



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

AUG 22 2017

Ms. Becky W. Keogh, Director  
Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118-531

Dear Ms. Keogh:

We received your letter dated June 30, 2017, responding to EPA's preliminary findings in our 2015 Title V Air Permit Program Evaluation Report. We appreciate your commitment to address the recommendations outlined in the Report. In addition, we want to express our gratitude for the cooperation and assistance of the Arkansas Department of Environmental Quality (ADEQ) as we conducted the Program Review.

Enclosed is the EPA's final ADEQ Title V Air Permit Program Evaluation Report. We will post the final program review report on the EPA Region 6 webpage at <https://www.epa.gov/caa-permitting/title-v-evaluations-region-6>. We have included your response in the final program evaluation report so the public will be aware of your commitment to address the report's recommendations and findings.

We look forward to continuing to work with you in the implementation of the title V permit program in Arkansas. We plan to track ADEQ's progress in addressing our recommendations and findings through our monthly title V conference calls and title V permit reviews. If we can be of any assistance, please feel free to contact myself or the Air Permits Section Chief, Jeff Robinson, at 214-665-6435.

Sincerely,

A handwritten signature in blue ink that reads "Wren Stenger".

Wren Stenger, Director  
Multimedia Planning and Permitting Division

Enclosure

## REGION 6 EXECUTIVE SUMMARY

TOPIC: ADEQ FY15 Title V Operating Permit Program Evaluation

DATE: August 2017

CONTACT: Melanie Magee, x7161; Jeff Robinson, x6435

PURPOSE/ACTION NEEDED: Summary of Outcomes and Final Report

**BACKGROUND:**

The Title V operating permit program requirements are contained in 40 CFR part 70 and are designed to reduce violations and improve enforcement of air pollution laws for the largest sources of air pollution. Title V operating permits are intended to be a compendium of all applicable requirements established in underlying NSR permits, NSPS rules, and NESHAPs rules. They generally do not independently impose new air quality control requirements on a source. According to the CAA, only funds collected from title V sources may be used to fund a state’s title V permit program. The CAA also requires that any fee collected under title V be used solely to cover permit program costs. As the oversight authority for the approved title V permitting programs, EPA is authorized by the CAA to monitor whether a state is adequately administering and enforcing a part 70 program.

**FINDINGS AND OUTCOMES SUMMARY:**

The EPA Region 6 review included an evaluation of the current work practices for operating permit development/issuance, and administration of the ADEQ title V program in accordance with the ADEQ’s operating permit rules, 40 CFR part 70 requirements, and title V of the CAA. The preliminary findings and recommendations from this evaluation were discussed with ADEQ and are briefly summarized below and discussed in more detail within the audit report.

Topic Review Area	Finding Summary	Outcome
<p><u>Area 1</u>: Legal and Factual Deficiencies in the ADEQ Prepared Statement of Basis (SB)</p>	<p>Although the ADEQ SBs contain most of the information necessary for permit issuance, the ADEQ SBs do not fully document the legal and factual basis for the draft permit conditions.</p> <ul style="list-style-type: none"> <li>• Insufficient Essential Information: Compliance and Permitting History;</li> <li>• Insufficient Supporting Information for Applicability and Permitting Terms and Conditions: Applicability Discussion for Permit Terms and Conditions, Permit Shields, Operational Flexibility and Alternative Monitoring Scenarios;</li> <li>• Inclusion of Applicable Title IV Acid Rain Requirements and Required Monitoring and Recordkeeping</li> </ul>	<ul style="list-style-type: none"> <li>• ADEQ revised the SB to include directions to staff to include more information related to compliance history and consultation with ECHO.</li> <li>• Table was added to SB to detail decisions regarding permit shields; Table added to list emission unit source, pollutant and applicable regulation.</li> <li>• ADEQ agrees to provide additional clarification discussion of any operational alternatives in the SB.</li> <li>• ADEQ has committed to completing closer reviews of the permitting action to verify changes in IEU, clarity in the permitting terms and conditions and discrepancies in the permitting record (Acid Rain vs</li> </ul>

Topic Review Area	Finding Summary	Outcome
<p><u>Area 2:</u> Issuing the Title V Permits that are Consistent with the Requirements of 40 CFR part 70</p>	<p>Inconsistency and timeliness issues in ADEQ's incorporation of effective federal regulations.</p> <ul style="list-style-type: none"> <li>• Inclusion of Newly Effective Federal Regulations. Effective 1-hour NOx NAAQS and 1-hour NAAQS Standards; Inclusion of PM<sub>2.5</sub> and GHG Emissions</li> <li>• Missing or Incomplete Title V Permit Requirements. Credible Evidence; Start-up and Shut-down Emissions, Section 112(r), Risk Management Plan, Incorporation, Title V semiannual and annual compliance reports, and Insignificant Activities</li> </ul>	<p>Title V).</p> <ul style="list-style-type: none"> <li>• ADEQ will update the NAAQS evaluation section of the SB to include a discussion of the one hour standard applicability for NOx, SO<sub>2</sub>, and PM<sub>2.5</sub></li> <li>• Permitting template will be changed to include credible evidence, startup and shutdown requirements, and 112(r).</li> <li>• The permit conditions related to semiannual compliance reports will be clarified to state that if a specific provision established by EPA rule, such as NSPS/NESHAP, requires semiannual reports to be submitted to EPA.</li> </ul>
<p><u>Area 3:</u> EPA Review Timeline</p>	<p>ADEQ has noted an agreement with EPA Region 6 that EPA's 45-day review may be concurrent with the 30-day public review or when EPA receives the proposed permit and statement of basis, whichever is later. It appears that the current understanding with EPA and ADEQ is consistent for cases where a <u>significant gap</u> of time exists between the date a draft permit is proposed for public comment and the final issuance date of the permit EPA would have another 45-day review period and opportunity to object after which the 60-day public petition period would take place. However, EPA is highlighting that to re-start EPA's 45-day review timeline a <u>significant gap in time is not necessary and applies to all actions</u> that require revisions to the permit or permit record.</p>	<ul style="list-style-type: none"> <li>• ADEQ has noted EPA's comment and has committed to maintaining communication with EPA for permitting actions that may require additional EPA review.</li> </ul>
<p><u>Area 4:</u> Collecting, Retaining, or Allocating Fee Revenue Consistent with the Requirements of 40 CFR part 70</p>	<ul style="list-style-type: none"> <li>• From FY13-FY15 ADEQ has relied on the presumptive minimum fee amount; however, in FY17 the fee factor (\$/ton) was not increased because the fee fund balance was greater than 150% of the amount of money expended from the fund in the previous year. ADEQ has demonstrated an alternating yearly ability to collect enough actual revenue to cover its actual expenditures. FY16 shows a \$373,745.29 deficit that was covered by the surplus \$14-13 mil title V fee fund balance.</li> <li>• ADEQ did not provide clear documentation</li> </ul>	<ul style="list-style-type: none"> <li>• ADEQ will conduct an evaluation of the Title V expenditures and revenue. In this re-evaluation, the proportional indirect costs in association with Title V staff time will be analyzed to see if the existing 80/20 split of Title V fees should be revised.</li> </ul>

Topic Review Area	Finding Summary	Outcome
	<p>to support whether the title V program is paying for only it's proportional share of both the ADEQ air program and ADEQ's overall indirect and direct costs.</p> <ul style="list-style-type: none"> <li>○ In comparison to the 80/20 allocation agreement, it appears that only 52% of the workload is spent on title V activities.</li> <li>○ It appears that the indirect cost billing to title V is higher than the proportional title V share.</li> </ul>	
<p><u>Area 5</u>: Acting in a Timely Manner on Any Applications for Permits Including Revisions and Renewals</p>	<p>ADEQ appears to have roughly 34% of their title V applications taking over 18 months for final action; however, reporting issues have been identified and additional discussion and analysis is recommended to resolve identified reporting discrepancies.</p>	<ul style="list-style-type: none"> <li>● ADEQ has reviewed the reporting differences and has responded that the ADEQ Legislative reports include renewals and the TOPS database did not include that category.</li> </ul>

**Arkansas Department of Environmental Quality  
Title V Operating Permit Program Evaluation**

July 2017

Conducted by:  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue (6MM-AP)  
Dallas, TX 75202

## ACKNOWLEDGEMENT

The EPA Region 6 would like to acknowledge the cooperation of the staff and management of the Arkansas Department of Environmental Quality (ADEQ) during this title V program evaluation. We appreciate their willingness to respond to EPA's information requests regarding the development and implementation of ADEQ's title V program.

## EXECUTIVE SUMMARY

The EPA Region 6 review included an evaluation of the current work practices and administration of the ADEQ title V program and compliance with the State Operating Permit Programs Rule, 40 Code of Federal Regulations (CFR) part 70 requirements and title V of the Clean Air Act (CAA or Act). The findings and recommendations from this evaluation are briefly summarized below and discussed in more detail within this document.

**Review Area 1:** Legal and Factual Deficiencies in the ADEQ Prepared Statement of Basis (SB)

**Finding Summary:** Although the ADEQ SBs contain most of the information necessary for permit issuance, the ADEQ SBs do not always fully document the legal and factual basis for the draft permit conditions.

**Review Area 2:** Issuing Title V Permits that are Consistent with the Requirements of 40 CFR part 70

**Finding Summary:** Inconsistency and timeliness issues in ADEQ's incorporation of effective federal regulations into permits.

**Review Area 3:** EPA Review Timeframe

**Finding Summary:** Based on ADEQ's interpretation of the EPA 45-day review period, EPA is highlighting that if the permitting authority makes any changes in the permit in response to public comment, it would have to resubmit the permit to EPA for review under 40 CFR § 70.8.

**Review Area 4:** Collecting, Retaining, or Allocating Fee Revenue Consistent with the Requirements of 40 CFR part 70

**Finding Summary:** EPA has noted that for FY17<sup>1</sup> the ADEQ has chosen to forgo the annual fee adjustment based on the CPI and did not increase the title V fee factor in accordance with 40 CFR § 70.9(b)(2). In further analysis and review of the ADEQ's responses to our questions concerning specific detailed accounting methodology for the establishment of the title V program's proportional share for both direct and indirect costs of the overall air program costs and of ADEQ's overall costs, ADEQ did not provide clear documentation to support whether the title V program is paying for only its proportional share of both the ADEQ air program and ADEQ's overall indirect and direct costs. In accordance with 40 CFR § 70.9(b)(5)(1), EPA is requesting for ADEQ to review and submit a detailed accounting that their current fee factor (dollars per ton of emissions) and whether the current collection of the title V fee revenue is sufficient to cover the reasonable and proportional share of direct and indirect costs for its title V program. We are also requesting that ADEQ evaluate and document in writing that the expenditures are solely attributable to the title V program. In accordance with 40 CFR § 70.9(a), EPA requires that the title V fee revenue should not be used for any other purpose except to

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<sup>1</sup> Memorandum from Thomas Rheame, Senior Operations Manager, ADEQ to ADEQ Air Permits Branch (August 25, 2016) (Available on-line at: [https://www.adeq.state.ar.us/air/permits/pdfs/fee\\_factor.pdf](https://www.adeq.state.ar.us/air/permits/pdfs/fee_factor.pdf)).

fund the title V permitting program and the excess title V funds should not be subject to reallocation to other environmental regulatory programs or state government use.

### **Review Area 5: Acting in a Timely Manner on Any Applications for Permits Including Revisions and Renewals**

**Finding Summary:** ADEQ appears to have roughly 34% of their title V applications taking over 18 months for final action; however, reporting issues have been identified and additional discussion and analysis is recommended to resolve identified reporting discrepancies.

## **INTRODUCTION**

The CAA title V and the part 70 regulations are designed to incorporate all federal applicable requirements for a source into a single title V operating permit. To fulfill this responsibility, it is important that all federal regulations applicable to the source such as the National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), applicable requirements of State Implementation Plans (SIP), and terms or conditions created by permits issued under SIP-approved permit programs be carried over into a title V permit. The ADEQ received full program approval from EPA on October 9, 2001 (66 FR 51312) for its title V operating permits program. EPA's program approval provides ADEQ the authority to issue title V operating permits to all major stationary sources and to certain other sources<sup>2</sup> within the State's jurisdiction. The ADEQ operating air permit program is a comprehensive state air quality program which is designed to address all applicable air contaminant emissions and regulatory requirements in a single permit document. After receiving full program approval, ADEQ has been implementing the state's title V operating permits program and directly issuing title V operating permits to applicable sources within the state of Arkansas.

The EPA serves as the oversight authority for the ADEQ title V operating permits program and has worked to provide program implementation assistance and permit oversight for the state's program. Additionally, EPA Region 6 works to complete title V program evaluations in a nationally consistent manner. The review completed by each EPA Regional Office of a state's administration of a title V program is generally based on a standardized evaluation protocol developed by the EPA Headquarters Office and is compared to the requirements of 40 CFR part 70. However, each EPA Region may also exercise its oversight discretion to focus on a narrower aspect of a States operating permit program based on previous program reviews or national policy/legal decisions impacting the program.

The EPA Region 6 oversees six separate air permitting authorities (Texas, Arkansas, Louisiana, Arkansas, New Mexico and the City of Albuquerque). As part of EPA's oversight responsibilities, the EPA Region 6 staff conducted an off-site program review and evaluation of the State of Arkansas' approved title V program. The ADEQ title V program evaluation includes the review of the ADEQ responses to the title V questionnaire and associated documentation, supplemental questions and selected ADEQ issued title V permits and supporting permitting information. The EPA Region 6

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<sup>2</sup> Sources required to obtain an operating permit under the title V operating permit program include "major" sources of air pollution as defined by title V. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year (TPY) or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter nominally 10 microns and less (PM<sub>10</sub>); those that emit 25 TPY or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

program evaluation team was led by the EPA Region 6 Air Permits Section Chief, Jeff Robinson and the following EPA personnel: Ashley Mohr, Melanie Magee, Aimee Wilson, Erica LeDoux, Dinesh Senghani and Kyndall Cox.

## **ADEQ TITLE V PROGRAM**

ADEQ is the state of Arkansas' main environmental protection agency and is headquartered in North Little Rock. ADEQ has three regulatory program offices –air, land, and water and most of Arkansas' environmental laws are found in the Arkansas code title eight. The ADEQ Air Division has requested and received EPA's approval of all delegable air programs – including the title V program. The Arkansas Department of Pollution Control and Ecology (now ADEQ) initially submitted to EPA its operating permits program, Arkansas Regulation 26, for approval on November 9, 1993. After ADEQ submitted program revisions on August 4, 2000, EPA granted final full approval on October 9, 2001 (66 FR 51312, effective December 10, 2001). Subsequent program revisions have been submitted to EPA from ADEQ on October 24, 2002 (effective November 8, 2004).<sup>3</sup> In the October 9, 2001 full program approval, Arkansas was approved as a so-called “merged” title V and New Source Review (NSR) program in that it issues pre-construction NSR permits title V operating permits concurrently. In the previous five years, ADEQ has received approximately 875 applications that involve title V permit action requests. ADEQ has estimated that over the five year period, the total amount of title V applications received are for the following: 21% significant modifications, 17% renewals, 3% initial (new), 40% minor amendments, and 19% administrative amendments.<sup>4</sup>

## **EPA REGION 6 EVALUATION APPROACH FOR THE ADEQ TITLE V PROGRAM**

The EPA Region 6's objectives for the ADEQ title V program evaluation were to identify any areas of the ADEQ title V program that may need improvement, identify any areas where the EPA's oversight role may need improvement and highlight any unique and/or innovative aspects of ADEQ's program that may be beneficial to other permitting authorities. The EPA Region 6 conducted the evaluation in three stages. In the first stage, EPA Region 6 sent the title V audit questionnaire for ADEQ to review and provide response comments. The title V audit questionnaire was developed by the EPA Headquarters Offices and covers the following program areas: 1) Title V Permit Preparation and Content; 2) General Permits; 3) Monitoring; 4) Public Participation and Affected State Review; 5) Permit Issuance/Revision/Renewal/Processes; 6) Compliance; 7) Resources and Internal Management Support; and, 8) Title V Benefits. In the appendix section of this report is a copy of the title V audit questionnaire responses received by EPA Region 6 from ADEQ. Based on the ADEQ questionnaire response received by EPA Region 6, a second list of follow-up questions was developed by the EPA Region 6 staff based on the need for additional clarification in ADEQ's initial questionnaire response. ADEQ's response to the EPA Region 6's additional questions are also included in the appendix section of this document.

For the second stage of the audit review, EPA Region 6 requested additional administrative permitting record information related to a selected subset (26 permitting actions) of title V permits issued by ADEQ during 2015. The additional information included the associated title V permit application, statement of

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<sup>3</sup> 40 CFR part 70, Appendix A

<sup>4</sup> Title V Audit Questionnaire Response from Thomas Rheame, ADEQ to EPA Region 6 (October 2015) (on file with EPA Region 6 and included in appendix to this document).

basis, public notice, draft and final title V permits. ADEQ routinely submits the draft and final title V permits to the EPA Region 6 Air Permits Section in accordance with the part 70 regulations. The EPA Region 6 office generally maintains copies of the title V permit applications received, draft and final permits and any additional associated documents transmitted to EPA Region 6 from ADEQ.

In the final third stage of the EPA Region 6's evaluation, the EPA Region 6 reviewed the information received from ADEQ and compared that information to the applicable regulations for inclusion in this report. After summarizing the review information, EPA has found several areas for ADEQ title V program improvement opportunities and identified topics for follow-up review and discussion. EPA plans to present the review findings to ADEQ and begin a more detailed review of the specific report findings. The final program review analysis is reserved until the title V program review discussions with ADEQ and detailed reviews are completed.

### **EPA REGION 6 FINDINGS AND RECOMMENDATIONS**

The following section includes a brief discussion of the most recurrent identified review issues and resolution recommendations. Based on the issues identified in the program review, this title V program evaluation report focuses on the implementation of the ADEQ title V operating permit program in the following areas:

1. Legal and Factual Deficiencies in the ADEQ Prepared Statement of Basis
  - a. Insufficient Essential Information
  - b. Insufficient Supporting Information for Applicability and Permitting Terms and Conditions Rationale
  - c. Inclusion of Applicable Title IV Acid Rain Requirements and Required Monitoring and Recordkeeping
2. Issuing Title V Permits that are Consistent with the Requirements of 40 CFR part 70
  - a. Inclusion of Newly Effective Federal Regulations
  - b. Missing or Incomplete Title V Permit Requirements
3. EPA Review Timeframe
4. Collecting, Retaining, or Allocating Fee Revenue Consistent with the Requirements of 40 CFR part 70
5. Acting in a Timely Manner on Any Applications for Permits Including Revisions and Renewals

## Evaluation of Identified Title V Program Review Issues

### 1. Legal and Factual Deficiencies in the ADEQ Prepared Statement of Basis

The title V program requirements are set forth in 40 CFR part 70 and requires title V permitting authorities to provide “a statement of the legal and factual basis for the draft permit conditions” (40 CFR § 70.7(a)(5)). The purpose of this requirement is to support the proposed title V permit with a discussion of the decision-making that went into the development of the draft permit and provide the permitting authority, the public, and EPA a record of the applicability determinations and technical issues surrounding the issuance of the permit. The EPA has provided guidance on the recommend contents of the Statement of Basis (SB).<sup>5</sup> The guidance does include that additional permitting information may be included in other parts of the permitting record. However, it is particularly helpful when the SB identifies key issues that the permitting authority anticipates would be a priority for EPA or public review. The guidance for recommended SB content has been developed over time and includes recommendations based on various title V petition orders and other documents. The guidance is a tool to help permitting authorities prevent the appearance of a failure to explain a permitting decision and the resulting questions regarding the adequacy of the permit.<sup>6</sup>

**Finding:** Although the ADEQ SBs contain most of the information necessary for permit issuance, the ADEQ SBs do not fully document the legal and factual basis for the draft permit conditions.

a. Insufficient Essential Information The SB’s reviewed inconsistently provide sufficient information on construction, permitting, or compliance history. The SB’s are shown to be inconsistent in providing essential emission unit descriptions, source ID, pollutants and specific regulatory applicability. The applicability of federal requirements such and NSPS, NESHAP, and title I modifications, depend on the dates of construction, operation, and/or permitting of affected units. In addition, whether a facility can take credit for contemporaneous emission increases or reductions in NSR actions depends on the dates that equipment came on or off line.

- Compliance History Examples

Example 1: Ash Grove Cement Company, Permit Number 0075-AOP-R13 (Ash Grove). In the SB developed for the January 6, 2012 draft permit, ADEQ noted that the last inspection was performed on February 2, 2010, and the Ash Grove facility was determined to be in compliance. The SB states that there is no known current or pending issues. However, the permitting record appears to show that ADEQ failed to check enforcement activities between 2011 and 2012 to make sure there are no known non-compliance issues. EPA found from quick check on the EPA Enforcement and Compliance History Online (ECHO) database that there was a failed stack test (June 15, 2012) and deviations reported in title V compliance certifications (December 4, 2011, November 29, 2012, and November 24, 2015). The ECHO database also contains the civil enforcement case report related to the consent decree case number 06-2009-3401 for PSD violations. The complaint was referred to the U.S. Department of Justice on September 9, 2009 and the complaint was filed with the court on June 19, 2013. In EPA’s review of the ADEQ’s legal orders database, it appears that on September 18, 2013, Ash Grove entered in to an

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<sup>5</sup> See, Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits (April 30, 2014) (available online at <https://www.epa.gov/sites/production/files/2015-08/documents/20140430.pdf>).

<sup>6</sup> See, e.g., *In the Matter of Los Medanos Energy Center* (Order on Petition)(May 24, 2004) at pages 14-17.

Agreed Order (AO) (order number 13-154) with ADEQ to resolve violations as a result of a failed stack test from February 1, 2011. As of September 2016, Ash Grove is noted in the ECHO database as in significant violation with the CAA. The title V regulations require facilities to be in compliance, or on a schedule for compliance, at the time of permit issuance. (40 CFR § 70.7(a)(5) and *In the matter of Port Hudson Operations, Georgia Pacific*, Petition Number 6-03-01, at 38).

