



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
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JAN 10 2017

Ms. Cecily M. Beall, Associate Director  
District of Columbia Department of  
Energy & Environment  
Air Quality Division  
1200 First Street, NE, 5<sup>th</sup> Floor  
Washington, DC 20002

Dear Ms. Beall:

Enclosed is the final report for the Title V operating permits program evaluation conducted by my staff on September 19 and 20, 2016. I would like to thank you and your staff for the cooperation and support given to my staff in conducting the evaluation, and I look forward to our continued collaboration.

If you have any questions or concerns, please do not hesitate to contact me at 215 814-2178 or [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Cristina Fernandez".

Cristina Fernandez, Director  
Air Protection Division

Enclosure





## District of Columbia Title V Program Evaluation – September 19 - 20, 2016

### **I. Introduction**

On September 19-20, 2016, the U.S. Environmental Protection Agency (EPA) conducted an evaluation of the District of Columbia's (DC) approved Title V Operating Permits Program. Representatives from EPA Region III's Office of Permits and State Programs travelled to the Department of Energy and Environment's (DOEE) office located in DC. Present from EPA were David Campbell (Associate Director of the Office of Permits and State Programs (OPSP), David Talley, Amy Johansen, and Paul Wentworth, all from the OPSP. Present from DOEE were Stephen Ours (Air Quality Division Permitting Branch Chief) and Cecily Beall (Air Quality Division Associate Director). The evaluation was conducted as a part of EPA's routine oversight of state/local permitting activities. EPA thanks DOEE for their hospitality and cooperation.

### **II. Background**

EPA took final action to approve DOEE's title V program on April 16, 2003. Subsequent to that approval, EPA conducted two title V program evaluations to assess DOEE's overall implementation of the program, and to identify organizational strengths, as well as areas in which some improvement could be made. Those evaluations were conducted in 2005 and 2009. Upon completion of the 2009 title V program evaluation, EPA recommended improvements in various program areas, which included the following: title V renewal permit backlog, concurrence process between permits and inspection staff, draft permit preparation, level of technical expertise among permitting staff, memorialization of standard operating procedures (SOPs), title V fee structure, staffing levels, permit reviews, and public comment periods.

### **III. Evaluation**

DOEE's title V program is well-established, and because EPA routinely reviews proposed title V permits which are submitted to EPA during the course of their regular issuance, EPA did not conduct a file review during this current evaluation. Rather, EPA and DOEE engaged in a focused dialogue about the following topics: title V permit preparation and content; monitoring and recordkeeping; public participation and outreach; permit issuance; compliance; resources and internal management support; implementation agreement; and, title V fees. The conversation addressed a number of specific program issues and the results of these discussions are outlined below.

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

##### **1. Improvements**

There are four permit writers in the Permitting Branch (one senior-level, two journeyman-level, and one newer hire). Each is assigned responsibility for a roster of title V permits. Most assignments are long-term relationships with the permit allocation list only varying slightly from

year to year as new facilities are identified, existing facilities close, staff turn-over occurs, etc. The assignments are made to the senior-level and experienced journeyman-level permit writers in approximately equal numbers. However, the senior-level staff member typically handles the more complex facilities. One facility is currently assigned to the entry-level staff member as an opportunity to develop expertise. A small number of facilities are handled directly by the Permitting Branch Chief. In addition to DOEE staff, a contractor has been providing support since 2013. New facilities are assigned based on staff workload, staff experience levels with that type of facility, and facility complexity. The Permitting Branch Chief meets monthly with the individual permit writers to go over their permit development priorities and any outstanding issues. He also convenes a monthly staff meeting.

Prior to Mr. Ours' assumption of his duties as the Permitting Branch Chief in December 2007, the quality of DOEE's permits were of such concern that the DC Attorney General's Office halted issuance of a number of permits in order to allow DOEE to improve the efficiency of its permitting process and implement quality assurance measures. However, this cessation of permit issuance created a significant backlog of renewal permits. In 2009, the number of sources with active title V permits was 32. However, 26 of the 32 (81%) were so-called "extended" permits, meaning that while they remained fully enforceable, their 5-year term had expired. EPA's 2009 program evaluation report noted that although the completion of timely title V renewal permits remained an issue, DOEE was actively pursuing process improvements to increase the quality of their title V permits and to accelerate the issuance rate. In spite of DOEE's efforts, progress was slow and by 2011 the title V permit renewal backlog had increased to 96 percent. In recent years, the renewal backlog has decreased dramatically. Currently, DOEE's title V permit renewal backlog is 38 percent. A number of changes to DOEE's permitting program have contributed to this improvement. These changes, listed below, will be discussed in detail in the succeeding paragraphs:

- Revised permit format
- Direct engagement with the permit applicants
- Development of a "pre-notification" version of the permit for review by the applicant, EPA, and affected states
- Formal concurrent permit review and enhanced coordination with EPA
- On-going communication with the permit applicants
- Use of contractor support for permit development

First, the overhaul of the permit format initiated in 2009 has improved the clarity and quality of the issued permits. As previously noted, EPA routinely reviews the majority of DOEE's title V permits pursuant to 40 CFR 70.7(a)(v). Based on our title V permit reviews, the organizational structure and technical content of the permits has improved significantly.

Second, prior to developing the initial or renewal title V permit, DOEE's permit writers actively engage with the company through data gathering activities and, at times as appropriate, site visits to develop an accurate picture of the facility in terms of its emissions sources. As a result,

each permit writer more-fully understands what applicable requirements should be incorporated into the permit if it is an initial permit or what revisions to the permit need to occur during the renewal process.

Third, the practice of sending a pre-draft of the permit (i.e. "pre-notification" version) to the applicant prior to conducting the required public participation process and providing an opportunity for early feedback has been expanded to include EPA Region III. This "best practice" helps expedite permit issuance. If needed, DOEE prepares a response to comments (RTC) document addressing all significant comments and copies EPA on its responses. DOEE initiates a meeting/conference call with the commenter(s) when any comments are received. The Permitting Branch Chief generally participates in these engagements in order to provide quality control and consistency during permit drafting. Once consensus is achieved, a draft title V permit is issued and notification of the commencement of the public participation period is provided on DOEE's website, in the *District of Columbia Register*, and in the *Washington Times*. Affected states are notified of the draft permit as well.

The fourth item, formal concurrent review, was recommended by EPA in our 2009 evaluation as a "best practice." At the time of the 2009 evaluation, DOEE was, in all cases, processing a draft permit for 30-day public review, and then submitting a proposed permit to EPA for its 45-day review. This is referred to as "sequential review". Because most title V permits are not controversial or contentious, many permitting authorities have adopted a concurrent review process, whereby a draft/proposed permit is processed and subject to public participation and EPA review at the same time. If no significant comments are received on the permit from any interested parties and EPA does not object, the final permit can be issued at the end of EPA's 45-day review period. This can result in considerable time savings. DOEE has implemented concurrent review since the last evaluation. It has proven to be a meaningful process improvement, resulting in a modest reduction in permit issuance times. In addition to concurrent review, DOEE and EPA have developed a practice of on-going permit status consultation. On average, EPA and the Permitting Branch Chief confer twice a month to review permit status and to discuss permit-specific issues and more broad-based program implementation challenges. This frequent interaction has further assisted in streamlining the permit issuance process and has conveyed to DOEE EPA's commitment to improving issuance rates.

DOEE's most recent best practice is a follow-up meeting with the company after their permit has been issued to ensure that all terms and requirements in the permit are fully understood. These meetings are only held for certain facilities where DOEE believes that it would be of value. This on-going communication with the applicant is typically conducted as a site visit with the responsible company officials and the appropriate DOEE permitting and compliance employees. Essentially, DOEE walks company officials through their permit requirements and answers any questions they may have.

While the above practices have diminished the title V permit backlog, further improvements are necessary. DOEE now employs a contractor to help develop and issue permits. DOEE hired

the contractor in 2013. Early indications suggest that the use of a contractor has made a slight improvement to permit issuance rates. The contractor is also assisting with ensuring that applicants are providing adequate information in their permit renewal applications.

## 2. Opportunities for Further Improvement

In the 2009 report, it was discussed that documentation of internal title V procedures, policies, technical information, and references in the form of SOPs would improve the process for issuance of title V permits and help preserve institutional knowledge regarding these processes and policies. At that time, DOEE's intent was to develop a comprehensive reference guide of policies and procedures for use by the permit writers. DOEE took steps toward developing SOPs, but the more immediate need to reduce the permit backlog overshadowed the need to develop those SOPs. Consequently, no SOPs have been written. EPA believes the development of SOPs to be a "best practice," and again suggests that this may be an opportunity for improvement of DOEE's title V program. Recognizing the resource requirements to develop robust SOPs, DOEE could consider developing more concise and higher-level documents as an interim step.

