



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 6**  
**1201 ELM STREET, SUITE 500**  
**DALLAS, TEXAS 75270**

August 22, 2022

Ms. Bliss Higgins  
Assistant Secretary  
Office of Environmental Services  
P.O. Box 4313  
Baton Rouge, Louisiana 70821-4313

RE: Clean Air Act (CAA) Title V Permit Program, State of Louisiana Audit for Fiscal Year 2021

Dear Ms. Higgins:

As part of our oversight responsibilities under the CAA, the U.S. Environmental Protection Agency has completed a review and evaluation of Louisiana's Title V permit program, administered for the state of Louisiana by the Louisiana Department of Environmental Quality. Enclosed, please find the EPA's final report on LDEQ's Title V Program for Fiscal Year 2021. This report contains findings and recommendations, including one requested follow-up item that is directly related to one of our recommendations.

The EPA sent a list of audit questions and requested specific documentation to be provided by LDEQ on April 23, 2021. LDEQ responded to our questions on June 4, 2021. On February 18, 2022, the EPA also requested supplemental financial information in order to thoroughly assess the LDEQ Title V program revenue and expenditures. LDEQ provided this supplemental information on March 14, 2022. The EPA provided our draft report findings to you on June 23, 2022, and we thank you for reviewing our findings and for providing clarification regarding air permit writer staffing levels on July 12, 2022. We have corrected our draft report given your specific input.

We commend LDEQ on the overall implementation for the State of Louisiana's Title V federal operating permit program. If you have any questions, please do not hesitate to contact me directly at (214) 665-7593, or call Jeff Robinson of my staff at (214) 665-6435.

Sincerely,

**DAVID**  
**GARCIA**

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David F. Garcia, P.E.  
Director  
Air and Radiation Division

Enclosure

Environmental Protection Agency  
Region 6

Louisiana Department of Environmental Quality  
FY 2021 Clean Air Act Title V Program Audit

August 2022

Environmental Protection Agency Region 6  
Louisiana Department of Environmental Quality  
FY 2021 Clean Air Act Title V Program Audit

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## **EXECUTIVE SUMMARY**

The Environmental Protection Agency (EPA) Region 6 conducted an audit of the work practices and administration of the Louisiana Department of Environmental Quality (LDEQ) Title V Operating Permit Program for their fiscal year (FY) 2021. We evaluated five aspects of the program to ensure the program is being implemented consistent with the LDEQ Title V (title V) approved requirements. The areas of review included:

- Consistency with Permit Requirements of 40 C.F.R. Part 70
- Adequacy of Monitoring Requirements in Title V Permits
- Acting in a Timely Manner of Applications for Initial, Revision and Renewal Permits
- Benefits of TV Permit Program
- Collecting, Retaining, or Allocating Fee Revenue Consistent with the Requirements of 40 C.F.R. Part 70. The details of this area are such that we subdivided this area into eight sub-areas as follows:
  - Current Title V Resources;
  - Fees Calculated;
  - Collections Tracked;
  - Billing Process;
  - Revenue Allocated;
  - Cost of “Effective” Program (Resources to Address Backlog / Renewals);
  - Split of 105 vs. Title V; and,
  - Environmental Justice Resources.

In total, the EPA made 13 findings and 12 recommendations, which can be seen in the sections below. Of the various recommendations, one associated with our review of “Current Title V resources request that the LDEQ prepare a report concerning Expedited permit projects finalized in FY 22 and submit that report to us by September 30, 2022.

In this document, we have also included in Appendix A two letters: the first was issued by the EPA dated March 6, 2015 concerning findings of EPA’s 2012 fee audit while the second letter is dated January 6, 2021 to the LDEQ from the Louisiana Legislative Auditor (LLA) summarizing a report on some aspects of the LDEQ’s permitting and enforcement program of interest in this current audit.

## INTRODUCTION

Title V of the Clean Air Act ("CAA" or the "Act"), 42 United States Code (U.S.C.) §7661-7661f) and 40 Code of Federal Regulations (C.F.R) Parts 70 (state/local program requirements) and 71 (EPA program requirements) sets forth the elements of a mandatory operating permit program which authorizes the operation of major emitting stationary sources of air pollution.

The Title V *operating* permit program ("Title V") introduced with the CAA amendments of 1990 (P.L. 101-549) was in addition to the other Title I and Title IV *preconstruction* permitting programs found in the Act (e.g., PSD, nonattainment NSR, acid rain). A Title V permit for a site contains a detailed, clear, and explicit listing of all stationary source requirements whose basis is found in the Act for that site. These requirements are listed on an emission unit by emission unit basis, and include emissions limitations and standards and associated monitoring, testing, recordkeeping, and reporting requirements. To enhance compliance with all requirements of the Act, Title V requires prompt reporting of deviations when they occur and mandates annual certifications of compliance by the Responsible Official based on the requirements found originally in the permit itself, and in addition, found by any credible evidence.

The permit holder is obliged to keep the permit's list of requirements up to date through amendments of various types in an ongoing fashion and to seek renewal of the permit every 5 years. Should the company fail to completely and timely apply for renewal, the permit will expire at the end of its then current 5-year term and with it the authority to operate would be lost. The Title V permit thus forms a complete listing of all applicable requirements for the site or portion of the site encompassed by the permit, lists the means to determine compliance with those requirements, and requires regular compliance statements such that the permit holder, the public, and the EPA understand the compliance burden and status for a given major source.

The permits under Title V were intended to be developed, implemented, and enforced by permitting authorities who are predominately state or governmental agencies delegated such authority or approved by EPA. Such delegation or program approval is obtained through formal public notice and comment procedures, as outlined in Title V of the Act and implemented through 40 CFR Part 70. For those jurisdictions with delegated or approved programs, the Act tasked EPA with ongoing program oversight responsibilities in accordance with the framework laid out in Title V and implemented thru rule in 40 CFR Part 70. Programs previously partially or fully delegated by the EPA can have their delegation revoked by the EPA if timely corrections are not made when program deficiencies are identified by the EPA (Section 502(i) of Title V).

Where no state or local permitting authority exists, approved or delegated, to implement the program, Section 502(d) of the Act directs the EPA to be the permitting authority for Title V subject sources and does so in accordance with 40 CFR Part 71. Part 71 provides EPA the framework to directly administer the program, issuing, modifying, reopening, and revoking operating permits as necessary.

## **PRIOR EVALUATIONS OF THE LDEQ TITLE V PROGRAM**

EPA has oversight responsibilities under the Clean Air Act (CAA) to ensure that a delegated or approved permitting authority (e.g., a state or local governmental body) is implementing the program in a manner consistent with their delegated or approved program. Such oversight includes the periodic evaluation of the state or local program permitting authority, typically by the EPA Regional Administrator with jurisdiction. The EPA Region 6 Air Permit section has previously evaluated the Louisiana Title V program as follows:

- 1993: Initial Program Approval and Fee Adequacy Demonstration
- 2002: Full Title V Program Evaluation
- 2007: Full Title V Program Evaluation
- 2012: Title V Program Fee Audit

### **Prior Audit Findings and Recommendations relevant to the current action.**

Two audits of relevance to the LDEQ title V permit program have been finalized in the seven years preceding the work documented in this report. EPA's audit of LDEQ's title V fee program was documented in a final report dated March 6, 2015 and the Louisiana Legislative Auditor's Performance Audit entitled "Monitoring and Enforcement of Air Quality" the findings and recommendations of which were conveyed in a January 6, 2021 letter to the LDEQ. Copies of both letters are available in Appendix A to this document.

EPA's purpose of including a summary of the LLA's work is due to EPA's concern regarding "practicable enforceability" of title V operating permits issued by the state which is within the scope of EPA's title V program evaluation and air permit program oversight.

Note also that EPA Region 6's Office of Enforcement and Compliance Assurance Division performs periodic State Review Framework oversight reviews for Louisiana and publishes such reports for access by the public<sup>1</sup>. Such reviews address oversight of compliance and enforcement of the title V program that are in addition to the review of the permitting aspects of the title V program presented in this report.

**EPA 2012 Fee Audit.** The 2012 EPA title V fee audit resulted in several findings and recommendations, relevant excerpts of which include with the following summarized from EPA's March 6, 2015 final report<sup>2</sup>.

### **EPA 2012 Audit Findings**

- "The revenue and expense tracking program... is capable of adequately tracking and accounting for the collections, revenue streams, and expenses of the program..."

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<sup>1</sup> The State Review Framework reports for Louisiana can be found at: <https://www.epa.gov/compliance/state-review-framework-srf-louisiana-final-reports>.

<sup>2</sup> A copy of EPA's 2015 report is available online at <https://www.epa.gov/sites/production/files/2016-02/documents/ldeq-title-v-review-022515final.pdf>. A copy of the report's transmittal letter containing summary findings and recommendations is found in Appendix A of this document.

- The LDEQ Title V total fees on a cost per ton basis compared with the EPA presumptive minimum (adjusted for inflation) was:
  - In 1995: \$19/ton, approximately 76% of the \$25/ton presumptive minimum, using a combination of Title V emissions fees and other fees derived from title V sources
  - In 2011, the LDEQ cost was \$26.24/ton, which was 59% of the \$44.48/ton presumptive minimum
  - Projected for 2016: \$32.21/ton, approximately 67% of the EPA's presumptive minimum of \$48.27/ton
- The LDEQ represented that Title V fee revenue... “[was] more than enough to adequately carry out the functions listed in 40 CFR 70.9(b)(1), and funds from Part 70 sources are the sole means used to finance the Title V program.”

### **EPA 2012 Audit Recommendations**

- ... The LDEQ should continue to maintain detailed accounting records to document that all fees collected from [title V sources]... are used to support the title V program are paid by title V permitted sources and that those fees adequately support the implementation and enforcement of the title V permit program in Louisiana.
- “[EPA] recommend[s] that the LDEQ make routine projections over time to assure that the ongoing mix of fees from Title V subject sources will continue to meet the total direct and indirect costs of the Title V program in Louisiana.”