Example 2: SourceGas Arkansas (Davis Compressor Station), Permit Number 1310-AOP-R3. ADEQ noted in the SB for the title V permit issued on April 1, 2014 that the facility was last inspected on May 29, 2013 and the facility was determined to be in compliance. From EPA's review of the facility's compliance information available online in the ECHO database, it appears that the facility was issued a Notice of Violation (NOV) by ADEQ on July 31, 2012. In EPA's review of the ADEQ legal orders database, EPA has noted that the Davis Compressor Station has two AOs. The first AO (order number 10-064) was issued by ADEQ on April 15, 2010 for Carbon Monoxide (CO) emission limit exceedances demonstrated in a permit required stack test and the second AO (order number 12-131) was issued by ADEQ on October 11, 2012 for failing to submit their Annual Compliance Certification in a timely manner. The ADEQ SB does not include a discussion related to the NOV or Administrative Orders and if all required elements of the Administrator Orders have been met by the company. (40 CFR § 70.7(a)(5) and *In the matter of Port Hudson Operations, Georgia Pacific*, Petition Number 6-03-01, at 38).

Example 3: Weyerhaeuser NR Company, Emerson Division (Weyerhaeuser). The Compliance Status section of the SB for the title V permit issued on June 19, 2015 appears to have omitted specific details related to the facility's compliance history. The first sentence of this section states: "The following summarizes the current compliance of the facility including active/pending enforcement actions and recent compliance activities and issues." However, additional supporting information was not included. In the EPA Region 6 review of the ADEQ online Legal Orders Database, it appears that Weyerhaeuser has been issued two AOs (order number: 12-018 on January 20, 2012 and order number: 98-114 on August 4, 1998). The Findings of Fact in both Orders have cited emission limitation exceedances following a stack test for the facility's wood-fired boiler, SN-06. Additional compliance history discussion is helpful to support ADEQ's determination that the permit review included the compliance history and the facility has been determined to be in compliance, or on a schedule for compliance, at the time of permit issuance. (40 CFR § 70.7(a)(5) and *In the matter of Port Hudson Operations, Georgia Pacific*, Petition Number 6-03-01, at 38).

- Permitting History Examples

Example: Ash Grove. In the PSD Applicability Section of the SB, ADEQ noted that "[t]he 41.3 Tons per Year (TPY) of PM [Particulate Matter] emissions increase is due to updated haul road emissions. Had the facility been able to properly identify the future haul road emissions in the 2006 PSD Application, the net emission change would have been below the significant emission increase level that would have triggered PSD review for PM or PM<sub>10</sub>." EPA has noted in our review that the Ash Grove facility did not undergo a PSD review for the 41.3 TPY PM emission increase. However, ADEQ does not fully discuss or adequately provide specific technical details and calculations in the permitting record to verify, with transparent documentation, the basis of the regulatory decision to not require PSD review for the PM emission increase. In its SB, the ADEQ should document and fully explain why permit modifications that are processed may qualify as minor modifications. These explanations should address all of the possible applicable minor modification gatekeepers, and provide sufficient detail to

allow permit reviewers to understand why the proposed modification is not a significant modification. The SB serves to highlight elements that EPA and the public would find important to review. The elements of the SB include a discussion of complex applicability determinations; construction and permitting history of the source; compliance history, including inspections, violations, a listing of settlement agreements or consent decrees into which the permittee has entered, and corrective action taken to address noncompliance; and the rationale for the monitoring methods selected.<sup>7</sup> Without the technical reasons supporting the regulatory decision to not require PSD review for the PM emission increase, it is difficult to discern if a PM Best Available Control Technology (BACT) analysis and subsequent applicable requirements were required. (40 CFR § 70.7(a)(5) and *In the matter of Port Hudson Operations, Georgia Pacific*, Petition Number 6-03-01, at 38).

**b. Insufficient Supporting Information for Applicability and Permitting Terms and Conditions Rationale**

The EPA has stated that unlike permits, SBs are not enforceable, do not set limits and do not create obligations. Thus, certain elements of a SB, if integrated into a permit document, could create legal ambiguities.<sup>8</sup> Therefore, it is important for a permitting authority to provide a clear discussion detailing their regulatory decision making that went into the development of the title V permit and provide a record of the applicability and technical issues surrounding the issuance of the permit.<sup>9</sup> The SB should highlight items such as applicability, permit shield, streamlined conditions, or any monitoring requirements that are not otherwise required or intended to fill in monitoring gaps in existing rules, especially the State Implementation Plan (SIP) rules.<sup>10</sup>

• **Applicability Discussion for Permit Terms and Conditions**

In the EPA regulations implementing title V requirements, 40 CFR § 70.7(a)(5) requires a permitting authority to provide “a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to the EPA and to any other person who requests it.” Recent EPA title V guidance on SB requirements has noted that the intent of the SB is to provide information for the “expeditious” evaluation of the permit terms and conditions, and by providing information that supports public information in the permitting process, considering other information in the record.<sup>11</sup>

In EPA’s review of the ADEQ SB documents, the EPA reviewers have reported that most of the reviewed SB documents do not provide an applicability discussion of the title V permit terms and conditions.

Example 1: Weyerhaeuser. In comparing the title V permit and SB, the SB does not include a monitoring applicability discussion for Volatile Organic Compounds (VOC) emissions and firebox temperature from the Regenerative Thermal Oxidizer (RTO) from emission unit SN-31. The final title V permit requires in Special Condition 102 for emission unit SN-31 to complete stack testing every 5 years using EPA reference method 5 or method 201A for PM<sub>10</sub> and EPA method 25A for VOC. Special

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<sup>7</sup> See *In the Matter of Port Hudson, Georgia Pacific*, Petition Number 6-03-01 (May 9, 2003) at page 38.

<sup>8</sup> See *In the Matter of Consolidated Edison Company of NY Ravenswood Steam Plant*, Petition Number II-2001-08 (September 30, 2003) at page 10, footnote 8.

<sup>9</sup> *Supra*, citation 6.

<sup>10</sup> *Supra*, citation 7, page 11.

<sup>11</sup> See Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits (April 30, 2014) (available online at <https://www.epa.gov/sites/production/files/2015-08/documents/20140430.pdf>).

Condition 102 continues to require that “if use of the RTO becomes necessary, the facility shall conduct initial stack tests to determine the minimum firebox temperature for operation in RTO mode. [Reg 19.702, Reg 19.901, and 40 CFR part 52 Subpart E].” In contrast, on page 7 of 10, the SB contains a table that lists the PM<sub>10</sub> testing requirements for emission unit SN-31 to utilize EPA reference method 5 or method 201A for PM<sub>10</sub> every five years as required by “Dept. Guidance” and no additional applicability discussion related to the VOC or firebox temperature testing requirements. The SB and permit Special Condition 102 requirement appear inconsistent and fails to identify the specific regulatory requirement(s). In further review of the emission unit SN-31’s permitting history, EPA has noted on page 15 of the final permit, item 10 states that some, but not all of the conditions related to the Consent Decree Civil No. CV’00-1001 HA have been removed. However, it is difficult to discern what conditions have been removed or retained and the technical justification for removal of any conditions. Without additional specificity, the permitting record appears to be insufficient to ensure that the annual emission limits for PM<sub>10</sub> and VOC are enforceable as a practical matter. As outlined in the Shell Deer Park Petition Response<sup>12</sup>, “permitting authorities must take three steps to satisfy the monitoring requirements in EPA’s part 70 regulations. First, under 40 CFR § 70.6(a)(3)(i)(A), permitting authorities must ensure that monitoring requirements contained in applicable requirements are properly incorporated into the title V permit. Second, if the applicable requirements contain no periodic monitoring, permitting authorities must add periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit. 40 CFR § 70.6(a)(3)(i)(B). Third, if there is some periodic monitoring in the applicable requirement, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance. 40 CFR § 70.6(c)(1).” This petition response further explains that when public comments are received or when EPA reviews a permit without specific regulatory requirement identification it is difficult to determine what monitoring, recordkeeping, and reporting requirements the proposed permit is relying on to assure compliance with the emission limit(s). ADEQ must also document the rationale for how those monitoring requirements assure compliance with the applicable requirements as required by 40 CFR § 70.6(a)(3). (40 CFR § 70.7(a)(5) and *In the matter of Fort James Camas Mill*, Petition Number X-1999-1, at 8).

Example 2: PECO Foods, Permit Number 2232-AOP-R0 (PECO). On page 13 of the title V permit, the source description of SN-01 and SN-02 states that the boilers are equipped to use natural gas, low sulfur diesel, No. 2 fuel oil, No. 6 fuel oil, “on-spec” used oil, and processed fat as fuel. It is not clear in the permitting record if the emission limits in the table are for all fuel sources. The permitting record, and specifically the SB, does not provide a discussion related to the applicability of 40 CFR part 63, subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources. Specific Condition 17 on page 19 of the title V permit states “SN-01 and SN-02 become subject to subpart JJJJJ after the facility uses oil as a fuel except during periods of gas curtailment, gas supply interruption, startups, or periodic testing on liquid fuel.” (40 CFR § 70.7(a)(5) and *In the matter of Port Hudson Operations, Georgia Pacific*, Petition Number 6-03-01, at 38).

Example 3: Southwestern Electric Power Company d/b/a Flint Creek Power Plant (Flint Creek), Permit Number 0276-AOP-R6. In the reviewed permitting action, the emergency diesel generator, SN-12, and emergency diesel fire pump, SN-13, are described in the permit as 555 horsepower and 405 horsepower,

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<sup>12</sup> See *In the matter of Shell Deer Park Chemical Plant*, Petition Number VI-2014-04 and VI-2014-05 (September 24, 2015) at pages 18-19.

respectively. However, the associated SB does not contain any technical discussion related to the dates of construction for the units or if any reconstruction activities have taken place since the original installation of the units. The applicability of federal requirements such as NSPS, NESHAP, and title I modifications, depend on the dates of construction, operation, and/or permitting of affected units. For emission units SN-12 and SN-13, the dates of construction and reconstruction are important to determine applicability for 40 CFR part 63, subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines and 40 CFR part 60, subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines the dates of construction and reconstruction. The reviewed title V permit and SB failed to contain additional information or discussion related to the applicability determination and only after EPA reviewed the permit application, the date of construction for both units was discovered to be 1978. It is important for a permitting authority to provide a clear discussion and record of the applicability determinations in the permitting record.<sup>13</sup> (40 CFR § 70.7(a)(5) and *In the matter of Port Hudson Operations, Georgia Pacific*, Petition Number 6-03-01, at 38).

- Permit Shields

One of the items that should be included in the SB is a discussion related to ADEQ's decisions to grant or deny requests for permit shields. The ADEQ SB should provide a detailed explanation for any decisions to grant or deny requests for permit shields. The explanation should specify which type of shield has been requested by the permit applicant, i.e., whether the referenced regulation applies to the source or not. If a permit shield has been granted, the SB should refer the reader to the permit conditions that incorporate the requirement. If a permit shield has been granted because a specific regulation does not apply to a source, the ADEQ should explain its concurrence with the applicant's permit shield applicability determination request.<sup>14</sup>

Example 1: Ash Grove. The issued title V permit for the Ash Grove facility addresses permit shields in a tabular form; however, the associated SB does not include any explanation or discussion related to ADEQ's decision for granting a permit shield. (CAA § 504(f)(2), 40 CFR 70.6(f)(1)(ii), 40 CFR § 70.7(a)(5) and EPA Region 5 Correspondence to Ohio EPA to provide SB guidelines.<sup>15</sup>)

Example 2: Weyerhaeuser. The issued title V permit addresses permit shield in a tabular form and references the applicable subpart without specific citations or references. The permit also shows the inapplicable regulations in a tabular form without any technical discussion in either the SB or permitting record for granting a permit shield. (CAA § 504(f)(2), 40 CFR 70.6(f)(1)(ii), 40 CFR § 70.7(a)(5) and EPA Region 5 Correspondence to Ohio EPA to provide SB guidelines.<sup>16</sup>)

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<sup>13</sup> *Supra*, citation 6.

<sup>14</sup> See generally CAA § 504(f)(2) and *Supra*, citation 7, page 11.

<sup>15</sup> Letter from Mr. Stephen Rothblatt, Chief, Air Programs Branch, U.S. EPA Region 5 to Mr. Robert F. Hodanbosi, Chief, Division of Air Pollution Control, Ohio Environmental Protection Agency (December 20, 2001) (available online at: <https://www.epa.gov/sites/production/files/2015-08/documents/sbguide.pdf>).

<sup>16</sup> *Id.*

- Operational Flexibility and Alternative Monitoring Scenarios

The SB should also contain a discussion of whether or not streamlined conditions or alternative monitoring scenarios are included in the permitting record. Recent title V petitions<sup>17</sup> have highlighted that the selected monitoring method must be clear and documented in the permitting record.

Example 1: Davis Compressor Station, Permit Number 1310-AOP-R3. The title V permit Special Condition 7 requires that the engine's startup time is not to exceed 30 minutes. The permit also requires in Special Condition 8 that the permittee has the option of utilizing an oil analysis program to extend the specified change requirement and specific alternative maintenance and recordkeeping requirements are included in the permit condition. The associated SB does not include any references or technical discussion related to the monitoring and recording keeping for startup and shutdown conditions or the alternative maintenance program. (40 CFR § 70.7(a)(5), *In the matter of Citgo Refining and Chemicals Company, West Plant*, Petition Number VI-2007-01 at 6-7, *In the matter of Fort James Camas Mill*, Petition Number X-1999-1 at 8, *In the matter of Consolidated Edison Company of NY Ravenswood Steam Plant*, Petition Number II-2001-08 at 11, and *In the matter of Yuhuang Chemical Inc., Methanol Plant*, Petition Number VI-2015-03 at 28).

Example 2: SMI, Weyerhaeuser and PECO. Specific Condition 7 on page 13 of SMI permit states that visible emissions may not exceed the limits specified in the referenced table and measured by EPA reference method 9. The referenced table has limits of 5% opacity for emission units SN-08, SN-09, SN-10 and SN-11 and includes a citation for regulation § 18.501 of the ADEQ Regulation 18. Further, Specific Condition 8 on page 14 of the permit states that weekly observations of the opacity from emission units SN-08, SN-09, SN-10 and SN-11 shall be conducted by a person trained but not necessarily certified in EPA reference method 9. The same permit limitation is contained in the EPA reviewed Weyerhaeuser title V permit Specific Condition 125 on page 65 of the permit<sup>18</sup> and Specific Condition 4 on page 14 of the PECO title V permit.

The referenced permit Specific Conditions cite the regulatory requirement of ADEQ Regulation § 18.501. In § 18.501(B), the regulation requires "Opacity of visible emissions shall be determined using EPA reference method 9 (40 CFR Part 60, Appendix A as of July 1, 1997)." Non-certified readers should only be required to document whether or not there are visible emissions using EPA reference method 22. ADEQ should provide detailed explanation if this requirement is subject to reference method 22 or reference method 9. (40 CFR § 70.7(a)(5)), *In the matter of Citgo Refining and Chemicals Company, West Plant*, Petition Number VI-2007-01 at 6-7, *In the matter of Fort James Camas Mill*, Petition Number X-1999-1 at 8, *In the matter of Consolidated Edison Company of NY Ravenswood Steam Plant*, Petition Number II-2001-08 at 11, and *In the matter of Yuhuang Chemical Inc., Methanol Plant*, Petition Number VI-2015-03 at 28).

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<sup>17</sup> See generally *In the Matter of Citgo Refining and Chemicals Company, L.P., West Plant*, Petition Number VI-2007-01 (May 20, 2009) at pages 6-7; *In the Matter of Fort James Camas Mill*, Petition Number X-1999-1 (December 22, 2000) at page 8, *In the Matter of Consolidated Edison Company of NY Ravenswood Steam Plant*, Petition Number II-2001-08 (September 30, 2003) at page 11, and *In the Matter of Yuhuang Chemical Inc., Methanol Plant*, Petition Number VI-2015-03 (August 31, 2016) at page 28.

<sup>18</sup> Weyerhaeuser's visual emissions limitation table references ADEQ Regulation § 19.503 and 40 CFR Part 52, Subpart E. In § 19.503(C) of the ADEQ Region 19, the regulation requires that the opacity of visible emissions shall be determined using EPA reference method 9 (40 CFR Part 60, Appendix A).

c. Inclusion of Applicable Title IV Acid Rain Requirements and Required Monitoring and Recordkeeping The Flint Creek SB provides limited emission unit technical descriptions to document ADEQ’s regulatory applicability decisions and does not appear to sufficiently set forth the basis or rationale for many other terms and conditions. In the EPA regulations implementing title V requirements (40 CFR part 70) and recent EPA title V guidance on SB requirements<sup>19</sup>, the EPA has noted that the intent of the SB is to provide information for the “expeditious” evaluation of the permit terms and conditions, and by providing information that supports public information in the permitting process, considering other information in the record. The Flint Creek SB does not appear to contain any references to the sources applicability to 40 CFR part 72, Acid Rain Provisions, and 40 CFR part 76, Acid Rain Nitrogen Oxides Emission Reduction Program. In the EPA Region 6 review, a comparison within the permitting record showed inconsistencies within the Permit, SB and several permitting terms and conditions. It also difficult to discern the applicable regulatory emission limit used as the basis of calculation for the annual emission limits (i.e., emission unit SN-01, boiler). The permit record is also devoid of a technical discussion pertaining to how or why the selected monitoring is sufficient to assure compliance with the applicable requirements. An example based on a cursory review of NOx limitations for this permitting action is as follows:

ADEQ Flint Creek Document	Reference Citation	Text (emphasis added)
Permit	Special Condition 3(d), Page 24	Pursuant to 40 CFR § 60.44(a)(3), NOx emissions shall not exceed <i>0.70 lb/MMBtu</i> . <i>How does this limit relate to the limitation provided in the attached Acid Rain Permit?</i>
Attached Acid Rain Permit Application		Step 1 of the NOx averaging table lists Flint Creek NOx emission limitation as <i>0.46 lb NOx/MMBtu of heat input on an annual average basis</i> . The Phase II NOx Averaging Plan calculates that the Btu-weighted annual emission rate operated in accordance with the proposed averaging plan, <i>0.54 lb/MMBtu</i> .
Permit	Special Condition 3(e) and 3(h), Page 24	Pursuant to 40 CFR § 60.45(a)...the permittee shall install, calibrate, maintain, and operate Continuous Emissions Monitoring Systems (CEMS) for NOx, SO <sub>2</sub> , opacity and carbon dioxide (CO <sub>2</sub> ). According to 60.45(b)(3), Flint Creek is <i>not required by 40 CFR part 60, subpart D to monitor (CEMS) for NOx</i> due to the actual NOx emissions being demonstrated to be less than 70% of the NSPS standard (0.70 lb/MMBtu) during the initial performance test. Which fuel is tested as the basis, Scenario 1: Coal Firing, Scenario 2: Coal and tire derived fuel (TDF) co-firing or Scenario 3: leachate injection while coal firing? How is compliance demonstrated? Pursuant to 40 CFR § 60.45(g)(3), excess NOx emissions are...as measured by a CEMS.... According to § 60.45(b)(3), Flint Creek is <i>not required by 40 CFR part 60, subpart D to monitor (CEMS) for NOx</i> due to the actual

<sup>19</sup> Supra, citation 10.

ADEQ Flint Creek Document	Reference Citation	Text (emphasis added)
		NOx emission being demonstrated to be less than the NSPS standard (0.70 lb/MMBtu) during the initial performance test.
Permit	Special Condition 18, Page 30	The permittee <i>shall maintain monthly records, using a CEMS for NOx</i> , which demonstrate compliance with the annual limit set in Specific Condition #1....
Statement of Basis	<p>Special Condition 10, Source and Pollutant Specific Regulatory Applicability Table, Page 4</p> <p>Special Condition 15, Monitoring or CEMS, Page 13</p> <p>Special Condition 15, Recordkeeping Requirements, Fuel Used</p>	<p>Source: SN-01  Pollutant(s): PM, SO<sub>2</sub>, NO<sub>x</sub>, Opacity, Mercury  Regulation: 40 CFR part 60, subpart D and 40 CFR part 63, subpart UUUUU – No other applicability references.</p> <p>SN 01 (Boiler) requires CEM for continuous monitoring of SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub></p> <p>Permit Limit: N/A. However, the table notes frequency as monthly and requires reporting. The Acid Rain Permit attached to the title V permit shows in the Table for Step 1 that Flint Creek emission unit 1 has an emission limitation of 0.46 lb NO<sub>x</sub>/mmBtu and an annual heat input limit of 33,727,600 mmBtu/emission unit. Does this annual heat input limit match the permitted emission limitations?</p>

## 2. Issuing Title V Permits that are Consistent with the Requirements of 40 CFR Part 70

The requirements that must be included in each title V permit is outlined in 40 CFR part 70 and includes all applicable requirements, and necessary testing, monitoring, recordkeeping, and reporting requirements sufficient to ensure compliance with the permit.

**Finding:** Inconsistency and timeliness issues in ADEQ’s incorporation of effective federal regulations.

### a. Inclusion of Newly Effective Federal Regulations

- Effective 1-hour NO<sub>x</sub> NAAQS and 1-hour SO<sub>2</sub> NAAQS Standards.

