

**The Environmental Protection Agency's (EPA) Re-evaluation of the United States Virgin Islands Department of Planning and Natural Resources' (DPNR) Title V Program
July 25/26, 2007**

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**Virgin Islands Department of Planning and Natural Resources (DPNR)
Title V Program Re-evaluation**

I. Introduction

As part of EPA's oversight responsibilities, EPA Region 2 staff conducted a program review and re-evaluation of the Virgin Islands' federally approved Title V program. This re-evaluation was conducted by EPA Region 2 staff in July 2007 and focused on the Title V Program implementation in the last four years. EPA evaluated air permitting and enforcement files, and conducted management and staff interviews. The Region also identified DPNR's program successes and deficiencies. This report summarizes items discovered during EPA Region 2's review and evaluation of the Virgin Islands' approved Title V program, which is administered and enforced by the DPNR. Virgin Islands' program covers ten sources. The DPNR had issued permits to six sources as of the date of this review. However, all the six permits were issued by late 2004 and as such no significant permitting activity was conducted since the Program evaluation in late 2003. The DPNR is currently working on issuing the last four Title V permits.

II. Executive Summary

Overview-

The purpose of this re-evaluation was to analyze how the VI Program is implemented and whether deficiencies discovered during the initial evaluation have been addressed. In addition, the purpose of the Region's review was to determine whether the Virgin Islands is complying with the 40 C.F.R. Part 70 requirements and Title V of the federal Clean Air Act ("the Act") with respect to administration and enforcement of Virgin Islands' approved Title V program, or if not, is taking corrective action to do so. The Region reviewed and evaluated the Virgin Islands' administration and enforcement of the program against the requirements of 40 C.F.R. Part 70. The details of the review are included in this report. EPA's analysis is based on the discussions with the DPNR's management and staff and file/report reviews. As part of this evaluation the DPNR provided information related to files/permits, financial records and small business activities. EPA's re-evaluation preliminarily concludes that the DPNR's Small Business Program continues to meet its obligations while the core Title V Program is found to have serious deficiencies. The following is Region 2's analyses of the Virgin Islands' Title V program.

Program Deficiencies:

Permit Expertise: The staff's lack of expertise in evaluating a Title V application and developing a comprehensive permit was shown as an area of serious concern in our 2003 evaluation. The DPNR subsequently committed to address this issue and provided a basic permit writing training to the staff but we found that there is no further progress on this issue. DPNR management itself indicated to EPA that the staff is not ready and still lacks such an expertise.

Permit Issuance: There is very limited permitting activity since 2004. VI issued six Title V Permits by 2004, however, it has failed to issue an initial permit to HOVENSA for almost 10

years. In addition, addressing the initial permitting requirements for the landfills and incinerators has just begun by the DPNR.

Permit Files: Although permit files were organized, all the source files lacked many critical documents. For example, we could not locate annual compliance certificates for most of the facilities. As stated in the 2003 evaluation, all the permits lack a “Statement of Basis”.

Permit Fees/Expenses: Although, DPNR collects emission fees every year, it is not done in a timely fashion. There is a computerized tracking system for the revenue and expenses, the DPNR also has a Program budget but the output may not justify such a budget.

Permit Compliance: The DPNR has not conducted a single full compliance inspection of a Title V source in the last four years. There were a limited number of partial compliance inspections conducted, however, they were not followed through with any action. EPA’s separate Enforcement Audit also revealed this issue and its report will provide further detail on this and similar issues.

Recommendations:

It is essential for the management to make a commitment for the success of this Program and develop accountability procedures. In order to bring the Program to a basic acceptability level, we recommend that the DPNR’s action plan should specifically include 1) the activities/plans for empowering the DPNR staff with technical expertise (self-learning, on-the-job training, sister-state assistance, internet courses, outside training etc.); 2) detailed schedule for the issuance of HOVENSA and the remaining three initial Title V permits, Statement of Basis; 3) detailed permit compliance/inspection schedule and the annual certifications tracking chart; 4) a permit fee collection schedule, fee vs. emissions trend reports and, 5) an internal audit of the Title V Program’s revenue, expenses and the output activities. The other suggested areas for Program enhancement include making the permit available on the internet, tracking visitors on the web, developing minor/major source inventory, making a one-step process for fee collection and developing VI specific Small Business Program brochures. It should also be noted that the role of the Small Business Program should be limited to providing compliance assistance to the sources. If the compliance assistance visits are used to determine compliance with the regulations, the Small Businesses may be discouraged from seeking any assistance from this program and would defeat the purpose for the Small Business Program envisioned under the Clean Air Act.

