



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

**SENT VIA ELECTRONIC MAIL**

October 14, 2021

Joanne Morin  
Deputy Director, Air and Climate Division  
Massachusetts Department of Environmental Protection  
One Winter Street, 6<sup>th</sup> Floor  
Boston, MA 02108  
[joanne.o.morin@state.ma.us](mailto:joanne.o.morin@state.ma.us)

Dear Ms. Morin:

Title V of the Clean Air Act, as amended in November of 1990, requires each state to develop and implement an operating permit program for stationary sources of air pollutants. As provided for in 40 CFR 70.10, and as a continued part of the EPA's obligation to oversee and review title V programs, the EPA conducted a virtual program review of Massachusetts's title V operating permit program on August 17, 2021.

Enclosed please find EPA's results from our recent review. We appreciate the time and effort in providing the Commonwealth's responses to our inquiries prior to the evaluation. The EPA is pleased with Massachusetts's implementation and continued efforts in making improvements to the Commonwealth's operating permit program. As discussed in the enclosed report, EPA's program evaluation identified two areas for improvement:

- MassDEP's annual fee revenue is not sufficient to cover the cost of implementing the Commonwealth's title V operating permit program. EPA is requesting MassDEP develop an action plan for review by March 31, 2022 to outline the necessary steps and provide milestone target dates to increase title V fee revenue.; and
- The existing renewal backlog is a significant portion of the Commonwealth's title V operating permit source universe. EPA appreciates MassDEP's progress on reducing the Commonwealth's title V operating permit backlog to date, however, continued progress is necessary. EPA is requesting MassDEP develop a plan by March 31, 2022 to sustain backlog reductions by 5-10% annually.

We are available to assist MassDEP with addressing program challenges that were identified during the program evaluation. The EPA looks forward to continuing to work with you in implementing the title V operating permit program. If you have any questions, please call me at (617) 918-1287 or Eric Wortman at (617) 918-1624.

Sincerely,

**PATRICK BIRD**

Digitally signed by PATRICK  
BIRD  
Date: 2021.10.14 11:28:46  
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Patrick Bird, Manager  
Air Permits, Toxics, and Indoor Programs Branch

Enclosure

cc: Glenn Keith, MassDEP (via email)  
Yi Tian, MassDEP (via email)

# 2021 EPA Region 1 Title V Operating Permit Program Evaluation

## Massachusetts Department of Environmental Protection

Participating in the program evaluation were:

Patrick Bird, US EPA Region 1  
Eric Wortman, US EPA Region 1  
Glenn Keith, MassDEP  
Joanne Morin, MassDEP  
Marc Simpson, MassDEP  
Thomas Hannah, MassDEP  
Thomas Cushing, MassDEP  
Edward Braczyk, MassDEP  
Yi Tian, MassDEP

The following sections contain the Massachusetts Department of Environmental Protection's (MassDEP) responses to EPA questions received on August 2, 2021 and the addendum received on August 17, 2021. Where specific findings or commitments were made during the program review conducted on August 17, 2021, EPA has provided an additional response.<sup>1</sup>

### I. Resources & Internal Management Support

1. Has your agency re-organized or made changes to address title V operating permit issuance since the last program evaluation in 2015?<sup>2</sup>

*MassDEP Response:* MassDEP has not made any significant changes to the title V permit program. MassDEP has implemented an electronic permit system (EEA ePLACE Portal <https://eplace.eea.mass.gov/citizenaccess/Default.aspx>) and a companion public portal (EEA ePlace Public Access Portal <https://eeaonline.eea.state.ma.us/EEA/PublicApp/>) for submitting and sharing all of its air permits, including title V applications and approvals. The Public Access Portal provides public access to all applications, public notices, public comments, and final approvals.

2. Has your agency made any revisions to their title V regulations since the last program evaluation?

*MassDEP Response:* On March 9, 2018 MassDEP amended its title V program regulations at 310 CMR 7.00 Appendix C as follows:

- Consistent with the June 23, 2014, the U.S. Supreme Court decision in *Utility Air Regulatory Group v. EPA*, removed the GHG Tailoring Rule threshold from the Operating Permit Regulations.