The EPA’s definition of “federally enforceable” does not require that a particular limitation in a permit issued under approved New Source Review (NSR) rule to be specifically mandated by, or included in, a state’s SIP to be enforceable by the EPA<sup>20</sup> (40 CFR § 52.21(b)(17)). In the Flint Creek Response to Comments (RTC), ADEQ responded to an EPA comment regarding the newly effective (at the time of EPA comment) 1-hour NO<sub>x</sub> NAAQS Standard of 100 ppb and the 1-hour SO<sub>2</sub> NAAQS Standard of 75 ppb to state that the requirements are not SIP approved “and are included...for informational purposes

<sup>20</sup> Letter from Mr. Thomas W. Rarick, U.S. EPA Region 9 to Mr. James D. Boyd, CARB (December 17, 1985) (available online at: <https://www.epa.gov/sites/production/files/2015-07/documents/majrsrce.pdf>).

only.” The ADEQ may lack the enforcement authority for the new regulation at the time of permit issuance; however, failing to implement a federally applicable NAAQS in the NSR permitting program may lead to title V permit objections and/or a potential determination that the state is failing to administer the approved state program. Although a newly effective rule may not be incorporated into a state’s SIP<sup>21</sup>, it is inconsistent with the federally approved title V operating program to limit the permitted applicable requirements to only SIP approved requirements. The title V program requirements state that the title V permit to include *all applicable* requirements (40 CFR § 70.1(b)). Other federal enforceability interpretations<sup>22</sup> have provided further clarification that “enforceable” is defined as “enforceable under federal, state, or local law and discoverable by the Administrator and any other person.” (40 CFR § 70.7(a)(iv))

- Inclusion of PM<sub>2.5</sub> and GHG Emissions in ADEQ Title V Permitting Record

ADEQ does not appear to have updated the title V application forms (see example emission rate table and Air Permit Application Forms, Number 16, March 2016) to require PM<sub>2.5</sub> (particulate matter with a diameter of less than 2.5 micrometers) or GHG (greenhouse gas) emission data. According to 40 CFR § 70.5(c)(3)(i), standard application forms for title V operating permits shall include information about “all emissions of regulated air pollutants.” In the EPA Region review of the permit application forms, it appears that the ADEQ title V application forms do not require information about PM<sub>2.5</sub> or GHG emissions, which meet the definition of regulated air pollutants in 40 CFR part 70.

PM<sub>2.5</sub> is a regulated air pollutant with its own National Ambient Air Quality Standards (NAAQS). ADEQ did not provide any technical justification in the EPA reviewed SBs<sup>23</sup> for why PM<sub>10</sub> should be the surrogate for PM<sub>2.5</sub>. Without this, ADEQ has no technical basis to automatically assume the adequacy of PM<sub>10</sub> as a surrogate. In 2008, the EPA issued a final rule for setting forth certain new requirements for PM<sub>2.5</sub> in the NSR and PSD regulations and also announced the end of the use of the EPA’s 1997 PM<sub>10</sub> Surrogate Policy under the federal PSD program. However, in a subsequent rulemaking in 2011, the EPA continued to allow the use of the surrogate policy<sup>24</sup> for PSD permits issued under SIP-approved PSD programs until May 16, 2011.<sup>25</sup>

The applicability for GHG emissions within the title V program are contained in 75 FR 82254 and have been narrowed with the recent Supreme Court decision (*Utility Air Regulatory Group (UARG) v.*

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<sup>21</sup> See 75 FR 35520, 35578, Primary National Ambient Air Quality Standard for Sulfur Dioxide: “To the extent necessary to address these PSD requirements for the new 1-hour SO<sub>2</sub> NAAQS, SIPs are due no later than 3 years after the promulgation date. Generally, however, the owner or operator of any major modification obtaining a final PSD permit on or after the effective date of the new 1-hour SO<sub>2</sub> NAAQS will be required, as a prerequisite for the PSD permit, to demonstrate that the emissions increases from the new or modified source will not cause or contribute to a violation of that new NAAQS.”

<sup>22</sup> Memorandum from Kathleen M. Bennett, U.S. EPA, Office of Air, Noise and Radiation. (April 28, 1982) (available online at: <https://www.epa.gov/sites/production/files/2015-07/documents/fednfrce.pdf>).

<sup>23</sup> See Peco Foods, Permit Number 2332-AOP-R0, issued December 17, 2014, and Specialty Minerals, Inc. (SMI), Permit Number 2337-AOP-R0, Issued January 7, 2015. Zilkha Biomass Monticello LLC, Permit Number 2349-AOP-R0, Issued July 2, 2015 does note in the regulatory applicability table on page 3 of the permit that the source is subject to PM<sub>2.5</sub> regulation through Compliance Assurance Monitoring (CAM); however, the permit nor SB contain any additional references for requirements.

<sup>24</sup> As noted in footnote 9 of 77 FR 65111, during this period, EPA has communicated that the policy should be applied consistent with applicable case law on use of surrogates. See 75 FR 6831.

<sup>25</sup> See 77 FR 65107 at 65111, Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>): Amendment to the Definition of “Regulated NSR Pollutant” Concerning Condensable Particulate Matter.

*Environmental Protection Agency* (No. 12-1146)). The EPA currently believes it is still appropriate for a title V permit to incorporate and assure compliance with GHG BACT limits that remain applicable requirements under a PSD permit issued to a Step 1 “anyway source.”<sup>26</sup>

b. Missing or Incomplete Title V Permit Requirements

- **Credible Evidence**

The ADEQ title V permits do not have credible evidence language imbedded in the permit even though the rule has been used in many court cases and title V petition decisions.<sup>27</sup> The credible evidence rule<sup>28</sup> is based on the EPA’s long-standing authority under the Act, and on amplified authority provided by the 1990 CAA Amendments. Section 113(a) of the Act authorizes the EPA to bring an administrative, civil or criminal enforcement action “on the basis of any information available to the Administrator.”

In the EPA Region 6 review, it is noted that ADEQ Regulation 19, § 701, states “...Any credible evidence based on sampling, monitoring, and reporting may be used to determine violations of applicable emission limitations.” However, it is the EPA position that the general language addressing the use of credible evidence is necessary to include in a title V permit to make it clear that despite any other language contained in the permit, credible evidence can be used to show compliance or noncompliance with the applicable requirements. Permit provisions containing testing or monitoring requirements may represent instances where a regulated entity could construe the language to mean that the methods for demonstrating compliance specified in the permit are the only methods admissible to demonstrate a violation of the permit terms. It is important that title V permits not lend themselves to this improper construction.

- **Startup and Shutdown Emissions**

The EPA reviewed title V actions do not appear to mention or reference startup and shutdown activities. Consistent with ADEQ’s SIP-approved NSR permitting program, the EPA interprets the CAA to require NSR permits to include legally and practically enforceable emission limitations covering all periods of source operations, including periods of startup and shutdown. As such, all emission limitations (including those which apply to periods of startup and shutdown) authorized in the NSR permits must be subject to both short-term and annual permitted emission limits supported by adequate monitoring, reporting and recordkeeping provisions. Alternative emission limitations that apply during startup and shutdown periods can be authorized in NSR permits after an on-the-record determination that compliance with the otherwise applicable BACT emission limitation cannot be met. Such alternative emissions limitations (secondary BACT limits) must be justified, and the permitting authority must ensure that all CAA requirements are met, including compliance with NAAQS and PSD increment provisions.<sup>29</sup>

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<sup>26</sup> Memorandum from Ms. Janet G. McCabe, U.S. EPA, Office of Air and Radiation to U.S. EPA Regional Administrators (July 24, 2014) (available online at: <https://www.epa.gov/sites/production/files/2015-12/documents/20140724memo.pdf>)

<sup>27</sup> See generally *In the Matter of Shell Deer Park Chemical Plant*, Petition Number VI-2014-04 and VI-2014-05 (September 24, 2015) at page 38.

<sup>28</sup> See 62 FR 8314, Credible Evidence Revisions.

<sup>29</sup> See *In re Prairie State Generating Co.*, PSD Appeal No. 05-05, at 113-118 (EAB, August 24, 2006), 13 E.A.D. \_\_\_; *In re Tallmadge Generating Station*, PSD Appeal No. 02-12, at 28 (EAB, May 21, 2003); *In re Indeck-Niles Energy Center.*, PSD Appeal No. 04-01, at 15-18 (EAB, Sept. 30, 2004); *In re Rockgen Energy Center*, 8 E.A.D. 536, 554 (EAB 1999)

- Section 112(r), Risk Management Plan, Incorporation

EPA notes that ADEQ's operating permits do not mention or reference 112(r), Risk Management Plan, requirements despite the fact that the application asks the facility to indicate its compliance status with respect to section 112(r) of the CAA. Although section 112(r) requirements may not apply to all sources and may not impose a specific limitation on the source they are applicable requirements (40 CFR § 70.2) that need to be addressed in the title V permits and enforced by the state. EPA is aware that a facility's obligations with respect to these requirements may change over time, based on the types of chemicals being stored at the facility. As such, EPA finds it sufficient to include a general statement in the title V permit requiring the facility to comply with its Risk Management Plan if and when it is subject to section 112(r).

- Title V semiannual and annual compliance reports

The ADEQ permits reviewed by the EPA Region 6 only specify that semiannual and annual compliance reports to be submitted to ADEQ. In 40 CFR § 70.6(c)(5)(iv), all compliance certifications are required to be submitted to the Administrator as well as the permitting authority. The ADEQ permit conditions should be revised to indicate that the permittee will send the reports to the EPA and ADEQ.

- Insignificant Activities

In the EPA Region 6 review of the selected ADEQ title V permitting actions, the ADEQ permitting records are inconsistent in the transfer of insignificant activities lists from previous permits. An example is noted in the EPA reviewed Ash Grove title V permitting action, 0075-AOP-R13. In comparing the previously issued title V permits, 0075-AOP-R12 and 0075-AOP-11, the following discrepancies were observed.

Insignificant Activities Description List From ADEQ Title V Permit Number 0075-AOP-R11	Insignificant Activities Description List From ADEQ Title V Permit Number 0075-AOP-12	Insignificant Activities Description List From ADEQ Title V Permit Number 0075-AOP-R13
Piles associated with clean-up	N/A	Piles associated with Clean-Up
Auxiliary drive to turn kilns		10,000 gallon oil tank
11,000 gallon oil tank		12,000 gallon oil tank
250 gallon fuel tank		10,000 gallon diesel UST
10,000 gallon Diesel UST		10,000 gallon unleaded UST
10,000 gallon unleaded UST		600 gallon tank
8,000 diesel tank		250 gallon grinding aid tanks
600 gallon tank		30,000 gallon grinding aid tank
Temporary Clinker Screening		10,000 gallon Masonry Air Entraining Agent Tank
		10,000 gallon diesel UST
		10,000 gallon diesel UST
		1,000 gallon UST
		(4) 550 gallon UST
		(2) 350 gallon used oil tanks

### **3. EPA Review Timeframe**

In 40 CFR § 70.8 the provisions are contained for the EPA to object to a proposed title V permitting action. The rules allow upon receipt by the Administrator, EPA has 45-days to review and notify the permitting authority of EPA's objection intentions. In ADEQ's questionnaire response, ADEQ has noted an understanding with EPA Region 6 that EPA's 45-day review may be concurrent with the 30-day public review or when EPA receives the proposed permit and statement of basis, whichever is later. The State has additionally indicated that comments received from EPA after the end of the 45-day review period, in the scope of negotiating changes to the permit, will be accepted and considered the same as during the official review period. However, ADEQ has noted that in instances where a significant gap in time between the date a draft permit is proposed for public comment and the final issuance date of the permit occurs, then EPA would have another 45-day review period. The title V rules provide that a title V permit cannot be issued if EPA objects to its issuance within 45 days of receipt of the proposed permit (40 CFR § 70.8(c)). A "proposed permit" is defined in 40 C.F. R. § 70.2 as "the version of the permit that the permitting authority proposes to issue and forwards to the Administrator for review in compliance with § 70.8." 40 CFR § 70.7(h) provides that the permitting authority provide an opportunity for public comment and hearing on the "draft permit". "Draft permit" is defined in 40 CFR § 70.2 as "the version of a permit for which the permitting authority offers public participation under § 70.7(h) or affected State review under § 70.8 of this part." Therefore, there is nothing in Part 70 that prohibits the permitting authority from simultaneously submitting a permit to EPA for review (proposed permit) at the same time it submits the permit for public comment (draft permit). If the permitting authority makes any changes in the permit in response to public comment, it would have to resubmit the permit to EPA for review under 40 CFR § 70.8. This longstanding regulatory interpretation has been communicated to the States and as an example, an email documenting this discussion with ADEQ is included in the Appendix to this document.<sup>30</sup>

### **4. Collecting, Retaining, or Allocating Fee Revenue Consistent with the Requirements of 40 CFR Part 70**

For permitting authorities that have met all relevant 40 CFR part 70 legal authority and implementation capabilities of the title V program, mechanisms are provided<sup>31</sup> to assure that permitting authorities have adequate funding for their programs and that the EPA assures proper initial and ongoing program implementation. The CAA does not mandate a specific fee mechanism be established, but it establishes a fee per ton of criteria air contaminant emissions or equally a mix of fees in a fee schedule as suitable funding mechanisms, provided the major source fee generated revenue covered all of the direct and indirect costs of the title V program and used solely for that purpose. An emissions fee of \$25/ton (adjusted annually based on the Consumer Price Index (CPI)) was identified as presumptively adequate for an approvable program based solely on emissions fees, but allowed for any alternative fee schedule and minimum fee provided the permitting authority meets the demonstration requirements of 40 CFR § 70.9 covering all direct and indirect costs of the mandatory elements of the program.

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<sup>30</sup> Letter from Mr. Carl E. Edlund, Director, Multimedia Planning and Permitting Division, EPA Region 6 to Ms. Kelly Haragan (February 21, 2002)(on file with author) and E-mails from Mr. Jeffrey Robinson, Air Permits Section Chief, EPA Region 6 to Mr. Mike Bates, Ms. Karen Bassett, and Ms. Ellen Carpenter, ADEQ (included in Appendix to this document).

<sup>31</sup> 40 CFR § 70.9, "Fee determination and certification" and 40 CFR 70.10, "Federal oversight and sanctions"

In the EPA's evaluation of how the ADEQ is administering the title V program for the State of Arkansas, EPA's review focused on an examination of ADEQ's title V fee structure, how the title V fees are tracked and how the title V fee revenue is used.

**Finding:** In our analysis of tracking ADEQ title V financial information, EPA has noted that for FY17<sup>32</sup> the ADEQ has chosen to forgo the annual fee adjustment based on the CPI and did not increase the title V fee factor in accordance with 40 CFR § 70.9(b)(2). In further analysis and review of the ADEQ's responses to our questions concerning specific detailed accounting methodology for the establishment of the title V program's proportional share for both direct and indirect costs of the overall air program costs and of ADEQ's overall costs, ADEQ did not provide clear documentation to support whether the title V program is paying for only its proportional share of both the ADEQ air program and ADEQ's overall indirect and direct costs. In accordance with 40 CFR § 70.9(b)(5)(1), EPA is requesting for ADEQ to review and submit a detailed accounting that their current fee factor (dollars per ton of emissions) and whether the current collection of the title V fee revenue is sufficient to cover the reasonable and proportional share of direct and indirect costs for its title V program. We are also requesting that ADEQ evaluate and document in writing that the expenditures are solely attributable to the title V program. In accordance with 40 CFR § 70.9(a), EPA requires that the title V fee revenue should not be used for any other purpose except to fund the title V permitting program and the excess title V funds should not be subject to reallocation to other environmental regulatory programs or state government use.

- Fee Collection Authority, Accounting Procedures and Title V Fee Assessment

The State of Arkansas budget is prepared on a biennial basis and is forecasted two and three years in advance. This budget forecast is based on a worst case estimate compared to previous funding cycles. The budget numbers from the prior biennial process is rolled forward with any anticipated budget revisions as the basis for the new biennial budget request. The title V funds received are segregated into a general fund (classification in accordance with GASB (Governmental Accounting Standards Board)); however, the state identifies the fund as an expendable trust fund (TPET500, ADEQ Fee Trust Air 19-5-1137). Within the title V fund, three cost centers are utilized to differentiate activities: 1) Cost Center 450656 for salary, travel and procurement; 2) Cost Center 451491 for agency overhead (lease and bond payments); and, 3) 451759 for computer services (i.e., PDS system development).

The ADEQ fee collection authority is contained in the Arkansas Pollution Control and Ecology Commission, Regulation No. 9, Fee Regulation section. As a part of ADEQ's initial part 70 program submittal, a fee demonstration was submitted to the EPA to show that ADEQ's fee schedule is expected to cover all required title V program costs.<sup>33</sup> The ADEQ fee schedule is based on the "presumptive minimum fee amount" as defined in 40 CFR § 70.9(b)(2). Effective September 1 of each year, ADEQ implements the new year's title V air fee factor (\$/ton). Since September 1, 2013, the title V fee factor has been as follows:

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<sup>32</sup> Memorandum from Thomas Rheaume, Senior Operations Manager, ADEQ to ADEQ Air Permits Branch (August 25, 2016) (Available on-line at: [https://www.adeq.state.ar.us/air/permits/pdfs/fee\\_factor.pdf](https://www.adeq.state.ar.us/air/permits/pdfs/fee_factor.pdf)).

<sup>33</sup> Memorandum from John S. Seitz, Director, EPA, Office of Air Quality Planning and Standards to EPA Regional Air Division Directors (November 1993) (Available on-line at: <https://www.epa.gov/sites/production/files/2015-08/documents/feedemon.pdf>).

Effective Date	September 1, 2013	September 1, 2014	September 1, 2015	September 1, 2016
Title V Fee Factor (\$/ton)	\$23.42	\$23.89	\$23.93	\$23.93
Consumer Price Index (CPI), July	233.596	238.250	238.654	240.647 <sup>34</sup>
Estimated Title V Fee Factor (\$/ton), if increase was applied	ADEQ Applied Increase	ADEQ Applied Increase	ADEQ Applied Increase	\$24.13

The title V fees are calculated based on the title V permit's allowable emissions. Emissions from Carbon Monoxide (CO), Carbon Dioxide (CO<sub>2</sub>) and methane (CH<sub>4</sub>) are not included in ADEQ's title V fee calculations.<sup>35</sup> ADEQ has not updated their title V fee calculations to include the recently finalized GHG cost adjustment rulemaking to recoup the costs associated with GHG title V permitting.<sup>36</sup> The GHG cost adjustment final rule did not specifically require states to revise their rules or programs or reopen permits in response to the cost calculation changes, it merely revised the calculation of the presumptive minimum cost for states. ADEQ should assess whether their current fee factor is adequate to recoup any expenses associated with the increased permitting burden associated with GHG emissions.

To determine the title V fees due from a source, ADEQ follows the requirements set forth in the ADEQ regulations 9.503 through 9.508 for initial fees, annual fees, modification fees, administrative permit amendments and renewal permits, general permits, and small businesses subject to part 70 permitting. A copy of the ADEQ regulations 9.503 through 9.508 are included for reference in the appendix to this document. Once the title V fees are calculated, an invoice is sent out monthly for renewal invoices of the title V permits for that month. ADEQ has procedures, including late fee assessment, for sources that have missed a payment deadline; however, most sources have returned payment by the deadline date. In the few instances a payment was missed, a late fee was assessed and billed to the company and the outstanding fee balances appear to be resolved.

- Title V Fee Revenue Balances

ADEQ has submitted to EPA Region 6 a detailed process to outline the procedures ADEQ follows to process title V revenue receipts. From the Arkansas State Fiscal Years 2013 through 2016 the title V revenues and expenditures<sup>37</sup> are as follows:

	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016
Title V Revenue	\$ 5,530,717.68	\$ 5,470,817.28	\$ 5,587,232.16	\$ 5,330,481.73
Title V Expenditure	\$ 5,339,612	\$ 5,476,571	\$ 5,465,685	\$ 5,704,227
Subtotal	\$ 191,105.58	(\$ 5,753.72)	\$ 121,546.83	(\$ 373,745.29)

<sup>34</sup> See: <http://www.bls.gov/news.release/pdf/cpi.pdf>

<sup>35</sup> ADEQ Regulation 9 § 502(C).

<sup>36</sup> The presumptive minimum calculation of 40 CFR § 70.9(b)(2) was updated in 2015 to add a GHG cost adjustment, see the final rule, *Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Utility Generating Units; Final Rule* (80 FR 64510, October 23, 2015). See Section XII.E, "Implications for Title V Fee Requirements for GHGs" at page 64633: <http://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf>.

<sup>37</sup> Memorandums from Mr. Mike Porta, ADEQ to the ADEQ Air Permits Branch (August 26, 2013 and August 20, 2014). Memorandum from Mr. Thomas Rheame, ADEQ to Air Permits Branch (August 25, 2016) (on file).

If any monies are collected in excess of the expenditures, then the excess revenue funds are held in the title V fund until needed. In EPA's analysis of the four year period (2013-2016), ADEQ has demonstrated an alternating ability to collect enough actual revenue to cover its actual expenditures. EPA has noted a more significant amount of expenditure deficit in fiscal year 2016 and, as a result, ADEQ did not collect enough actual revenue to cover its actual expenditures, but it did maintain an ample surplus to cover any potential fee revenue shortfall in its title V fee fund balance. As noted in the ADEQ yearly permit fee factor memorandums, ADEQ has reported a title V fee fund balance of \$ 14,253,094 for State Fiscal Year 2012, \$ 14,175,933 for State Fiscal Year 2013 and \$ 13,942,137 for State Fiscal Year 2015. The ADEQ fee regulations allow for the fee factor to not be increased by the allowable amount if there is a surplus in the title V fund. The ADEQ yearly permit fee factor memorandums, have reported from 2013 to 2015 the fee factor was increased; however, in 2016, the fee factor was not increased because the fee fund balance is greater than 150% of the amount of money expended from the fund in the previous year.

With a merged NSR and title V air permitting program, the ADEQ permit writer's duties are not limited to title V functions and the example timesheets reflect separate billing codes to allow differentiation between title V and other program activities. The last title V fee review was completed in 2001 and, as a result of this review, ADEQ established an accounting procedure to separate monies that represent the amounts attributed to activities that incorporate Federal requirements from those that represent State-only requirements. Following this accounting procedure change, in a letter dated July 24, 2003, ADEQ submitted a letter to EPA Region 6 that stated the allocation of title V fees would be adjusted to collect 80% of the fees from major sources to the title V program and the remaining 20% to the State air program (80/20 allocation). The purpose of this allocation adjustment was to better represent the type of work completed by ADEQ as a merged NSR and title V program. ADEQ provided a spreadsheet that details the number of employees that charge time to title V and the percentage of their workload that is related to title V activities. The title V workload percentages represented in the worksheet are within the 80/20 allocation. However, in reviewing the ADEQ FTE working on title V activities in state fiscal year 2013, it appears that only 52% of the workload is spent on title V activities which further supports that an evaluation is needed to assure that title V fees are being utilized to cover only its proportional share of the air program expenditures of direct and indirect costs.