**LLA 2021 Audit.** The LLA audit focused on compliance monitoring and enforcement of air regulations between the fiscal years of 2015 to 2019. The LLA audit included analysis of ambient air monitoring data, EPA data sets (e.g., the Toxic Release Inventory (TRI) and the 2014 National Air Toxics Assessment (NATA)) file reviews, LDEQ staff interviews, and the review of an Environmental Integrity Project (EIP) report<sup>3</sup> on the spending and staffing in state programs from 2008 to 2018. Included in the January 6, 2021 final report<sup>4</sup> with LDEQ’s responses are two recommendations that EPA finds particularly relevant to this current review and they are:

**LLA Finding 3 Recommendation 4:** DEQ should continue to pursue electronic report submissions like other states; and,

**LLA Finding 5; Recommendation 10:** DEQ management should determine whether staffing levels are sufficient to provide quality services, and if not, request funding to hire additional staff.

These two recommendations are discussed in context in the relevant sections of this audit report.

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<sup>3</sup> “The Thin Green Line: Cuts to State Pollution Control Agencies Threaten Public Health.” December 5, 2019. <https://environmentalintegrity.org/news/state-funding-for-environmental-programs-slashed/>

<sup>4</sup> A copy of EPA’s 2015 report is available online at <https://www.epa.gov/sites/production/files/2016-02/documents/ldeq-title-v-review-022515final.pdf>. A copy of the report’s transmittal letter containing summary findings and recommendations is found in Appendix A of this document.



## SCOPE OF CURRENT EPA AUDIT

In October 2020, Region 6 notified LDEQ that EPA would conduct a limited scope audit of the State of Louisiana's Title V Program for EPA fiscal year<sup>5</sup> (FY) 2021. This FY2021 audit also includes a review of the audit report and recommendations issued by the Louisiana Legislative Auditor on January 20, 2021<sup>6</sup>, as the EPA finds some elements of that audit complimentary to its evaluation here.

EPA Region 6 sent a list of questions related to the FY 2021 title V program audit to the LDEQ by email on April 23, 2021. The questions were divided among the following general areas:

- Title V Permit Preparation and Content;
- Title V Monitoring;
- Title V Permit Issuance, Revision, and Renewal;
- Title V Benefits; and,
- Title V Administration and Fees.

EPA Region 6 received a timely response to the questionnaire from LDEQ on June 4, 2021, along with supporting documentation. On February 18, 2022, EPA requested additional financial information to further assess LDEQ's title V program revenue and expenditures. LDEQ provided timely response on March 14, 2022. The EPA appreciates LDEQ's cooperation and prompt responses during EPA's review.

This report considers LDEQ's title V operations over the time period of 2018 through 2021 in light of the perennial agency goals and objectives of the Federal Clean Air Act and its amendments: protection of human health and the environment. In the section of this report entitled "Environmental Justice in Permitting" we offer observations and recommendations on how LDEQ's title V program may assist in meeting the national goal of taking decisive action to advance Environmental Justice and Civil Rights.

## EPA AUDIT ANALYSIS, FINDINGS, AND RECOMMENDATIONS

The following section includes a brief discussion of the areas of review, our findings, and recommendations to improve or resolve potential concerns identified.

The evaluation focused on the implementation of the program in the following five areas:

- A.1.** Title V permit consistency with the EPA approved/delegated Part 70 program.
- A.2.** Title V permit adequacy of monitoring conditions within the permit.
- A.3.** Title V permit processing timeliness for initial issuance, revisions, and renewals.
- A.4.** Title V permit program benefits.
- A.5.** Title V permit program fee tracking and program support adequacy.

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<sup>5</sup> EPA's 2021 fiscal year began on October 1, 2020 and ended on September 30, 2021. LDEQ's 2021 fiscal year began on July 1, 2020 and ended on June 30, 2021.

<sup>6</sup> Full report and DEQ response available from the Louisiana Auditor's Site here:  
[https://lla.la.gov/publicreports.nsf/0/4f3372abddf0f271862586630067c25d/\\$file/00022660a.pdf](https://lla.la.gov/publicreports.nsf/0/4f3372abddf0f271862586630067c25d/$file/00022660a.pdf)

**A.1. Title V permit consistency with the EPA approved/delegated Part 70 program.**

We evaluated information provided by the state related to the processing of air permit applications, training resources for air permits staff, as well as information from the Title V Operating Permits System Report (TOPS Report) that LDEQ submits to EPA on a semiannual basis.<sup>7</sup> According to LDEQ's questionnaire responses and the 2021 TOPS reports, Louisiana has a TV universe averaging between 490 and 498 active sources and between 727 and 735 active title V permits.

Between January 1, 2018, and March 31, 2021, LDEQ issued:

- 52 initial title V permits for 39 Part 70 sources.
- 33 title V permits for 20 greenfield sources (e.g., new process units at existing Part 70 sources).
- 41 synthetic minor permits with practically enforceable permit limits, none of which are major sources.

At the time of response, LDEQ reported ten pending applications for new sources, of which four have been pending for longer than 18 months. The most recent TOPS report listed eight applications that are pending greater than 18 months. The LDEQ notes that of the four backlogged applications, three of the applicants are no longer pursuing development of their proposed projects, and the fourth application was suspended for approximately ten months at the request of the applicant.

**A1. Finding 1: Timeliness of permit issuance.**

LDEQ has made excellent progress in achieving its goal of completing the timely issuance of all the initial Title V permits. We understand that some of the initial pending Title V permits are for complex industries such as refineries and chemical plants. Nevertheless, we encourage LDEQ to finalize the remaining initial permits as quickly as possible.

**A1.F1.Recommendation 1: Timing of concurrent PSD and title V actions.**

If the title V and PSD permits are being issued simultaneously, LDEQ should look at EPA's Memo from the Director of the Office of Air Quality Planning and Standards (OAQPS) to the Regional Air Division Directors: "Timely Processing of Prevention of Significant Deterioration (PSD) Permits when EPA or a PSD-Delegated Air Agency Issues the Permit" dated October 15, 2012<sup>8</sup>. In his memo, OAQPS Director Stephen Page addressed requests by applicants to delay the permitting decision (Section D) and options to prevent inaction on permit processing (Section E). EPA encourages LDEQ to look at options similar to those employed by EPA, i.e., constructive withdrawal / suspend / deny, and establish a process that requires facilities to formally withdraw pending permit applications on or before 18-month

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<sup>7</sup>LDEQ most recent updates into TOPS were on January 28, 2021, and July 30, 2021. Additional information in this section was obtained from LDEQ Title V air permitting staff.

<sup>8</sup> The memorandum is available here: <https://www.epa.gov/nsr/timely-processing-prevention-significant-deterioration-psd-permits-when-epa-or-psd-delegated>

deadline to minimize the backlog and minimize staff time and effort on suspended projects or permit applications submitted as placeholders.

#### **A.2. Title V permit adequacy of monitoring conditions within the permit.**

The Federal requirements regarding the *Monitoring and related recordkeeping and reporting requirements* for title V permits are found in 40 CFR § 70.6(a)(3). Adequacy of emissions monitoring for compliance demonstration purposes was a primary congressional driver implemented via the 1990 Clean Air Act Amendments title V permit program, and consequently is critical to effective air quality assurance via title V permits. During the timeframe addressed in this program evaluation, the LDEQ issued 550 title V permit actions where the public was given notice and the opportunity for public comment (and opportunity for a hearing) were presented. This notice and comment activity implements an important aspect of title V public participation. In some cases those who had submitted comments on a given draft permit had concluded that their concerns had not been adequately addressed by the LDEQ and so petitioned the Administrator to object to the issuance of the permit.

In the timeframe evaluated here, a total of 14 petitions to object to title V permits issued by the LDEQ had been received by the EPA. While the Administrator's response to some of those petitions remain pending, in two instances public petitions to object have led to the Administrator objecting to operating permits based in part on monitoring inadequacy<sup>9</sup>. In these cases, the Administrator determined that relevant monitoring provisions were in some manner inadequate and provided rationale and direction to resolve the inadequacy in the orders issued. We acknowledge LDEQ's prompt response to address issues in consideration of EPA direction provided in each petition order.

In this limited scope title V program audit, we reviewed monitoring "boiler plate" language employed by the LDEQ and their method of development of permit provisions based on selected control device types provided by the LDEQ in response to our questionnaire.

#### **A2. Finding 1: The LDEQ employs best management practices for incorporating air monitoring into title V permits:**

- Assigning experienced mentors for new permit writers to provide instruction and guidance in reviewing air permit applications, drafting permit actions, and utilizing LDEQ's Tools for Environmental Management and Protection Organizations (TEMPO).
- Requiring all permit writers to complete two continuing education courses each fiscal year and providing new permit writers access to job-relevant trainings via professional organizations and associations like Central States Air Resource Agencies (CenSARA).

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<sup>9</sup> See Petition Response to Yuhuang Chemical (order issued 4/2/18) and Exxon Mobil Refinery, Reformer and Utilities units (order issued 3/18/22) here: <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>. The response to the Yuhuang granted petition to object by LDEQ can be seen in their response to comments document here: <https://edms.deq.louisiana.gov/app/doc/view?doc=10688688>. The LDEQ has reopened the Exxon Mobil permits in response to the petition order and EPA is evaluating the response currently.

- Employing LDEQ developed guidance in the form of a compendium of standard monitoring requirements for commonly utilized control devices and general stack test guidelines.
- Incorporate additional monitoring and recordkeeping requirements to support emission limits or standards as per state rule, Compliance Measures and Certifications of Compliance<sup>10</sup> as well as 40 CFR § 70.6(a)(3) when the underlying NSR or PSD monitoring is deemed insufficient.

In addition to these best management practices, we note that an excellent source of information concerning monitoring adequacy or lack thereof can be found in the response to those title V petitions where the Administrator has granted public petitions to object to permits on the basis of inadequate monitoring.

**A2.F1.Recommendation 1: Use title V petition orders granting on monitoring adequacy claims as additional guidance in developing monitoring requirements**

We encourage LDEQ to use title V petition orders<sup>11</sup> issued nationally where EPA has granted on monitoring adequacy claims as input to inform your best management practices geared toward development of monitoring conditions in title V permits or underlying NSR permits written by the LDEQ.