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<sup>1</sup> EPA conducted a virtual program review via a video-call due to the COVID-19 pandemic.

<sup>2</sup> The last program evaluation for Massachusetts was completed in July 2015. See letter from Ida E. McDonnell, Manager Air Permit, Toxics, and Indoor Programs Unit, USEPA Region 1 to Glenn Keith, Deputy Director, Division of Air & Climate, dated September 24, 2015.

- Clarified that potential emissions from “insignificant activities” must be considered in major source applicability determinations, and removed lab hoods at commercial laboratories from the list of “insignificant activities.”
- Removed the requirement for public notice in newspapers, and defined web-based and mailing list requirements.

On March 20, 2020 MassDEP amended its title V program regulations at 310 CMR 7.00 Appendix C as follows:

- Replaced the requirement for newspaper publication with electronic publication of notices of public hearings and comment periods on draft title V permit decisions.
- Allowed implementation of operational changes MassDEP has approved in a permit modification prior to modifying a facility’s operating permit, provided such operation is not prohibited by the operating permit.

a. If yes, have these revisions been submitted to EPA for approval?

*MassDEP Response:* No, but MassDEP intends to submit these amendments to EPA for approval into the title V state plan.

*EPA Response:* The EPA notes that there are minor discrepancies between the Commonwealth’s current rules and the approved title V operating permit program. Upon completion of planned upcoming regulatory amendments, MassDEP should submit a comprehensive package of the changes to the title V operating permit program to EPA for review and approval. EPA is available to work with MassDEP on a draft package for submittal.

3. Are there any competing resource priorities for your “title V” staff in issuing title V operating permits?

*MassDEP Response:* In general, MassDEP staff are not assigned exclusively to work on title V permits so must also work on other air permits, which can be a higher priority depending on the application.

a. If yes, please describe.

*MassDEP Response:* MassDEP air permitting staff process applications for limited plan approvals, non-major comprehensive plan approvals, major comprehensive plan approvals, title V permits, as well as other types of air approvals. In particular, the non-title V air permits have regulatory permit review timelines that must be met based on fees paid by applicants. The air permit staff also spend time on air quality complaints and compliance and enforcement activities.

*EPA Response:* This allocation of staff resources between title V operating permits and other state-issued air permits is common among New England state air permitting

programs. EPA stresses the need for accounting of staff time between these programs to ensure a complete and accurate total of time devoted to operating permit activities.

4. Overall, what is the biggest internal roadblock to permit issuance from the perspective of resources and internal management support?

*MassDEP Response:* Limited air permit staff resources affect MassDEP's ability to issue title V permits in a timely way. Staff must prioritize permit applications for new and modified facilities because these permits have review deadlines and directly affect air quality and economic development.

*EPA Response:* According to the July 31, 2021 Title V Operating Permits (TOPS) data report, MassDEP has 66 permit applications for renewal permits for facilities with active permits that have permit terms extended past 5 years. In addition, there are 5 initial permit applications that have not been issued within the regulatory timeframe of 18 months. When compared to the total title V operating permit universe of 112 sources, this represents a significant backlog in initial and renewal title V operating permit actions. Although the backlog has decreased from the prior reporting period, and EPA applauds the program for these decreases, and would like to see MassDEP continue to implement steps to prioritize issuance of pending permit applications and reduce the permit backlog. EPA recommends MassDEP develop a plan to sustain backlog reductions by 5-10% annually. EPA requests a plan for review by March 31, 2022.

5. How many title V operating permit writers does the Department have on staff (number of FTE's)?

*MassDEP Response:* With very few exceptions permit writers are not assigned exclusively to operating permits but are assigned a number of operating permits along with their other air permit applications. MassDEP spends approximately 5.2 FTEs on title V permit work.

6. Do the permit writers work full-time on title V?

*MassDEP Response:* Permit writing staff are not exclusively assigned to preparing title V permits (see response to #5).

- a. If not, describe their other activities and what percentage of their time is spent on title V permits.

*MassDEP Response:* Permit staff spend between 70 – 80 percent of their time on other state air permits and approvals, responding to complaints, compliance and enforcement activities, and administrative activities (personnel, training, etc.).