III. Focus of the Evaluation and possible outcome:

This program review focused on two questions:

- (1) Is the Virgin Islands administering its permitting program consistent with the requirements of 40 C.F.R. Part 70?
- (2) Is the Virgin Islands adequately enforcing its permitting program consistent with the requirements of 40 C.F.R. Part 70?

In terms of possible outcomes, the EPA may withdraw a state agency's (or in this case the Virgin Islands') program approval in whole or in part whenever the approved program no longer complies with the Federal requirements and the permitting authority fails to take corrective action. The Region identified several issues of significance that could lead to a formal determination of program deficiency. If EPA makes a formal deficiency determination, it publishes an NOD in the Federal Register, notifying the state of the determination and the corrective actions required. The state must correct the deficiency within eighteen (18) months or face the imposition of sanctions in accordance with section 502(i)(2) of the Act, 42 U.S.C. § 7661a(i)(2). EPA must withdraw the program approval and then promulgate a federal operating permits program if the state has failed to correct the deficiency pursuant to Section 502(i)(4) of the Act within two years. It is not the Region's goal to implement this program in the Virgin Islands but to ensure that the DPNR issues all permits expeditiously, issues permits that meet all Virgin Islands and Federal requirements and enforces these permits. If, however, EPA withdraws program approval, EPA will issue Title V permits and enforce the Title V program. Moreover, EPA has the discretionary authority to apply the sanctions, withdraw program approval, and promulgate a federal program if the state has failed to take significant action within ninety (90) days, under Section 502(i)(1) of the Act and the implementing regulations found at 40 C.F.R. § 70.10(b)(2).

IV. Re-evaluation of Virgin Islands' Title V Program

On July 25 and 26, 2007, staff from the Division of Environmental Planning and Protection and the Caribbean Environmental Protection Division conducted an onsite review of VI's Title V air permitting program. Prior to the onsite visit, regional staff reviewed in-house state agency documents and files, including public notices, and permits. The Region sent the agenda topics for the Title V program review in advance to the DPNR.

VIDPNR- Organization

The Virgin Islands Department of Environmental Protection (VIDEP) is part of the VI Department of Planning and Natural Resources. The air related issues are handled by VIDEP's Air Quality Management and Air Pollution Control sections. The Air Pollution Control section is responsible for minor and major source permitting and enforcement whereas the Air Quality Management section is responsible for all the air monitoring activities on the island. The DPNR is headed by the Commissioner to whom the DEP Director reports. The Air Quality management (3 FTE) and the Air Pollution Control chiefs (6 FTE) report to the DEP Director. The DEP plans to hire 2 more FTEs in near future with a goal to have one staff member per one Title V facility. Note that the ratio of one FTE per facility is much higher than normally a State would have for this program.

VI Title V Permitting Status

The Region evaluated DPNR's permitting status and expertise in evaluating on Title V air permit applications by reviewing information regarding the number of sources permitted, those which still need an initial Title V permit and the training activities. The Region's review relied on

information from the state's air permit chart, quarterly input for the Title V Operating Permits System, and staff interviews. Based on this information, EPA concludes that the DPNR continues to have a backlog in issuance of initial Title V permits.

Virgin Islands began this program with a potential Title V universe consisting of 10 sources¹. The DPNR subsequently removed two sources from the universe of the ten potential sources affected by this program. As of the issuance of EPA's first evaluation report in mid 2004, VI had issued four final permits and was working on four draft permits. VI subsequently issued two additional final permits, however, there is no progress on any remaining initial permit applications. The facilities that still need initial permits include HOVENSA which submitted its initial application in 1997. It should be noted that in 2002 DPNR committed to issuing all remaining permits by December 2003.

In 2002, the DPNR hired a contractor to review applications and draft permits to remedy some of the delays. The DPNR still could not issue all permits in a timely manner because of a lack of contractor oversight. EPA was informed that another contractor that was hired to develop the HOVENSA Title V permit will continue to provide assistance in preparing all the permits. The following Table lists all potential Title V sources and the status of their applications.

Potential Title V Source in the Virgin Islands	Status as of July 2007	Permit Renewal
Buccaneer Hotel	Final Permit--May 2003	May 2008
Wyndham Sugar Bay Resort	Final Permit- May 2003	May 2008
VIWAPA St. Croix	Final Permit- December 2003	Dec 2008
VIWAPA St. Thomas	Final Permit- December 2003	Dec 2008
VIWAPA St. John	Final Permit- April 2005	Apr 2010
DIVI Resorts	Final Permit- Apr 2005	Apr 2010
HOVENSA	Draft Permit- 2002- Plans to reissue the draft permit by Nov 2007 and final permit by Feb 2008	
Frechmen's Marriot	No longer a Title V- powered by grid	
St. Croix Alumina	Bought by St. Croix Renaissance Park- new application received January 2007- Application incomplete	
Bovoni Landfill- STT	No application received	
Anguila landfill- STX	No application received	

¹Information in this section regarding the Title V universe in Virgin Islands was obtained from the DPNR Title V air permitting staff. This information is provided by DPNR to the Region on a quarterly basis and is inputted into the Title V Operating Permits System.

