

Colorado Department of Public Health & Environment

Title V Permitting Program Review

FINAL REPORT

September 2013

Conducted by the

U.S. Environmental Protection Agency

Region 8

1595 Wynkoop Avenue

Denver, Colorado 80202

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EXECUTIVE SUMMARY FOR TITLE V PROGRAM REVIEW – COLORADO

In September 2012, the Region 8 Environmental Protection Agency (EPA) office conducted a review of Colorado's title V operating permit program. The program review consisted of reviewing the overall title V program and a file review of a selection of operating permits issued by the Colorado Department of Public Health and Environment (CDPHE). The overall program review used a regionally developed program review checklist submitted to the State prior to review. The file review consisted of examining the documents and files for three facilities. This is the third title V review of CDPHE's program by EPA.

The purpose of the program review was to evaluate the implementation of the operating permit program and note practices that other agencies could learn from, document areas needing improvement and learn how EPA could assist in the future if needed. EPA conducted these program reviews as part of its obligation to oversee and review state programs it approved for implementing the title V program.

As part of the program review, Donald Law, EPA-Region 8, met with the CDPHE staff, Roland Hea, Permitting Section Manager, Matt Burgett, Operating Permit Unit Supervisor and Jackie Joyce, Permit Engineer. In preparation for the review, CDPHE was provided the title V program review questionnaire. The State's preliminary responses on that questionnaire were the basis of discussion during the program review. A copy of the questionnaire is included in Attachment 1.

For the file review, EPA reviewed the operating permit files for the original, modified and renewed permits, where applicable. An attempt was made to review at least one file that had a renewal permit issued, so that a comparison could be made between permits issued early in the program versus more recently-issued permits.

Title V Permit Reviews	
Company Name	Permit Number
Sterling Energy Company – Yenter Gas Plant	05OPLO105
Front Range Landfill	97OPWE188
Shafer Commercial Seating	95OPDE077

Overall, CDPHE's program is well run and managed by professional and dedicated staff. Minor improvements could be made in records retention. However one major area of concern is the timeliness of permit issuance.

Findings and Conclusions

During the program review it was noted that CDPHE has improved its title V program over time. Much of the improvement and evolution of the program is a result of permitting and inspection experience and work with EPA. EPA believes CDPHE's title V program has many strong points. Below are the significant findings of the review. The comments are arranged into three groups: areas of major improvement for the review period; areas where improvements can still be made; and areas where EPA can assist the State to strengthen its program.

A. The following areas are those that were identified as programmatic areas where CDPHE has improved the program in the past five years:

1. Environmental Justice (EJ) – As was brought up in the Second Round Title V Audit report, CDPHE can improve in the area of EJ. At that time, no mechanism seemed to be in place that would alert title V permit writers to EJ issues that might exist. CDPHE is currently improving its outreach into communities that have the potential for EJ impact by conducting informational meetings to educate the public on the permitting and enforcement process in the state of Colorado and to help educate the local community on topics that are of interest for that area. CDPHE has also expressed an interest in examining the final plan for EPA's Plan EJ 2014 and implementing those tools into its title V program should they prove appropriate.
2. Assigning one Staff Engineer to a Company – As much as possible, CDPHE continues to attempt to assure that the same staff engineer works on all facets of permitting for a company as well as an individual source within the company. This assures that the engineer is familiar with the environmental staff of the company as well as the operations at a specific facility and assists CDPHE in issuing timely permits. In addition, CDPHE feels that this familiarity builds a strong working trust between the agency and an individual company.

B. The following areas are those that were identified as programmatic areas where program improvements can be made:

1. Permit Timeliness – The title V Program Unit is fully staffed under CDPHE's current operational organization. However, timely issuance of both initial title V permits as well as issuance of significant modifications and renewal permits appears to be a concern. Under 40 CFR 70.7(a)(2) a timely initial permit, minor modification, or renewal shall be issued within 18 months of submittal of a complete application. For significant modifications 40 CFR 70.7(e)(4)(ii) states that on the majority of significant permit modifications, a timely permit should be issued within 9 months of receipt of a complete application. For example, only 2% of initial title V permits are currently being issued timely by CDPHE. As the title V program has

matured and the public has become more educated on air permitting issues, CDPHE finds that it is spending more time on answering public comments, conducting public hearings, and responding to EPA's Administrative Orders issued due to a public petition of a title V operating permit. These requirements divert manpower and resources that were previously focused on issuing title V operating permits. CDPHE feels that the title V Operating Permit Unit will need more staff to meet timeliness requirements.