7. Are you currently fully staffed?

*MassDEP Response:* Nearly all positions within MassDEP's budget and full-time equivalent (FTE) cap relating to the title V air program are filled. Generally, vacancies are filled as they occur.

*EPA Response:* Based on conversations with MassDEP, EPA understands MassDEP is in the process of filling a vacancy and is anticipating another departure from the title V operating permit program over the coming year that will need to be backfilled. Positions may be filled relatively quickly as allowed by the budget. If permitting backlogs persist, EPA recommends MassDEP reevaluate staffing caps for air permitting positions in regional offices and dedicate more resources to the program, as necessary.

8. How many title V operating permits are your permit writers responsible for?

*MassDEP Response:* On average, a permit writer will be responsible for 5 to 7 title V permits, primarily operating permit renewals.

9. Please describe staff turnover (if applicable).

*MassDEP Response:* Turnover is generally low and varies over time.

a. How does this impact permit issuance?

*MassDEP Response:* Until staff vacancies are backfilled fewer resources are available to work on permit issuance.

10. Is there anything that EPA can do to assist/improve your training?

a. If yes, please describe.

*MassDEP Response:* MassDEP would appreciate more comprehensive guidance and training on what should be included in a title V permit.

*EPA Response:* EPA understands the challenges presented by including the appropriate level of detail for applicable requirements in title V operating permits, particularly for complex regulations such as the stationary reciprocating internal combustion engine rules at 40 CFR part 60 and part 63. EPA's website has implementation tools available to assist permitting authorities in determining the applicable requirements for stationary engines. See <https://www.epa.gov/stationary-engines/guidance-and-tools-implementing-stationary-engine-requirements>.

EPA is available to assist MassDEP with training for its title V operating permit program. EPA also notes that it is revamping content through the online learning platform Air Pollution Training Institute accessed at <https://www.epa.gov/air-quality-data-and-tools/air-pollution-training-institute-public-training-site>. In particular, course "SI-460 Intro to

Permitting” is specific training for title V permitting, including the development of a draft permit.

11. What was your title V fee (dollars per ton) for FY 2019?

*MassDEP Response:* **\$47.48/ton** based on operating fees invoiced [\$599,500 divided by 12,626 tons, which is 3-year (2015-2017) average of emissions]

12. What is your title V fee (dollars per ton) for FY 2020?

*MassDEP Response:* **\$47.89/ton** based on operating fees invoiced [\$575,500 divided by 12,007 tons, which is 3-year (2016-2018) average of emissions]

*EPA Response:* The Commonwealth’s fee regulations at 310 CMR 4.00 are structured in a way that fees are calculated from a base fee for the appropriate source category, and then combined with an additional fee for a corresponding range of emissions.

The dollar per ton fee provided by MassDEP is below EPA’s presumptive minimum fee for the corresponding year.<sup>3</sup> The presumptive minimum fee rate is adjusted for inflation in September of each year, and each adjusted presumptive minimum fee is effective from September 1 until August 31 of the following year. The EPA considers the total program revenue to be presumptively adequate if fees are collected at or above the presumptive minimum level. States may charge less than the presumptive minimum, and use alternative fee structures, if they provide a demonstration that they have adequate fees to fully cover the direct and indirect costs of adequately implementing and enforcing the title V program. *See* 40 C.F.R. 70.9(b)(2)&(3). EPA recommends MassDEP increase its title V operating permit program fees to an appropriate level to fully fund the program.

13. How do you track title V expenses?

*MassDEP Response:* Each year the Commonwealth’s budget includes a specific MassDEP appropriation for the title V air operating permit and compliance program. MassDEP tracks expenditures via its annual spending plan. The FY 2021 Budget (<https://malegislature.gov/Budget/FY2021/FinalBudget>) contains the following: Department of Environmental Protection.