Although the Permitting Branch Chief's intensive oversight of the permit development process adds necessary quality assurance benefits, it can at times create a bottleneck in the permitting process which may contribute to the issue of the permit renewal backlog. Measures should be pursued to increase initial draft permit quality and lessen the need for comprehensive intervention by the Permitting Branch Chief. EPA understands the challenge of balancing quality and timeliness and is eager to explore ways to assist DOEE strike the appropriate balance. Such measures as peer-to-peer draft permit review, permit-specific mentoring by the Permit Chief and/or EPA personnel, and additional training should be considered.

DOEE uses multiple tracking systems during its permit issuance process. Each tracking system was developed to serve reporting purposes tailored to the needs of specific individuals involved in the permitting process, both inside and outside the agency. The Permitting Branch Chief maintains a database to keep records of detailed permit-specific historical information, renewal dates, etc. Additionally, he maintains a separate system aimed specifically at tracking DOEE's efforts to reduce the permit backlog. A third system, developed with EPA, is used during periodic conference call discussions with EPA to report on permit issuance status. This system is something of a hybrid, incorporating data fields found in the other two systems. Finally, there is a simple overview spreadsheet which summarizes the status of the permitting activities of the permits team in terms of what stage each initial or renewal is in at the time, as well as providing a snapshot of the overall performance of the permit group. This is posted in-house on a bulletin board and is seen by the staff. During the EPA program review, the Permitting Branch Chief reported that he was considering combining some of these tracking systems. EPA agreed that eliminating redundant tracking systems would be beneficial and help streamline

the tracking process and reduce the oversight burden on the Permitting Branch Chief.<sup>1</sup> Further, it is suggested that DOEE seek opportunities to provide the permits group with additional administrative program support that could assist in this type of workflow tracking.

## **B. Monitoring and Record Keeping**

Federal and District regulations require that each title V permit contain sufficient monitoring to ensure compliance with each applicable requirement in the permit. The permitting agency should supply a rationale in the statement of basis (SOB) accompanying the permit that justifies the type of monitoring chosen. A similar process is followed for recordkeeping and reporting requirements.

Similar to the permit configurations of other permitting authorities, DOEE's permits are organized into discrete sections which include: (1) emission limits, (2) operational standards, (3) monitoring, (4) testing, (5) record keeping, and (6) reporting. DOEE permit writers determine what emission limits and/or operational standards apply to the particular source under permit consideration and then establish the appropriate monitoring, recordkeeping, and reporting requirements necessary to demonstrate compliance with those standards. To do this, the permit writers look for appropriate schemes that assure compliance with limits and or standards and remain consistent with other similar permits/facilities. DOEE indicated that they do not include the rationale for choosing specific monitoring to assure compliance with the relevant standard in the SOB. EPA suggests that adding this type of supportive analysis to the SOB will create a sounder record for the permit decision-making process. The analysis need not be exhaustive in all instances and "template" language can be developed to be used for similar circumstances.

DOEE's implementation of compliance assurance monitoring (CAM) was assessed. DOEE has very few title V facilities with CAM requirements. At this time, DOEE does not have a CAM application form. While they are planning to develop one in the future, they are concentrating on developing more pressing application forms. Based on DC's limited number of CAM sources, EPA sees the development of a CAM application as a lower priority for DOEE.

Finally, startup/shutdown/malfunction (SSM) emissions and associated monitoring have been an issue nationally. EPA issued a final rulemaking known as a "SIP Call" to address those State Implementation Plans (SIPs) which contained improper exclusions to emissions limitations during SSM periods. DOEE was included in this SIP Call and is evaluating the impact on their overall regulatory program and how it may also impact its permitting programs. DOEE has a particular concern regarding their existing opacity requirements. EPA will continue to work with DOEE on SSM-related challenges.

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<sup>1</sup> Since the time of the review, the Permitting Branch Chief has made some enhancements to the tracking system used with EPA and has reported that this allowed him to discontinue use of the separate tracking system used for updating DOEE management.

### **C. Public Participation and Outreach**

Public participation is a crucial component of any well-functioning title V permitting program. DOEE employs a number of methods for informing the public of opportunities to comment on draft title V permits. Permit information is published on DOEE's website. It is also published in the *District of Columbia Register* and a local newspaper, the *Washington Times*. DDOE's title V permits have not typically generated substantial public interest or controversy in DC; however, if interest arises, DOEE would schedule public hearings upon request. Parties interested in reviewing draft title V permits may do so in person or online on DOEE's website. Comments on draft permits may be submitted electronically, by mail, or in person in the case of a hearing. EPA commends DOEE for expanding public access, transparency and participation by making its permit-related documents available online.