- C. The following areas are those that were identified as programmatic areas where the CDPHE needs further assistance from EPA:
1. CDPHE continues to have difficulties in receiving appropriate Compliance Assurance Monitoring (CAM) plans from regulated industries required to be submitted under 40 CFR 64.4. CDPHE acknowledges that there is literature out there on this subject but feels that training targeting industry would be appropriate. If submitted CAM plans are deficient, it can add significant time to the issuance of a title V permit. In addition, CDPHE spends significant additional staff time in educating industry what is required in an appropriate CAM plan. It is the title V permitting staff's opinion that targeted training would be helpful in educating industry and improve the quality of submitted CAM plans.
 2. Legal challenges to federal rules make permitting of sources where those rules are applicable difficult. These challenges can lead to stays or vacated portions of the rule. CDPHE has expressed difficulty in keeping track of the regulatory timeframe associated with these challenges and associated stays and vacations. This difficulty contributes to the length of time CDPHE needs to issue a timely permit.

Introduction

EPA conducted this program review as part of its obligation to oversee and review state programs that have been approved by EPA, and in response to recommendations from an audit conducted in July 2002 by the Office of Inspector General.

The state of Colorado operates a fully EPA approved program that allows it to implement the requirements of title V of the Clean Air Act (CAA), including the issuance of operating permits. EPA has a statutory responsibility to oversee the programs it approved by performing oversight duties, including occasional program reviews. Such responsibilities include overseeing the activities of the State program to ensure that local, regional, and national environmental goals and objectives meet minimum requirements outlined by the federal regulation.

Objective of Program Review

Following the second round of state program reviews, EPA nationally committed to a third round of reviews. The objectives of the third round reviews are to: (i) conduct a follow-up to the second round reviews by ensuring that any EPA or CDPHE concerns identified during the second round reviews have been addressed or are being addressed satisfactorily; (ii) identify new good practices that other agencies can learn from; (iii) document areas needing improvement; and (iv) learn how EPA can help state and local title V programs improve the permitting process.

Program Review Process

The first program review was conducted in February 2004. EPA sent a nationally standardized Title V Program Evaluation Questionnaire and fee questionnaire to CDPHE to be completed and returned to EPA. This was followed by EPA review of the responses, and then by an on-site interview with CDPHE. The review responses were used as the basis for discussions during the on-site visit. The review focused on general program information and specific areas relating to permit development, public participation, compliance, resource management, and title V benefits.

The second program review was conducted in May 2008. Region 8 developed a revised Title V Second Round State Program Review Questionnaire. Once a draft review was prepared, Region 8 gave the states the opportunity to submit comments during a three week comment period from January 22, 2008 through February 12, 2008.

The third program review was conducted in September 2012. Region 8 used the Title V Second Round State Program Review Questionnaire to complete this program review.

This program review also incorporates the Region's review of selected title V files, as well as a review of CDPHE's title V fee management system. A separate questionnaire was provided by EPA to CDPHE to complete for the title V fee audit (State/local Title V Program Fiscal Tracking Evaluation Document). The fee audit was conducted on September 6, 2012. The purpose of the fee audit is to determine whether the following are satisfied:

- Sources are being billed in accordance with fee requirements and are paying the required fees;
- Division of expenses is identified by CDPHE between title V and non-title V programs;
- Features are integrated into CDPHE's accounting/financial management system which will identify title V revenue and expenditures separate from other funding, and which certify the disposition of title V funds; and
- Title V fees collected from sources are used by CDPHE to pay for the entire title V program, and no such fees are used as Clean Air Act (CAA) section 105 grant matching.

Donald Law of Region 8 conducted the on-site visit on September 6, 2012 with Ronald Hea, Matt Burgett, and Jackie Joyce of CDPHE.

During the on-site visit, EPA conducted an in depth review of three title V source files: Sterling Energy Company – Yenter Gas Plant(05OPLO105), Front Range Landfill (97OPWE188) and Shafer Commercial Seating (95OPDE077).