- Title V Workload Allocation

ADEQ has estimated that approximately 356 air permit applications are received per year (all air permit types but excluding general permits). These applications are divided among 16 staff permitting engineers (plus one vacant position) and 3 section supervisors for the review, development and issuance of air permits. There are an estimated 203 active title V permitted facilities in Arkansas and the ADEQ allocates the title V workload accordingly:

	ADEQ FY2001 <sup>38</sup>	ADEQ FY2013 <sup>39</sup>
Number of Title V Permits, estimate	245 existing major sources	203 existing major sources <sup>40</sup>

	ADEQ FY2001 Total FTE (includes full time and part time)	ADEQ FY2001 Equivalent FTE	ADEQ FY2001 hr/yr	ADEQ FY2013 Total FTE (includes full time and part time)	ADEQ FY2013 Equivalent FTE	ADEQ FY2013 hr/yr
General Air Division Administration (Air Division Chief, Assistant Chief, Administrative Assistant II, Management Project Analysis II- Planning Section and Graphic Artist I- Planning Section)	5	3	5,400	2	1.28	2,314
Permitting	19	11.6	20,800	16	9.6	17192
Permitting Supervisors	2	2	3,600	3	2.31	4,183
Permit Section Manager (Branch)	1	1	1,800	1	0.4	747.5
Small Business Technical Assistance Program Coordinator (not located in Air Division)	1	1	1,800	-	-	-
Secretarial/Administrative	5	5	9,000	19	8.74	15,744.5
Data Management	17	10	18,000	-	-	-
Field Inspectors	18	18	32,400	25	16.6	29,942
Enforcement and Compliance Monitoring	5	5	9,000	8	5.6	10,028.5
Planning	-	-	-	10	4.13	7,442.25
Grants Management	-	-	-	1	0.05	97
<b>Total:</b>	<b>73</b>	<b>56.6</b>	<b>101,880</b>	<b>85</b>	<b>48.7</b>	<b>86,691</b>

Before reviewing title V expenditures, an understanding of the proportional share of title V activities to non-title V activities is necessary to evaluate if a State's accounting procedures are within the title V fee schedule guidance.<sup>41</sup> As shown in the table above this paragraph, for fiscal year 2013, ADEQ had 85 FTE that coded expenditures on title V related activities; however, with a merged program, a percentage of the employee's time is also spent on non-title V activities. Therefore, based on the 2013 documentation provided by ADEQ, EPA has estimated that the 85 employees working on title V activities during FY2013 is roughly equivalent to 48.7 FTE based on title V work hours. ADEQ has

<sup>38</sup> Letter from Mr. Keith Michaels, Chief, Air Division, ADEQ to Ms. Rebecca Weber, Associate Director, Region 6 Air Program, EPA (June 7, 2001) (on file).

<sup>39</sup> Email from Mr. Thomas Rheaume, Senior Operations Manager, ADEQ to Ms. Melanie Magee, Air Permits Section, EPA Region 6 (September 20, 2016) (on file). Estimates are made based on occupational title groupings and hours billed towards title V.

<sup>40</sup> Arkansas DEQ Title V Program Evaluation Questionnaire (August 24, 2015) (on file and included in appendix to this document). EPA acknowledges that the total number of existing title V permits is not based on 2013 estimates; however, for the purposes of this analysis we have assumed that the total number of existing title V permits for 2013 is roughly equivalent to the estimates provided in the questionnaire responses.

<sup>41</sup> Memorandum from Mr. John S. Seitz, Director Office of Air Quality Planning and Standards, EPA to EPA Air Division Directors, August 4, 1993.

approximately 400 employees<sup>42</sup> and the equivalent work load of 48.7 FTE results in an estimated proportional title V workload share of 12% of ADEQ's annual direct costs.

- Title V Expenditures Review

The full cost of a program or activity is comprised of direct and indirect costs. The direct costs associated with a title V program mostly includes salary and wages, equipment, professional services, official travel, public notice, and public hearings. Indirect costs are funds that are related to general administration or overhead. For a program, this is a share of costs associated with managing the organization within which the program resides.

ADEQ has provided several example timecards, purchase receipts and detailed spreadsheets to document the account receivables from the title V account that are related to direct costs. The direct cost expenditures appear to be reasonable and consistent with the title V fee schedule guidance and the revised Office of Management and Budget (OMB) circular 87. However, specific concerns have been noted with the payments from the Capital Lease cost centers (5120012100 and 5120012200), Interest Distribution and Interest Certificate Deposit cost centers (4049003000 and 4049007000) and other indirect cost centers. The noted concerns are related to the establishment of the proportional share of title V program's indirect costs and the equitable payment of overhead expenses.

The overall indirect cost associated with title V expenditures has been difficult to determine based on the information provided by ADEQ. EPA has requested on multiple occasions that ADEQ provide an indirect cost or indirect cost rate estimate based on a formula for the title V expenditures. Without additional specific information, EPA has completed a relative estimate of the ADEQ title V indirect costs to use in comparison to the estimated title V proportional FTE equivalent to determine the proportional title V share for indirect cost expenditures. Based on this relative estimate, EPA has calculated, as an example, that roughly 21% of the FY2013 title V expenditures are associated with indirect costs. Comparing the estimated 21% indirect costs with the estimated title V proportional FTE equivalent percentage of 12%, it appears that the indirect cost billing to title V is higher than the proportional title V share. In a follow-up conversation with ADEQ, it is the agency's understanding that the title V expenditures are compared to the overall ADEQ expenditures and the resulting title V expenditure percentage is to remain below a percentage level that is set internally within the agency. For example, in FY2013 ADEQ has calculated that the title V expenditure level is 10% of the total ADEQ expenditures for the fiscal year.<sup>43</sup>

It is EPA Region 6's recommendation that a full title V fee demonstration or review be completed by ADEQ's accounting and/or financial offices to establish if ADEQ is collecting sufficient title V funds to properly implement, enforce and manage the program. In addition, the demonstration or review should evaluate and document whether the title V operating permit program is only paying for its proportional share of the ADEQ air program and ADEQ overall direct and indirect costs.

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<sup>42</sup> See <https://www.adeq.state.ar.us/home/about/>

<sup>43</sup> Email correspondence and attached excel spreadsheet from Mr. William Millard, ADEQ to Ms. Melanie Magee, EPA Region 6 (September 15, 2016) (on file).

## 5. Acting in a Timely Manner on Any Applications for Permits Including Revisions and Renewals

The title V program requirements for permit issuance, renewal, re-openings and revisions are generally found in 40 CFR § 70.7 and the title V permits must be renewed every five years. The ADEQ provided EPA Region 6 with information regarding the status of all applications for title V permit revisions and renewals. In the previous five years, ADEQ has received 875 applications that involve title V permits. ADEQ has estimated that over the five year period, the total amount of title V applications are for the following: 21% significant modifications, 17% renewals, 3% initial (new), 40% minor modifications, and 19% administrative modifications.<sup>44</sup>

**Finding:** ADEQ appears to have roughly 34% of their title V applications taking over 18 months for final action; however, reporting issues have been identified and additional discussion and analysis is recommended to resolve identified reporting discrepancies.

To establish a factual determination of whether or not ADEQ is acting in a timely manner on title V permitting actions, EPA started by reviewing the EPA Title V Operating Permits System (TOPS) database. The TOPS database contains the semiannual information submitted from title V permitting authorities to EPA to report progress on title V actions within their authority. The reviewed TOPS reports from ADEQ indicate a very low number of initial or significant modification title V permit applications that are pending final action beyond 18 months. However, EPA also compared the semiannual TOPS reports with the ADEQ Section 38 reports submitted to the Arkansas State Legislature. In comparing the data between these reports several reporting inconsistencies are noted in this review. In the appendix to this document, a table was completed to summarize the permitting delays reported to the Arkansas Legislature and the information reported to EPA. In the evaluation of the Section 38 reports, it appears that ADEQ has averaged 34% of title V applications to be pending final action over 18 months from 2012 to 2015. In accordance with 40 CFR § 70.7(a)(v)(2), a title V permitting authority shall take final action on each permit application (including a request for permit modification or renewal) within 18 months, or lesser time approved by the Administrator, after receiving a complete application. EPA recommends a detailed discussion with ADEQ related to the TOPS report and Section 38 report discrepancies and possible recommendations to reduce title V permit application decision delays.

### Conclusion

With this title V program review, EPA has found several areas for ADEQ title V program improvement and identified topics for follow-up review and discussion. EPA has presented the review findings to ADEQ. In response, ADEQ has committed in a letter that is enclosed within the Appendix to this report to address the report findings.

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<sup>44</sup> Title V Audit Questionnaire Response from Thomas Rheaume, ADEQ to EPA Region 6 (October 2015) (on file and included in appendix to this document).

## Appendix

FY15 ADEQ Title V Permitting Actions Reviewed by EPA Region 6

<b>Facility Name</b>	<b>Title V Permit Type</b>	<b>ADEQ Title V Permit Number</b>	<b>Date Title V Application Received by ADEQ</b>	<b>ADEQ Draft Permit Date</b>	<b>ADEQ Final Permit Date</b>
American Fuel Cell and Coated Fabrics Company (AmFuel)	Minor Modification	0904-AOP-R8	10/8/2014	11/12/2014	1/16/2015
Arkansas Steel Associates, LLC	Minor Modification	1302-AOP-R18	5/7/2013	7/30/2013	10/1/2013
Armstrong Hardwood Flooring Company (Witt Plant)	Minor Modification	0693-AOP-R10	2/25/2014	5/2/2014	7/16/2014
Ash Grove Cement Company	Significant Modification	0597-AOP-R16	7/18/2011	1/6/2012	2/23/2012
BFI Waste Systems of Arkansas LLC	Significant Modification	0276-AOP-R6	7/24/2012	2/6/2013	8/7/2013
BFI-Waste System of Arkansas, LLC	Renewal of Existing Permit	1009-AOP-R11	1/5/2015	4/14/2015	6/15/2015
Clean Harbors El Dorado, LLC	Renewal of Existing Permit	1310-AOP-R3	11/16/2012	10/1/2013	12/26/2013
Dassault Falcon Jet Corp.	Significant Modification	1614-AOP-R4	6/9/2014	7/11/2014	8/20/2014
Deltic Timber Corporation	Significant Modification	0828-AOP-R10	1/21/2014		2/11/2015
DeSoto Gathering Company, LLC - Midge CPF-5	Initial (New) Permit	0075-AOP-R13	1/27/2015	4/6/2015	6/1/2015
El Dorado Chemical Company	Significant Modification	1139-AOP-R16	1/31/2013	9/17/2013	11/18/2013
Georgia Pacific, LLC (Crossett Paper Operations)	Administrative Amendment	1855-AOP-R3	6/10/2014	--	3/11/2015
Gerdau MacSteel	Administrative Amendment	0573-AOP-R16	11/3/2014	--	11/25/2014
Great Lakes Chemical Corporation (West Plant)	Minor Modification	1876-AOP-R7	7/5/2013	12/10/2013	4/18/2014
Interfor U.S. Inc.	Significant Modification	0592-AOP-R10	12/2/2014	2/12/2015	4/6/2015
Kawneer Company, Inc.	Administrative Amendment	1567-AOP-R2	1/5/2012	--	2/7/2012
Nucor Corporation (Nucor Steel, Arkansas)	Significant Modification	0492-AOP-R9	7/2/2012	10/5/2012	11/30/2012
Paragould Light Water & Cable (Paragould Generation Plant)	Initial (New) Permit	0035-AOP-R12	6/27/2012	10/30/2012	1/4/2013
Peco Foods, Inc.	Initial (New) Permit	0286-AOP-R9	6/4/2014	10/2/2014	12/17/2014

<b>Facility Name</b>	<b>Title V Permit Type</b>	<b>ADEQ Title V Permit Number</b>	<b>Date Title V Application Received by ADEQ</b>	<b>ADEQ Draft Permit Date</b>	<b>ADEQ Final Permit Date</b>
Saint-Gobain Ceramics & Plastics, Inc.	Minor Modification	0427-AOP-R11	9/25/2012	1/16/2013	6/14/2013
SourceGas Arkansas, Inc. - Davis Compressor Station	Renewal of Existing Permit	0982-AOP-R4	10/7/2013	11/22/2013	4/1/2014
Southwestern Electric Power Company d/b/a Flint Creek Power Plant	Renewal of Existing Permit	0985-AOP-R0	6/24/2010	6/7/2013	10/25/2013
Specialty Minerals, Inc.	Initial (New) Permit	2337-AOP-R0	7/7/2014	11/17/2014	1/7/2015
Superior Industries International Arkansas, LLC	Administrative Amendment	2337-AOP-R0	8/17/2012	--	10/11/2012
Weyerhaeuser NR Company (Emerson Division)	Renewal of Existing Permit	2350-AOP-R0	10/1/2014	2/11/2015	6/19/2015
Zilkha Biomass Monticello LLC	Initial (New) Permit	2349-AOP-R0	1/21/2015	5/1/2015	7/2/2015
American Fuel Cell and Coated Fabrics Company (AmFuel)	Minor Modification	0904-AOP-R8	10/8/2014	11/12/2014	1/16/2015

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**Regulation No. 9**



BY \_\_\_\_\_  
SECRETARY OF STATE  
STATE OF ARKANSAS  
12 JUN 29 PM 4:15  
REGISTER DIV.  
**FILED**

**Fee Regulation**

Adopted by the PC&E Commission June 22, 2012

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## CHAPTER 5: AIR PERMIT FEES

### AIR PERMIT FEES.

#### Reg.9.501      **Applicability**

The air permit fees contained in this section are applicable to (1) non-part 70 permits, (2) part 70 permits, and (3) general permits.

#### Reg.9.502      **Terms Used in Fee Formulas**

(A) **\$/ton factor** is \$16/ton until September, 1994, after which time it shall be increased annually by the percentage, if any, by which the federal Consumer Price Index exceeds that of the previous year. The Director may, after considering the factors contained in Reg.9.901 of this regulation, decide not to increase the \$/ton factor in a year when the fee fund has a balance greater than 150% of the amount of money expended from that fund in the previous year.

(B) **tons/year predominant air contaminant** is the permitted emission rate of the most predominant air contaminant (other than carbon monoxide, carbon dioxide and methane). The maximum value shall be no greater than 4,000 tons/year per facility.

(C) **tons/year chargeable emissions** is the sum of the permitted emission rates of all air contaminants (other than carbon monoxide, carbon dioxide and methane). The maximum value per air contaminant shall not exceed 4,000 tons/year per facility.

#### Reg.9.503      **Initial Fees**

Initial fees shall be assessed according to the following formulas:

(A) Non-part 70 permits

**initial fee = \$/ton factor x tons/year predominant air contaminant**

Provided, however, no initial fee shall be less than \$500 except for general permits issued to Non-part 70 sources.

(B) Part 70 permits

(1) Permits issued to part 70 sources already holding an active air permit not issued pursuant to Department Regulation #26:

**initial fee = [\$/ton factor x tons/year chargeable emissions]**

**- amount of last annual air permit fee invoice**

Provided, however, that no initial fee shall be less than \$1,000.

(2) Permits issued to part 70 sources which do not hold an active air permit:

**initial fee = \$/ton factor x tons/year chargeable emissions**

Provided, however, that no initial fee shall be less than the \$/ton factor x 100.

**Reg.9.504 Annual Fees**

Annual fees shall be assessed according to the following formulas:

(A) Non-part 70 permits

**annual fee = \$/ton factor x tons/year predominant air contaminant**

Provided, however, that no annual fee shall be charged for a permit in which the tons/year predominant air contaminant is less than 10 tons/year.

(B) Part 70 permits

**annual fee = \$/ton factor x tons/year chargeable emissions**

Provided, however, that no annual fee shall be less than the \$/ton factor x 100.

**Reg.9.505 Modification Fees**

Modification and renewal fees for air permits shall be assessed according to the following formulas:

(A) Non-part 70 permits

**modification fee = \$/ton factor x tons/year net emissions increase of predominant air contaminant**

However, no modification fee shall be less than \$400, or more than the \$/ton factor x 4,000.

(B) Part 70 permits

(1) For each non-minor permit modification or each renewal permit involving a non-minor permit modification:

**fee = \$/ton factor x tons/year net emission increase of chargeable emissions**

However, no fee shall be less than \$1,000 or more than the \$/ton factor x 4,000.

(2) \$500 for each minor permit modification or each renewal permit involving only a minor permit modification.

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**Reg.9.506 Administrative Permit Amendments and Renewal Permits**

There shall be no fee charged for administrative permit amendments or renewal permits not involving a permit modification, as such are defined in Regulation 26: Arkansas Operating Air Permit Program, Regulation 19: State Implementation Plan for Air Pollution Control, or Regulation 18: Arkansas Air Pollution Control Code, as applicable.

**Reg.9.507 General Permits**

(A) In lieu of the fees schedules above, and except as provided in 9.507(B) below, sources which qualify for a General Air Permit issued pursuant to APC&EC Reg. Nos. 18, 19, or 26 shall be subject to an Initial Fee and Annual Fee as described below:

- (1) The Initial Fee of \$200.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable General Permit.
- (2) Until a Notice of Termination (NOT) is submitted and approved by the Department, the Permittee shall be billed \$200.00 annually thereafter on the anniversary date of coverage.
- (3) When general permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.

(B) The following General Permit holders shall not be assessed or billed an Annual Fee:

- (1) Non-part 70 General Permits in which the tons/year predominant air contaminant is less than 10 tons per year.

**Reg.9.508 Permit Fees for Certain Small Businesses Subject to Part 70 Permitting Requirements**

(A) For purposes of this section, the term "small business stationary source" means a stationary source that :

- (1) is owned or operated by a person that employs 100 or fewer individuals
- (2) is a small business concern as defined in the federal Small Business Act ([www.sba.gov](http://www.sba.gov));
- (3) is not a major stationary source;
- (4) is permitted to emit less than 50 tons per year of any regulated pollutant; and
- (5) is permitted to emit less than 75 tons per year of all regulated pollutants.

(B) Upon written request, the Director may reduce the Part 70 initial, Part 70 annual, or Part 70 modification fee for a small business stationary source if the source demonstrates to the satisfaction of the Director that they do not have the financial resources to pay the fee as calculated.

(C) When reducing permit fees in accordance with Reg.9.508(B), the Director shall calculate the fee as if the source is a non-Part 70 source.

Percentage of Title V Permit Applications Received by ADEQ and are Pending Final Action over 18 months for Fiscal Years 2012 through 2016. <sup>45</sup>

Year	Quarter	Number of title V permits pending over 18 months (540 days) <sup>46</sup>	Percentage of title V permits pending over 18 months (540 days) <sup>47</sup>	EPA Semiannual Title V Permit Data Report (Sum of Question 5 and 8, number of actions) <sup>48</sup>
2016	Apr 4, 2016 - Jun 30, 2016	3	8.3 %	1
2016	Jan 1, 2016 - Mar 31, 2016	9	22.5 %	-
-	-	-	-	-
2015	Oct 1, 2015 – Dec 31, 2015	14	31.1 %	1
2015	Jul 1, 2015 – Sep 30, 2015	17	37.8 %	-
2015	Apr 1, 2015 – Jun 30, 2015	16	23.0 %	-
2015	Jan 1, 2015 – Mar 31, 2015	45	35.4 %	-
-	-	-	<b>Avg 31.8 %</b>	-
2014	Oct 1, 2014 – Dec 31, 2014	66	33.3 %	7
2014	Jul 1, 2014 – Sep 30, 2014	61	38.8 %	-
2014	Apr 1, 2014 – Jun 30, 2014	55	33.3 %	-
2014	Jan 1, 2014 – Mar 31, 2014	64	37.6 %	-
-	-	-	<b>Avg 35.8 %</b>	-
2013	Oct 1, 2013 – Dec 31, 2013	57	41.9 %	4
2013	Jul 1, 2013 – Sep 30, 2013	55	36.2 %	-
2013	Apr 1, 2013 – Jun 30, 2013	45	30.6 %	-
2013	Jan 1, 2013 – Mar 31, 2013	43	32.3 %	-
-	-	-	<b>Avg 35.25 %</b>	-
2012	Oct 1, 2012 – Dec 31, 2012	39	29.2 %	3
2012	Jul 1, 2012 – Sep 30, 2012	40	28.4 %	-
2012	Apr 1, 2012 – Jun 30, 2012	38	34.9 %	4
2012	Jan 1, 2012 – Mar 31, 2012	40	38.1 %	-
-	-	-	<b>Avg 32.65%</b>	-

<sup>45</sup> ADEQ title V fee collection information available from ADEQ reports submitted to the Arkansas Legislative Council. See: <https://www.adeq.state.ar.us/diroffice/legislative.aspx>

<sup>46</sup> CAA § 503(c)

<sup>47</sup> CAA § 503(c)

<sup>48</sup> Information from the TOPS reports appear to contain duplicate and/or missing timeframes for reporting periods.