### **D. Permit Issuance**

According to its most recent title V data report, DOEE reduced their backlog of renewal permits from 21 to 16 between July 1, 2015 and June 30, 2016. Additionally, DOEE issued two initial permits during this same period. This incremental improvement can be attributed to improved organizational stability; additional resources in the form of a contractor; and, a more intuitive permit format. While the downward trend is a positive outcome, considerably more improvement is necessary to diminish, and then eliminate the permit renewal backlog.

Additional challenges that can negatively impact the efficiency of the permit process include: pending revisions to underlying preconstruction permits, compliance/enforcement issues, frequent EPA rulemaking revisions and policy/guidance directives, incomplete permit applications, and competing internal priorities. According to the Permitting Branch Chief, the biggest external hurdles to timely permit processing originate from: revisions to underlying preconstruction permits; incomplete permit applications; and, frequent EPA rulemaking revisions such as the reciprocal internal combustion engine (RICE) rule revisions and the SSM SIP call.

EPA will continue to work to clearly communicate changes to EPA guidance and policy on a timely basis, providing capacity-building training as needed. With regard to incomplete permit applications, this is a challenge faced by most permitting authorities. The fact that DOEE spends a significant amount of time seeking information from the applicants is slowing permit processing, and thus is a limiting factor in allowing DOEE to align its outstanding permit renewal percentage more closely with its peer permitting authorities in EPA Region III, which is approximately 15 percent. A best practice employed by other permitting authorities with some success is the establishment of formal due dates for the provision of the identified additional application information. While DOEE currently employs this tactic, it is recommended that DDOE more consistently establish due dates and consider follow-up enforcement action as necessary.

On a limited basis, budget-driven travel restrictions have negatively impacted training participation.

### **G. Implementation Agreement**

Subsequent to EPA's initial approval of DOEE's title V program, EPA and DOEE discussed an "implementation agreement," which spelled out EPA's and DOEE's responsibilities and expectations for the cooperative implementation of title V in the District of Columbia. During recent title V program evaluations, EPA Region III has been discussing with permitting authorities the need to revise the existing agreements to incorporate "lessons learned" from 20+ years of shared implementation experience. EPA has pledged to develop a draft revised implementation agreement to begin the process of updating this important document.

### **H. Title V Fees**

Title V revenues have been decreasing nationwide because of improved source performance, more restrictive emissions requirements, and source closures. Additionally, many permitting authorities still rely on the presumptively approvable minimum fee structure that was established in the initial title V implementation regulations. DOEE's currently-approved program adopted EPA's "presumptive minimum" fee structure, which required owners or operators of title V sources located in the District to pay a base fee of \$25 (in 1989 dollars) per ton of regulated pollutant per year, to be adjusted annually by the increase in the Consumer Price Index. While DOEE's fee revenues are currently marginally sufficient to staff and implement its title V operating permit program and associated implementation activities, DOEE, like many permitting authorities is experiencing diminishing fee revenues due in part to the success of title V and other Clean Air Act programs that have led to meaningful reductions in air emissions. DOEE is commended for being proactive in attempting to maintain adequate title V revenue to sustain its title V program.

DOEE is poised to propose revisions to its title V regulations and in the process will revise their title V fee structure. The draft revisions, if adopted, will enable DOEE to collect application fees and annual emissions-based operating fees from both major and minor sources permitted in the District. The addition of permit application fees and the flexibility to collect emissions fees from minor sources should strengthen the overall permit program's resource base and provide longer-term sustainability that is more resilient to decreases in emissions and source closures. EPA supports these changes and has been working closely with DOEE on these proposed regulatory provisions and will continue to support the District's efforts to maintain adequate resources to implement its title V operating permit program.

## **E. Compliance**

While DOEE maintains separate permitting and enforcement programs, permitting and enforcement staff have performed combined compliance assistance visits related to title V responsibilities. In rare cases, the permitting group may take the lead in developing an enforcement action. As far as the impact of compliance issues on the timeliness of title V permitting actions is concerned, there are situations when compliance issues must be resolved prior to permit issuance. Permit issuance may be delayed depending on the issue. For example, issuance of the title V permit may be delayed due to the applicant's failure to obtain the necessary preconstruction permits. There have also been occasions where permit writers have issued NOVs for failure to obtain an operating or construction permit. Also, both inspectors and permit writers have discovered a number of facilities which did not appropriately identify its insignificant emission sources.