With respect to making the monitoring data based on conditions placed in the permit more accessible to both public officials responsible for compliance assurance and private citizens we evaluated the LDEQ's use of electronic submittal, storage and transmittal of compliance monitoring and reporting.

We acknowledge that LDEQ's implementation of its' Electronic Document Management System (EDMS) and the improvements made to it in the last few years which enables the management of files in a variety of formats. The system is very good and allows hard copy files to be converted by the LDEQ to widely supported filetypes and made available to all interested parties through a user-friendly webpage accessible through the internet.<sup>12</sup>

We suggest that the LDEQ go a step further. We acknowledge that some applicable requirements incorporated into the title V permits do allow for or in some cases, mandate, electronic submittal of federally driven reporting. Indeed, the EPA's Compliance and Emissions Data Reporting Interface<sup>13</sup> (i.e., CEDRI) is one such system that the EPA uses and has expanded the use of to manage the electronic submittal of and access to such reports and the data they contain.

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<sup>10</sup> LAC 33:III.507.H.1.a

<sup>11</sup> The database of Title V petitions and resolution of those petitions can be found here: <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>

<sup>12</sup> The EDMS is available at this web address: <https://edms.deq.louisiana.gov/edmsv2/quick-search?aspxerrorpath=%2Fapp%2Fdoc%2Fquerydef.aspx>

<sup>13</sup> CEDRI is available at this web address: <https://www.epa.gov/electronic-reporting-air-emissions/cedri>

The CEDRI system enables regulated entities to submit reports, and regulatory authorities, including state agencies, to access and use such reports in a Cross-Media Electronic Reporting Rule (CROMERR) compliant system.<sup>14</sup> Registration for regulators is straightforward and can be utilized easily. CEDRI currently has several report options for title V sources, as well as those subject to 40 CFR Parts 60, 62, and 63. Many reports submitted through CEDRI can be accessed by the general public through EPA's WebFire website<sup>15</sup>, albeit in a manner a bit more complex than the EDMS operated by the LDEQ. Like the EDMS, the WebFire access portal allows for retrieval of reports from various media programs and is not solely an air program reporting tool.

We noted that the LLA Audit Recommendation 4 (See Appendix A) suggests implementation of electronic reporting for title V related compliance reports. EPA Region 6 supports LLA Recommendation #4. We encourage LDEQ to continue the transition to electronic reporting for title V driven reports, including semiannual deviation reports and annual compliance reports.

**A2.F1.Recommendation 2: We encourage the LDEQ to make greater use of electronic reporting for monitoring requirements placed in title V permit.**

As stated above, we encourage LDEQ to make use of an enhanced EDMS or a system similar to CEDRI to facilitate greater use of electronic reporting of compliance monitoring and reports.

**A.3. Title V permit processing timeliness for initial issuance, revisions, and renewals.**

We evaluated the information provided by the LDEQ related to the processing of air permit applications, as well as the TOPS semi-annual reports. To date, LDEQ has issued 727 permits for part 70 sources. The Federal statutory timeframe for issuing permits is 549 days (18 months) from the date of determination of a complete application.

LDEQ reported the average process time<sup>16</sup> for title V permits issued in 2019 and 2020 for:

- Initial permits: 382 days.
- Significant modifications: 237 days.
- Minor modifications: 97 days.
- Renewals: 412 days.

LDEQ reported the following information for title V permit revisions in 2019 and 2020:

- Significant modifications: 8.8%

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<sup>14</sup> Information about CROMERR is available at this web address: <https://www.epa.gov/cromerr>

<sup>15</sup> Information about and access to WebFire is available at this web address: <https://cfpub.epa.gov/webfire/>

<sup>16</sup> Note: Initial title V permit data from the state included fourteen initial permits proposed for Formosa Plastics (i.e., FG LA), which should not be considered representative of a normal permitting demand for one facility. EPA did not include these permits in the above-listed average process time since all these initial permits are not final due to ongoing judicial review.

- Minor modifications: 85.8%
- Administrative amendments: 5.4%

Regarding title V permit renewal or reopening, LDEQ issued:

- Title V renewals in 2019: 120
- Title V renewals in 2020: 102

The state reported a very low percentage (2.7%) of late renewal applications received in 2019 and 2020. As of May 2021, LDEQ estimated there were 166 applications pending.

### **A3. Finding 1: Permit actions are generally issued in a timely fashion.**

Based on EPA review and evaluation of LDEQ's permit issuance rates, Region 6 has determined that the State is meeting the regulatory requirements regarding acting timely upon permit revisions and renewals. We note that external factors can impact initial permit issuance.

We wish to commend the LDEQ air permit program for continuously reducing the number of projects whose completion are delayed beyond the ordinary timeframes for a variety of reasons, and for their continued work and monthly reporting to the EPA until resolution is achieved on those projects.

### **A.4. Title V permit program benefits.**

This section of the audit is an opportunity for LDEQ to provide EPA Region 6 with specific input, views and/or anecdotal information on the implementation and benefits of the title V program. LDEQ notes that their title V universe has remained relatively stable throughout the program: Louisiana reported there were 509 part 70 sources in July 2010 TOPS report and 490 sources<sup>17</sup> in the most recent TOPS report dated July 2021.

As a benefit of implementing the title V program, LDEQ rated its staff as having better understanding of following areas:

- stationary source requirements of the State Implementation Plan (SIP),
- NSPS, NESHAPS, and MACT requirements,
- major NSR/PSD program requirements,
- technical understanding of sources' operations,
- determining rule applicability at stationary sources
- developing monitoring conditions to assure compliance,
- writing enforceable permit terms, and
- use of emissions inventory data for stationary sources.

LDEQ assessed the sources' compliance improvements with the of title V program as follows:

- increased use of self-audits,
- increased use of environmental management systems,

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<sup>17</sup> This number breaks down as 484 sources that have obtained Part 70 permits plus 6 that have not (AIs 17139, 17363, 19803, 51692, 105476, and 167323).

- increased number of staff devoted to environmental management,
- increased resources to support environmental control systems (e.g., control device maintenance, installation of improved control devices),
- increased resources devoted to compliance monitoring, and
- better awareness of compliance obligations.

Other noteworthy benefits LDEQ attributes to the title V program is the requirement to submit semiannual monitoring reports<sup>18</sup> and the annual title V compliance certification<sup>19</sup> provisions directly inspired LDEQ's solid waste program to promulgate similar regulations<sup>20</sup> on November 20, 2011.

In addition to these positive elements attributable to the title V program, the LDEQ further offered comments on three areas that they perceived as not being positively influenced by their title V program. These areas include:

- The LDEQ Minor New Source Review program. The long existence of this program in the state has not been materially improved as the result of the title V program.
- Emissions reductions not as attributable to title V program as to other associated rules. Per LDEQ, "While there has certainly been a marked decline in annual emissions since approval of Louisiana's Operating Permits Program (60 FR 47296, September 12, 1995), LDEQ is hesitant to attribute such reductions to the program itself... These reductions are more appropriately attributed to new federal regulations, particularly... Sections 111 and 112 of the Clean Air Act, and ... declining NAAQS."
- Records management. LDEQ notes that improvements in records management are attributable to the creation of the EDMS, the electronic repository of official records for the LDEQ. As described above, EDMS records, either created by the LDEQ or received and converted to a suitable electronic format by the LDEQ, are searchable and fully accessible online to members of the public.

#### **A4. Finding 1: EPA appreciates LDEQ's thoughtful input.**

EPA appreciates LDEQ's thoughtful input on the benefits and challenges of implementing the title V program. We encourage LDEQ to continue to assess and address programmatic issues, and to discuss those with EPA on the regularly scheduled monthly EPA LDEQ Air Permits conference calls.

#### **A.5. Permit program fee tracking and program support adequacy.**

The Federal requirements regarding title V fee determination and certification are found in 40 CFR § 70.9 which requires in part that "... owners or operators of part 70 sources pay annual fees... that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs."

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<sup>18</sup> 40 CFR § 70.6(a)(3)(iii)(A)

<sup>19</sup> 40 CFR § 70.6(c)(5) and LAC 33:III.507.H.5

<sup>20</sup> LAC 33:VII.525

The *Fee schedule adequacy* at 40 CFR § 70.9(b)(2) states, “The Administrator will presume that the fee schedule meets the requirements of paragraph (b)(1) of this section if it would result in the collection and retention of an amount of not less than \$25 per year [as adjusted pursuant to the criteria set forth in paragraph (b)(2)(iv) of this section] times the total tons of the actual emissions of each regulated pollutant (for presumptive fee calculation) emitted from part 70 sources and any GHG cost adjustment required under paragraph (b)(2)(v) of this section.”

Louisiana Air program fee requirements are found in LAC 33:III.201 entitled *Rules and Regulations for the Fee System of the Air Quality Control Programs*<sup>21</sup> a fee system for funding the monitoring, investigation and other activities required... for the maintenance of a safe and healthful environment by the DEQ in accordance with the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.). LDEQ mandated fees are required for all permits, licenses, registrations and variances authorized by the Act.

Region 6 concluded its last TV fee audit of the LDEQ program in 2015.

For the current audit, EPA sent a list of questions and requested specific documentation to verify that there were procedures in place for the receipt, separation, expenditures, and adequacy of the State's Title V funds. The questions were divided among the following eight sub-areas:

- SA1.** Current Title V Resources;
- SA2.** Fees Calculated;
- SA3.** Collections Tracked;
- SA4.** Billing Process;
- SA5.** Revenue Allocated;
- SA6.** Cost of “Effective” Program (Resources to Address Backlog / Renewals);
- SA7.** Split of 105 vs. Title V; and,
- SA8.** Environmental Justice Resources.

#### **A.5. SA1: Current Title V Resources.**

At the time of response, LDEQ reported that there are 716 “effective” title V permits in the State of Louisiana, which is slightly higher than the 705 “active” permits reported in the most recent TOPS Report dated July 30, 2021. We note that the number of active major permits seems to be in a downward trend: the Louisiana Legislative Auditor’s report references “approximately 750 active major permits” from FY2015 through 2019. LDEQ reported 718 active part 70 permits on January 28, 2021.