# Arkansas DEQ Title V Program Evaluation

## Questionnaire

August 24, 2015

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## A. Title V Permit Preparation and Content

1. Since 2010, what % of your initial applications contained sufficient information so the permit could be drafted without seeking additional information? What efforts were taken to improve quality of applications if this % was low? It is unclear what is meant by “initial” application. The assumption is that it means the first version of any Title V application. That said, this is not something we have data available on, but an estimate is only 5% do not require additional information of some kind to draft a permit though the amount of information varies. We provide detailed instructions on completing forms and have limited the number of forms to avoid confusion. A checklist is also provided for the applicants in the forms and instructions. We also offer applicants the opportunity to review draft and final permits before they are issued to correct avoid any mistakes. Our staff is always available for consultation and works with applicants to provide all necessary information.
2. For those Title V sources with an application on file, do you require the sources to update their applications in a timely fashion if a significant amount of time has passed between application submittal and the time you draft the permit? No, we draft the permit based on the submitted information. Typically this is not an issue with our permit issuance timelines. On the few occasions were this has been an issue applicants submitted updated information as required or as a result of review of the draft permit.
  - a. Do you require a new compliance certification if the certification is more than one-year old? No
3. Do you verify that the source is in compliance before a permit is issued, and if so, how? Yes, we review department records and inspections. We may also verify some permit conditions that are date specific, such as a requirement to stack test. Do you consider Notices of Violation as a compliance concern? Yes
  - a. In cases where the facility is out of compliance, are specific milestones and dates for returning to compliance included in the permit? Please give a specific example and permit number. No. These issues are referred to the enforcement branch for action. If the facility proposes a plan we will include it in the permit.
  - b. Or do you delay issuance until compliance is attained? Please cite an example for a source. No, we refer these issues to enforcement for actions.
  - c. How do you handle a permit application when the facility has self-reported non-compliance with permitted conditions? It is handled the same as any other permit application.

- d. How do you incorporate a State order or an EPA consent decree in the permit? Any requirements are added as specific conditions for the relevant source.
4. Recognizing that ADEQ operates as a merged NSR and Title V program for major sources, how do you incorporate startup/shutdown and maintenance (SSM) emissions in Title V permits? The facility must comply with the stated permit limits at all times. Any SSM emissions are either reportable events or must be specifically stated in the permit as alternative limits.
- a. What percentage of major sources have federally enforceable provisions such as monitoring and recordkeeping for SSM in the PSD/NSR permits that are incorporated into the Title V permit? We are a one permit system so there is no difference in the PSD/NSR and Title V permit. Limits in permits are to be met at all times, which include SSM limits and if the facility exceeds their permit limits they must report these excess emissions in accordance with our Regulation 19.601 and in other required reports. Some combustion turbine permits include alternative recordkeeping for SSM , see below.
- b. When SSM emissions and the associated requirements are incorporated into a source's Title V permit through a permit action issued after the source's initial Title V permit receipt, does the permit record (e.g., Statement of Basis) clearly specify or discuss the associated NSR permit action that is establishing the SSM requirements? Please provide an example. Not applicable
- c. Are you aware of any instance(s) since 2012 where SSM requirements have been incorporated into a Title V without an associated NSR permit action to create the underlying requirements? If so, please explain. Recordkeeping only requirements have been incorporated because of the numerous startups that combustion turbines experience. The following is an example from Associated Electric Cooperative, Inc. – Dell Power Plant, AFIN 47-00448, Permit No 1903-AOP-R9:

For the purposes of this permit, "upset condition" reports as required by §19.601 of Regulation 19 shall not be required for periods of startup or shutdown of SN-01 and SN-02. The record keeping requirements detailed below shall only apply for emissions which directly result from the start-up and/or shutdown of one or more of the combustion turbine units (SN-01 and SN-02). All other "upset conditions" must be reported as required by Regulation 19. The following conditions must be met during startup and shutdown periods.

- a. All CEM systems required for SN-01 and SN-02 must be operating during startup and shutdown. The emissions recorded during these periods shall count toward the annual ton per year emission limits.

b. The permittee shall maintain a log or equivalent electronic data record which shall indicate the date, start time, and duration of each start up and shut down event. For natural gas operation, "Startup" shall be defined as the period of time beginning with the first fire within the combustion turbine firing chamber until the units) are in "6" mode of operation and the turbine has reached a continuous and stable operating level. A continuous and stable operating level shall be considered as having been achieved ten (10) minutes following the units reaching "6" mode of operation. "Shutdown" shall be defined as the period of time having initiated the shut down event that the unit(s) drop below "6" mode of operation until fuel is no longer combusted in the firing chamber. Minute data that does not fall in the "6" mode of operation shall not be included in the hourly calculations for NOx and CO rolling averages for the purpose of compliance with permit conditions. For fuel oil operation, "Startup" shall be defined as the period of time beginning with the first fire within the combustion turbine firing chamber until the unit(s) reach normal operating mode with water injection and the SCR is operational. "Shutdown" shall be defined as the period of time having initiated the shut down event the unit(s) are outside of normal operating mode and the SCR is not operational until fuel is no longer combusted in the firing chamber. Minute data that does not fall in the "normal SCR operational" mode of operation shall not be included in the hourly calculations for NOx and CO rolling averages for the purpose of compliance with the permit conditions. These logs or equivalent electronic data records shall be made available to Department personnel upon request.

c. Opacity is not included. If any occurrences should ever occur, "upset condition" reporting is required.

d. The facility shall comply with 40 CFR §60.7 reporting and recordkeeping requirements as applicable to NSPS limits and applicable parts of the ADEQ CEMS Conditions.

[Regulation 19, §19.601 and A.C.A. §8-4-203 as referenced by A.C.A. §8-4-304 and §8- 4-311]

5. Do you have a process for quality assuring the regulatory content of your permits before issuance? Please explain the process and how it is implemented. Permits and SOBs use templates and macros with standard language. Draft and final permits are reviewed by a supervisor, branch manager and at least one other. Applicants are given the opportunity to review draft and final permits before they are issued to address any concerns.

6. Do you utilize any streamlining strategies in preparing the permit such as:

- a. Incorporating by reference: test methods, major and minor New Source Review permits, MACT, other Federal requirements into the Title V

- permit by referencing the permit number, FR citation, or rule? Explain. No
- b. Streamlining multiple applicable requirements on the same emission unit(s) (i.e., grouping similar units, listing the requirements of the most stringent applicable requirements)? Describe. Yes. Our permits are written by grouping together sources by applicable requirements, emissions or recordkeeping requirements.
- c. Use of WhitePaper 2 for streamlining applicable requirements or any other streamlining processes? Please describe. We do not address the White Paper 2 specifically, but we do follow some of the guidelines such as treatment of insignificant activities and treatment of multiple applicable requirements on the same emission unit.
7. Have you recently reformatted your permits? If so, what do you believe are the strengths and weaknesses of the reformat of the permits (i.e. length, readability, facilitates compliance certifications, etc.)? Why? We have not reformatted permits. Small changes are constantly being made to add requirements or standard language but the permits are essentially in the same format.
8. Does your current Statement of Basis<sup>1</sup> explain:
- a. A description of the facility and history of the permits at the source? No, this information is in the permit
- b. The total number of Title V permits issued or to be issued at the source if there will be multiple Title V permits at the source? Yes
- c. All emissions of pollutants for which this source is major as well as all regulated pollutants? A summary of emissions is included but not specifically identifying those pollutants for which the source is major.
- d. Applicable Title IV acid rain requirements and required monitoring and recordkeeping requirements? No, this is in the permit
- e. Any operational flexibility at the source, such as CAP, fuel sources, etc.? No, this would be in the permit.
- f. Rationale for applicable monitoring and recordkeeping requirements to include the identification of authority for these decisions? Yes, to some degree. The authority is included in the permit itself.

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<sup>1</sup> The Statement of Basis sets forth the legal and factual basis for the permit as required by 70.7(a)(5). The permitting authority might use another name for this document such as Technical Support Document, Determination of Compliance, Fact Sheet, Data Base Summary, or combination of.

- g. The basis for each permit shield especially when streamlining applicable requirements? This is included in the permit
  - h. Regulatory applicability and non-applicability of Federal and State SIP approved rules? No, this is contained in the permit application and not duplicated in the SOB.
  - i. List of State-only rules that are not federally enforceable in this permit? These are identified in the permit with a regulatory citation to Regulation 18 only.
  - j. Part C and Part D CAA (PSD and NNSR) applicability rationale, including netting (including specific details on enforceable decreases and increases), use of offsets and modeling. Also any NSR permit limits not included in the Title V permit? When necessary, yes
  - k. Compliance History of the site and source for the past five years to include references to formal enforcement documents, and any active consent decrees? No. The SOB contains any current compliance issues but not a five year history.
9. What templates do you have that facilitate permit writing for:
- a. Statement of Basis? The SOB itself is a template.
  - b. Regulatory Applicability? We have templates for regulatory citations, but not applicability
  - c. Monitoring requirements? We have standard language for many requirements such as testing language, recordkeeping, etc.
  - d. Any other templates? Permits, permit conditions (testing, recordkeeping, etc.), public notices, fee calculations, letters (FLMs, other states, etc.), deficiency letters, admin complete letters, and many other types
10. Please discuss training and guidance given to your permit writers, and the frequency of such training. There is no formal training other than attendance at third party training such as CENSARA, CARB or other courses. These typically include the industry specific courses, courses on dispersion modeling, permit writing, CEMs, control equipment, etc. Engineers learn under the supervision of other engineers.
11. Has your permit processing time improved with:
- a. Standard templates? We have no way to measure or compare. We assume it has.

- b. Any other systems? Our tracking system in ePortal has increased the accuracy of our database, eliminated a lot of data entry, saved paper and increased the permit routing procedures

Please provide examples of each. No examples of increased efficiency can be provided, but all the templates and an ePortal demonstration are available if requested.

12. Since 2010, how many “new” sources have been issued Title V permit? Are there any backlogged title V permits? Approximately 29. There is no backlog.

13. Have the items listed below hindered your issuance of Title V permits and to what degree?

- a. SIP backlog (i.e., EPA approval still awaited for proposed SIP revisions). No. It may create a problem for facilities, but we write permits based on existing state and federal regulations.

- b. Pending revisions to underlying NSR permits. Not applicable to Arkansas since we are a one permit system; they are one and the same permit

- c. Compliance/enforcement issues. Generally, we do not hold permits for enforcement issues

- d. EPA rule promulgation awaited (MACT, NSPS, etc.) or applicability determinations? It creates a lot of confusion and unnecessary work, but we draft permits with the current rule and address any changes later if they become final

- e. Issues with EPA on interpretation of underlying applicable requirements. No

- f. Permit renewals and permit modifications (i.e., competing priorities)). Generally, no.

- g. Awaiting EPA guidance. Please provide examples indicating the type of guidance and the how you requested such guidance – staff through management, etc. Generally if this issue arises we draft the permit with the best information available and try not to wait on an EPA decision. On the occasions where we have requested guidance from EPA, the process is long, cumbersome and confusing. We know of one facility (Kinder Morgan Terminal) still awaiting a determination after multiple attempts and another (Riceland) having to repeat the request in different ways and still awaiting a response. Even casual guidance, such as questions on

modeling, take a seeming extraordinary amount of time for a response.

Please provide any additional comments on Title V Permit Preparation or Content. We have no other comments

## **B. Monitoring**

1. How do you ensure that your operating permits contain adequate monitoring (i.e., the monitoring required in §§ 70.6(a)(3)) if monitoring is not specified in the underlying standard or CAM? We follow EPA rules and guidelines
  - a. Have you developed criteria or guidance regarding how monitoring is selected for permits? If yes, please provide the guidance. We do not have any state specific guidance.
2. Do you provide training to your permit writers on monitoring? (e.g., periodic and/or sufficiency monitoring; CAM; monitoring QA/QC procedures including for CEMS; test methods; establishing parameter ranges) We have no formal training though engineers do attend third party training (CENSARA and others).
3. How often do you “add” monitoring not required by underlying requirements in a specific permit? Have you seen any effects of the monitoring in your permits such as better source compliance? Has ADEQ evaluated the Sierra Club vs. EPA decision to determine the potential impact on how ADEQ will insure that permits have adequate monitoring? We include monitoring necessary to assure compliance with the permit and permit limits. Much of this monitoring is not specifically required by an “underlying requirement” other than compliance with a stated emission rate.
4. Are you incorporating CAM monitoring into your permits? What process is used by the permit writers to determine if CAM is necessary? CAM is incorporated into permits as required by regulation.
5. In cases where there are no underlying requirements to a permit condition, and periodic monitoring is required to demonstrate compliance with an applicable requirement in the Title V permit, is the periodic monitoring practicably enforceable? Give examples and explain. We endeavor to make all conditions practically enforceable.
6. Have you added federally enforceable conditions to permits that were Title V authorized only, i.e., testing, monitoring, reporting, maintenance of records? If so, please provide examples. We operate a one permit system so any condition is part of the Title V permit.

Please provide any additional comments on Monitoring. No additional comments

## C. Public Participation and Affected State Review

### Public Notification Process

1. Do you publish notices on proposed Title V permits in a newspaper of general circulation? Name some typical ones. Draft notices are published in the state-wide paper (Democrat-Gazette) and the local paper
2. Do you use a state publication designed to give general public notice? We publish in both a state-wide and local papers.
3. How does ADEQ update the mailing list of people interested in Title V permits? No one has requested to be on a general mailing list of all permits. Our mailing list includes local officials, EPA, FLM and other states as necessary. We also maintain listservers that send out emails of permit actions, primarily applications received, draft and final permit actions
  - a. How does a person get on the list? The mailing list is by request. The listserver is a subscription service available through the ADEQ website. It is an automatic process. Any inquiries we have received to be added to a mailing list have been satisfied by directing them to the listserver.
  - b. Are elected public officials on this list? These are included by default in mailings of draft permits.
  - c. How many environmental organizations are on this list? None are on the mailing list. On the listserver they are not identified except by email addresses (at least one is clearly an environmental organization).
  - d. Is this list based on particular sources or areas? The mailing list will vary on elected official by area and will vary if other states or FLMs are notified by area and/or type of permit. Everyone on the listserver gets notified of all permits actions.
  - e. What information do you send to people on the list? The mailing list contains the public notice and information where to obtain copies of the draft permit. The listserver contains general information identifying the facility and permit action.
  - f. Any other comments concerning this list? No
4. Aside from publications described above, do you use other means of public notification? Please indicate your alternate means of public notification. The ADEQ website contains lists of draft permits and permit applications. [https://www.adeq.state.ar.us/air/permits/draft\\_noi.aspx](https://www.adeq.state.ar.us/air/permits/draft_noi.aspx)

5. Do you reach out to specific communities (e.g., environmental justice communities) beyond the standard public notification processes? No
6. Do your public notices clearly state when the public comment period begins and ends? Yes
7. Do your public notices clearly state when the EPA review period begins? No
8. What is your opinion on the most effective avenues for public notice? There does not seem to be any one method that is totally effective. Public notices in newspapers are becoming less effective while internet options do not reach all parties targeted. The best approach seems to be a combination of avenues.
9. Do you provide notices in languages besides English? Please list. No
10. Does you know of any state mandated legal barriers that would preclude ADEQ from conducting public notice via e-notice (in lieu of newspaper notice) in the future? Yes. State law requires publication in a newspaper.

### **Public Comments**

11. Have you ever been asked by the public to extend a public comment period? Yes
  - a. If yes, did you normally grant them? Yes
  - b. If not, what would be the reason(s)? Not applicable.
12. Has the public ever suggested improvements to the contents of your public notice, improvements to your public participation process, or other ways to notify them of draft permits? Describe. Based on concerns from environmental consultants, we started the listservers for notification of permit actions.
13. Do you provide the public a copy of the Statement of Basis if they request it? Yes
14. Since 2010, what % of your permits have received public comments? It is estimated less than 10% receive comments (that are not from the facility.)
  - a. Are these comments based on particular sources? No
  - b. Are there any specific areas that receive most of the public comments? Generally they relate to the environmental impact of the facility.
  - c. Are these comments from an environmental organization? Occasionally
15. Has there ever been training conducted for the public on their ability to comment

on Title V permits and how they may go about doing this? Please comment if this has had any impact on the quality of public comments. No

16. Have you noticed any trends in the type of comments you have received? Please explain. No trends are noticed.
17. What percentage of your permits change due to public comments? The number is not tracked, but less than 5% change due to comments from the general public. Over 50 % of permits change based on comments from the permittee.
18. Have environmental justice communities been active in commenting on permits? Very rarely. Only one circumstance is readily identifiable, Georgia Pacific in Crossett.
19. Do you re-propose (and re-notice) the draft permit for public comment if there are any changes made to permit as a result of EPA's comments or public comments? If not, please explain what type of changes will result in such an action to be re-noticed. No. A new application or addition of significant emissions (i.e. a new source, large increase in permitted emissions, etc) not included in the noticed application would result in a new draft permit and notice; generally anything that would be classified as a modification itself.
20. Have you proposed any Title V actions that have incorporated NSR conditions that were either not public noticed or did not go through an official public comment period? Explain these circumstances. No

#### **EPA 45-Day Review**

*EPA has an agreement with ADEQ that for Title V actions, its 45-day review can be concurrent at the same time as the 30 day public review starts or when EPA receives the proposed permit and statement of basis, whichever is later. The State has additionally indicated that comments received from EPA after the end of the 45-day review period, in the scope of negotiating changes to the permit, will be accepted and considered the same as during the official review period. In accordance with Title V requirements and the approved Arkansas Title V program, the 60-day public petition period **following follows** the conclusion of the 45-day EPA review period. Please note, that in a case where a significant gap of time exists between the date a draft permit is proposed for public comment and the final issuance date of the permit (specifically in those cases where ADEQ has responded to public comment and made associated changes to the permit) EPA would have another 45-day review period and opportunity to object after which the 60-day public petition period would take place.*

21. Do you have any mechanism to notify the public who may have sent comments when the EPA 45-day review period ends? Please explain. We would have the commenters contact information, but do not understand the need to notify them.

22. Is the public notified or is the draft permit repropoed for public comments when the permit is changed due to EPA's comments. All commenters get a notice of the final permit decision. We rarely, if ever, re-notice a permit. This would only happen if a new or modified application is submitted.
23. Do you have any issues on the EPA 45-day review period as stated above? ADEQ regulations do not allow for a second comment period by EPA

### **Permittee Comments**

24. What percentage of your permits involve a pre-permit meeting with the permittee? Less than 5%
25. Do you work with the permittees prior to public notice? How? Aside from regular contact during permit review, a pre-draft is sent to the facility for the review of factual errors before sending draft
- a. Do permittees provide comments/corrections on the permit during the public comment period? Are there any trends in the type of comments? Yes. Most facilities comment. There are no noticeable trends but similar issues on recordkeeping occur frequently.
- b. How do these types of comments or other permittee requests, such as changes to underlying NSR permits, affect your ability to issue a timely permit? They typically delay final issuance a few weeks while we address the comments. Rarely, it can extend months.

### **Public Hearings**

26. Please provide a list of public hearings conducted since 2010. For Title V facilities:

GP Chemicals Crossett  
GP Crossett (multi-media meeting) (8/2014)  
Entergy White Bluff  
El Dorado Chemical  
Big River Steel  
Flint Creek  
Entergy White Bluff  
Clean Harbors  
Fayetteville Express Pipeline

### **Availability of Public Information**

27. Do you charge the public for copies of permit-related documents? What is the cost? We do not charge for records unless paper copies are required (\$0.05 per

page plus postage) or electronic media (\$1 per disc plus mailing). In most cases we do not charge any fee, the major exception being if the request comes in the form of a Freedom of Information Act request that involves paper copies or media as described above.

- a. Are there exceptions to this cost (e.g., the draft permit requested during the public comment period, or for non-profit organizations)? No.
- b. Do your Title V permit fees cover this cost? If not, why? We do not usually charge for copies.

28. What is your process for the public to obtain permit-related information (such as permit applications, draft permits, deviation reports, 6-month monitoring reports, compliance certifications, statement of basis) especially during the public comment period? Draft permits are available online. Other items are available by visiting the department and searching our electronic records or requesting the information.

- a. Are any of the documents available locally (e.g., public libraries, field offices) during the public comment period? Explain. The library has a copy of the draft permit, SOB and public notice
- b. Have you received comments on the availability (or non-availability) of such information from the public? Only one case where there was a party in opposition to a permit and the local library did not keep the material available (though it was sent to them). Otherwise we generally get favorable comments about the availability of information via the website.
- c. Who is responsible for ensuring that this information is actually available in the local offices/libraries? Please explain the verification process. We mail it to the library with instructions but do not verify that they follow our requests for availability

29. How long does it typically take to respond to requests for information for permits in the public comment period? 1-3 days

30. Have you ever extended your public comment period, as a result of information requests? Not because of time issues in compiling/providing information. Some comment periods have been extended based on the stated issue that there was too much information to review in the allotted time. ADEQ regulations limit the time such periods can be extended.

