the basis of monitoring that is not imposed by an applicable requirement.</p>	<p>This effort is ongoing.</p>
2	<p><i>The permit(s) have requirements concerning minimum data availability for continuous emissions monitoring systems. For example, condition 151 in the Weyerhaeuser Springfield permit sets minimum data availability continuous emissions monitoring systems (CEMs) and continuous opacity monitoring systems (COMs) required. The permit does not contain a specific statement of authority for this condition (the permit refers generally to OAR 340-218-0050(1), which requires permits to contain emission limitations and standards, including operational requirements that assure compliance with applicable requirements). Nor does the review report discuss the basis and purpose for this condition. It is, therefore, difficult to determine if this condition is based on an applicable requirement or whether it is created under the Title V permit. If the latter, Part 70 permits, can contain narrowly drawn exceptions to monitoring requirements created under the authority of Title V Part 70 under certain conditions. Importantly, such provisions cannot apply to any monitoring provision that is itself an “applicable requirement”. For example, no such general relief from monitoring requirements exists for NSPS monitoring</i></p>	<p>We understand and agree with EPA’s comment. Discussing/informing LRAPA staff of EPA’s concern; training and use of DEQ’s source testing and CEMS procedures manual; and reference to EPA monitoring guidance will address this concern. In addition, LRAPA will develop QA procedures to screen permit conditions for terms that differ from rule specific (and ACDP specific) monitoring requirements.</p>	<p>LRAPA uses DEQ’s Continuous Monitoring Manual and permit templates, and strives to correctly cite authority and explain the purpose of permit conditions in the review reports.</p>

<p><i>provisions and neither the permitting authority nor EPA has the authority to create such an exemption absent Federal rulemaking. Similarly, if the requirement to have a CEM is imposed by an LRAPA or in a permit to construct, the Title V authority cannot be used to create data availability requirements. Rather, the underlying applicable requirement must first be revised to include such a data availability requirement. Title V authority can be used to create data availability requirements only for monitoring that is itself created under Title V authority. ODEQ has recognized this in its discussion in ODEQ's August 5, 1999, Title V Program Review (see pages 18-19, item 12). As indicated above, however, it is difficult to tell from the LRAPA permits and review reports whether this condition applies to CEMS required only by the Title V permit, or whether the CEMs otherwise required by the applicable requirements (e.g. an existing ACDP or SIP requirement).</i></p>		
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**D. Public Participation and Affected State Review**

#	EPA concern	LRAPA response	2017 Follow-up
1	<p><i>Several permit terms allow departure from established permit conditions if an alternative is approved by the LRAPA. For example, Weyerhaeuser permit condition 151(a) authorizes LRAPA to allow backup or standby monitoring that differs from the backup/standby monitoring specified in the permit if LRAPA approves the alternative in writing. This effectively allows the permittee and LRAPA to change an enforceable permit condition through an off-permit process and is contrary to the permit revision procedure of Part 70 and ODEQ's rules. Such a change would typically be processed as a minor permit modification (unless it is relaxation in reporting or recordkeeping, which must be processed as a significant modification). Another example from Kingsford permit (condition 26), includes a statement that LRAPA can waive testing. This type of requirement would reduce the</i></p>	<p>LRAPA agrees that these permit terms need immediate correction and appreciates EPA's diligence in reviewing its Title V permits. Max Hueftle, LRAPA permit writer, has corrected the Title V permits that EPA noted with this concern. In addition, Max Hueftle and the LRAPA operations manager will provide training, peer review, and supervisor QA to address, as well as avoid, the re-appearance of this concern.</p>	<p>LRAPA has worked to remove such allowances from permits and also has eliminated them from drafts if suggested by permittees or permit writing staff.</p>