On July 21, 2022, the LDEQ provided additional information on staffing levels in Air Permits, and noted that essentially there has been no change in the number of staff persons directly involved in permit development since the Title V Fee audit of 2012 conducted by the EPA. Therefore, there are still 25 persons actively involved in permit development at the LDEQ. Additional support to process TV permit applications is periodically provided by managers of the Petrochemical and Manufacturing Sections (respectively), one supervisor of the Petrochemical Section, and the division’s Environmental Senior Scientist.

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<sup>21</sup> LAC 33:III.201



LDEQ's title V program is also supported by staff in the following divisions:

- Enforcement Division,
- Surveillance Division,
- Air Planning and Assessment Division,
- Public Participation; and,
- Permit Support Division.

Total numbers were not provided for purposes of this audit; however, the LLA report's fifth and final finding<sup>22</sup> noted that, "DEQ faces challenges in performing its required regulatory duties, including low staffing levels, high workloads, frequent turnover of staff, and ineffective data systems." The LLA audit report further noted that "Despite Louisiana's large number of Title V facilities, DEQ's positions dedicated to air regulation decreased by 14.6%, from 247 in fiscal year 2010 to 211 in fiscal year 2019, which presents a challenge for staff performing their responsibilities."

LDEQ's title V program is funded by a combination of fees, each of which is tracked separately by the LDEQ accounting system. EPA was able to verify for the most part that the revenue streams are appropriately being accounted for by those separate codes. Following the 2012 fee audit, the Louisiana legislature approved a 20% surcharge<sup>23</sup> to annual maintenance fees for part 70 sources, which went into effect July 1, 2017.<sup>24</sup> The current fees assessed related to the title V program are as follows:

1. Annual maintenance fee<sup>25</sup>
2. Application fee<sup>26</sup>
3. Toxics fee<sup>27</sup>
4. Title V criteria pollutant fee
5. Title V additional fee (i.e., the 20% surcharge)
6. Expedited permit processing fee

In their questionnaire response, LDEQ did note that the expedited permit fees are not tracked by media due to limitations of the state's accounting system.

To track expenditures, LDEQ utilizes the Finance Module in the LaGov Enterprise Resource Planning System (i.e., LaGov) that has been in place since 2014. In LaGov, title V expenditures are identified via Work Breakdown Structure (WBS) E.990011.10. In March 2014, LDEQ implemented a new timekeeping system, Cross Application Time Sheet

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<sup>22</sup> A summary of that 5<sup>th</sup> finding and recommendations and the LDEQ response is found in Appendix A of this document. The full finding can be found on page 18 of the LLA report, available here: [https://lla.la.gov/publicreports.nsf/0/4f3372abddf0f271862586630067c25d/\\$file/00022660a.pdf](https://lla.la.gov/publicreports.nsf/0/4f3372abddf0f271862586630067c25d/$file/00022660a.pdf).

<sup>23</sup> LAC 33:III.209.B

<sup>24</sup> Authority provided by Act No. 451 of the 2016 Louisiana Regular Legislative Session.

<sup>25</sup> LAC 33:209, 211, and 223

<sup>26</sup> LAC 33:III.207, 211 and 223

<sup>27</sup> LAC 33:III.211.B.14 and 223.B (Fee number 2200 in Table 2)

(CATS) by which employees can easily code their respective timesheet for work to support the title V program via WBS E.990011.10. LDEQ provided supporting documentation in Table 3 to identify expenditures charged to WBS E.990011.10 for fiscal years 2018 through 2020. In FY2020, title V expenditures included salaries, related benefits, travel, professional services, other compensation, and indirect costs.

**A5.SA1.Finding 1: Accounting system adequate in most respects.**

The timekeeping and expenditure systems in place appear to be reliable and accurate for the purposes of tracking and accounting for title V revenue and related title V program support.

**A5.SA1.Finding 2: Accounting system weakness in tracking Expedited projects.**

Expedited permit projects continue to generate considerable revenue for LDEQ as demonstrated by the financial data provided in Table 2 of Exhibit 9 (see Exhibits). However, as noted in the prior title V fee audit and restated in the questionnaire response, LDEQ is unable to track expedited permit fees by media because of limitations with the state's accounting system.

**F2.Recommendation 1: Improve Expedited Permit accounting.**

LDEQ should revisit efforts to track expedited permit fees by media and clearly delineate the "overtime costs for work performed in support of the title V program." LDEQ should also state what activities are encompassed under the category of "other compensation." LDEQ should also ensure that any fees collected for expedited permits at Part 70 (title V) sources be appropriately tracked and accounted for the title V program per 40 CFR § 70.9(a) where the work is associated with the title V permit.

**F2.Recommendation 2: Submit a report by September 30, 2022**

To assure that the level of effort expended on Expedited air permit actions at Part 70 sources are fully funded by Title V supporting fees, we request that LDEQ provide a report addressing Expedited air permit actions completed at Part 70 sources in LDEQ fiscal year 2022. The report should include, on a project-by-project basis, level of effort (hours) spent by staff members, invoices billed to the companies for such services, and revenue sources used to pay the costs of those actions related to expedited air permit projects completed during fiscal year 2022. Such projects may have begun prior to fiscal year 2022. We request that the report be submitted by September 30, 2022 to EPA Region 6, Air and Radiation Division.

**A5.SA1.Finding 3: Impact of staff reduction on program viability.**

The low staffing level for the permitting program cited by the LLA report (see footnote 22), even though there appears to be a downward trend in number of active permits, raises questions of LDEQ's Title V air program staffing adequacy and could possibly hinder the effective implementation of the title V program.

The LLA Recommendation 10 (See Appendix A) to LDEQ was that DEQ management should determine whether staffing levels are sufficient to provide quality services, and if not, request funding to hire additional staff. The response from DEQ was that "While DEQ agrees

with this recommendation, DEQ will analyze positions within the department and consider moving staff in the most appropriate divisions to meet the requirements of the agency. While we appreciate the recommendation to request additional positions for the agency, given the current funding position of the agency and the state, the ability to obtain more positions may not be feasible at this time.”

### **F3.Recommendation 1: EPA supports LLA Recommendation #10**

EPA recommends that the LDEQ complete its internal analysis of staffing positions available to support the critical work of the title V air program as recommended by the LAA Recommendation 10. Such an analysis should include but not be limited to air permit writers, surveillance, enforcement, and other program areas that support the title V program. While EPA appreciates the difficulties involved in evaluating adequate staffing, we note that it is a statutory obligation for the approved title V program to fully fund the title V program, and the fee structure put in place by the LDEQ should enable the accomplishment of this mandate.

#### **A.5. SA2: Fees Calculated**

The LDEQ provided a complete listing of fees collected from Part 70 (title V) sources along with the respective revenue object codes in the state’s accounting system (ISIS) as follows:

Revenue Object Code	Revenue Object Code Description
1560-01	ANNUAL FEE
1560-02	PERMIT FEE
1560-14	AIR TOXIC
1560-24	CRITERIA POLLUTANTS
1560-29	TITLE V CRITERIA POLLUTANTS
1560-33	TITLE V ADDITIONAL FEE
1925-XP	EXPEDITED PERMITS

LDEQ provided sample invoices for each fee type in Exhibit A. In each invoice, the following information can be ascertained: company name, agency interest number (AI), permit number, fee type (e.g., permit application fee, air quality annual fee, air quality title V additional fee, title V annual fee, etc). However, with exception of the title V criteria pollutants and air toxics, it is difficult to calculate fees with any confidence because the invoice does not include the facility’s annual emissions.

Actual emissions<sup>28</sup> (tons/year) are used for calculating annual Title V emissions fees. Companies report annually to LDEQ’s Emission Reporting and Inventory Center (ERIC). A responsible official is required to certify the accuracy of ERIC data.

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<sup>28</sup> Emissions reported per LAC 33:III.919, and fees are capped at 4000 tons of any given criteria pollutant.

While conducting this audit, LDEQ's criteria pollutant fee was \$14.11/ton of actual PM<sub>10</sub>, SO<sub>2</sub>, NO<sub>x</sub> and VOC but a fee increase to \$16.61/ton took effect on 7/1/2022<sup>29</sup>.

The LDEQ uses a variety of fees to fund their program, and permissibly does not rely solely on emissions fees to fund their program. Exhibit 9 dated March 14, 2022 (See Exhibits) provides a comprehensive breakdown of revenue by category that was collected from Part 70 sources in 2018, 2019, and 2020, including revenue from Expedited permit work for Part 70 sources. Table 1 of Exhibit 9 provides income, total tons billed, and then provides a calculation of actual dollars per ton cost, which in 2020 was \$19.73/ton of emissions, and when Expedited permit revenue is included, was \$20.77/ton.

We have evaluated the use rate of expedited permit actions over 10-year period of 2011 through 2021 in the air program. Based on our review (see table immediately following this paragraph) it appears that the relative proportion of permit actions completed using the expedited permit process has risen over since 2013 and comprised about 20% of all air permit actions in 2021 while income received from those actions has increased each year, and now comprises on average approximately 5% of the income received from Part 70 sources based on data from Table 1 of Exhibit 9.