2220-2221 For the administration and implementation of the operating permit and compliance program required under the Clean Air Act under 42 U.S.C. section 7401 et seq..... \$1,613,230

*EPA Response:* As noted above, EPA recommends MassDEP increase its title V operating permit program fees to an appropriate level to fully fund the program. Section 502(b) of the CAA and 40 C.F.R. 70.9 requires that a permitting authority collect fees from subject sources that are sufficient to cover title V program expenses and that are used

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<sup>3</sup> EPA’s presumptive minimum for 40 CFR part 70 can be found online at <https://www.epa.gov/title-v-operating-permits/historical-permit-fee-rates>.

solely to cover the costs of the title V operating permit program. Therefore, MassDEP should increase title V program fees to cover the cost of implementing the program. It is not permissible to have supplemental funds from the legislature cover title V operating permit program expenses.

14. How do you track title V fee revenue?

*MassDEP Response:* Title V revenue is tracked through two separate revenue accounts, one account for air quality operating permit annual compliance fees and one account for air quality operating permit application fees.

15. Annually what is your projected title V revenue for 2019 and 2020?

*MassDEP Response:* MassDEP collected \$614,450 in title V revenue for FY 2019 and \$524,375 for FY 2020.

*EPA Response:* The EPA has committed to evaluating title V fees consistent with our 2018 fee guidance in response to the Office of Inspector General's (OIG) report *Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues Report*. See OIG No. 15- P-0006 (October 20, 2014). Based on the title V revenue collected in FY19 and FY20, and the Commonwealth's allocation of \$1.6M annually for MassDEP to implement the title V operating permit program, there is a significant shortfall in the amount of revenue generated from title V fees.

EPA is committed to working with MassDEP to further evaluate the current fee structure and support the Commonwealth in making adjustments to 310 CMR 4.00 such that fee revenue adequately covers all programmatic expenses. EPA is requesting MassDEP provide a plan that sets forth the necessary steps and their associated timeline to increase fee revenue by March 31, 2022.

16. Have you noticed a trend in the amount of title V revenue collected?

*MassDEP Response:* Title V revenue has been decreasing. Since the fees are based largely on air emissions, the revenue has decreased as air emissions have decreased and as the number of title V facilities has decreased. Air emissions have significantly decreased from title V facilities due to closure of coal plants, repowering of some existing power plants to natural gas, and powering of new power plants with natural gas.

17. Does your title V revenue cover all of your title V expenses?

*MassDEP Response:* MassDEP's title V revenue does not cover all of its title V expenses.

*EPA Response:* As previously discussed, EPA is requesting MassDEP to analyze the title V program fee structure and provide a plan outlining the steps to resolve the discrepancy in fee revenue in the Commonwealth's title V operating permit program.



18. Are you able to roll over title V funds from one fiscal year to the next?

*MassDEP Response:* No. Annually appropriated funds do not roll over from one fiscal year to the next. Any unexpended funds would be returned to the general fund. However, expenses exceed revenues each year so MassDEP is able to spend its title V appropriation each year.

19. Do you have title V funds that you currently carry over?

*MassDEP Response:* No. Title V funds are not carried over to future fiscal years but are fully expended each fiscal year.

a. If yes, what is the amount of the carryover funds?

## II. Permit Issuance

20. Does your program have a plan in place to reduce and eventually eliminate the title V permit renewal backlog?

*MassDEP Response:* Each MassDEP regional office has different approaches for reducing the permit renewal backlog depending on the size of their backlog, available permitting resources, and competing priorities. For example, this year the Central Regional Office hired a recently retired air permitting engineer on a part-time basis to assist with the backlog.

*EPA Response:* EPA appreciates MassDEP's efforts to reduce the permit backlog, and MassDEP has made progress to reduce the backlog from 73 renewal permits to 66 renewal permits over the last year.<sup>4</sup> However, the existing renewal backlog is a significant portion of the Commonwealth's title V operating permit source universe. EPA is available to assist MassDEP to identify strategies to further reduce the permit backlog. As noted above, EPA recommends MassDEP develop a plan to sustain backlog reductions by 5-10% annually. EPA requests a plan for review by March 31, 2022.

21. Please describe any additional comments on resources and internal management support or permit issuance.

## III. Public Participation

22. On average, how much does it cost to publish a public notice in the newspaper (or state publication), if applicable?

*MassDEP Response:* MassDEP does not publish notices in newspapers.