	<i>stringency of the permit without going through any public review. Generally, the permit itself should describe the criteria by which testing can be reduced, making the option transparent.</i>		
2	<i>The Kingsford facility review report (Items 67 and 68) states that no comment was received, but 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 in the public comment period. Then if EPA does not object to a permit during the 45-day review period, the public can petition EPA within 60 days after the 45-day review period ends. LRAPA should revise this language in the review reports to be clear about the EPA petition (appeal) process.</i>	LRAPA has revised the review report language as requested by EPA.	The following was added to the model Title V review report: “If EPA does not object in writing, any person may petition the EPA within 60 days after the expiration of EPA's 45-day review period to make such objection. Any such petition must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in OAR 340-218-0210, unless the petitioner demonstrates it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.”
3	<i>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 and LRAPA law meets these requirements, LRAPA 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, LRAPA could help ensure a more meaningful public participation process in Lane County.</i>	LRAPA does not presently have the resources to provide the extra services described by EPA. In addition to turnover in support staff, we are trying to locate a candidate to fill a permit writer vacancy. Somewhat related, we are in the process of posting up-to-date Title V permits and review reports on our website.	The LRAPA website was updated to include educational items related to Title V (see: <a href="http://www.lrapa.org/198/Title-V-Operating-Permits">http://www.lrapa.org/198/Title-V-Operating-Permits</a> ). We also explain meaningful public participation as part of informational meetings or hearings on specific permits.
4	<i>LRAPA provides the permittee with a pre-draft permit for review and comment before the draft permit goes out for</i>	LRAPA agrees with EPA’s concern, and believes this is a matter of permit writer experience. A permit	This effort is ongoing.

<p><i>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 this permit. Working with the permittee on developing substantive requirements of the permit, however, can create the impression that the permit issuance process is not an open process. LRAPA should carefully balance these interests as it works with permittees during the development and issuance of Title V permits</i></p>	<p>writer's changes because of permittee comments and/or proposals typically indicate the objectivity and knowledge of a permit writer. Hence, new permit writers need support and training related to this concern so that they are objective and can differentiate regulatory, equipment and application clarification versus the impression that permittee's unduly influence permit writers and/or write their own review reports/permits</p>	
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E. Permit Issuance / Revision / Renewal

#	EPA concern	LRAPA response	2017 Follow-up
1	<p><i>The Sierra Pine permit review report explains that numerous changes were made to ACDP conditions. ACDP term numbers were referenced. Presumably, the ACDP numbering is changed every time a term is rescinded, or even when a modification to a term occurs. The review report should reference the date of the subject ACDP along with the term that is being addressed. Without the date, or another identifier, it is nearly impossible to track the changes made.</i></p>	<p>When LRAPA renewed Sierra Pine's Title V permit in March 2008, the associated review report included a more detailed explanation of ACDP and permit term changes, as follows:</p> <ul style="list-style-type: none"> <li>• Item 14, History of Changes to PSEL from Baseline/1984 Permit to the Title V Operating Permit (Issued 2/97);</li> <li>• Item 15, Adjusted Baseline (Due to 1997 PSD Permit Application);</li> <li>• Item 22, History of Changes to the Facility/PSEL from the 1984 ACDP to the Title V Operating Permit at 167 MMSF (issued 2/97);</li> <li>• Item 23, Changes to the Facility/PSEL since the Title V Permit Issuance;</li> </ul>	<p>Similar to DEQ review reports, LRAPA includes a condition-by-condition list of changes to the permit terms.</p>

		<ul style="list-style-type: none"> <li>Item 1, Reference to a 2/15/05 Construction ACDP for a natural gas fired boiler; and</li> <li>Item 33, General Background Information, which discusses changes that have been made since the last permit renewal.</li> </ul>	
2	<p><i>The review report for a particular permit action, such as a permit modification, should explain the basis and authority for the action. In ODEQ's August 5, 1999, Title V Program Review, August 5, 1999, pp. 26, ODEQ stated that the introduction to the review report would identify the reason for the current permit action, which may be a new Title V permit, administrative amendment, minor permit modification, significant permit modification, or permit renewal. The Kingsford permit however, was revised through a significant permit modification and reissued in 2003. The language in the beginning of the review report, however, refers to this permit action for a new Title V source, which is not correct. Although there is a statement on page 10 of the review report regarding the context of this permit action, discussing it at the beginning of the review report would have better explained the context of the action. In addition, the review report does not clearly identify how the permit, after the significant permit modification, differs from the permit before the modification and under what authority the changes were made.</i></p>	<p>We recognize that some of LRAPA's review reports appear to be recycled versions of past review reports, resulting in documents that are not easily understood by readers who are unfamiliar with the requirements that triggered the permit application. Although past reports can be a useful tool and starting template, we realize that cutting, pasting, and mixing of new permit action information into an older report needs to result in a new review report that clearly reflects the subject permit action. LRAPA will QA (Supervisor review) its newly drafted review reports to address its own and EPA's concerns regarding the evaluation and documentation for new permit actions.</p>	<p>This effort is ongoing.</p>