**Air Permit Projects “Issued” by La Fiscal Year and Proportion of Expedited Projects<sup>30</sup>.**

Project Type	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Grand Total
Expedited	700	590	445	424	355	345	257	266	273	254	208	4117
All	2446	2634	2755	2790	1867	1721	1507	1367	1364	1174	1013	20638
Expedited as % of all	29%	22%	16%	15%	19%	20%	17%	19%	20%	22%	21%	20%

Table 2 of Exhibit 9 (see Exhibits) provides a comparison of dollars per ton adjusted by the consumer price index. Two things Exhibit 9 depict of note:

1. Actual cost per ton LDEQ charged in 2020 was approximately 66% of the presumptive per ton minimum when adjusted by the consumer price index (\$33.76/\$50.51/ton).
2. Based on estimates of cost per hour per employee (salary, fringe benefits, etc) from the Bureau of Labor Statistics<sup>31</sup>, where total state employee costs are split between

<sup>29</sup> The details of the fee increase can be found by consulting Reg MM021 found at the Monthly Regulation Changes 2022 webpage located here: <https://www.deq.louisiana.gov/page/monthly-regulation-changes-2022%20>

<sup>30</sup> List of all air projects extracted in January 2022 from the LDEQ project list page here: <https://www.deq.louisiana.gov/page/permits-issued-by-calendar-quarter> while the Expedited permit project list is based on an extract conducted in April 2022 from the project list search page provided by LDEQ here: <https://internet.deq.louisiana.gov/portal/DIVISIONS/PPPSD/LIST-OF-REQUESTS-FOR-EXPEDITED-PERMITTING-ACTIVITIES>

<sup>31</sup> Employer Costs for Employee Compensation December 2021, USDL-22 09469 available at <https://www.bls.gov/news.release/pdf/eccc.pdf>. This publication indicates that 62% of an employee's total cost to

wages and benefits (percent of whole) at a 62/38 split, it would appear that the level of effort expended in 2020 by existing state employees on expedited permit work at Part 70 sources amounts to close to 6 FTEs<sup>32</sup>, approximately 10% of the total count of 62.7 title V FTEs. Since not all FTE's take on Expedited permit work, it would appear that some FTEs are doing a significant amount of additional work at Part 70 sources over and above their salaried level of effort.

**A5.SA2.Finding 1: Expedited Permit level of effort a potential long-term concern.**

While it is not impermissible for a state to charge less than the presumptive minimum title V emissions fees to fund the program provided the funds collected at the Part 70 sources are dedicated to and adequate to properly fund the program as described in 40 CFR 70.9. Louisiana's use of fee types other than emissions fees can be acceptable provided the Part 70 requirement fees fund the entirety of the program, they are dedicated to Part 70 program costs, and that title V fee management is transparent. Nevertheless, it seems apparent that in the long run, the expedited permit program could result in an overextension of existing staff particularly as the election of expedited permit actions by the regulated community has become well established.

**F1.Recommendation 1: Evaluate whether the FTE load borne by expedited permit actions should be converted to additional FTEs added to the program.**

LDEQ should evaluate whether the title V operating permit program should retain additional FTEs that directly correspond with the level of demand for the expedited permitting mechanism since the expedited permit program creates a workload demand above and beyond LDEQ's appropriated FTEs. We are concerned whether LDEQ's title V operating program could meet its normal workload demand without the fee structure mechanism of the expedited permit program to fund the time and material demands which is directly related to fee revenue generation. We are also recommending that LDEQ ensure it is implementing revenue/expenditure tracking so that activities implemented for Part 70 sources can receive their properly dedicated funding specifically for title V operating permit related work.

**A.5. SA3: Collections Tracked**

LDEQ provided information in Table 2 to demonstrate the ability to track the various air permit fees billed and the amounts received, along with late fees assessed. Financial Services staff are responsible for tracking fees associated with the TV air permits in TEMPO database and notifying Air Permits staff if there is any outstanding balance with a respective applicant/company. Exhibits C and D outline the processes utilized to refer overdue accounts for collection.

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the employer is in wages, and 38% are fringe benefits. If the average salary of a suitably trained and experienced permit writer is \$50,000/year, then the total cost of such an employee is \$80,645.

<sup>32</sup> Calculated as follows: Total expedited permit income from Part 70 sources in 2020/average cost per FTE. \$468,369/\$80,645=5.8 FTE of effort.

For FY2018 and FY2019, LDEQ reports that less than 2% of invoices had outstanding balances as reported in Exhibit D (1.26% and 1.99% respectively). FY2020 had a higher percentage of 3.76% invoices that had not been collected. LDEQ reported that there are 36 invoices with credit balances due to updated reporting or other accounting issues that will be either transferred or refunded as appropriate.

**A5.SA3.Finding 1: The collections tracking systems in place appear to be reliable and accurate.**

**A.5. SA4: Review Area 5. Sub Area 4: Billing Process**

Per LDEQ, there have been no significant changes to the billing process since the previous TV fee audit. LDEQ notes that with technology upgrades they have conducted internal evaluations to ensure that fees are assessed correctly, which they typically do prior to generating the annual invoices.

**A5.SA4.Finding 1: The billings tracking systems in place appear to be reliable and accurate.**

**A.5. SA5: Revenue Allocated**

Per LDEQ, there have been no significant changes to how revenue is budgeted or allocated since the previous TV fee audit. LDEQ provided Exhibits E and F, along with Table 2, to document the fee structure and revenues.

**A5.SA5.Finding 1: The revenue tracking systems in place appear to be reliable and accurate.**

**A.5. SA6: Cost of “Effective” Program.**

Exhibit 9, Table 1 (see Exhibits) provided by LDEQ showed the end-of-year accounting and itemized costs for the title V program for FY2018, FY2019, and FY2020. Expenditures are tracked via WBS element E.990011.10. Indirect expenditures use the same WBS element along with the unique order number, DEQMS1000053. Of note, at the bottom of the Table 1 spreadsheet, there is a calculation of full-time employees (FTEs) of greater than 50 employees, which includes the 22 air permit writers plus others whose work supports the title V program (e.g., surveillance, enforcement, and other programs).

Per LDEQ, “Governmental accounting standards require liquidation of all encumbrances at the end of the fiscal year.” However, there is a note that “professional services (i.e., laboratory contracts) are encumbered during the fiscal year ... and carried forward at year end.”

**A5.SA6.Finding 1: The cost tracking systems in place appear to be reliable and accurate.**

**A.5. SA7: Split of 105 vs. Title V.**

Revenue streams – EPA was able to verify that title V revenue streams are accounted for separately using discrete revenue object codes except for the expedited permit fees. We understand that Expedited permit fees are not tracked by media. LDEQ is required to ensure that all fees collected by Part 70 sources are to be used solely for title V permit program

costs. The failure to appropriately track expedited permit fees means expedited permit fees for title V permits cannot be tracked to ensure that they are used solely the title V permit program.

Expenditures – As previously discussed, LDEQ tracks title V expenditures via WBS element E.9900011.10 that is utilized by Air Permits Division, as well as, Enforcement, Surveillance, Air Planning and Assessment, and Public Participation and Permit Support Divisions. EPA was able to identify the WBS code in the timesheets provided in Exhibit E, along with positions charged to PPG grants. The invoices for lab services in Exhibit F do not directly reference the WBS code. LDEQ notes that historically there have not been any excess monies including the fiscal years FY2018, FY2019, and FY2020.

#### **A.5. SA8: Environmental Justice in Permitting.**

Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. On January 20, 2021, President Biden issued Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*<sup>33</sup>. In Section 8, Engagement with Members of Underserved Communities, Federal agencies were directed to “consult with members of communities that have historically been underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs. The head of each agency shall evaluate opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations.”

EPA’s goal is for everyone to enjoy (1) the same degree of protection from environmental health hazards, and (2) equal access to the decision-making process to have a healthy environment in which to live, learn, and work. The resource *EPA Legal Tools to Advance Environmental Justice* was recently published as a resource and can be found on this website: <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>. In addition, **EJSCREEN**<sup>34</sup> is a mapping and screening tool that provides a nationally consistent dataset and approach for combining environmental and demographic indicators for assessing possible environmental justice concerns. Since EJSCREEN is EPA’s preferred screening tool across media for considering potential affects to communities such as, but not limited to, Air Toxics Cancer Risk, NAAQS, and proximity to National Priorities List sites, EPA provided major updates to the tool in 2020 and in 2022.

EPA reviewed LDEQ policies and procedures related to environmental justice as it relates to the air permitting program. LDEQ has indicated that they directly address environmental justice concerns in all Basis of Decision documents (when prepared) and in Response to Comments documents related to responding to public comments on specific permits. LDEQ

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<sup>33</sup> See <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.

<sup>34</sup> See <https://www.epa.gov/ejscreen>.

notes that key staff were trained on EJSCREEN on October 12, 2017 and that EJSCREEN is utilized when processing applications for new Part 70 sources. Per LDEQ, environmental justice concerns are typically addressed by the permit applicant in their Environmental Assessment Statement (EAS) where required by R.S. 30:2018(A).

All air permit applications and supplemental information is accessible online via LDEQ's EDMS. Regarding public participation, LDEQ routinely provides copies of public notice in Spanish and Vietnamese and historically has provided hard copies of the permit application, Statement of Basis, and proposed permits in local libraries.

We note that in 2022, and outside the timeframe for this review, EPA received two complaints arising under Title VI of the Civil Rights Act of 1964, 42 U.S.C §§ 2000d - 2000d-7, that prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. While these Title VI complaints are outside the scope of this Title V audit evaluation, we want to reiterate the importance of consideration of EJ and civil rights in permitting decisions.

#### **A5.SA8.Finding 1: Implementing EJ considerations in the air permitting program.**

LDEQ has procedures in place for evaluating environmental justice via the EAS, but LDEQ's response to the company-generated EAS could be improved to incorporate additional agency protocols necessary to ensure that equity concerns are addressed as part of their title V permitting program. In addition, LDEQ may not be using up-to-date tools and resources to effectively evaluate environmental justice.

EPA is committed to advancing environmental justice and incorporating equity considerations into all aspects of our work. This commitment includes improving our assessment and consideration of the impacts of permits on communities already overburdened by pollution. While Executive Order 13985 is a directive written by the President to the Executive Branch of the federal government, its contents may prove fruitful for consideration as the LDEQ conducts its title V work. Tools to address environmental justice are being developed not just by EPA, but also by various state partners across EPA regions. In order to fully assess equity considerations for overburdened communities during the permitting process, EPA believes that an environmental justice analysis may include input received from the community, an evaluation of existing environmental data, use of known demographic information, and other relevant information as much as possible. EPA recognizes that LDEQ has statutory obligations that consider mitigation of impacts to communities, however, EPA has the following recommendations based upon our experience to date and those federal tools and resources currently available.

#### **F1.Recommendation 1: LDEQ should engage early in the permitting process with communities and applicants to address environmental justice.**

EPA believes that early engagement to enable community participation in the permitting process is necessary to advance environmental justice and ensure that equity concerns are being understood and addressed throughout the entire permitting process. For example, LDEQ should be able to identify upcoming permit actions that potentially affect disproportionately impacted communities at the



permit application stage and should continuously look for new opportunities to enhance environmental justice in its overall air permitting process. LDEQ should also be able to partner with applicants early to look for opportunities to work with communities and more effectively communicate how they plan to mitigate air pollution impacts in disproportionately impacted communities through practically enforceable permit conditions. EPA is certainly open to discussing mitigation options that could be considered pursuant to both existing regulatory and discretionary authorities.