*EPA Response:* As noted above, on March 20, 2020, MassDEP amended its title V program regulations at 310 CMR 7.00 Appendix C to replacing the requirement for

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<sup>4</sup> Backlogged permit data is provided by MassDEP in semi-annual TOPS reports.

newspaper publication in favor of electronic publication of notices of public hearings and comment periods on draft title V operating permit decisions.

a. \$ \_\_\_\_\_ NA \_\_\_\_\_ (per publication)

23. On an annual basis how much is spent on public notices?

*MassDEP Response:* MassDEP does not publish notices in newspapers. MassDEP does translate public notices into alternative languages using an internal bank of translators. If a language translation is not available internally, MassDEP will pay an external contractor for translation services.

24. What information do you post on your website during the public notice period?

*MassDEP Response:* MassDEP posts the following information:

- Facility name and address
- Applicant/permittee identification
- Application status
- Application date
- Agency contact information
- Permit Authorization ID Number
- Supporting Documents including:
  - Application and supporting technical documentation
  - Public Hearing Fact Sheet (possibly in multiple languages based on local demographics)
  - Proposed Approval Document
- How to submit comments
- Timeframe for submitting public comments

25. Do you reach out to specific communities (e.g., environmental justice communities) beyond the standard public notification processes?

*MassDEP Response:* Yes, see answer to question 28

26. What is your opinion on the most effective avenues for public notice?

*MassDEP Response:* MassDEP uses a combination of approaches, including the web-based public access portal, and sending notices directly to local community groups and local officials.

*EPA Response:* EPA applauds MassDEP for its efforts to ensure adequate public participation in its title V operating permit program. MassDEP's notifications and community outreach sufficiently meet the programs public notice requirements. As discussed during the program review, public participation is likely increased as a result of

the e-notice process because the bulk of relevant permitting information can be accessed online.

27. Do you provide notices in languages besides English?

a. If yes, please list the languages.

*MassDEP Response:* Public notices are most commonly translated into Spanish, Chinese, Portuguese, Haitian Creole, and Vietnamese.

#### **IV. Environmental Justice Resources**

28. How is the permitting authority considering and addressing EJ issues in permitting actions?

*MassDEP Response:* The Executive Office of Energy and Environmental Affairs (EEA) updated its Environmental Justice Policy on June 24, 2021. As part of EEA's EJ Strategy, all EEA agencies are required to establish a robust public participation program for key agency actions that potentially affect EJ populations. EEA's policy is to engage with EJ populations as early in the permitting process as possible, preferably before any formal public comment period. This policy has resulted in extensive outreach to EJ communities for the underlying air permits that an Operating Permit includes, most commonly for Comprehensive Plan Approvals. MassDEP has established an enhanced community engagement process for affected EJ populations at the application stage of a proposed air permit project. MassDEP has asked air permit applicants to prepare a Fact sheet about their proposed project to be distributed to EJ populations within certain distances of a proposed project to encourage their input or comment at an early stage.

Instructions for preparing a Fact Sheet can be found at:

<https://www.mass.gov/doc/instructions-template-draft-project-fact-sheet-for-an-air-permit-application/download>

An example of a Fact Sheet that was distributed to EJ populations can be found at:

<https://www.mass.gov/doc/charlton-northeast-energy-center-llc-espanol-january-2021/download>

*EPA Response:* MassDEP has a robust Environmental Justice program and invests significant resources to ensure EJ populations are incorporated into the permit process. In addition, MassDEP is in the process on developing new provisions for including cumulative impact analyses (CIA) in certain categories of air quality permits as required by "An Act Creating a Next Generation Roadmap for Massachusetts Climate Policy."

29. List any specific examples where the permit decision or permit process was substantively altered in order to address EJ concerns. For each example, please specify how the permit decision was altered to address EJ concerns. (Examples might include extending the length of the public comment period, a decision to hold a public hearing, or enhancements to permit terms and conditions.)

*MassDEP Response:* A recent example is that for a proposed operating permit renewal, MassDEP's Western Regional Office scheduled a public hearing at the request of a local community organization.