F. Compliance

#	EPA concern	LRAPA response	2017 Follow-up
1	<p><i>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. Deviation 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</i></p>	<p>The revisions DEQ made to OAR Division 218-Title V Operating Permits to address the concern EPA raised regarding the reporting of deviations also address the issue for LRAPA. Additionally, LRAPA is currently</p>	<p>The EQC adopted DEQ's proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern. DEQ also changed the general reporting</p>

	<p><i>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 emission 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 sources is subject to a new requirement or tested for the first time. Furthermore, ODEQ's rules in OAR 340-214-0300. EPA will work with ODEQ to ensure their rules are adequately revised to capture the reporting of all permit deviations as provided in CFR 70.6(a)(3)(iii)<sup>1</sup></i></p>	<p>revising its Title 36, Excess Emissions, to be consistent with OAR Division 214 Reporting Rule, which DEQ revised to address EPA's concerns regarding the reporting requirements for excess emissions, startup, shutdown, maintenance and repair, and an affirmative defense demonstration. Also, see the response to previous concern #4, reporting of permit deviations, in Section A, Title V Preparation and Content.</p>	<p>requirements in the Title V permit template.</p>
2	<p><i>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's rules require all deviations which do not cause excess emissions to be reported promptly within seven days of the deviation. For sources that pre-approved procedures for startup/shutdown or scheduled maintenance, ODEQ's rules require, 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, LRAPA 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/LRAPA 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-month reporting period. LRAPA should also be aware that on October 24, 2005, the 2<sup>nd</sup> 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. EPA will work with ODEQ to ensure their regulations are revised to adequately require prompt reporting of all deviations.</i></p>	<p>The above response to concern #1 in this Section F, Compliance, should address/respond to this concern.</p>	<p>The EQC adopted DEQ's proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern. DEQ also changed the general reporting requirements in the Title V permit template.</p>

<sup>1</sup> Although 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 deviation reporting requirements. EPA is addressing here only Title V concerns and not any concerns EPA may have with ODEQ's general excess emission rules for purposes of meeting requirements for SIPs.

3	<p><i>The compliance schedule specified at permit condition 161 in the Weyerhaeuser Springfield permit is not adequate. LRAPA source to resolve compliance issues prior to permit issuance and this one was the only compliance schedule established in the final operating permit. The required elements of compliance schedules are specified by 40 CFR §70.6(c) (3) and OAR 340-218-0040(3) (n) (C) (iii) and 340-218-0070(4). Condition 161 does not contain an enforceable sequence of actions with milestones leading to compliance. The permit term is vague and it is unclear what the permittee is required to do. Simply stating that the permittee shall meet the applicable requirement by a date six years in the future is not adequate. The review report also does not explain what is required or why the permitting authority determined a compliance schedule of several years was appropriate. The ODEQ model permit indicates the kind of information that should be included in a compliance schedule.</i></p>	<p>The compliance schedules with corrective action measures and milestones that LRAPA establishes in its stipulated final orders (SFO) would have satisfied the state and federal criteria for allowing a facility to operate under a Title V permit compliance schedule. Unfortunately, the permit reviewed by EPA did not refer to and include an official compliance schedule from an issued SFO, nor did it include an SFO type compliance schedule that requires of facility's that need to re-gain/establish compliance status. This should [have] been done in the case of the Weyerhaeuser Title V permit. Supervisor QA should resolve this issue.</p>	<p>This effort is ongoing.</p>
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G. Resources and Internal Management