The scope of the Title V program review focused on the overall Title V program, specifically the strengths and weaknesses of the permits' content and CDPHE's permit processing techniques. The Title V files were well organized, labeled, and very comprehensive. Each file contains a separate binder for the permit application, permit documents, and an engineer's notebook. The combination of these file elements makes it easy to follow the history of a permitting action. Each permit is accompanied by a technical review document (TRD) explaining the permit history, applicability, exemptions, streamlining, and CDPHE's decision making process.

As was evident from our interviews and file review, the State employees interviewed are knowledgeable about the air permitting program and generally make sound decisions. The program review and file review questionnaires had two fundamental purposes: (1) to collect and organize the information regarding the operating permitting program; and (2) to ensure consistency among the states when conducting the program reviews.

PROCEDURE FOR THE PROGRAM REVIEW

EPA staff began the on-site visit by discussing the schedule for the visit, identifying the process of the review, and allowing CDPHE the opportunity to ask preliminary questions about the review process. As agreed, the initial discussion was devoted to issues raised in the questionnaire. Later discussion centered on concerns expressed by CDPHE. File review was conducted during the September 2012 fee audit review. Since many of the review responses are self-explanatory, the interview portion of the program review focused more on getting further clarification than restating the preliminary questionnaire responses in their entirety. This approach made for educational dialog between Region 8 and CDPHE participants and provided some additional information and clarification that was incorporated into Colorado's final questionnaire responses.

Supervisors and CDPHE staff made themselves available as necessary to answer questions or to otherwise assist EPA staff. EPA appreciated this assistance and spirit of cooperation. While it was apparent that the CDPHE Operating Permit Unit prides itself on running one of the premier programs in the country, CDPHE was open to reviewing the recommendations that EPA might have as a result of the program review to further improve its program.

CDPHE ORGANIZATION AND STAFFING

The CDPHE Operating Permit Unit is part of the Stationary Sources Program. Currently there are six full time employees dedicated to Title V permitting issues. This is considered “fully staffed” under the current organization of the Operating Permit Unit. The Operating Permit Unit works closely with the Construction Permit Unit, Field Services Unit, and Technical Services Program. The Operating Permit Unit is generally responsible for issuing operating permits. However, since Colorado has a merged construction permit/operating permit program, some construction permit actions are handled by staff of the Operating Permit Unit. The Construction and Operating Permitting Units each have their own Unit Supervisor and staff.

There has been very little turnover in staff in the past five years. Currently, the permitting section is fully staffed. Overall, the staff is very experienced and does not require a great deal of training.

One minor change in procedure since the Second Round program is that the Permitting Section Manager (currently Roland Hea) no longer reviews all draft title V permits. This change was implemented due to workload issues. Matt Burgett currently reviews all draft title V permits.

TRAINING

The Operating Permit Unit provides training to employees based on need and availability. The permitting staff occasionally participates in training offered by EPA, WESTAR, and on-the-job training. As stated before, due to low staff turnover, the staff is well-trained and very knowledgeable about Title V issues. As regulations change and emerge (e.g., Compliance Assurance Monitoring, Maximum Achievable Control Technologies), additional training becomes necessary.

CDPHE staff did express concern about the amount and complexity of regulations that apply to title V facilities. In particular, there is concern about integration of applicable requirements of complex regulations within the body of the title V permit and a lack of guidance on what EPA considers appropriate in relation to citing a rule by reference or placing a regulation verbatim within the permit. There has been confusion in the past about the level of detail required regarding appropriate level of citing a rule by reference in the past that has led to potentially reopening a title V permit.

CDPHE also expressed concern about the difficulty in following the regulatory approval track, in particular in reference to legal challenges to rules and any resulting stays or vacated portions of rules. This ambiguity of the current approved regulation can add to the delay in issuing a timely title V permit.

Compliance assurance monitoring (CAM), required to be submitted under 40 CFR 64.4, continues to present difficulties for CDPHE. Many sources do not submit adequate CAM plans. The most common reasons for an inadequate CAM plan include improper justification of indicator and range, no supplied data to justify the proposed indicator range, and a lack of understanding of the requirements and needs of a CAM plan. CDPHE noted that while there appears to be a fair amount of documentation and guidance on the EPA website, CDPHE did not recall any specific industry directed CAM training offered recently. If submitted CAM plans are deficient, it can add significant time to the issuance of a title V permit. In addition, CDPHE spends significant additional staff time in educating industry what is required in an appropriate CAM plan. It is the title V permitting staff's opinion that targeted training would be helpful in educating industry and improve the quality of submitted CAM plans.