**F1.Recommendation 2: LDEQ should avail itself of EPA’s most recent EJ resources and tools, such as use of the most up-to-date EJScreen tool and EJ related trainings available.**

LDEQ should ensure that all current air permit staff are trained to use EJSCREEN, since there have been major updates in 2020 and 2022 to improve performance and user interface/reporting. In addition, EJSCREEN can be used to help enhance outreach efforts to inform communities of permit actions – for example, public information of upcoming permit actions can be translated into languages where English proficiency<sup>35</sup> may impact effective communications during the permitting process. For example, EPA has provided interpreters as necessary for such communities at public hearings to also help with communicating the permit process and obtaining public comments from all members of the community. LDEQ should also bear in mind that EJSCREEN is one of the tools used in evaluating existing demographic and public health data about affected communities, however, other factors such as known monitoring and/or air modeling information for the area surrounding the facility of interest that is available can also be used to evaluate how to address community concerns specific to the permit action being taken.

**F1.Recommendation 3: LDEQ should use EJScreen as a tool to identify possible environmental justice concerns for all permit projects, not just new source projects.**

LDEQ should consider whether all major air permit projects, not just applications for new part 70 sources, warrant use of EJSCREEN to evaluate potential community impacts. As already recommended above, EPA encourages LDEQ to keep current with EPA’s ongoing EJSCREEN updates and any future additional tools that EPA develops for advancing environmental justice, including cumulative air and risk impact analyses.

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<sup>35</sup> See [https://www.epa.gov/ogc/assisting-people-limited-english-proficiency#:~:text=On%20August%2011%2C%202000%2C%20President,limited%20English%20proficiency%20\(LEP\)%2C](https://www.epa.gov/ogc/assisting-people-limited-english-proficiency#:~:text=On%20August%2011%2C%202000%2C%20President,limited%20English%20proficiency%20(LEP)%2C).

## **APPENDIX A**

### **Audit Report Transmittal Letters**

EPA 2012 Fee Audit Transmittal Letter<sup>36</sup>  
March 6, 2015

Louisiana Legislative Audit Report Transmittal Letter<sup>37</sup>  
January 6, 2021

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<sup>36</sup> A copy of EPA's 2015 report is available online at <https://www.epa.gov/sites/production/files/2016-02/documents/ldeq-title-v-review-022515final.pdf>. A copy of the report's transmittal letter containing summary findings and recommendations is found in Appendix A of this document.

<sup>37</sup> Full report, including the excerpt presented here, is available here: [https://lla.la.gov/publicreports.nsf/0/4f3372abddf0f271862586630067c25d/\\$file/00022660a.pdf](https://lla.la.gov/publicreports.nsf/0/4f3372abddf0f271862586630067c25d/$file/00022660a.pdf).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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MAR 06 2015

Ms. Peggy M. Hatch  
Secretary  
Louisiana Department of Environmental Quality  
P.O. Box 4301  
Baton Rouge, LA 70821-4301

RE: 2012 Louisiana Title V fee audit final report

Dear Secretary Hatch:

As part of the Environmental Protection Agency's (EPA) oversight responsibilities, the EPA Region 6 staff conducted an audit of the State of Louisiana's approved Title V fee program beginning in fiscal year 2012.

The purpose of this letter is to transmit a final report of the Region's assessment of the program, which is administered and enforced by the Louisiana Department of Environmental Quality (LDEQ). As a matter of convenience, and because many of the exhibits referenced in the report originated from the LDEQ, the report (and Appendix A and all exhibits) is provided electronically on the enclosed compact disk (CD). The exhibits include copies of both the draft and the final fee demonstrations submitted to the EPA by the LDEQ in response to our January 2014 draft audit report findings which were shared with the LDEQ prior to the EPA finalizing this audit report.

Our findings in the final audit report include:

- The revenue and expense tracking program currently implemented by the LDEQ is capable of adequately tracking and accounting for the collections, revenue streams, and expenses of the program.
- The revenue from Title V emissions fees and other fees derived from Title V sources appear to be sufficient to pay for both the direct and indirect costs of the LDEQ Title V program. The LDEQ Title V program was approved in 1995 when the cost of the program was 76% of the \$25/ton presumptive minimum, using a combination of Title V emissions fees and other fees derived from Title V subject sources. In 2011, the LDEQ cost was \$26.24/ton, which was 59% of the inflation adjusted federal presumptive minimum of \$44.48/ton. In the December 2014 draft fee demonstration, the LDEQ projects a 2016 program cost of \$32.21/ton, on a total cost divided by total tons of criteria pollutant emissions basis, which is approximately 67% of the EPA's presumptive minimum of \$48.27/ton (CPI adjusted, September 1, 2014-August 31, 2015 basis).
- The LDEQ represents that Title V fee revenue collected and managed through the Louisiana Environmental Trust Fund are more than enough to adequately carry out the functions listed in 40 CFR 70.9(b)(1), and funds from Part 70 sources are the sole means used to finance the Title V program.

Our recommendations in the final audit report include:



- We want to emphasize that LDEQ should continue to collect fee revenue sufficient to cover the reasonable direct and indirect costs for its Title V program, and that the Title V revenue should not be used for any other purpose except to fund the required Title V program elements and any excess revenue should not be subject to reallocation to other environmental regulatory programs or state government uses. The LDEQ should continue to maintain detailed accounting records to document that all fees collected from Title V source emission fees and other fees (e.g., air toxic fees, application fees) that are used to support the Title V program are paid by Title V permitted sources and that those fees adequately support the implementation and enforcement of the Title V permit program in Louisiana.
- We acknowledge receipt of the LDEQ's finalized Title V fee demonstration dated February 12, 2015. We would also recommend that the LDEQ make routine projections over time to assure that the ongoing mix of fees from Title V subject sources will continue to meet the total direct and indirect costs of the Title V program in Louisiana.

We commend the LDEQ on the improvements demonstrated in the area of revenue and expense tracking for Louisiana's Title V federal operating permit program. This report concludes our Fee Audit begun in 2012. If you have any questions, please do not hesitate to call me or Jeff Robinson of my staff at (214) 665-7250.

Sincerely,



Wren Stenger  
Director  
Multimedia Planning and  
Permitting Division

Enclosures

cc: Tegan Treadaway  
LDEQ Assistant Secretary, Office of Environmental Services

Cheryl Nolan  
LDEQ Administrator, Air Permits Division

Report without CD of Exhibits:

Mr. Sparsh Khandeshi, Environmental Integrity Project,  
1000 Vermont Avenue, NW Eleventh Floor, Washington, DC 20005

Ms. Anne Rolfes, Louisiana Bucket Brigade  
4226 Canal St. New Orleans, La 70119

# EPA Region 6 2012 Audit of LDEQ Title V Operating Permit Fee Program

## Executive Summary

### Background

**Title V Operating Permits Program, Program Funding and Management** In Title V of the Federal Clean Air Act (CAA) Amendments of 1990 (P.L.101-549, United States Code §§7661-7661f), Congress set forth a mandatory fee funded operating permit program intending to assure clarity of obligations and compliance demonstration under the Act for each individual major stationary source of air pollution. Implementation of title V programs are delegated to the appropriate state or local jurisdiction permitting authorities that have met all relevant 40 CFR Part 70 legal authority and implementation capabilities of the program. Specifically, 40 CFR §70.9, "Fee determination and certification" and 40 CFR §70.10 "Federal oversight and sanctions" provide mechanisms to assure that permitting authorities have adequate funding for their programs and that EPA assures proper initial and ongoing program implementation.

Congress did not mandate a specific fee mechanism be established, but established a fee per ton of criteria air contaminant emissions or, equally, a mix of fees in a fee schedule as suitable funding mechanisms, provided the major source fee generated revenue covered all of the direct and indirect costs of the Title V program and were used solely for that purpose. Congress identified that an emissions fee of \$25/ton (adjusted annually based on the Consumer Price Index (CPI)) was presumptively adequate for an approvable program based solely on emissions fees, but allowed for any alternative fee schedule and minimum fee provided the permitting authority meets the demonstration requirements of 40 CFR §70.9 covering all direct and indirect costs of the mandatory elements of the program.

Title V permittees pay fees directly to the LDEQ as the administering air quality agency, the program acts much like a commercial enterprise. EPA has recognized that State governments can choose from generic types of funds such as trust funds to manage their Title V programs. LDEQ is currently funding the Title V program through Title V source specific emission fees and through other fees such as the air toxics fee and annual maintenance fees that are collected from Title V major sources which are deposited into the Louisiana Environmental Trust Fund. Title V revenue is expended from that same fund to pay for Title V program costs using appropriate accounting tools.

**The Current Fee Audit** EPA Region 6 initiated a limited scope programmatic oversight audit of the Louisiana Department of Environmental Quality (LDEQ) Title V permit fee program in fall 2011. The purpose of the audit was to determine if sufficient fee revenue is being collected and retained to cover the costs of the LDEQ fully delegated Title V program and whether the systems used by the LDEQ are adequate to track and account for the collection, retention, and management of program revenues and expenses and, conversely, that non-Title V program expenses are not being recovered through the Title V program.

Audit data gathering occurred during FY 2012-2013. Timely written responses to the 76 questions posed were provided by the LDEQ and supplemented with over 44 datasets and exhibits. Data analysis and preliminary findings were developed in FY 2013 and were shared with the LDEQ in January of 2014. The LDEQ then evaluated their current practices against the demonstration criteria found in 40 CFR Part §70.9 and provided a draft report outlining their current practices which included program costs, program organization, and changes LDEQ undertook as part of the adoption of a new state agency wide financial system.