Regarding the coordination of consent decrees (CDs) with the title V permit, DOEE deals with very few CDs. Most CDs have a provision to modify the title V permit to incorporate the provisions in the CD, such as requirements to operate a control device to comply with the CD requirements.

## **F. Resources and Internal Management Support**

DOEE's current title V permit team consists of the Permitting Branch Chief and four permit writers. DOEE has also used a team of contractors on a temporary basis. The contractor was engaged in the second part of 2013 and assumed the lead responsibility for a subset of facilities in much the same manner as the staff permit writers. Staff permit writers review the work products of the contractor as does the Permitting Branch Chief. The contractor has provided additional support in terms of obtaining all of the necessary information from applicants in order to begin the permit drafting process. It is fair to suggest that modest improvements have been realized with the addition of the contractor. Objectively, EPA would strongly suggest that DOEE evaluate the cost efficacy and return on investment provided by the contractor's services.

While the Permitting Branch Chief believes current staffing levels are adequate to continue the trend of improving issuance rates, EPA feels additional resources could further accelerate those rates. It is recommended that DOEE evaluate securing additional programmatic and administrative support for its title V permit program. A part-time/full-time support person could act as a permit process manager responsible for tracking permit status and workflow, as well as other program implementation-related administrative tasks. It is expected that this type of support would provide the technical staff greater time to focus on the more substantive activities related to permit development and relieve some of the Permitting Branch Chief's current administrative burden.

Access to training by DOEE permitting staff has generally not been problematic. DOEE has been supportive of staff training, particularly if it is identified in the staff's individual training plan.

## **IV. Conclusions**

EPA again thanks DOEE for their hospitality and cooperation in conducting this evaluation. While no fundamental or structural program deficiencies were identified during the evaluation, EPA remains concerned that permit renewal rates are not accelerating at a sufficient pace. This represents an area in need of considerable attention and resources by DOEE.

Below, EPA identified best practices employed by DOEE. Also enumerated are number of areas DOEE should improve its oversight and implementation of its title V permit program. Finally, we provide a number of recommendations that may improve permit program implementation.

### **A. Best Practices by DOEE**

- Regular interactions with individual staff permit writers to assess permit issuance status and establishing priority for renewal permit issuance.
- Proactive interaction between DOEE, the applicant, EPA and other interested parties both informally and formally through the “pre-notification” process. Also, post-permit issuance meetings with applicants have increased their understanding of their obligations under the permit.
- Routine engagement with EPA to discuss permit issuance status and broader program implementation challenges.
- Posting of permit documents on-line has broadened community engagement.

### **B. Areas for Improvement**

- Renewal permit backlog has improved but remains unacceptably high.
- Permit-specific intervention by Permitting Branch Chief. While such efforts provide important quality control benefits it impacts permit issuance timeliness. Peer-to-peer draft permit review, permit-specific mentoring by the Permit Chief and/or EPA personnel, and additional training should be considered.
- Permit workflow management. Permit application completeness and applicant follow-up as well as permit status tracking would benefit from additional administrative and program support.

### **C. Recommended Actions**

- Modify the Statement of Basis (SOB) to include a monitoring rationale section.

- Consider documentation of internal title V procedures, policies, technical information, and references in the form of SOPs, to improve the process for issuance of title V permits.
- Evaluate the overall efficacy of the contractor support.
- Continue to pursue a restructuring of DOEE's permit fee program.

#### **V. Follow-up**

- EPA will continue to regularly engage DOEE management regarding permit issuance status and overall program implementation.
- EPA will continue its practice of reviewing pre-notification permits as expeditiously as practicable and make every effort to streamline its formal permit review process in order to enable timely issuance of final permits by DOEE.
- EPA will provide additional support regarding implementation of responsive measures to the SSM SIP call.
- EPA will provide timely support on emerging and new permit program-related regulations, guidance and policy objectives.
- EPA will work with DOEE to develop a revised title V implementation agreement and will assist, as needed, in developing SOPs to address the title V permitting processes.
- EPA will continue to provide support as DOEE pursues changes to its permit fee program and related changes to its overall permit program regulatory infrastructure.