FEE AUDIT

During the on-site review EPA discussed fee protocol with CDPHE. EPA and CDPHE used the fee protocol form (Attachment 2) as the basis of discussion to determine how CDPHE tracks and documents its title V fee structure. Colorado's fee collection authority and fee rates are specified in C.R.S. 25-7-114.1(6) and C.R.S. 25-7-114.7 and can also be found in General

Condition #8. Present at the fee audit were Roland Hea, Kirsten King, That Vu, Adam Wozniak, Wes Hamlyn, and Matt Burget.

From this review, it is clear that Colorado is able to account for all title V activity down to small tasks. Nothing was uncovered during the discussion of the fee questionnaire that warrants concern. CDPHE tracks work at the function level (e.g., NSR vs. OPP) and at the activity level (e.g., mailing, copying, personnel costs). Where a staff member's time is split between title V and other permitting work, the engineer is expected to track and document that time accordingly to assure that title V resources are not dedicated to other purposes. These time and effort documents follow the permit package through the completion procedures to assure that complete documentation is maintained. Overhead costs are tracked on a statistical distribution model to assure a separation of title V and non-title V overhead costs. Additionally, non-direct support related to title V issues is tracked, documented and paid for with title V fees. These practices assure that fees are used solely for the title V program fulfilling part of the requirements in §70.9. Currently, CDPHE is developing a new tracking system that will allow hourly-based fees to be billed on a quarterly basis. It is hopeful that this system will come into use sometime after June 2012.

For annual (\$/ton) fees, Title V sources are billed once per year, in one of three separate billing groups, the same time every year. Annual emission fees are generated based on actual emission data (after the use of controls) received from the individual source. This data is reported via the Air Pollution Emission Notice (APEN). APENs are good for five years unless the emission source undergoes some form of modification that would have an impact on its actual emission rate.

Checks are submitted to the accounting department whose system directly interfaces with the billing system. Permit engineers are able to track a source's current fee payment status by accessing the fee payment database to assure that fees are current. For permit-related work (\$/hr), Title V sources are billed once per quarter.

The following is a summary of CDPHE's fee rates at the time of inspection:

Permit work:	\$76.45 per hour
Criteria Pollutants:	\$22.90 per ton
Hazardous Air Pollutants:	\$152.90 per ton
APEN fee (good for 5 yrs, or until modified):	\$152.90

These fee rates have increased since the Second Round program review.

CDPHE stated that the majority of the billed sources pay their fees on time. For hourly fee work, during fiscal year 2011-2012, 153 invoices were issued. Of those 153 invoices, 10 were considered "past due". For annual fee sources, only one title V source was issued an invoice for fiscal year 2011-2012 that is now considered "past due".

In order to set the fee rate CDPHE must estimate the cost of the title V program and use the estimated billable tonnage to calculate a dollar per ton fee rate that will adequately cover the title V program. Once a fee rate is established that will be sufficient, the rate must be approved by the State Legislature and then adopted by the Colorado Air Quality Control Commission. EPA believes that CDPHE's fee structure meets the regulatory requirements of §70.9 for fee determination and certification. However, as will be discussed below, while this fee structure meets the requirements for current staffing levels, EPA has concern that this structure may need to be examined in order to meet the future demands and requirements of the Title V Program Unit.

FILE REVIEW

The following files were reviewed in detail:

Title V Permit Reviews	
Company Name	Permit Number
Sterling Energy Company – Yenter Gas Plant	05OPLO105
Front Range Landfill	97OPWE188
Shafer Commercial Seating	95OPDE077

All permit files were complete and it was easy to follow the historical progression of modifications to each facility. Each significant modification was accompanied by detailed engineer's notes or a Technical Review Document indicating the methodology, calculations, and engineering assumptions used to determine the final permitting action.

All examples of CDPHE title V permitting appeared to incorporate all provisions required by 40 CFR 70.6 and corresponding Colorado rules for permit content.

As noted by EPA during the Second Round program review, sources are only required to resubmit those portions of the original applications that required a change or modification when submitting an application to renew. While this practice assures that only pertinent documents are submitted to the agency, it has the potential to create confusion during the renewal process. CDPHE does mitigate this potential by assuring that the same permit engineer is responsible for all aspects of permitting an individual source and, therefore, is very familiar with a source's current operations.