### Findings

**Revenue and Billing Findings** LDEQ's accounting system appears adequate for Title V fee revenue and expenditure purposes, and their systems allows for timely receivables billing and tracking. Louisiana calculated their 2011 Title V program cost \$7.97 MM, \$5.56 MM of which was paid for by Title V criteria pollutant emissions fees, with the balance of the costs of the program, some \$2.41MM was paid for from the fee schedule derived revenues from the Title V sites in the state. Such fees included permit application fees, air toxics fees, and annual monitoring and maintenance fees paid for by Title V sites.

**Title V program estimated cost per ton in 2011 and Projected for 2016** LDEQ's 2011 aggregate Title V program cost was an EPA calculated \$26.24/ton based on LDEQ supplied data, which is 59% of the federal presumptive minimum CPI adjusted fee of \$44.48/ton for that same year. In contrast, the LDEQ demonstrated to EPA's satisfaction in 1993 that \$19/ton was adequate to run the Title V program, which was 76% of the presumptive minimum fee of \$25/ton at that time. As was the case in 1993, the LDEQ uses a mixture of fees to fund the Title V program, and does not solely rely on criteria pollutant emissions fees. The LDEQ projects that total direct and indirect costs of the program for 2016 will be \$9.2MM, or approximately \$32.21/ton, on a total cost divided by total tons of criteria pollutant emissions basis, approximately 67% of EPA's presumptive minimum of \$48.27/ton (CPI adjusted for September 1, 2014-August 31, 2015 basis). The LDEQ also indicates that as in the past, this total cost is supported by a combination of Title V criteria pollutant emissions fees and the fee schedule derived fees paid by Part 70 subject sources. LDEQ asserts that had the state relied solely on CPI adjusted Title V criteria pollutant emissions fees rather than on a combination of emissions fees the volatile nature of changing total emissions would have required a legislatively approved emissions fee increase. The LDEQ does not rely solely on emissions fees and therefore some of that emissions related volatility is avoided and the total fee revenue generated from Title V subject sites continues to exceed the direct and indirect costs of their Title V program, a pattern that the LDEQ expects to continue into the foreseeable future.

**Does LDEQ collect sufficient funds to properly implement, enforce, and manage the program?** LDEQ organizational restructuring, reduction of 12 FTEs in the permitting group, new program implementation level of effort accounting (e.g. "expedited permits"), and procedural changes (automation of permit development, toxics program restructuring) undertaken since initial program approval in 1995 made a direct comparison of current program costs versus initial program costs, as demonstrated by an initial program fee demonstration, impossible. The LDEQ's recent draft fee demonstration provides much of the necessary information upon which to base a formal fee demonstration update to the LDEQ Title V program.

## **Recommendations**

We want to emphasize that LDEQ should continue to collect fee revenue sufficient to cover the reasonable direct and indirect costs for its Title V program, and that Title V revenue should not be used for any other purpose except to fund the Title V permitting program and any excess revenue should not be subject to reallocation to other environmental regulatory programs or state government use. LDEQ should continue to maintain detailed accounting records to document that all fees collected from Title V source emission fees and other fees (e.g., application fees, air toxic fees) that are used to support the Title V program are paid by Title V permitted sources and that those fees adequately support the implementation and enforcement of the Title V permit program in Louisiana.

We acknowledge receipt of LDEQ's finalized Title V fee demonstration dated February 12, 2015. We would also recommend that the LDEQ make routine projections over time to assure that the ongoing mix of fees from Title V subject sources will continue to meet the total direct and indirect costs of the Title V program in Louisiana.



**State of Louisiana**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**OFFICE OF THE SECRETARY**

January 6, 2021

Mr. Daryl G. Purpera, CPA, CFE  
Office of the Legislative Auditor  
Post Office Box 94397  
Baton Rouge, LA 70804-9397

Dear Mr. Purpera:

This is the Department of Environmental Quality's (DEQ) response to the reportable findings and recommendations presented in the Louisiana Legislative Auditor (LLA) Performance Audit Services report titled "**Monitoring and Enforcement of Air Quality**".

DEQ takes its responsibility to promote and protect public health through sound environmental policy very seriously and appreciates the opportunity to respond to the observations within your report. After reviewing the findings and recommendations, DEQ offers the following responses.

**Finding 1:** Louisiana has seen improvement in air quality since calendar year 2008. However, certain areas of the state are highly industrialized and have high concentrations of air pollution.

**Response:** As noted in the report, DEQ has achieved and maintained substantial improvements in air quality over the last ten years despite facing some of the largest state environmental regulatory agency budget and staffing cuts in the nation. The comprehensive and robust air quality monitoring and enforcement activities executed by the department have contributed to a substantial decrease (75.1%) in the number of unhealthy air quality days for Louisiana citizens in sensitive groups.

DEQ currently operates over 40 ambient air monitoring sites throughout the state to monitor air quality. Most of the ambient air monitoring sites are in the "highly industrialized" zones referenced in the report (Exhibit 1). DEQ collected over 1300 air quality samples during the 2019 calendar year to test for a subset of the toxic pollutants noted and explained in Appendix C. It should be noted that none of these pollutants were detected in 2019 ambient air concentrations that exceeded the Louisiana Toxic Air Pollutant Ambient Air Standards.

**Finding 2; Recommendation 1:** DEQ should vary when they inspect facilities so that they are less predictable as state law stresses the importance of unannounced inspections.

**Response:** DEQ agrees with this recommendation, and notes that during the later years of the audit timeframe (2017), approval was obtained from the United States Environmental Protection Agency-Region 6 (USEPA-R6) to implement an Alternate Compliance Monitoring Strategy (ACMS) for scheduling and performing inspections of permitted facilities. The ACMS was successfully implemented two (2) years ago and has increased the variability of inspection dates.



**Finding 2; Recommendation 2:** DEQ should require secondary evidence, such as photographs, to ensure that inspections actually occurred.

**Response:** DEQ disagrees with this recommendation, and offers the following information related to the inspection process. DEQ's Standard Operating Procedure (SOP) requires staff (i.e., inspectors) to leave a completed Field Interview Form (FIF) at each facility inspected, which is signed by a facility representative at the conclusion of the inspection. In the isolated case contained in the audit report, a FIF was not completed, signed, or left at the facilities as the inspector did not visit the facilities as required by existing SOP. DEQ notes that this isolated incident of SOP circumvention was voluntarily reported to your office prior to this incident being discovered during the audit and was used as the basis that formed this recommendation.

**Finding 2; Recommendation 3:** DEQ should review required self-monitoring reports timely to monitor and regulate air quality in Louisiana.

**Response:** DEQ agrees with this recommendation, and offers the following additional details related to the self-monitoring report review process. DEQ's Enforcement Division receives Semiannual Monitoring and Deviation reports and Annual Compliance Certifications for the approximately 500 Title V permitted facilities in Louisiana. Once these reports are received, key data points are entered into Advantage RM and an Environmental Scientist (ES) reviews any reported deviations to determine if High Priority Violations (HPVs) or other violations which pose significant threat to human health or the environment are reported. If any of the reported deviations fall into one of these categories, the ES will initiate preparing an addressing enforcement action. Reports which do not contain violations of this nature are submitted to DEQs Electronic Data Management System (EDMS) and are thoroughly reviewed during the next routine inspection or file review. Current staffing levels and the volume of reports received impedes the Enforcement Division staff from performing a thorough review upon receipt of every report and from immediately initiating a formal enforcement for every violation reported in either of the aforementioned reports. As suggested in Recommendation 10, DEQ management will review current staffing levels related to self-monitoring report review and may request additional funding to hire additional staff.

It should also be noted that any permittee who fails to submit a Title V semiannual or annual report is currently being identified during its routine inspection or any other file review. For the past several months, the Enforcement Division has been working to improve the quality of historical data in Advantage RM for the Semiannual Monitoring and Deviation reports and Annual Compliance Certifications. As this data is improved, the Enforcement Division will utilize this information to quickly pursue permittees/respondents who failed to submit the required Title V Reports. Queries of this data will be run at least twice per year following the report submission due dates (March 31 and September 30) to determine if any permittees failed to submit its reports. Additionally, as discussed in more detail is the response to Recommendation 4, DEQ is actively pursuing a mechanism for electronic reporting of Semiannual Monitoring and Deviation reports and Annual Compliance Certifications which should result in improved data quality, automated processing of reports into Advantage RM and EDMS, and more efficient review of reported deviations.



**Finding 3; Recommendation 4:** DEQ should continue to pursue electronic report submissions like other states.

**Response:** DEQ agrees with this recommendation. DEQ began researching and developing plans for electronic submission of Title V and other Air quality reports prior to this audit. An internal workgroup was formed and has had regular development meetings. An initial request for a developmental quote was submitted to a contractor in November 2020 to help better determine the cost of providing an electronic reporting submission option. Enforcement Division staff are currently working with the contractor to determine DEQ's exact needs so an accurate quote can be obtained. DEQ will continue pursuing electronic submission of Title V and certain other Air quality reports, as it is anticipated this method will reduce workload on staff for processing mail, reduce data errors in Title V Report tracking, improve timeliness of reports being available in the EDMS, and improve the Department's ability to query and manipulate relevant data, including reported deviations. However, it should be noted, that development and implementation of any the electronic submission option that is currently being explored will be dependent upon securing sufficient funding and adequate allocation of Office of Technology (OTS) resources. DEQ is actively researching potential grants and other alternate sources of funding for this project.

**Finding 3; Recommendation 5:** DEQ should develop formal timeframe goals for how long it should take to issue enforcement actions and monitor its performance based on the timeframe goals.

**Response:** DEQ agrees with this recommendation, and offers the following additional information related to the enforcement process. The Enforcement Division-Air Enforcement Section has made a substantial effort to address backlog referrals in recent years. This process resulted in actions issued in the later years of the audit period, including FY19, with an increase in time from referral assignment to action issued date. While addressing of backlog referrals is continuing, processes are in place to improve this timeline. Notably, the time from referral assignment to action issuance decreased by 38.9% from FY19 to FY20 (average 344 days).