Susan Berg- STJ	Applicability to be verified	
Roy Schneider Hospital	Application received- may not be a Title V source- Incinerator disconnected but not dismantled	
Juan Lewis Hospital	Incinerator dismantled and removed	
Port Authority	Applicability to be verified	

The DPNR also issues permits to minor sources. The DPNR informed EPA that there are about 300 minor sources, however, the Enforcement Evaluation revealed that there are about 100 minor sources. It is therefore recommended that the DPNR develop a minor source inventory and track the permitting status. EPA notes that the VI charges \$50 for each Construction and Operating Permit it issues to a minor source.

VI Title V Staff

The Title V Program is implemented by the Air Pollution Control section within the DEP. It also handles minor source permitting all air enforcement activities. This section is headed by a Supervisor who oversees 6 staff members (3 in St. Croix and 3 in St. Thomas). There is an attorney who assists in enforcement matters. DPNR had provided a basic permit writing training to four staff members in the last four years, however, its staff still lacks permitting expertise. There is no one at the DPNR who can handle the Title V permitting independently. This issue was also brought to the DPNR's attention during the 2003 evaluation. It should be noted that the 2003 evaluation identified a serious concern that the Virgin Islands was not in a position to act in a timely way on Title V permit renewals. Although, no renewal is due until 2008, EPA is concerned that the renewal process may also be delayed if the DPNR does not take steps now to increase the expertise of its permitting staff.

VI Title V Enforcement

As part of EPA's oversight of Virgin Islands' approved Title V program, Region 2 also evaluated the DPNR's Title V enforcement program. Note that a comprehensive review of the Enforcement Program was conducted by EPA in December 2006, the review for this report focused only on the activities related to Title V permits. Based on EPA's discussions and the file reviews it was determined that the DPNR staff has not conducted a single full inspection of a Title V facility nor has it taken any enforcement action based on limited partial inspections in the last four years. The DPNR never reviewed a few of the Compliance Certifications that were received and never followed up with the facilities that failed to submit such a certification. Thus, in the area of compliance and enforcement also, the DPNR has not developed any expertise.

VI Title V Fees/Expenses

The Federal requirements regarding Title V fee adequacy are found in 40 C.F.R. Part 70 section 70.9. The provisions in Part 70 require that the state program require Part 70 sources to pay a fee sufficient to cover the permit program costs (direct and indirect). Further, states can

only use Title V fee revenues for Title V program costs. The purpose of this reevaluation was to verify that there were procedures still in place for the receipt, separation, expenditure, and adequacy of the Virgin Islands' Title V funds. All specific answers and documentation were provided either during the onsite review or when additional requests were made.

EPA Region 2 conducted a preliminary review of the DPNR's Title V fee structure to find out if there is any change since the 2003 evaluation. The one major change to the fee structure is that the fee was raised from \$18 per ton to \$50 per ton since 2006. EPA Region 2 was able to verify that Title V fees are being calculated in accordance with the DPNR Title V fee regulation.. The DPNR's invoices are maintained by company (facility), invoice number, and the total amount billed. The DPNR sends a letter to a source asking for fuel use and other relevant data. When the DPNR receives these data, it calculates the fees and send out a remittance notice. Although, all the facilities pay the fees due, the DPNR does not appear to send out remittance notices on a timely basis. Further, EPA does not see a need for a two-step process to collect the fees. A Title V facility should be able to estimate the emissions and submit the fees at the same time. The DPNR needs to review EPA's Part 71 fee forms for any guidance on how such a step is feasible. Payments are received and recorded by facility name and invoice number. The DPNR charges late fee and some facilities are consistently late in paying the fees. The DPNR does not charge any other fee to a Title V facility.

The DPNR provided Accounts Receivable/Expenditure listings for fiscal year FY2006 and other financial data for the Title V program. Based on EPA's initial review of this information, specific concerns are listed below:

FY 2006:

1. The VIDPNR's letter dated, June 22, 2007, states that "In 2006, the total revenue collected was \$1,442,899.80 (\$147,168.00 in April 2006 and \$1,295,731.80 in October 2006". However, the source documentation revealed that VIDPNR received \$1,295,731.80 in 2005. There seems to be inconsistencies in the way the DPNR is recording the revenues and expenditures since the letter stipulates on a calendar year basis and the source documentation revealed a fiscal year basis. This situation applies to all fiscal years that were reviewed.
2. An analysis was conducted which revealed that for CY 2006, the revenue increased by 71% and the expenses increased by 54%, when compared to CY 2005. It is unclear why the stated amounts increased by such percentage. Specifically, the equipment for FY 2006 increased by \$529,346 (FY 2006 Equipment totaling \$548,637 less FY 2005 Equipment totaling \$19,291).