There were a few concerns noted by EPA during the file review process, as discussed below.

While each source file reviewed was determined to be complete, not all information was kept in the same location. For example, the current permit application was not kept with the associated current title V operating permit. This could create difficulty for the public in reviewing the most current history for a particular facility and determining if the current title V permit incorporates all approved activities currently occurring at that particular facility.

In addition, individual files did not appear to have the most current facility related data within their file. For example, while the file for Shafer Commercial Seating did have APENs from the year 2006, it appeared that Shaffer should have submitted current APENs by March 2011.

There did not appear to be any notation regarding whether or not these APENs have been submitted by Shaffer.

Finally, CDPHE appears to be currently having difficulty in meeting the regulatory requirements for issuing title V permits. As stated during the Third Round program review and reported on their answers to the review questionnaire, CDPHE is currently issuing only 2% of initial title V permits with the timeframe specified in 40 CFR 70.7(a)(2). CDPHE is only issuing 19% of significant permit modifications under the 18 month time frame required under 40 CFR 70.7(a)(2) and 14% of significant permit modifications under the 9 month time frame required under 40 CFR 70.7(e)(4)(ii). Further, one percent of the title V permits issued by CDPHE expired when the Division failed to issue the renewal permit prior to the permit expiration date, and the source failed to submit a timely and complete renewal permit application and was not granted the application shield. Twenty three percent of the title V permits continue to operate under extended terms when the application shield is granted and CDPHE does not issue the renewal prior to the permit expiration date.

While CDPHE has stated that they are “fully staffed” under its existing organization structure, CDPHE states that the title V operating permit unit is understaffed to meet the required regulatory timeframes. In addition to title V permitting requirements, CDPHE staff is also required to respond an increasing amount of public comments prior to permit issuance and has to dedicate time and resources to responding to title V petitions and associated Administrative Orders after permit issuance.

As the public has become more educated of air quality concerns, they have become more involved in the title V permitting process. This involvement has increased the requirements of staff time and resources. While CDPHE has previously maintained sufficient staffing levels to meet its regulatory requirements on issuing timely and complete title V air permits, it appears that staffing level is no longer sufficient to meet current demands.

The most significant concern to arise from this program review is the number of sources that are not receiving timely issued title V permits. This includes initial permit issuance to new sources and renewal of title V operating permits to existing sources. A current and accurate title V operating permit is the best mechanism for a source to know its air pollution control requirements and to keep the public informed of current allowable activities at a permitted facility.

EPA encourages CDPHE to take measures it deems necessary in order to improve this rate of timely permit issuance. While the current fee structure appears adequate to meet previous title V permitting staff needs, it appears this structure may need to be reexamined in order to appropriately fund the needed staff to meet the division’s increasing permitting workload.

UPDATE ON SECOND ROUND CONCERNS IDENTIFIED BY EPA

In the second round program evaluation, conducted in 2008, it was noted that a mechanism seemed to be in place that would alert title V permit writers to EJ issues that might exist. CDPHE is currently monitoring the developments associated with EPA’s Plan EJ 2014 and will evaluate if the tools and requirements of that final plan could be implemented in the Colorado title V program.

In addition, CDPHE has actively engaged with members of the Pueblo community, including Pueblo Environmental Stakeholders, to discuss air quality related issues within the Pueblo community. These efforts have led to a number of informational meetings in Pueblo that addressed topics such as air permitting and enforcement processes, mercury emissions from the Pueblo region’s large industrial sources, and overviews of particular permitting actions of interest in the Pueblo region. CDPHE believes these efforts have increased the community’s understanding and allowed meaningful access to the permitting process.

CONCLUSION

In conclusion, CDPHE implements an effective title V program that continues to evolve as challenges arise. During the permit file reviews all the standard language contained in the nationally developed checklist were found in each permit. Additionally, CDPHE permits show continuous improvements across all aspects of the permit language and issuance process. CDPHE continues to have an excellent level of communication with EPA staff to address issues in proposed permits. The title V fee review demonstrates CDPHE's ability to continue to operate a program that meets the fee requirements of Part 70. CDPHE's title V program continues to meet the requirements of Part 70 regulation and no deficiencies were discovered during this review. However, EPA has provided the suggestions in this report for possible areas that could continue to be improved.