In addition, all of the activities performed by Enforcement Division staff from the time a referral is assigned until an addressing enforcement action is issued are not fully outlined in the report. More specifically, when inspection referrals are received by the Enforcement Division, a Warning Letter, which is an informal enforcement action, is issued to the facility which encourages a written response to be submitted. In response to the Warning Letter, respondents often request meetings with DEQ or submit information which require further review and consideration to determine valid violations. This information may indicate violations have been corrected, provide additional clarification of the circumstances, or provide documentation that the areas of concern were not violations. These activities, which are important parts to the process, often add to the time it takes to issue an enforcement action. Additionally, many of the states surveyed by the auditor(s) do not have the same quantity or complexity of air quality facilities that are regulated by DEQ. Therefore, it may be inaccurate to compare DEQ to states with less permitted or regulated facilities and/or facilities with less complex operations. However, DEQ does recognize the importance of timely enforcement actions. The Enforcement Division will evaluate the volume and complexity of air enforcement referrals received, all duties and responsibilities involved in preparing addressing actions (as well as post issuance activities, especially the statutory and regulatory requirements respondents are entitled to) and will determine and establish timeliness goals, as appropriate.

**Finding 3; Recommendation 6:** DEQ should develop additional reporting capabilities for enforcement staff and management to use to better monitor the enforcement process.

**Response:** DEQ agrees with the recommendation, and offers the following additional information related to the enforcement process. The Enforcement Division-Air Enforcement Section currently runs multiple reports to track and monitor referrals received. These reports contain imperative information which is used to monitor the status of referrals received, issued enforcement actions, settlement offers received and/or settlement agreements. These reports also provide information such as inspection date, referral received and assigned date, and action issued date, which are used to determine timeliness of addressing these cases and identify cases in need of progress. It should be noted the audit report states that DEQ's management can run reports to show the "last action for enforcement cases." However, the reports run include all actions issued and the last task entered into Advantage RM for each action. Although the reports do not currently include information indicating which referrals or actions are already being addressed by a Settlement Agreement or Penalty Assessment, development of this type of report using data systems currently available is in progress. Separate reports are run on a routine basis to monitor the status of cases for which a settlement offer has been received as well as the status of all settlement offers.

The audit report states that the Enforcement Division cannot accurately link all inspections to enforcement actions to determine whether all inspections with violations resulted in an enforcement action. However, when inspection referrals are received by the Enforcement Division, they are immediately assigned an enforcement tracking number within Advantage RM. Once this tracking number is assigned, it remains on the reports Enforcement Division runs and utilizes until the referral is closed with an addressing enforcement action and/or other activity. After which, the violations are deemed addressed in the inspection reports in Advantage RM. This is how inspection referrals are tracked by the Enforcement Division. DEQ has been developing software which will allow management and staff to develop and run more sophisticated reports to improve efficiency in tracking activities. This software will also have the capability to run automated reports which can be used as reminders or triggers for staff. DEQ will continue pursuing development and implementation of this useful tool.

**Finding 4; Recommendation 7:** DEQ should streamline the process for receiving and processing facility penalty and settlement payments. DEQ should effectively track all penalties it assesses and ensure that facilities pay the penalties.

**Response:** DEQ agrees with the recommendation and offers the following additional information related to the settlement processes. DEQ acknowledges that there may be room for improvement in the processes and/or manner by which the Financial Services Division (FSD) and the Enforcement Division communicate on payments received for final Penalty Assessments and Settlement Agreements. However, to state that DEQ does not effectively track penalties it has assessed and whether facilities have paid the assessed amounts is somewhat misleading. Penalty assessments and all other issued actions are tracked by Enforcement Division management utilizing the "Issued Action" query in Advantage RM. Additionally, this information is manually verified monthly before being posted to the DEQ's website and is also compiled and reported annually to the Louisiana Legislature.

DEQ issues two types of penalties, Penalty Assessments (PAs) and Expedited Penalty Agreements & Notices of Potential Penalties (XPs), both of which are combined under the term "penalty" in the audit report. PAs are formal enforcement actions which can be appealed, delaying the payment or closure process through hearings or Informal Dispute Resolution (IDR).

XPs are part of a voluntary expedited penalty program, and have other requirements in addition to payment in order to comply. By regulation, facilities are not in compliance with an XP until both payment and the signed XP form certifying compliance are returned to DEQ. Additionally, some XPs also require reports, such as emission inventories, be submitted before the action can be closed. In isolated cases, both XPs and PAs, may also be closed without payment (i.e., Respondent demonstrates an inability to pay or Respondent is insolvent, etc.). Since DEQ-Enforcement Division's primary goal is to obtain compliance, Air Enforcement management tracks PAs and XPs from issuance to closure to ensure all steps of the process, not just payment, are completed.

DEQ will continue tracking PAs and XPs to ensure payments are timely submitted and/or compliance is achieved in the required timeframe. The timeframe by which the FSD processes payments received for penalties and/or XPs and notifies the Enforcement Division of such will be further reviewed and changes will be immediately implemented for areas identified as needing improvement. FSD will continue to work toward faster depositing, classification, and posting of penalty payments to customer accounts and Advantage RM. It is important to note that there are often delays in receiving these payments (mail delays, mail routed to other divisions, identifying information not included, etc.). FSD will continue to work with the Enforcement Division to ensure it is kept informed of any delays in posting payments.

**Finding 4; Recommendation 8:** DEQ should develop reports that can integrate payment data from the fiscal division, as well as capture information from DEQ's legal division, in order to easily identify what penalties and settlements have been paid.

*Response:* DEQ agrees with this recommendation. DEQ is currently reviewing all processes and procedures in place for penalty and settlement payment processing and will implement any improvements, as appropriate.

**Finding 4; Recommendation 9:** DEQ should establish a process that requires facilities to submit acceptable settlement offers within a certain timeframe, such as six months, and draft a penalty amount for those who do not comply.

*Response:* DEQ agrees with this recommendation, and offers the following information related to the settlement process. Some of the complexities of the enforcement process or not fully detailed in the report. For instance, Compliance Orders and Notices of Potential Penalty (CONOPPs) are subject to appeal. DEQ may grant or deny the hearing request or may enter into Informal Dispute Resolution (IDR). In addition, facilities may require compliance schedules to return to compliance or provide additional information for discussion/consideration. For these reasons, a standard deadline to submit a settlement offer is not appropriate for all facilities. It should also be noted that DEQ has existing procedures to facilitate timely settlement offers such as the "REQUEST TO SETTLE" form and Settlement Agreement Brochure which are attached to all CONOPPs and Notices of Potential Penalty (NOPPs) that are issued by DEQ. DEQ agrees revising the "REQUEST TO SETTLE" form to include a recommended timeframe to submit a settlement offer may improve the existing process.

**Finding 5; Recommendation 10:** DEQ management should determine whether staffing levels are sufficient to provide quality services, and if not, request funding to hire additional staff.

*Response:* DEQ agrees with this recommendation. DEQ will analyze positions within the department and consider moving staff in the most appropriate divisions to meet the requirements of the agency. While we appreciate the recommendation to request additional positions for the

agency, given the current funding position of the agency and the state, the ability to obtain more positions may not be feasible at this time.

**Finding 5; Recommendation 11:** DEQ management should continue to work towards the development and implementation of a comprehensive data system that can provide adequate management reporting.

**Response:** DEQ agrees with this recommendation. DEQ's current data system, Advantage RM, is capable of tracking the Department's activities; however, the number of employees who are able to use the tools/software required to develop and run reports from the data contained in Advantage RM is limited. DEQ is in the process of developing software which will allow additional Enforcement Division and Legal Affairs Division staff to develop and run reports to ensure referrals are addressed in a timely and efficient manner. This software is currently under development with the DEQ's IT Division.

The Legal Affairs Division would like to clarify that regulations are not currently being drafted to allow/require electronic reporting for Title V and/or other air quality reports. However, DEQ is in the process of drafting regulations regarding improving Title V reporting, and is also in the process of pursuing development of a system which will allow facilities to electronically file Title V and/or other Air quality reports. This system will be integrated with Advantage RM and will automate and improve many functions related to reviewing and processing the reports.

Furthermore, and as previously discussed in the responses to Recommendations 3 and 7, certain issues with data accuracy and completeness have already been identified by DEQ. Efforts to resolve these issues and implement processes to ensure data accuracy are underway. The new software under development will allow Enforcement Division management to more frequently monitor the completeness and accuracy of this data entry. DEQ will continue pursuing the development and implementation of software to provide improved reporting and tracking.

As always, we appreciate the assistance of the LLA and will continue to look for ways to optimize DEQ's air quality monitoring and enforcement processes to provide for a better environment for current and future citizens of Louisiana. We look forward to your continued assistance in this endeavor.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Chuck Carr Brown', with a stylized flourish at the end.

Chuck Carr Brown, Ph.D.  
Secretary

## LIST OF EXHIBITS<sup>38</sup>

- Bureau of Labor Statistics News Release March 18 2022 Employer Costs for Employee Compensation Dec 2021.pdf
- DEQ 2021 TV Audit Response.docx
- Exhibit 9 - Title V revenues costs and calculated price per ton criteria pollutants 3.14.2022.pdf
- Exhibit A. LDEQ Example Invoices.pdf
- Exhibit B. LDEQ Expedited Permit Program.pdf
- Exhibit C. LDEQ ODR Referral Process.pdf
- Exhibit D. LDEQ Collections Rate and Process.pdf
- LA TOPS 01\_28\_2021.pdf
- LA TOPS 07\_30\_2021.pdf
- Monitoring Example Sugar Mill Boiler Testing Policy.pdf
- Monitoring Example Carbon Adsorption Unit.xlsx
- Monitoring Example Carbon Canister.xlsx
- Monitoring Example Cyclone Collectors.xlsx
- Monitoring Example Dust Filters.xlsx
- Monitoring Example non-NSPS Flares.xlsx
- Monitoring Example StackTestingGuidelines.pdf
- Monitoring Example Wet Scrubbers.xlsx
- Table 1. LDEQ Revenue and Expenditures for Title V.xlsx
- Table 2. LDEQ Actual Collections v. Billings.xlsx
- Table 3. LDEQ FY 18 thru 20 Title V Expenditures.xlsx

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<sup>38</sup> A copy of this 2021 (and prior) audit report and exhibits are available for download at the following EPA website: <https://www.epa.gov/caa-permitting/reports-title-v-operating-permit-program-evaluations-epas-south-central-region>