#	EPA concern	LRAPA response	2017 Follow-up
1	<p><i>On-site interviews indicated that there may be confusion related to allocation of permitting staff time (labor cost) to Title V and non-Title V budgets. Note that activities associated with NSR permit preparation are not Title V fundable activities, even if the project is a Title V source. Title V permit revisions to accommodate new source review permit terms, and agency activities related to implementation of NSR requirements contained in Title V permits are examples of activities that may be billed to Title V. However, establishing or revising site-specific NSR permit terms may not be billed to Title V. LRAPA permitting and accounting staff should examine that aspect of their internal billing system and change it accordingly if need be.</i></p>	<p>Allocation procedures are reviewed annually with managers and staff as part of the budgeting process. Title V staff now have multiple years experience with the time allocation accounting system.</p>	<p>This effort is ongoing.</p>

H. Title V Benefits (EPA noted Title V permit program benefits)

I. Document Review (Rules//Forms/Guidance)

#	EPA concern	LRAPA response	2017 Follow-up
1	<p><i>EPA has recently revised the requirements for compliance certifications in 40 CFR 60.6(c) (5) (iii) to identify whether compliance with each permit term and condition that is the basis of the certification was continuous or intermittent during the covered period. ODEQ (and LRAPA) must revise their reporting regulations to reflect this change. We note that LRAPA is reporting forms are consistent with the current Part 70 compliance certification language.</i></p>	<p>For this item, we would like guidance of what EPA means by “intermittent”. For example, are intermittent deviations based on the timeframe in specific permit terms (ex. CEMS-hourly or 3 hour averages; visible emission observations- weekly; -12 consecutive months, -annual). In any case, it would seem that any deviation of a requirement would result in intermittent compliance. When would a deviation not result in intermittent compliance with the subject permit condition?</p>	<p>LRAPA is authorized to implement the Oregon Title V Operating Permit Program in Lane County and refers sources to the use of DEQ rules and forms. DEQ has revised regulations and many of the forms over time.</p>
2	<p><i>LRAPA should submit Title V rules changes to EPA for approval. Rule revisions are required to be approved as program revisions.</i></p>	<p>Since LRAPA has adopted DEQ’s Title V rules by reference, the DEQ submitted rule and program revisions to EPA apply to LRAPA. Somewhat related, LRAPA has submitted a rule proposal package for EPA review (and subsequently SIP rule approval) that would align LRAPA’s other rules to the State and Federal Title V rules/programs (ex. ACDP terms, emission event reporting, definitions, Major NSR and PSD, request for NESHAP/NSPS delegation).</p>	<p>No additional follow-up.</p>
3	<p><i>The regulatory references in the reporting forms need to be updated to reflect the 1999-2001 renumbering and revisions of the OAR.</i></p>	<p>When EPA brought this to LRAPA’s attention, permit writer, Max Hueftle, updated the OAR references in the forms.</p>	<p>LRAPA is authorized to implement the Oregon Title V Operating Permit Program in Lane County and refers sources to the use of DEQ rules and forms. DEQ has revised regulations and many of the forms over time.</p>
4	<p><i>In some cases, the forms and/or reporting guidance has text that deviates from the language of the applicable reporting requirements or</i></p>	<p>LRAPA’s forms are identical to DEQ’s, however a review of our forms and</p>	<p>LRAPA is authorized to implement the Oregon Title V Operating Permit</p>

	<i>do not adequately capture the regulator requirements. For example, forms and guidance related to deviation reporting, permit modifications, compliance certification, insignificant emissions units, and CEMs data availability, need to be evaluated with respect to the underlying requirements and policies.</i>	the information we receive on those forms, may be a good project. From the project, LRAPA could improve instructions and/or guidance, as needed, supply examples and/or details that clarify Title V requirements and policies. However, at this time our priority projects include: 1) address concerns from EPA's Title V program review in new permit actions; address the items identified in EPA's 'state review framework' report on LRAPA's compliance and enforcement program; implement new area source MACT rules; and develop a HAP emission inventory. However, during our day-to-day work, if we find a specific problematic form(s), we will review that form and supply needed instructions, guidance and/or changes.	Program in Lane County and refers sources to the use of DEQ rules and forms. DEQ has revised regulations and many of the forms over time.
5	<i>In addition to the issues discussed elsewhere in this report, EPA has identified the following statutory and regulatory issues in ODEQ's Title V program that also affect LRAPA's program:</i>	NA	NA
5.a	<i>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 of state law exempts agricultural operations. ORS 468A.020 and OAR 340-200-0020 provide that state air 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 and LRAPA's Title V program.</i>	In 2007, the Oregon legislature adopted Senate Bill 235, which gives both the Oregon Department of Agriculture (ODA) and the DEQ authority to implement federal air quality standards for agricultural operations in Oregon. DEQ is currently proposing rule amendments to OAR 340-200-0030; 340-200-0040; 340-210-0205; 340-264-0040 that would apply Title V permitting requirements to agricultural operations that are above federal	The agricultural exemption in ORS 468A.020 was revised to clarify the exemption and does not apply to the extent necessary to implement the Clean Air Act.