FY 2005:

1. The data is unusual since the revenues and the expenditures are the same. Historical trends have shown that the majority of the times, no entity has expended the same as what was collected as revenue.

FY 2004:

1. It was found that an invoice covering years 2003 through 2005 was sent to Wyndham Sugar Bay Resort on June July 17, 2006 which revealed that the facility was not billed on a timely basis. A review of DPNR's billing and collection business processes should be conducted.

In order to test VIDPNR's efficiencies and compliance in administering the Title V Program, an internal financial audit is recommended. EPA further suggests that an adequate sample size be selected for revenues and expenditures. Specifically, for the revenue portion, as a minimum, the following should be covered: i) how the revenues are arrived at, ii) the date the facilities were billed, and iii) when the checks were received. For the expenditure portion, the following should be covered: i) it is critical to trace the expenses to the source documentation to determine if the expenses are allowable and allocable to the Title V Program. In addition, the DPNR must use their established reporting period which is the fiscal year not calendar year.

VI Small Business Program

The Small Business Environmental Assistance Program (SBEAP) is headed by the VI Small Business Ombudsman recently appointed by the Governor. This program has five staff members who cover all the islands. They are actively engaged in providing the services in the areas of administration, environmental compliance, rule development liaison via workshops and on-site assessment to about 5000 small businesses on the three Islands. The SBEAP has a budget of about \$200,000 and is entirely funded by the Title V program. The SBEAP develops and maintains a database of about 5000 small businesses on the islands. In 2006, the SBEAP visited 94 auto repair shops, 2 bakeries, 5 gasoline stations, 3 welding shops etc. to provide technical assistance. Further, the SBEAP provided 1500 manuals, fact sheets etc. to the businesses, participated in about a dozen seminars, workshops and street events. The SBEAP also has a web site and keeps updating the site to provide regular information. Based on the discussions with the DPNR and the review of the information SBEAP provided during this re-evaluation, EPA found that the SBEAP site assessment visit is also used to assess and issue a compliance report. The DPNR is reminded that the role of the Small Business Program should be limited to providing compliance assistance to the sources. If the compliance assistance visits are used to determine compliance with the regulations, the Small Businesses may be discouraged from seeking any assistance from this program and would defeat the purpose for the Small Business Program envisioned under the Clean Air Act. Note that except for the mingling of the compliance issues, Virgin Islands' Small Business Program is operating according the provisions of the rules and regulations.

VI Management/Staff Discussion

The DPNR management and the staff discussed how the Title V program be successfully implemented from now on. This is a new management that came on board a few months ago and as such determined to do what is necessary for the effective management of this program. It also plans to empower the staff in obtaining the technical expertise necessary for this program. The staff also expressed its interest in self-learning /training to implement the permitting program from application review to the enforcement of the permits. EPA also was informed that the management still needs to determine if the DPNR will hire a contractor during the permit renewal

cycle or have its staff fulfill those obligations.

VI Title V Facility Files

EPA reviewed four source files to determine if all the documents are available for the record. Although, the files were organized chronologically, many documents could not be located. For example, DIVI DIVI file lacked a completeness letter, draft Title V permit and compliance certificates. The Buccaneer and the Wyndham files lacked completeness letters, public notices and the compliance certificates. The VIWAPA St. Croix file contained most of the documents, however, even when a compliance certificate showed a possible violation, the DPNR did not take any follow-up action. It should be noted that the DPNR has now developed a filing/process chart for a Title V facility and intends to follow it up in future. This program requires that all the permit related records be maintained in order and all the documentation should be on file for the review.

V. Recommendations

It is essential for the management to make a commitment for the success of this Program and develop accountability procedures. In order to bring the Program to a basic acceptability level, we recommend that the DPNR's action plan should specifically include 1) the activities/plans for empowering the DPNR staff with technical expertise (self-learning, on-the-job training, sister-state assistance, internet courses, outside training etc.); 2) detailed schedule for the issuance of HOVENSA and the remaining three initial Title V permits, Statement of Basis; 3) detailed permit compliance/inspection schedule and the annual certifications tracking chart; 4) a permit fee collection schedule, fee vs. emissions trend reports and, 5) an internal audit of the Title V Program's revenue, expenses and the output activities. The other suggested areas for Program enhancement include making the permit available on the internet, tracking visitors on the web, developing minor/major source inventory, making a one-step process for fee collection and developing VI specific Small Business Program brochures.