- a. Where is this information stored? All our records are electronic and available at the main office in North Little Rock

- b. Do information requests, either during or outside of the public comment period, affect your ability to issue timely permits? No
  - c. Have you ever extended the public comment period because of a request or a public hearing? Yes. Public hearings require a notice and so are usually scheduled after the normal 30 day comment period. This allows comments outside the normal comment period.
31. What information is available from your website? Final permits, draft permits, SOB, database of permitting activities, permits currently in public comment period, application forms and instructions, other permit guidance.
- a. Is there regulatory and permit guidance information available online for the public? No
  - b. Please confirm that draft permits and final permits following signature are posted on ADEQ's website. This is correct.
  - c. What additional supporting documentation for pending permit actions is made available on ADEQ's website? None
  - d. Have you considered or are you working on developing a web access system to expand the types of permit related documents made available for the public? If so, please explain. Yes, but this is would be an agency wide decision. There have been discussions about making our records accessible, in general, over the web.
32. Have any other ideas for improved public notification, process, and/or access to information been considered? If yes, please describe. No
33. Do you have any resources available to the public on public participation (e.g., booklets, pamphlets, webpages)? No
34. Do you provide training to citizens on public participation or on Title V? No
35. Do you have staff dedicated to public participation, relations, or a liaison? The agency has a Public Outreach and Assistance division, but it is not dedicated to air permits and has no specific programs relating to air permits
- a. Where are they in the organization? See above
  - b. What is their primary function? See above

**Affected State Review, Review by Federal Land Managers (FLM) and Indian Tribes**

36. How do you determine what States qualify as "affected States" for draft permits?

Our form letters are generated with information from a database that identifies affected states depending on the location (county) of the facility/permittee

37. How do you notify affected States or Tribal Nation governments of draft permits? Please provide recent examples of permits and letters that were sent to the affected States. They are notified by mail or email if we have an email address. See attachment C37 for examples.
38. How do you determine when to notify the FLM office for Class I areas? Do you have a guidance document for the permit engineer and the public participation group at ADEQ? FLMs are notified of all PSD permit applications. We do not understand the second part of the question.
39. What percentage of your permits get comments from affected States and FLMs? None from affected states. The FLM comments only on the largest of projects less than one per year.
40. Are there any patterns to the type of draft permits that get affected State/FLM comments? Are there common themes in these comments? Affected states do not comment. The FLM follows their FLAG document when commenting.
41. Does ADEQ review and comment on the adjacent States' Title V permits? Please provide some examples when ADEQ felt it was necessary. No

Please provide any additional comments on Public Participation and Affected State Review. No additional comments

## D. Permit Issuance / Revision / Renewal

### Permit Issuance

1. Have there been any initial Title V permits withdrawn? If so, why? If the question is about voided permits, then yes we have had facilities void their permit due to closure or curtailment. We do not keep records in a manner that would allow us to determine if an application is withdrawn prior to issuance but there are very few if any of those instances
  - a. What process does ADEQ use to grant a permit rescission? Voiding of permits can be done at the request of the facility. It is an administrative process.
  - b. How many MACT sources have taken synthetic minors and have their Title V permits rescinded? What permit action is taken to make the PTE practically enforceable. We do not track or classify permits in this manner.
  - c. What other categories or minor NSR sources have their Title V permits rescinded? We have no information on this question.
2. How many synthetic minor Title V permits (sources) have been issued? We do not classify permits in this manner. A permitted facility is either Title V or a minor source.
  - a. Do you write synthetic minor permits for HAP sources? How many? We do not classify permits in this manner
3. What has been your average time in the past two years for processing Title V permits from an administratively complete application to permit issuance? Because a permit can contain multiple applications, the tracking of dates is not exact. But based on the information we have, the average is 198 days for all Title V issued. However, this value does not account for multiple applications combined into one permit and is only a very general estimate. The current target is permit issuance with 180 days for all permits.
  - a. Are there any types of permits that take a much longer time? Why? Renewals are not prioritized unless there is a modification associated with it so they would generally take longer.

### Permit Revisions

4. DeDid you follow your regulations on how to process permit modifications based on a list or description of what changes can qualify for: (Y/N) Yes  
If yes, please provide the regulatory citation to your applicable regulations.

- a. How many administrative amendments are processed in a year and what types? In the last 5 years we have received 163 Administrative Amendments for Title V permits, or about 33 per year. The question about “type” is unclear.
  - b. §502(b)(10) changes? (See §70.4(b)(12)) We do not track this type of request specifically. It is estimated that about 10 requests per year are received that specifically cite this regulation
  - c. Significant and/or minor permit modification? (See §70.7(e)) In the last 5 years we have received 539 significant and minor modifications for Title V permits, or about 108 per year.
  - d. Group processing of minor modifications? If so, what percentage? We do not have data on group processing of minor modifications.
5. For those permits that have been issued, and where the permitted facility has undergone a change, how many Title V permits have you processed per year? ADEQ received 875 applications that involved Title V permits in the last 5 years.
- a. What percentage of changes at the facilities is processed as:
    - i. Significant? 185 Modifications were received in a 5 year period or 21% of total applications  
148 Renewals were received in a 5 year period or 17% of total applications  
25 Initial (new) were received in a 5 year period or 3% of total applications
    - ii. Minor? 354 were received in a 5 year period or 40% of total applications
    - iii. Administrative? 163 were received in a 5 year period or 19% of total applications
  - b. Does ADEQ have guidance on what can be considered an off permit change? How many (or what percentages) were off-permit? We have no guidance and do not have any such classification of permit changes.
6. Have you taken longer than the Part 70 timeframes of 18 months for significant revisions, 90 days for minor permit revisions and 60 days for administrative?

Explain. On occasion, we have exceeded these timeframes.

7. What have you done to streamline the issuance of revisions? Nothing that is specific to permit revisions.
8. What process do you use to track permit revision applications moving through your system? Currently we use our ePortal system with some database extractions. Every permit application is entered into the ePortal system as a unique entry. Processing steps that relate to that permit action are assigned to that entry. These steps can include details of all the steps required to process that permit, for example, administrative complete determinations, mailing of notices, entry into the ADEQ file system, issuance of draft/final, fee billing/collection etc. Often, these steps number over 80 unique elements. Every one of these steps must be indicated as complete to issue a permit and often some steps preclude subsequent steps from happening. For example, a final permit cannot be issued unless the fee is paid.

Responsible staff are assigned to each step and upon completion the staff will check the box indicating completion. The date, time and staff ID are automatically recorded and available in database formats, if necessary.

9. Have you developed guidance to assist permit writers and sources in evaluating whether a proposed revision qualifies as an administrative amendment, significant or minor revision, or requires that the permit be reopened? If so, provide a copy. The regulation states what qualifies an administrative or minor modification. A checklist is provided based on the regulation for minor modifications (see attachment D9).
10. Do you require applications for minor permit modifications to contain a certification by a responsible official, consistent with 70.5(d), that the proposed modification meets the criteria for use of minor permit modification procedures, and a request that such procedures be used? Yes.
11. When public noticing proposed permit revisions, how do you identify which portions of the permit are being revised? (e.g., narrative description of change, highlighting, different fonts). Narrative of permit activity/change.
12. When public noticing proposed permit revisions, how do you clarify that only the proposed permit revisions are open to comment? Please provide an example. We do not make such a statement in the public notice.

### **Permit Renewal Or Reopening**

13. How many permit renewals have you processed? In the last 5 years we have issued 162 renewals.

14. What is your plan to issue permit renewals in a timely fashion? (Within 18 months.) We have set a goal of 6 months for all permit issuance.
15. Do you have a different application form for a permit renewal compared to a standard application form? (e.g., are your application renewal forms different than forms for initial permits?) No, they are the same.
  - a. If yes, what are the differences? Are 1st time requirements (like CAM, off permit changes, etc.) in a renewal application being included in the renewal? They are the same.
  - b. If no, please explain how the application differentiates between other actions, including initials, and a renewal. The applicant indicates the type of permit application (check box in the application form)
16. Is issuance of renewal permits typically “easier” than the original permits? Explain. Typically but not always.
17. How are you implementing the permit renewal process (i.e., guidance, checklist for permit applicants)? Renewals are treated the same way as initial applications. There are no special forms.
18. What % of renewal applications have you found to be untimely and late? What action have you taken on these permittees? Less than 5%. (these are reported in the TOPS reports). These are referred to the enforcement branch for appropriate action.
19. How many complete applications for renewals do you presently have in-house ready to process? 41
20. Have you ever determined that an issued permit must be revised or revoked, to assure compliance with the applicable requirements? Yes, enforcement/inspections often precipitate permit modifications.

Please provide any additional comments on Permit Issuance / Revision / Renewal. No additional comments

**E. Compliance with Respect to Permit Terms and Conditions**

1. Deviation reporting:

- a. Which deviations do you require be reported prior to the semi-annual monitoring report? Describe. Upset Conditions – exceedences of applicable emission limitations lasting 30 or more minutes, in the aggregate, during a 24-hour period, unless otherwise specified in an applicable permit or regulation.
- b. Do you require that some deviations be reported by telephone? No
- c. If yes, do you require a follow-up written report? If yes, within what timeframe? N/A
- d. Do you require that all deviation reports be certified by a responsible official? (If no, describe which deviation reports are not certified). Yes
  - i. Do you require all certifications at the time of submittal? Yes
  - ii. If not, do you allow the responsible official to “back certify” deviation reports? If you allow the responsible official to “back certify” deviation reports, what timeframe do you allow for the follow-up certifications (e.g., within 30 days; at the time of the semi-annual deviation reporting)? N/A

2. How does your program define deviation? Exceedences of applicable emission limitations lasting 30 or more minutes, in the aggregate, during a 24-hour period, unless otherwise specified in an applicable permit or regulation.

- a. Do you require only violations of permit terms such as BACT limits to be reported as deviations? No
- b. Do you require SSM to be reported as a deviation when the permit limits are exceeded? No
- c. Which of the following do you require to be reported as a deviation (Check all that apply):

- Y  N  i. Excess emissions excused due to emergencies (pursuant to 70.6(g))
- Y  N  ii. Excess emissions excused due to SIP provisions (cite the specific state rule)

- Y  N  iii. Excess emissions allowed under NSPS or MACT SSM provisions
- Y  N  iv. Excursions from specified parameter ranges where such excursions are not a monitoring violation (as defined in CAM)
- Y  N  v. Excursions from specified parameter ranges where such excursions are credible evidence of an emission violation
- Y  N  vi. Failure to collect data/conduct monitoring where such failure is “excused”:
  - a. During scheduled routine maintenance or calibration checks
  - b. Where less than 100% data collection is allowed by the permit
  - c. Due to an emergency
- Y  N  vii. Other? Please describe. N/A

3. Do your deviation reports include:

- Y  N  a. The probable cause of the deviation?
- Y  N  b. Any corrective actions taken?
- Y  N  c. The magnitude and duration of the deviation?
- Y  N  4. Do you define “prompt” reporting of deviations as more frequent than semi- annual?
- Y  N  5. Do you require a written report for deviations?
- Y  N  6. Do you require that a responsible official certify all deviation reports?

7. What is your procedure for reviewing and following up on:

- a. Deviation reports? If they are mentioned in the semi or annual reports, we verify that they are attached. Upon inspection of the facility inspector reviews as a part of the inspection process.

- b. Semi-annual monitoring reports? The technical reviewed is completed when submitted, as schedule allows or at time of Inspection if scheduled.
- c. Annual compliance certifications? Log that the report is received and enter the receipt of the report into a Certification Database. The technical review is performed when submitted, as schedule allows or at time of Inspection if scheduled to be inspected.

8. What percentage of the following reports do you review prior to permit issuance?

- a. Deviation reports None
- b. Semi-annual monitoring reports None
- c. Annual compliance certification None

9. Compliance certifications:

- Y  N  a. Is the certification form consistent with your rules?
- Y  N  b. Is compliance based on whether compliance is continuous or intermittent or whether the compliance monitoring method is continuous or intermittent?
- Y  N  c. Do you require sources to use the form? What percentage does? 100% if not required to resubmit using the form
- Y  N  d. Does the form account for the use of credible evidence?
- Y  N  e. Does the form require the source to specify the monitoring method used to determine compliance where there are options for monitoring, including which method was used where more than one method exists?

10. Excess emissions provisions:

- Y  N  a. Does your program include an emergency defense provision as provided in 70.6(g)? If yes, does it:
  - Y  N  i. Provide relief from penalties?
  - Y  N  ii. Provide injunctive relief?
  - Y  N  iii. Excuse noncompliance?

- Y  N  b. Does your program include a SIP excess emissions provision? If no, go to 6.c. If yes does it:
- Y  N  i. Provide relief from penalties?
- Y  N  ii. Provide injunctive relief?
- Y  N  iii. Excuse noncompliance?
- c. Do you require the source to obtain a written concurrence from the PA before the source can qualify for:
- Y  N  i. the emergency defense provision?
- Y  N  ii. the SIP excess emissions provision?
- Y  N  iii. NSPS/NESHAP SSM excess emissions provisions?

### **Resources & Internal Management Support**

11. Are there any competing resource/workload priorities for your "Title V" staff? We do not have staff dedicated solely to Title V.
12. Are there any initiatives instituted by your management that recognize/reward your permit staff for getting past barriers in implementing the Title V program that you would care to share? No
13. How is your senior management kept up to date on permit issuance? Quarterly reports
14. Do you have any automatic computer programs in place as part of the permitting process? Yes If so, do you have dedicated staff for the automated computer programs? No Do you plan on any more automation of your permit programs? Please explain. We have no definitive plans other than making more applications available to be submitted online
15. Does ADEQ currently allow for the electronic submission of permit applications? If so, please provide information regarding the requirements for electronic submission and what documents still require hardcopy submittal. Electronic submittals are currently only available for general permit applications. All Title V and traditional minor source permits still require hard copies at this time.
16. What is your process for addressing issues and problems related to permit

writing? We have no formal process.

Please provide any additional comments on Compliance with Respect to Permit Terms and Conditions. No additional comments

**F. Title V Benefits**

1. Compared to the period when you first started implementing the Title V program, does the Title V staff generally have a better understanding of:

- | Y  N  a. NSPS requirements?
- | Y  N  b. The stationary source requirements in the SIP?
- | Y  N  c. The minor NSR program?
- | Y  N  d. The major NSR/PSD program?
- | Y  N  e. How to design monitoring terms to assure compliance?
- | Y  N  f. How to write enforceable permit terms?
- | Y  N  g. Sources' operations (e.g., better technical understanding of source operations; more complete information about emission units and/or control devices; etc.)?
- | Y  N  h. Your stationary source emissions inventory?
- | Y  N  i. Applicability and more enforceable (clearer) permits?

2. Has your Title V universe changed since you first implemented the Title V program? Please explain. We have had a declining number of Title V permits from a high of 278 to the current 203.

3. In issuing the Title V permits:

- | Y  N  a. Have you noted inconsistencies in how sources had previously been regulated (e.g., different emission limits or frequency of testing for similar units)? If yes, describe.
- | Y  N  b. Have you taken (or are you taking) steps to assure better regulatory consistency within source categories and/or between sources? If yes, describe.

4. Based on your experience, estimate the frequency with which potential compliance problems were identified through the permit issuance process. You

may either state the number of permits, or as a percentage of permits, or relative terms as often, never, sometimes or frequently.

- a. prior to submitting an application There is no review by the permit branch prior to an application being submitted. Inspections often reveal issues.
- b. prior to issuing a draft permit About 10% are issues that were not previously identified (i.e. by an inspection that precipitated the permit application)
- c. after issuing a final permit This is rare, less than 10%. The most common circumstance that can be cited is where the permit required testing and the facility did not pass the required testing.

5. Based on your experience with sources addressing compliance problems identified through the Title V permitting process, estimate the general rate of compliance with the following requirements prior to implementing Title V:

- a. NSPS requirements (including failure to identify an NSPS as applicable) No information is available on this question.
- b. SIP requirements No information is available on this question.
- c. Minor NSR requirements (including the requirement to obtain a permit) No information is available on this question.
- d. Major NSR/PSD requirements (including the requirement to obtain a permit) No information is available on this question.

6. What changes in compliance behavior on the part of sources have you seen in response to Title V? (Check all that apply.)

- Y  N  a. increased use of self-audits?
- Y  N  b. increased use of environmental management systems?
- Y  N  c. increased staff devoted to environmental management?
- Y  N  d. increased resources devoted to environmental control systems (e.g., maintenance of control equipment; installation of improved control devices; etc.)?

Y  N

e. increased resources devoted to compliance monitoring?

Y  N

f. better awareness of compliance obligations?

Y  N

h. other? Describe. Increased use of consultants

7. Has Title V resulted in improved implementation of your air program in any of the following areas due to Title V:

Y  N

a. netting actions?

Y  N

b. emission inventories?

Y  N

c. past records management (e.g., lost permits)?

Y  N

d. enforceability of PTE limits (e.g., consistent with guidance on enforceability of PTE limits such as the June 13, 1989 guidance)?

Y  N

e. identifying source categories or types of emission units with pervasive or persistent compliance problems; etc.?

Y  N

f. clarity and enforceability of NSR permit terms?

Y  N

g. better documentation of the basis for applicable requirements (e.g., emission limit in NSR permit taken to avoid PSD; throughput limit taken to stay under MACT threshold)?

Y  N

h. emissions trading programs?

Y  N

i. emission caps?

Y  N

j. other? (describe)

Y  N

8. If yes to any of the above, would you care to share how this improvement came about? (e.g., increased training; outreach; targeted enforcement)

Y  N

9. Has Title V changed the way you conduct business?

Y  N

a. Are there aspects of the Title V program that you have extended to other program areas (e.g., require certification of accuracy and completeness for pre-

construction permit applications and reports; increased records retention; inspection entry requirement language in NSR permits). If yes, describe. Permit certifications and responsible official definitions/requirements are the same for minor and Title V facilities.

Y  N

b. Have you made changes in how NSR permits are written and documented as a result of lessons learned in Title V (e.g., permit terms more clearly written; use of a statement of basis to document decision making)? If yes, describe.

Y  N

c. Do you work more closely with the sources? If yes, describe.

Y  N

d. Do you devote more resources to public involvement? If yes, describe.

Y  N

e. Do you use information from Title V to target inspections and/or enforcement?

Y  N

f. Other ways? If yes, describe.

Y  N

10. Has the Title V fee money been helpful in running the program? Have you been able to provide:

Y  N

a. better training?

Y  N

b. more resources for your staff such as CFRs and computers?

Y  N

c. better funding for travel to sources?

Y  N

d. stable funding despite fluctuations in funding for other state programs?

Y  N

e. incentives to hire and retain good staff?

Y  N

f. are there other benefits of the fee program? Describe. N/A

Y  N

11. Have you received positive feedback from citizens?

Y  N

12. Has industry expressed a benefit of Title V? If so, describe.

Please provide any additional comments on Title V Benefits.

## G. Title I / Title V Interface

1. What % of Title V permitting actions incorporate NSR actions. 20%
2. For those Title V permitting actions that have associated NSR actions, how does the permit record, specifically the Statement of Basis, provide the public with information regarding the type of NSR action being permitted since ADEQ uses a one permit system? Does the Statement of Basis have distinct sections that identify what, if any, NSR actions are taking place? If so, please provide an example. One section of the SOB identifies the type of permit action and what if any would be considered as new (NSR). The narrative in the permit also explains any permit actions included in the permit issuance. See attachment G2, Section 5.
3. For those Title V permitting actions that have associated NSR actions, does the permit record clearly specify if an air quality analysis was required by the NSR action (either Minor or Major NSR) to demonstrate compliance with applicable air quality standards? If so, please identify where this information is contained and provide an example. ADEQ only requires an air quality analysis for major NSR actions. A section of the SOB contains the results of any dispersion modeling conducted. For major NSR actions, the ambient air analysis is also summarized in the permit narrative. See attachment G3-1 starting on page 88 and attachment G3-2, Section 12
  - a. For NSR actions determined to not require an air quality analysis, does the Statement of Basis discuss the basis for this determination? No
  - b. For NSR actions requiring an air quality analysis, does the Statement of Basis include a summary of the analysis completed along with ADEQ's evaluation of the analysis? Yes
  - c. Has ADEQ received comments from the public on any Title V permit actions related to the adequacy of an air quality analysis conducted for the associated NSR action or related to the absence of an air quality analysis? One major NSR permit was appealed by a third party and part of the appeal was based on the air quality analysis. No other comments about criteria pollutant air quality analysis are known. Some permits receive comments on non-criteria (predominantly HAPs) air quality impacts.
4. What % of Title V permits have incorporated NSR conditions with RMRR exempted actions? These would not appear in a permit action unless they were concurrent with an application under review. These actions are usually handled by correspondence outside of a formal permit issuance
  - a. If applicable, what % of the RMRR exempted actions are "like-kind" replacements? Unknown.

- b. For any RMRR exempted actions, are actual emissions being reviewed? No, there are no known exemptions. What emissions are being reviewed? By regulation, RMRR does not involve review of actual emissions.
5. What % of Title V permits for PSD sources have specifically addressed SSM? Less than 5%
6. EPA's May 22, 2015 final SSM SIP Call rule granted the Petition related to SSM provisions contained in Arkansas's regulations (Reg. 19.1004(H) and Reg. 19.602) as being substantially inadequate to meet Clean Air Act requirements. In the interim, prior to the required revisions to these regulations, how does ADEQ plan to address SSM in pending and upcoming Title V permit actions? Is there a specific plan to update the SSM requirements contained in current Title V that were developed based on the inadequate regulations so that they are consistent with CAA requirements? If so, please explain. ADEQ will continue to issue permits under current Arkansas regulations. The State of Arkansas is among the states that have challenged the SIP call in court.
7. When does a "grandfathered" unit at a PSD source lose that status under your Title V permits? In accordance with NSR rules, when the unit is modified and a significant emission rate increase occurs

Please provide any additional comments on Title V / Title V Interface. None

## H. Title V Administration and Fee Review

### Current Title V Resources

1. What section of your regulation defines the ADEQ's fee collection authority and rate(s)? ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION Regulation No. 9, Fee Regulation
  - a. Has the basis or amounts of any of these fees that were relied upon in the original Title V program approval changed? Please describe. The fee factor is evaluated every year in accordance with the regulations. The current factor is \$23.93/ton. See attachment H1.
  - b. Are there fees that have been adopted since the original Title V program approval that are now relied upon to, at least in part, fund any aspect of the Title V program? Please describe. No
  - c. Are any of the fees that can be used, even in part, to pay for Title V purposes dedicated by law to non-Title V program areas? Please explain. No
2. What is the projected number of permits subject to review to implement Title V? Please discuss. There are 203 active Title V permits
3. How do you track Title V expenses? Title V expenses are identified by the Air Division and they assign a Cost Center and Fund to the expense. The Agency's accounting department codes the assigned Cost Center and Fund, which is unique to Title V expenses, to expense based on the assigned Cost Center and Fund in the State Accounting System (AASIS). Reports can then be extracted from AASIS for program expenses.
4. How do you track Title V fee revenue? Title V fees are billed through our invoicing program. When the invoice is created, the billing is assigned a code to designate it as a Title V fee. Once the check is received it is credited to the billing program and coded into AASIS using a Cost Center and Fund with is unique to Title V revenues. Reports can be extracted from AASIS for program revenues. Note: In 2001 the EPA approved a plan where ADEQ can take a portion (20%) of the Title V funds and apply them to our State Fee Fund. See attachment H4.
5. Please provide a spreadsheet for FY 2012, FY 2013, and FY 2014 documenting ADEQ's annual account receivables and ADEQ's annual expenses for the Title V permitting program. Are ADEQ's current Title V fees sufficient to support the Title V program? Yes. See attachment H5, H45-1 and H45-2
6. Provide a list of Title V permittees and fee revenues generated from each of these

- permittees. See attachment H6
7. Provide source bills for the last three months. See attachment H7.
  8. How many Title V permit writers does the agency have on staff (number of FTE's)? Currently there are 16 permit writers (and one vacancy), 3 supervisors. They are not limited to Title V permits.
  9. Do the permit writers work full time on Title V or do they work on other items such as NSR permits? ADEQ is a one permit system so a permit can be Title V and NSR. In addition, all engineers can work on any type of air permit.
    - a. If not, describe their main activities and percentage of time on Title V permits. Processing permits.
    - b. Please describe very specifically how ADEQ tracks the time allocated to Title V activities versus other non-Title V activities? Time is tracked by function codes on bi-weekly timesheets.
  10. Are you currently fully staffed? Has your state legislature of the state budget process implemented a ceiling on you FTE staffing that results in the collection of more Title V fees than your FTE staffing allocation is allowed by the state budget process? We have one vacant position. Our fees regulations allow for the fee factor to not be increased by the allowable amount if there is a surplus in the Title V fund.
  11. What is the ratio of permits to permit writers? We receive on the order of 356 applications for all types (excluding General Permits) of air permits per year and have a staff of about 16 engineers. We issue approximately 237 final permits per year. There are 203 active Title V permitted facilities and 525 minor source permitted facilities
  12. Describe staff turnover and how do you minimize turnover? There is no method to influence staff turnover.
  13. Describe your career ladder for permit writers? Engineers who obtain their professional license can be upgraded.
  14. Do you have the flexibility to offer competitive salaries? No
  15. Can you hire experienced people with commensurate salaries? No
  16. Describe the type of training given to your new and existing permit writers. This is a repeat of previous questions in this survey
  17. Is there anything that EPA can do to assist/improve your training? Unknown.