		<p>thresholds. A public hearing on these rule changes will occur on May 19, 2008. Following the public hearing and response to public comment, DEQ expects to recommend the proposed rule changes for adoption by the Environmental Quality Commission at their August 21, 2008 meeting. Once adopted, the DEQ plans to submit the amended rules to EPA for SIP approval. This should resolve the 2005 petition to the EPA.</p> <p>When EQC adopts the OAR revisions for agricultural operations, LRAPA expects to confer with its legal counsel regarding rule changes it may need to implement the Title V applicability to agricultural operations.</p>	
5.b	<p><i>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. 6-17 (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 LRAPA is “streamlining.” As discussed above, this would be contrary to Part 70.</i></p>	<p>LRAPA does not have any Title V permits with “streamlining of multiple applicable requirements”. Hence, this is a non-issue. If in the future, a Title V applicant requests use of streamlining, LRAPA will consult with EPA before it determines if it will agree to the streamlining of any permit terms.</p>	<p>No follow-up.</p>

	<i>ODEQ has 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.</i>		
5.c	<i>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 the Clean Air Act Section 129(c). Part 70 now requires permits for some non-major sources subject to 111 and 112 standards. ODEQ acknowledged that they must revise their rules to ensure such sources are subject to Title V permitting. Similar language in LRAPA's guidance and forms should also be revised.</i>	LRAPA believes the following current version of OAR 340-218-0020(4)(a) resolves EPA's concern with the Title V permit exemptions:  "(a) All sources listed in 340-218-0020(1) that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA are not required to obtain a Title V permit, except non-major sources subject to a standard under section 111 or section 112 of the FCAA promulgated after July 21, 1992 are required to obtain a Title V permit unless specifically exempted from the requirement to obtain a Title V permit in section 111 or 112 standards."	The EQC adopted DEQ's proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern.
5.d	<i>The list of changes that can be made by administrative amendment under ODEQ's and LRAPA's Title V programs (OAR 340-218-0150(1)) should be narrowed. ODEQ's regulations authorize corrections to baseline or PSELS to be made by administrative amendment when more accurate emission data is obtained but the corrections 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 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.</i>	DEQ no longer lists baseline and PSEL corrections under allowable changes with Title V administrative amendment procedures. This DEQ change also applies to LRAPA's Title V program. (Removed OAR section was 340-218-0150(1)(i))	The EQC adopted DEQ's proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern. DEQ also changed the general reporting requirements in the Title V permit template.
5.e	<i>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 records of comments and make them available to the public has been</i>	The use of the terms "draft" and "proposed permit" is a subtle distinction within the Title V program. LRAPA specifically follows this	The EQC adopted DEQ's proposed changes to Title V permitting rules on October 17, 2007 that were intended to address this concern.

<p><i>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 requirement public comment under Title V, not just public hearings. Also, in consolidating the information contained in the public notice for all programs, some of 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 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.</i></p>	<p>distinction using “draft” for the public and “proposed permit” when sending the permit package to EPA for its review. LRAPA’s Public Notice in Title 34 is consistent with Part 70 procedures for public comment. For EPA’s review, LRAPA follows the procedures in OAR 340-218-0230, which are also consistent with Part 70.</p>	
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6. Any issues or requests that the LRAPA would like to raise to Region 10 regarding any aspect of the title V program.

None.

Max  
01/13/17