## **V. Incorporation of MACT Requirements into Permits**

30. How does the permitting authority incorporate MACT requirements into the permit?

- a. Describe the permitting authority's MACT permit content structure and approach for both major and area source standards.

*MassDEP Response:* MassDEP includes applicable MACT emissions/operations limits in Table 3 of the operating permit, testing/monitoring requirements in Table 4, recordkeeping requirements in Table 5, reporting requirements in Table 6, and work practice standards in Table 8 for emission units subject to MACT, using the same approach for both major and area source standards. In addition, corresponding citations are used throughout the text of the permit.

- b. How does the permitting authority make clear which compliance option the source is using?

*MassDEP Response:* The facility's preferred compliance option is indicated in Table 3, and other acceptable alternative options listed in Table 9 Alternative Operating Scenarios. The facility may use any of these options and must keep the appropriate records in accordance with the compliance option it employs.

- c. What process does the permitting authority have for incorporating new or revised MACT requirements into permits?

*MassDEP Response:* MassDEP incorporates new or revised MACT requirements in the operating permit renewal process.

## **VI. State Feedback**

*Opportunity for the permitting authority to raise any issues and concerns*

31. What concerns does the permitting authority have with the national program that are not addressed elsewhere in the program evaluation?

*None*

32. What issues, if any, are affecting the title V operating permit program in your state right now that you consider particularly important?

*None*

33. What recommendations does the permitting authority have for EPA regarding the implementation or oversight of the national title V operating permit program?

*None*

34. What are the permitting authority's title V operating permit program priorities?

*MassDEP Response:* MassDEP's title V program priorities are to reduce the permit renewal backlog and ensure adequate public involvement, especially by EJ communities.

35. What can EPA do to help foster a successful title V operating permit program in your state?

*MassDEP Response:* It would be helpful if EPA could develop navigation tools for staff to follow various regulatory requirements such as MACT standards or NSPS.

*EPA Response:* EPA is available to assist MassDEP with applicability determinations and regulatory interpretations for NSPS and MACT standards. EPA often provides implementation tools on its website for various regulations. For example, EPA's website has implementation tools available to assist permitting authorities in determining the applicable requirements for stationary engines. See <https://www.epa.gov/stationary-engines/guidance-and-tools-implementing-stationary-engine-requirements>

***EPA Conclusion:*** EPA Region 1 appreciates the collaborative partnership with MassDEP. We look forward to assisting the MassDEP in future permitting and rulemaking efforts, as well as providing training and guidance to the program whenever possible. We would like to thank MassDEP for an informative discussion during the program evaluation, and we are open to any feedback from MassDEP and how we can improve the title V operating permit program evaluation process.

The EPA concluded its evaluation of MassDEP's title V operating permit program. During the program evaluation, EPA identified the following area of improvement.

1. As previously stated, MassDEP's annual fee revenue is not sufficient to cover the cost of implementing the Commonwealth's title V operating permit program. Therefore, MassDEP should increase fee revenue as expeditiously as possible to cover the program expenses. EPA is requesting MassDEP analyze its title V program fee structure and submit an action plan with milestones to increase fee revenue by March 31, 2022. The EPA understands the complexity of the process for increasing title V fee revenue. As such, we are requesting your action plan include various milestones and target dates for increase fee revenue. These milestones may include, but are not limited to, the following:
  - a. Analyzing the shortfall and determining the amount of additional revenue needed annually by X date;
  - b. Engaging with affected stakeholders and regulated community to determine the best approach for collecting additional fees by X date;

- c. Revising fee regulations at 310 CMR 4.00 to support collection of additional fees by X date; and
  - d. Evaluating the changes to fee collection by X date after implementation to ensure that the total annual revenue collected from title V fees is sufficient to cover the cost of the program.
- 2. EPA appreciates MassDEP's progress on reducing the Commonwealth's title V operating permit backlog. However, we do recognize the existing renewal backlog is a significant portion of the Commonwealth's title V operating permit source universe. EPA would like to see continued improvement to reduce the Commonwealth's backlog, and to facilitate this effort, EPA recommends MassDEP develop a plan to sustain backlog reductions by 5-10% annually. EPA requests a plan for review by March 31, 2022.