18. Overall, what is the biggest internal roadblock to permit issuance from the perspective of Resources and Internal Management Support? Unknown.

### **Fees Calculated**

19. Do you charge Title V fees based on emission volume? Yes.
- a. If not, what is the basis for your fees?
- b. What is your Title V fee? Currently it is \$ 22.93/ton of chargeable emission.
20. How are fees calculated? Show formula for calculation of emission based fee, application fees, and hourly processing. See the attachment H20 of the regulations concerning air permit fees for permit fee calculations.
- a. Provide examples of the calculations of actual emissions for fee purposes. Fees are based on permitted, not actual emissions.
- b. Provide an example of emission inventory request letter. We do not base fees on inventory, they are based on permitted emissions
21. Are appropriate (actual or allowable) emission records used for dollars-per-ton based fees? Yes
22. How do you determine the actual emissions for fee purposes? We use permitted, not actual emissions in our fees

### **Collections Tracked**

23. Discuss how incoming payments are recorded to the appropriate accounts. See attachment H23
24. Are sources paying the total fees charged each year? Those facilities that pay their fees, pay 100% of what was billed. We do not give any facility a price break, but due to natural attrition some facilities file bankruptcy and do not pay their fees.
25. Are sources paying on time? Yes, the vast majority are.
26. What procedures are maintained for collection of outstanding Title V revenues? Invoices are sent out monthly for renewal of the Title V permits coming due that particular month. We send out late letters 45 days later for those who have still not paid their fees (at which time a late fee is assessed). If we receive no response

within another 30 days, we send notification to our Air Division. The Air Division then calls the Environmental Coordinator for the facility in question to make them aware their permit fees have not been paid. If the fees are not promptly paid as a result of this call (10 days), our Air Division's enforcement personnel issue a Notice of Violation (NOV) against the facility and our Legal Division gets involved to assist in finding a resolution to the problem.

27. Are late fees being assessed? Yes.
28. How are late fees being credited to the Title V accounts? Late fees are charged on our invoice system and then credited when the payment is received. The total amount of invoiced fees and late fees is deposited to the Title V fund. The late fees are billed in the same manner as the regular Title V fees, see H.4.
29. How do you insure that a facility has paid all applicable Title V permit fees prior to issuance of the permit? Administrative procedures in processing permits checks for any outstanding balances before the application is processed.
30. Have all Title V fees been collected for the FY 2012, FY 2013, and FY 2014? For facilities still in operation, yes.
31. If there are uncollected Title V fees, how does ADEQ pursue collection of such fees? See H.26.
32. Do you assess late fees on sources that have not paid the appropriate Title V fees? If so, when is the late fee assessed and what is the timeframe for remittance of all the applicable fees? Yes. See H.26.
33. Provide ADEQ's data detailing actual collections vs. Billings or fee tracking for the Title V permitting program. Illustrate what procedures are maintained for collection of outstanding Title V revenues. See H. 26. We use an in-house created software system that we use to bill the facilities and it helps us track the facilities that have not paid their fees.
34. Provide copies or documentation of examples detailing late fee assessment and recording collection of fees to Title V accounts. Late fee assessment examples are included in the attachment H6.

### **Billing Process**

35. Can you show that sources are billed in accordance with your fee requirements? Yes. Annual fees are billed based on the "chargeable emissions" times the fee factor. The "chargeable emissions" are calculated at time of permit issuance by a spreadsheet and the value entered into the billing system for use in calculating the annual fee when due.

36. What is the state billing process including notification time frame and receiving and tracking? Please describe. See H.26.

### **Revenue Allocated**

37. Provide account balances by object/facility codes. See attachment H37.
38. How are Title V fees budgeted/allocated by ADEQ? Title V fee revenues are deposited into a Fund that contains only Title V fees. These fees are then used to pay Title V expenses. It is my understanding this was established a decade or more ago. The fees are budgeted based on historical trends and anticipated needs.
39. Provide specific formulas showing how you calculate administrative personnel costs, overhead, and non-labor costs (e.g., travel, training, purchases, etc.) We don't calculate administrative personnel costs nor overhead specifically for this program. The amount allocated to this program's budget is less than our calculated overhead rate for our Federal grants. The overhead rate for our Federal grants is almost 50% for this period while the amount of the overhead for the Title V budget is less than 20%.
40. Provide examples of time sheets for project managers, administrative support staff and management personnel. See attachment H40
41. Provide examples of procurement documents, travel vouchers, training, etc. Please include travel vouchers which illustrate dual purpose travel. For example, where more than one type of facility was visited. See attachments H41-1 and H41-2.
42. Provide account balances by object code for FY 2013 and FY 2014. Title V revenues for FY2014 were \$5,470,817.28 and for FY2013 \$5,530,717.68. (Fund TPET500)

### **Cost of "Effective" Program (Resources to Address Backlog/Renewals)**

43. Provide end-of-year accounting reports that illustrate actual and estimated costs of the program. Provide the FTE and itemized cost estimates ADEQ uses to budget your Title V program. Also, include the total amount of Title V fees expended and the total amount billed to facilities for Title V (by FY 2012, FY 2013, and FY 2014) for the last three years. See attachments 6 and 7 trial balances for 2012-2014. Note the NBR amounts are "Nonbudget Relevant" amounts. Those amounts are the result of our CAFR (Consolidate Annual Financial Report) group's year-end adjustments or reversal of year-end adjustments and are not actual cash payouts or receipts.
44. Provide a report that estimates costs of running the program, i.e., direct and indirect program costs that are broken down into specific cost categories. How

are these expenditures calculated/tracked? We can provide our Budgets for the program, if need. The State of Arkansas' Budget is prepared on a biennial basis which means we budget two and three years in advance. Our budget takes a worst case need approach. The budget numbers from the prior biennial process roll forward in our State accounting system each time we prepare a new budget. This helps us see what we had and compare it to what we think we will need during the next cycle as noted in H. 38. The expenditures are tracked, as mentioned earlier, the use of cost cents and fund related to the Title V program.

45. Provide a summary of Title V obligations and encumbrances for FY 2012, FY 2013, and FY 2014. See attachments H45-1 and H45-2 trial balances 2012-2014 for actual program expenditures, H.43.

### **Split of 105 vs. Title V**

46. What type of accounting framework do you use to account for Title V programs fees (e.g., general fund, special revenue fund, expendable trust fund)? As far as GASB accounting standards, the fund is considered a General fund. For State identification purposes based on statutory language, the fund is classified as an expendable trust fund. State Code TPET500 ADEQ Fee Trust Air 19-5-1137.
47. How are Title V revenues kept separate from all other state generated revenues? Is ADEQ currently utilizing non-Title V revenues or general appropriations to support the Title V operating permit program or has it done so since FY 2012? If so, please provide details of why non-Title V funds or general appropriations were utilized. They are segregated into the TPET500 fund. No other funds are used to support the Title V program.
48. How do you account for excess monies (if any) collected for the Title V program? Monies collected in excess of expenditures are held in the Title V fund until needed.
49. What mechanism(s) is ADEQ using to differentiate Title V activities from non-Title V activities? We use different cost centers and funds to differentiate between Title V and non-Title V revenues and expenses.
- a. If accounting codes are utilized to differentiate activities, please provide a listing of those codes and an explanation for each specific expenditure and revenue type. Cost centers 450656, 451491 and 451759 are all tied to fund TPET500, Title V.
50. Have you integrated features into your accounting/financial management system which will identify Title V expenditures separate from other non-Title V permitting program expenses? Please describe. Yes, as previously noted in H. 49.
- a. If so, are the same expenditure codes used in each organizational unit of ADEQ

that conducts work in support of Title V related activities? Please provide a comprehensive listing of all such codes and their descriptions and indicate each of the organizational units within the ADEQ that uses them. Include each expenditure code that may be used to support Title V related activities. Yes, the cost centers are strictly used for Title V. Other programs have different cost centers and funds. As noted in H. 49, all Title V expenses are “tied” to the program by use of the aforementioned cost centers.

51. Does the ADEQ keep separate records that identify Title V monies collected from other non-Title V permitting program fees? Yes.
- a. If so, is this recordkeeping process the same for each of the revenue streams used throughout all of the ADEQ? Please explain. Yes, as previously explained in H.4, H. 49 and H. 50.
52. What are the amounts of the 105 grants funds received in FY 2012, FY 2013, and FY 2014, respectively? 2012-\$1,246,728, 2013-1,107,451, 2014-\$1,039,193
53. What are the amounts of the 105 grants funds used in FY 2012, FY 2013, and FY 2014 respectively? 2012-\$1,354,170, 2013-\$1,086,849, 2014-\$1,022,439 (Note: These numbers are for the State fiscal year end, same for H. 52.)
54. What are ADEQ’s source(s) of 105 matching funds? Please discuss. State funds, general and special revenue.
- a. Please provide total funds by accounting code for each category or source of matching funds for each of FY 2012, FY 2013, and FY 2014. Matching funds 2014 \$952,373.93 from Special Revenue (TPE0000) and \$74,915.90 from General Revenue (HMA0100), 2013 \$908,835.25 from Special Revenue (TPE0000) and \$192,836.48 from General Revenue (HMA0100), 2012 \$865,589.88 from Special Revenue (TPE0000) and \$488,545.12 from General Revenue (HMA0100).
55. How does your accounting system produce reports, periodically and as requested, with which you will be able to certify the disposition of Title V funds? Please discuss. There are a variety of reports that can be produced from our State accounting system (AASIS) and from our billing system. We can run reports for expenditures, revenues, and balances for a period or at a date in time.

### **Environmental Justice Resources**

*Note: By EJ analysis we refer to any procedures applied during the permitting process, regardless of whether they are called EJ, that consider demographics (race, income,*

*nationality, etc.), cumulative effects, (burden, exposure, risk), comparative effects or modifications to the public involvement processes to address unique characteristics of the project.*

56. Do you have Environmental Justice (EJ) legislation, policy or general guidance, which helps to direct permitting efforts? No

a. If so, may EPA obtain copies of appropriate documentation?

57. Do you have an in-house EJ office or coordinator, charged with oversight of EJ related activities? Yes

58. Have you provided EJ training / guidance to your permit writers? When? No

59. Do the permit writers have access to demographic information necessary for EJ assessments? (e.g., socioeconomic status, minority populations, etc.) If so, how are they taken into account in the permitting process? No

60. When reviewing an initial or renewal application, is any screening for potential EJ issues performed? If so, please describe the process and/or attach guidance. No

61. Are any other EJ factors or additional community information and/or demographics (for example – children, the elderly) taken into account or considered during the permitting process? no

Y  N  62. Do you allow public involvement during an EJ analysis?

If yes, please answer the following:

a. What stakeholder groups do you try to involve? N/A

b. At what point in the EJ analysis or permitting process do stakeholders become involved? N/A

c. To what degree and in what manner do stakeholders or the community influence the permit decision making process? N/A

d. To what degree do you know about how stakeholders or the affected community participated in the permit decision making process? N/A

e. Describe how you make information available to stakeholders and the affected community. (For example – translation of information, understandable and accessible materials, personal contacts, clearly

explained technical information including potential risk, distribution of information, public meetings, etc.) N/A

Please provide any additional comments on Title V Fee Review. None

## I. Miscellaneous

1. How does ADEQ permit synthetic minor MACT sources? Please provide an example. Our regulations only require permitting on certain minor MACT sources. See Regulation 18.301 for permitting thresholds. For those sources that do we require a permit, all “applicable requirements” of the MACT are incorporated into the permit.
2. How does ADEQ permit solid waste combustion sources (air-curtain incinerators, OSWI units, etc.)? Are there specific permitting procedures followed for these sources that are unique to this source type? These sources require permits and a are permitted under the same procedures as other permits.

Since 2012, have the following permit actions for solid waste combustion sources been taken? If so, please provide a list of those permit actions.

- a. Initial Title V permits? Yes, for air curtain incinerators burning woodwaste only.
  - b. Renewals? Yes
  - c. Modifications? No
  - d. When an application is submitted for a major applicable source to add applicable provisions under MACT/NESHAP, or the change is in the method of operation or for an expansion, are the changes evaluated under ADEQ’s SIP approved NSR regulations? Yes
3. Good Practices not addressed elsewhere in this questionnaire:

Are there any of the practices employed by ADEQ that improve the quality of the permits, or other aspects of Title V program that are not addressed elsewhere in this questionnaire? Please explain. N/A

4. EPA assistance not addressed elsewhere in this questionnaire:

Is there anything else EPA can do to help your Title V program? There are many questions that arise in permitting that do not have readily identifiable answers. In those cases, we exert a lot of effort in formulating answers. In addition, there is no readily available way to access the knowledge of EPA and other states in an informal manner. Once we address an issue, there is no simple way to archive the issue for future reference.

It would seem that an informal database of questions and response to air issues would be a benefit. Something on the order of a voluntary discussion group where questions can be asked, information exchanged and past discussions

| searched.

| Please provide any additional comments on Miscellaneous topics. None

## ADEQ Audit Response Questions

Audit Question:

### A. Title V Permit Preparation and Content

1. In ADEQ's response to this question, the state offers that to avoid confusion, a limited number of forms are required and the state provides detailed instructions and a checklist to assist applicants in the completion of the Title V application. For a Title V application to be considered complete, the application must provide all information required pursuant to 40 CFR § 70.5(a)(2). EPA has reviewed the Title V air permit application forms available online at:

<https://www.adeq.state.ar.us/air/permits/instructions.aspx>. Based on our review, it appears that the online forms do not specifically require the following required elements:

- Citation and description of all applicable requirements (40 CFR § 70.5(c)(4)(i)) and Description of or reference to any applicable test method for determining compliance with each applicable requirement (40 CFR § 70.5(c)(4)(ii)).

The forms allude to applicable requirements in the emission rate table, but to be clear we have added this to our instructions. See most recent version, attached.

-The online air permit application forms instructions states that additional application forms are required of any source subject to 40 § CFR Part 72. However, the website does not appear to provide a link to the nationally standardized forms required in 40 CFR § 70.5(c)(10).

We have added this to the forms, instructions and checklist.

We have not added a specific link since links change and facilities subject to these rules are well aware of the forms.

-The online certification of compliance form does not appear to include the requirement to contain a statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods (see 40 CFR § 70.5(c)(9)(ii)). It is also unclear if ADEQ requires the permit application to include a schedule for submission of compliance certifications during the permit term in accordance with 40 CFR § 70.5(c)(9)(iii).

These items are stated in the text of the compliance certification form; the first and second lines in the signature box.

Please clarify where ADEQ requires applicants to submit the above information in a Title V permit application.

It is unclear from ADEQ's response if a Title V permit applicant is notified within 60 days of receipt of the application if the application is deemed complete, except as otherwise provided in 40 CFR § 70.7(a)(4). See 40 CFR § 70.5(a)(2). Please clarify if ADEQ does provide a completeness determination in writing to Title V permit applicants and if ADEQ maintains a

record of the number of completeness versus incompleteness determinations that have been completed.

ADEQ notifies applicants of complete or deficient applications typically in 2-5 days. These notices are combined with state public notice requirements or in the case of minor modifications, by the approval/rejection of the minor modification.

It is unclear what type of completeness list is being requested. Many applications require additional information and ADEQ notifies applicants of deficiencies and allows applicants to supplement submittals. If required, ADEQ can most likely retrieve records of the date applications were declared complete, the dates between receiving and complete determinations and those applications that have been received but are still incomplete. However, few if any applications are ever declared incomplete and terminated, though that number is also available.

2.a. EPA understands that ADEQ works to process permits in a timely manner and the frequency of a Title V permit application and review timeline exceeding one year is very low. However, the response to 2.a. does not appear to fully address the requirements contained at 40 CFR § 70.5(c)(9)(iii) regarding the schedule for the submission of compliance certifications. Specifically, the compliance certifications are required to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement. If a compliance certification is found to be more than one-year old (or less depending on applicable requirements), does ADEQ require the submission of a new compliance certification?

We do not require a new compliance certification for the application if more than one year old.

Compliance certifications are required on an annual basis by permit condition. Even if an application for a permit were older than one year, the facility would still be required to submit annual certifications.

ADEQ is a single permit program. Not Title V source may construct/operate without a Title V permit. Therefore, all Title V sources will have an annual compliance certification requirement.

We do not believe 70.5(C)(9)(iii) refers to permit application certifications since it refers to submitting certifications during the "permit term"

3.a. The ADEQ response appears to conflict with the requirements of 40 CFR § 70.5(c)(8)(ii)(C) and the ADEQ online certification of compliance. The ADEQ online certification of compliance states that if the facility is not in compliance then a compliance plan and compliance schedule is required to be attached. Is this correct or provide additional information to clarify ADEQ's initial response?

The ADEQ understood the question to ask how enforcement issues discovered by ADEQ during permit review handled. EPA is correct that the forms and regulations require certification and/or compliance plans.

3.c. and d. EPA would like to affirm that ADEQ ensures compliance with 40 CFR § 70.5(c)(8)(iii)(C) by requiring the schedule of compliance to include a schedule of remedial measures leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule is required to resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based. Please provide two recent examples that highlight where ADEQ has incorporated a schedule of compliance with remedial measures to ensure compliance.

ADEQ does require the schedule of compliance.

5. How often does ADEQ review the templates and macros standard language to check for new regulation requirements?

There is no fixed schedule. They are updated when changes are required by new regulations, policy decisions, the need for a standard condition, clarity or other reasons.

Please affirm that the “pre-public notice” draft permit that is reviewed by the company (draft permit released to company for review and comment prior to public notice), is available for the public to review if requested. Also, if changes are made to the “pre-public notice” draft permit is the information related to the change retained in the permitting record or is the company required to supplement their permit application to support such changes in the “pre-public notice” draft permit? (see 40 CFR § 70.7(h)(2).

All department records are public information available upon request. This includes pre-public notice draft permits. The purpose of the pre-draft review is to allow the facility opportunity to comment on typographical errors, mathematical errors, misinterpretations of process descriptions, and other factual errors relating to the application and draft permit. They may submit other comments but most comments on compliance mechanisms and other substantial changes will need to be submitted during the official public comment period or in a separate permit application if not contained in the current record.

6.a. Please provide additional information to support the corrective measures taken on the incorporation of regulatory citations for the statement of basis and permit terms and conditions. Additional information is also requested on when EPA can expect to see implementation of ADEQ’s changes. In accordance with 40 CFR § 70.6(a)(1)(i), a Title V permit is required to specify and reference the origin of and authority for each term and condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based. ADEQ’s response indicates that no streamlining strategies are utilized in the development of the Title V permit. However, the permit is required to specify and reference the origin of and authority for each term and condition. In the previous ADEQ Audit, EPA noted an inconsistency of federal regulation listed in the statement of basis and permit.

ADEQ is unsure of the context of this question. Item 6a of the audit questionnaire does not seem to relate to any of these questions or issues except possibly the streamlining question (6b) and that does not seem to be a requirement.

ADEQ is committed to work with EPA on this issue. We request specific examples and changes requested in the Statement of Basis be provided.

6.b and c. Please provide additional information to describe the process and requirements used by ADEQ to review and approve proposed streamlined multiple applicable requirements and insignificant emissions. ADEQ's response states that ADEQ does follow some of the White Paper's guidelines.

- i. When a title V applicant requests a streamlining approach, does ADEQ require the applicant to submit an addendum to the title V application to demonstrate that the new streamlined requirement is equal to or more stringent than the most stringent applicable limit and contains sufficient source compliance information on which to base such a compliance demonstration? If not, please explain how the ADEQ permitting record supports this required analysis.

In most cases a demonstration cannot be provided or the rules are federal rules which ADEQ will not change

We have not, to our knowledge, received or allowed a streamlining request for a federal requirement. We received one request for changes to an opacity requirement that had an NSPS limit and a state limit. The NSPS limit was not changed.

Any such request would require information that the requirements are equal or more stringent.

- ii. Please explain how ADEQ documents in the title V permit the applicable requirements.

The Title V permit contains all the conditions and requirements applicable to the source with a regulatory citation attached. Applicable regulations are also broadly listed in the narrative, table of regulations.

- iii. If the title V applicant and ADEQ work together collaboratively to establish a basis for a streamlined limit prior to the issuance of a draft permit, please provide an example of analysis that was added to the permitting record as a result of this collaborative approach.

There are no examples

- iv. White Paper #2 states: "Any streamlining demonstration must be promptly submitted to EPA upon its availability and in advance of draft permit issuance unless EPA has previously agreed with the permitting authority not to require it." For the title V record, please clarify ADEQ's understanding of any agreement with EPA Region 6.

ADEQ relies on monthly conference calls with EPA and review of draft permits to identify issues that need EPA input or approval.

- v. In footnote 7, on page 9 of White Paper #2, the white paper states that if a streamline limit is based on an alternative or new test method relative to the ones already approved by EPA for the SIP or section 111, or section 112, then some additional steps are needed to complete the proposed streamlining. If ADEQ has relied on this approach in the past, please provide an example.

ADEQ has not relied upon this approach.

- vi. Page 8 of White Paper #2 states that streamlined permit terms should be covered by a permit shield. The guidance continues by stating that where the permitting authority does not provide for a permit shield, the permit should clarify this understanding. Please provide additional information to clarify how ADEQ incorporates permit shields into a permit and any corresponding technical discussion.

ADEQ has not issued any streamlined permit terms

- vii. If a new compliance certification is not required if the certification is more than one-year old as stated in ADEQ's response to question 2.a., then it is difficult to understand how the compliance certification requirement for insignificant activities is met (see page 33 section 2.e. of White Paper #2). Please explain how ADEQ assures compliance with 40 CFR § 70.6(c)(5) for insignificant activities.

We do not require a new compliance certification for the application if more than one year old.

Compliance certifications are required on an annual basis by permit condition. Even if an application for a permit were older than one year, the facility would still be required to submit annual certifications.

ADEQ is a single permit program. Not Title V source may construct/operate without a Title V permit. Therefore, all Title V sources will have an annual compliance certification requirement.

We do not believe 70.5(C)(9)(iii) refers to permit application certifications since it refers to submitting certifications during the "permit term"

8. Please provide additional information to support any changes ADEQ has made in the development of the Statement of Basis since the last title V audit. In the previous fiscal year 2010 title V audit, EPA noted its concerns and discussed with ADEQ potential deficiencies of actual and legal basis in the ADEQ prepared Statement of Basis. In this previous audit review, we discussed that the reviewed statement of basis documents did not provide the facility's general information such as process information and a cross reference table that lists the emission unit description, source identification, pollutants and regulatory applicability. The responses to question 8 appears to remain problematic in assuring compliance with 40 CFR § 70.7(a)(5) and Arkansas Regulation 26.506.

ADEQ has made several changes to the statement of basis since the last audit. However, none are in response to the concerns outlined above.

#### B. Monitoring – No Additional Questions

#### C. Public Participation and Affected State Review

22. Please clarify the public notification procedures ADEQ would follow if a draft NSR permit received comments and the emission rates or BACT requirements changed, how would the public be notified of the permit changes with the corresponding title V draft permit?

All comments on a draft permit are addressed in a Response to Comments document and sent along with the final permit decision to any commenters.

#### D. Permit Issuance / Revision / Renewal

4. The response indicates that permit modifications are based on a list or description; however, the regulatory citation that ADEQ follows was not included. Please provide the regulatory citation that ADEQ follows.

The requirements for a minor modification are found in Reg. 26.1002 -26.1009

Significant modification requirements are found in Reg.26.1010

Administrative Amendments requirements are found in Reg 26, Chapter 9

Renewals are treated the same as an initial permit.

4.b. Please verify for the estimated 10 requests per year for § 502(b)(10) changes, that the notification requirements contained in 40 CFR § 70.4(b)(12) are required from applicants. Does ADEQ allow for permitted sources to trade increases and decreases in emissions as cited in 40 CFR § 70.4(b)(12)(ii)? Please describe how ADEQ tracks trade increases and/or decreases associated with § 502(b)(10) requests.

There are less than 10 such requests. They are required to meet the conditions of Reg. 26.802 which contain the provisions of 70.4(b)(12)

Reg. 26.804 allows sources to trade increases and decreases. However, no permitted source has yet requested such trading.

6. Please provide additional information to explain a situation where ADEQ may have taken longer than the Part 70 timeframes.

Generally they fall into the following categories:

Difficulty in obtaining information necessary to review permit  
Facility closed/bankrupt but still wanting to maintain permit.  
Modeling issues that cannot be resolved easily  
PSD BACT issues  
Owner with multiple facilities and trying to coordinate all the permits at once  
Failure to provide public notice proofs or payments

Some of these issues are due to the one permit system; they are not previously resolved in a construction permit.

#### E. Compliance with Respect to Permit Terms and Conditions

9.d. Credible Evidence. In the previous fiscal year 2010 audit discussions and the ADEQ response it appears that ADEQ is not accounting for the use of credible evidence? It is the EPA position, and AR Regulation 19, § 19.701 that the general language addressing the use of credible evidence is necessary to make it clear that despite any other language contained in the permit, credible evidence can be used to show compliance or noncompliance with applicable requirements. Please provide an update to detail an anticipated date when EPA can expect to see the inclusion of the credible evidence language in ADEQ permits.

The regulation stands independent of whether or not it is contained in a permit condition.

#### F. Title V Benefits

3.a. and b. The ADEQ response indicates that inconsistencies have been noticed and ADEQ is (or has) taking steps to assure better regulatory consistency within source categories and/or between sources. Please provide addition information to clarify the additional steps that ADEQ has taken to help address inconsistencies.

The main method is through standardizing permit templates and language, for example, standard testing language for compressor stations.

As similar sources and source categories are noticed, a standard condition is formulated and made available for use in the template.

#### G. Title I / Title V Interface – No Additional Questions

H. Title V Administration and Fee Review – EPA would like additional time to review the cost information and may request a separate conference call to clarify and discuss ADEQ's responses to this section.

Noted



{In Archive} RE: Entergy White Bluff Title V Permit   
Jeffrey Robinson to: Bates, Mike

01/19/2012 03:32 PM

From: Jeffrey Robinson/R6/USEPA/US  
To: "Bates, Mike" <BATES@adeq.state.ar.us>,  
Archive: This message is being viewed in an archive.

Thank you.

"Bates, Mike" Jeff, we are working on the transcript from the he... 01/19/2012 03:09:48 PM

From: "Bates, Mike" <BATES@adeq.state.ar.us>  
To: Jeffrey Robinson/R6/USEPA/US@EPA  
Date: 01/19/2012 03:09 PM  
Subject: RE: Entergy White Bluff Title V Permit

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Jeff, we are working on the transcript from the hearing and written comments. At this time I don't really have a timeframe of when the response to comments & final permit might be ready. I'll let you know when a timeframe is firmed up.

**From:** Jeffrey Robinson [mailto:Robinson.Jeffrey@epamail.epa.gov]  
**Sent:** Thursday, January 19, 2012 1:27 PM  
**To:** Bates, Mike  
**Subject:** Fw: Entergy White Bluff Title V Permit

Mike:

What is the latest status on the White Bluff permit?

Jeff

----- Forwarded by Jeffrey Robinson/R6/USEPA/US on 01/19/2012 01:25 PM -----

From: Jeffrey Robinson/R6/USEPA/US  
To: "Bassett, Karen" <BASSETT@adeq.state.ar.us>, "Bates, Mike" <BATES@adeq.state.ar.us>  
Cc: Thomas Diggs/R6/USEPA/US@EPA, "Carpenter, Ellen" <CARPENTER@adeq.state.ar.us>  
Date: 11/24/2011 04:42 AM  
Subject: Re: Entergy White Bluff Title V Permit

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Karen and Mike: I received feedback on Karen's response from the Office of General Counsel and Regional Counsel. The feedback stated that " when EPA approved state permitting authorities' ability to run the 30 day comment period concurrently with EPA's 45 day comment period it was historically conditioned on receiving no significant public comments (other states have similar systems). If a permitting authority receives a significant public comment during the comment period (even if in response to that comment no substantive changes are made to the draft permit), we have historically said that the permit process has to revert back to the process whereby the 45 day review period comes AFTER the close of the 30 day comment period." With this

direction, I would like the opportunity to review the proposed permit prior to the final being issued. This is consistent with how we review permits issued concurrently in Louisiana. Jeff

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**From:** "Bassett, Karen" [BASSETT@adeq.state.ar.us]  
**Sent:** 11/22/2011 01:15 PM CST  
**To:** Jeffrey Robinson; "Bates, Mike" <BATES@adeq.state.ar.us>  
**Cc:** "Rheaume@adeq.ar.us" <Rheaume@adeq.ar.us>; Thomas Diggs; "Carpenter, Ellen" <CARPENTER@adeq.state.ar.us>  
**Subject:** Re: Entergy White Bluff Title V Permit

Jeff, I don't think we would have a problem with you reviewing it, I just don't know how we could legally take any additional comments after the close of the comment period and use them as a basis for a change. Having said that, if we make significant changes to the draft due to public comment, we would have to decide if a second public comment period is necessary to truly provide for meaning public involvement. Does this help any?

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**From:** [Robinson.Jeffrey@epamail.epa.gov](mailto:Robinson.Jeffrey@epamail.epa.gov) [mailto:[Robinson.Jeffrey@epamail.epa.gov](mailto:Robinson.Jeffrey@epamail.epa.gov)]  
**Sent:** Tuesday, November 22, 2011 01:07 PM  
**To:** Bates, Mike  
**Cc:** Bassett, Karen; 'Rheaume@adeq.ar.us' <Rheaume@adeq.ar.us>; [Diggs.Thomas@epamail.epa.gov](mailto:Diggs.Thomas@epamail.epa.gov) <[Diggs.Thomas@epamail.epa.gov](mailto:Diggs.Thomas@epamail.epa.gov)>  
**Subject:** RE: Entergy White Bluff Title V Permit

It is also my understanding that on an individual permit where significant changes are made that EPA can exercise it's right under 40 CFR 70.8 to review the proposed permit that ADEQ wants to issue. I'm getting questions from EPA Hq about this permit and also have Sierra Club calling me about the permit. I just want to verify ADEQ's willingness to let us review a proposed permit if significant changes are made as a result of public comment on the draft permit.

---

**From:** "Bates, Mike" <BATES@adeq.state.ar.us>  
**To:** Jeffrey Robinson/R6/USEPA/US@EPA, "Rheaume@adeq.ar.us" <Rheaume@adeq.ar.us>  
**Cc:** "Bassett, Karen" <BASSETT@adeq.state.ar.us>  
**Date:** 11/18/2011 03:32 PM  
**Subject:** RE: Entergy White Bluff Title V Permit

Jeff,

Our "Draft Permit" is synonymous with "proposed permit" as has been the practice in the implementation of the Arkansas Title V Operating Permit since its initial approval. The 30 day public comment period and the EPA 45 day review period run concurrently.

As in previous permitting matters, any EPA and public comments received will be addressed in the Response to Comments document and issued with the final permit decision by ADEQ. Once a final permitting decision has been issued, our State administrative procedures allow for parties with standing to request review (appeal) by the Arkansas Pollution Control and Ecology Commission of ADEQ's Final Permit Decision.

It is our understanding that the 60 day window for a person to submit a petition for objection to EPA begins upon expiration the 45 day EPA review period (in this case, December 5, 2011) – assuming that EPA does not submit an objection pursuant to APC&EC Reg. 26.605 [40 CFR 70.8 (c)].

Please let me know if we need to discuss this further.

**From:** [Robinson.Jeffrey@epamail.epa.gov](mailto:Robinson.Jeffrey@epamail.epa.gov) [<mailto:Robinson.Jeffrey@epamail.epa.gov>]  
**Sent:** Friday, November 18, 2011 1:39 PM  
**To:** Bates, Mike; [Rheaume@adeq.ar.us](mailto:Rheaume@adeq.ar.us)  
**Subject:** Entergy White Bluff Title V Permit

Mike and Tom:

I wanted to make sure that we are on the same page with respect to Entergy White Bluff's Title V permit. As I understand, EPA's 45-day review period on the draft permit expires on December 4, 2011. It is our understanding that the public comment period on the draft permit expires on November 24, 2011. However, ADEQ has scheduled a public hearing on or about January 4, 2012, and in your letter to Sierra Club you've indicated that you will accept oral and/or written public comments on the draft permit during the hearing, and that a decision to extend the comment period by as much as 20 days may be made.

I want to verify that if you receive comments from the public during either the public comment period or during the public hearing that you will then provide EPA a proposed permit for review and ADEQ's response to comments, and EPA will start a new 45-day review period for the proposed Title V permit and then we will begin the 60-day window for commenters to petition EPA on the permit. Please confirm whether we have a mutual understanding of how this permit will be processed if public comments are received by ADEQ.

Jeff  
214-665-6435

## Magee, Melanie

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**Subject:** FW: TOPs report vs Legislative Report

**From:** Rheaume, Thomas [mailto:RHEAUME@adeq.state.ar.us]

**Sent:** Wednesday, February 08, 2017 8:01 AM

**To:** Magee, Melanie <Magee.Melanie@epa.gov>

**Cc:** Mohr, Ashley <Mohr.Ashley@epa.gov>

**Subject:** TOPs report vs Legislative Report

I hope this clears up one issue:

You are getting your numbers from item 5 and 8 of the EPA report (this is from the July 01 – December 31, 2015 TOPS report we sent in):

<b>Total Outstanding Initial Part 70 Applications</b>	The number of active initial part 70 applications older than 18 months:  0	<ul style="list-style-type: none"><li>• This element tracks <u>all</u> active, administratively complete <u>initial</u> part 70 permit applications that the permitting authority has not taken final action on within 18 months of receipt of the administratively complete application. Do not stop or restart the 18 month clock for additional information submitted after the application is deemed administratively complete.</li><li>• For TOPS purposes, initial part 70 applications are applications for sources that are subject to title V for the first time, or for any source that comes back into the title V program after a period of not being subject. Do <u>not</u> include renewal applications.</li><li>• Include all current outstanding initial applications, including those that may also be tracked in data element #1.</li><li>• Do <u>not</u> count initial applications the Permitting Authority has taken final action on.</li></ul>
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<b>Outstanding Significant Permit Modifications</b>	Total number of active significant modification applications older than 18 months:  1	<ul style="list-style-type: none"><li>• This element tracks all active, administratively complete significant permit modification applications that the permitting authority has not taken final action on within 18 months of receipt of the administratively complete application.</li><li>• Do not stop or restart the 18 month clock for additional information submitted after the application is deemed administratively complete.</li><li>• Do <u>not</u> count significant modification applications the Permitting Authority has taken final action on.</li></ul>
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This is only tracking initial Title V or significant modifications

On our legislative report, we have 14 listed (this is the last quarter 2015 report)

<b>CSN</b>	<b>Date App</b>	<b>FACILITY NAME</b>	<b>Days</b>	<b>Reason Code</b>
				Days
5500017	11/3/2009	Caddo River LLC	2227	3
7000016	5/27/2011	Lion Oil Company	1672	7
0200028	8/6/2012	Georgia-Pacific Chemicals LLC	1244	9
3900023	11/26/2012	U. S. Army Corps of Engineers - W.G. Huxtable Pumping Plant	1113	8
7000012	6/27/2013	Great Lakes Chemical Corporation - Central Plant	858	9
4000041	8/28/2013	Enable Mississippi River Transmission, LLC (Glendale Compressor)	852	9
1500068	12/2/2013	Enable Gas Transmission, LLC (Round Mountain Compressor Station)	762	6
5400120	1/16/2014	Enable Gas Transmission, LLC (Helena Compressor Station)	699	9
4300093	1/16/2014	Enable Mississippi River Transmission, LLC (Carlisle Compressor )	699	9
7300127	2/20/2014	Enable Mississippi River Transmission, LLC (West Point Compressor	680	9
4200088	2/26/2014	Enable Gas Transmission, LLC (Dunn Compressor Station)	672	9
6100076	3/4/2014	Enable Mississippi River Transmission, LLC (Biggers Compressor )	670	9
3400111	1/16/2014	Enable Mississippi River Transmission, LLC (Tuckerman Compressor)	657	9
6000065	5/6/2014	AFCO Steel, LLC	572	9

All of these except one, I think it was Caddo, were renewals with no changes (i.e. modifications). Caddo was held up in bankruptcy issues.

The others were held up for lack of a path forward in a couple of issues, not because of lack of resources

Let me know if you need anything else

Thomas Rheaume  
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ARKANSAS  
Department of Environmental Quality

June 30, 2017

Ms. Wren Stenger  
Director, Multimedia Division (6MM)  
EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202

Dear Ms. Stenger:

Thank you for the opportunity to review the preliminary findings of the audit conducted on the Arkansas Department of Environmental Quality (ADEQ), Office of Air Quality (OAR) Title V program in 2015–2016. Based on these findings, the ADEQ offers the following additional information and planned activities.

Overall, the audit did not identify any major elements of the program that were not being conducted. Therefore, staffing and funding is sufficient to cover implementation of the Title V program. EPA has identified some questions and potential improvements that are addressed below.

## **I. TITLE V FEES AND EXPENDITURES**

The Title V fund balance has proven to be sufficient to cover our Title V permit program costs. ADEQ runs a surplus in both its fee funds (Title V and non-Title V).

EPA has questioned whether the ADEQ 80/20 allocation of Title V fees is representative of the current Title V workload. Arkansas operates a one permit system with construction, operating, state, and federal requirements all included in the Title V permit. This means that the Title V permits not only contain all the elements required by federal Operating Permit (Title V) rules, but also include “state-only” conditions in the permits as well as those conditions typically considered part of a construction permit. The single fee charged covers the review of applications, issuance of permits, implementation, compliance and enforcement of all conditions in a Title V permit. The 80/20 split of our Title V fees allocates 20% of the fee received for those items not specifically required by the federal Operating Permit rules. For example, the state fiscal year 2016 total revenue collected from annual permit fees for Title V facilities was recorded at \$6,663,102.16. Taking the 80/20 split, \$5,330,481.73 was deposited in the Title V funding bank

(Cost Center 450656) and the remaining \$1,332,620.43 was deposited in our Non-Title V fund bank (Cost Center 450655).

Nevertheless, ADEQ will conduct an evaluation of the Title V expenditures and revenue. ADEQ is currently re-evaluating the proportional indirect costs in association with our staff time allocated to the program. From the results of this analysis, ADEQ will determine if the 80/20 split of title V fees should be revised. As stated, our current Title V fund balance has proven to be sufficient to cover our Title V permit program costs.

## **II. TITLE V STATEMENT OF BASIS**

Based on EPA comments of the current format of our Statement of Basis, ADEQ will take the following actions:

- Expand the scope of compliance review. Include any active compliance issues obtained from the EPA Enforcement and Compliance History Online (ECHO) database or other compliance databases to establish that the conditions of the permit provide for compliance with all applicable requirements (40 CFR 70.7(a)(iv)).
- Add a standard statement related to decisions to grant or deny requests for permit shields. This will include an explanation as to which type of shield has been granted in accordance with 40 CFR 70.6(f)(1)(i) and (ii).
- Provide additional clarification discussion of any operational alternatives with associated monitoring methods to demonstrate compliance with the terms and conditions in the permit.
- Add information on any Greenhouse Gas (GHG) applicable requirements. Because GHG requirements would only apply if the source were otherwise subject to Prevention of Significant Deterioration (PSD) rules, there is no need to classify sources as major or non-major GHG sources outside of a PSD review. The only information added will be if the facility had a significant increase in GHG emissions and was otherwise subject to PSD review.
- Update National Ambient Air Quality Standards (NAAQS) evaluation section with ADEQ's recently submitted implementation plan that includes one-hour standard applicability for NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>2.5</sub>.
- Check for any changes to Insignificant Activities with permit revisions to verify the emission unit meets the ADEQ requirements for an insignificant activity and to update the insignificant activities list. With input from EPA, ADEQ will also consider alternative formats for the Statement of Basis format, which may contain a more detailed discussion related to the specific applicable terms and conditions.

On one issue noted by EPA, there seems to be confusion on the ADEQ use of PM<sub>10</sub> emissions in place of separate PM<sub>2.5</sub> emission limits. By definition, all PM<sub>2.5</sub> emissions are included in PM<sub>10</sub> emissions. ADEQ has taken the conservative approach of evaluating increases in PM<sub>2.5</sub> emissions as if they were the same as the PM<sub>10</sub> emissions. If separate or additional PM<sub>2.5</sub> requirements or emission limits are necessary, such as NSR or BACT limits, they are specifically included in permits as PM<sub>2.5</sub>. ADEQ does not use PM<sub>10</sub> standards (NAAQS) or PM<sub>10</sub> BACT as a surrogate for PM<sub>2.5</sub>. No changes in ADEQ practices are needed.

### III. PERMIT DOCUMENT

Several minor issues were identified that ADEQ is willing to modify permit templates to accommodate. ADEQ will take the following actions:

- Include in permit templates credible evidence language and clarify startup and shutdown requirements. Proposed conditions are:

Any credible evidence based on sampling, monitoring, and reporting may be used to determine violations of applicable emission limitations.

Unless specifically stated otherwise, emission rates and limits apply at all times of operation, including startup and shutdown.

- Clarify in permit conditions that semiannual compliance reports should also be sent to EPA if a specific provision established in an EPA rule, such as an NSPS/NESHAP rule, requires semi-annual reports to be submitted to EPA. (With regards to the finding that ADEQ clarify in permits that semi-annual reports be sent to EPA, we find no regulatory requirement for submittal of reports other than annual certifications. ADEQ permits currently state such annual reports need to be submitted to EPA.)
- Add a condition for 112(r) compliance in permits for applicable facilities. A proposed condition is:

The permittee, if subject to the provisions of Section 112(r) of the Clean Air Act, shall develop and register a risk management plan with the appropriate agency.

We appreciate the opportunity to review these findings and the cooperation of the Region.

Sincerely,

  
Becky W. Keogh  
Director