

Title V Operating Permit Program Evaluation

Alabama Department of Environmental Management, Air Division

Onsite Visit December 10-11, 2019

2020 Evaluation Report



United States Environmental Protection Agency, Region 4

Air and Radiation Division

Atlanta Georgia

Acknowledgements

EPA Region 4 would like to acknowledge the dedication and commitment of the staff and management of Alabama Department of Environmental Management's (ADEM) Air Division during this difficult year. ADEM staff addressed numerous challenges to keep their program operating smoothly during the pandemic, including remote work, public notice and comment, drafting and responding to comments on several of their most challenging permits, as well as taking on new challenges such as our Electronic Permitting System. We appreciate their cooperation and willingness to respond to our information requests. We would also like to acknowledge the work of our dear colleague Randy Terry, who passed in March of 2020, after completing the initial findings and shortly after commencing this report. Randy, a dedicated public servant for over 28 years, served as our Title V Program Manager and Program Evaluation Coordinator, as well as ADEM's Title V contact for many years. He is missed by all.

Title V Operating Permit Program Evaluation Findings
Alabama Department of Environmental Management, Air Division
August 2020 Evaluation Report with EPA Follow-up Notes

Executive Summary

Positive Findings:

- The ADEM's Air Division management and staff have a strong understanding of the requirements of Title V. Based on an administrative file review of 10 permits, EPA finds the permits are well-written and contain all of the necessary information, including a detailed facility history.
- ADEM benefits from a Title V fee structure that allows for annual updates to the fee rate and a budget process that ensures Title V fees are used solely for the Title V program. ADEM is aware of, and EPA acknowledges, the ongoing challenge of maintaining a fully funded program with significantly declining emissions, resulting in the need for continuous fee rate increases.
- ADEM has seamlessly transitioned away from newspaper to web-based electronic noticing (e-notice). ADEM reports a cost savings and believes that utilizing their website for notification is more useful to the communities.

Areas to Monitor

- At the time of the onsite evaluation, the program had a backlog of just under 10% of Title V permit renewal applications older than 18 months past the Title V permit expiration date, including 8 landfill permits that were delayed due to EPA's delay in finalizing new landfill standards. These applications were certified by ADEM as being timely, so they are extended and not expired.

Action Item

- EPA requests that ADEM include an updated timeline for any permits older than eighteen months (540 days) past the Title V permit expiration date, with each TOPS report.

Recommendations

- EPA recommends that ADEM provide training to staff on the use of the EJSCREEN tool and that ADEM ensure that any potential impacted communities are aware of their ability to participate in the permitting process.

Background

In response to the recommendations of a 2002 Office of Inspector General (OIG) audit, the U.S. Environmental Protection Agency developed an action plan for performing reviews of Title V operating permit programs for each air pollution control agency beginning in fiscal year 2003.

Following the initial Title V program reviews, the EPA committed to conduct ongoing periodic Title V program reviews for state and local programs that have at least 20 Title V major sources within their jurisdiction. These follow-up evaluations may target specific areas of the program, follow-up items from previous evaluations, or overall implementation. In addition, at the request of the OIG, the EPA formally added a Title V fee audit component in 2018.

The EPA Region 4 oversees 8 state and 10 local air permitting authorities with Title V operating permit programs. Eleven of these programs have at least 20 Title V major sources (the remaining 7 programs have 10 or fewer sources). Resources allowing, EPA Region 4 typically commences 2 Title V program evaluations annually, with the goal of reviewing each of these eleven programs on a five to six-year cycle.

Alabama Department of Environmental Management's (ADEM) initial Title V program review was conducted in 2005 and subsequent evaluations were conducted in 2007 and 2013. The 2007 evaluation included a specific review of compliance assurance monitoring plans. The 2013 evaluation included a review of the Title V fees accounting process, permit file review, and public participation. The purpose of these evaluations is to ensure the ability of ADEM's Air Division to carry out its duties and responsibilities, as required, to effectively run the Title V program, to document good practices and to identify if there are any ways our office can best assist ADEM in meeting this commitment.

The 2020 ADEM program evaluation consisted of a review of staffing resources and internal management support, Title V revenue and expenses, public participation, permit issuance rates, and an administrative file review of issued permits. This information was gathered in fiscal year 2020 (FY20) through ADEM's response to the EPA's survey questions, administrative review of selected permit files, an on onsite visit with interviews and discussions in December 2019, a subsequent fee review in mid-FY20 based on additional information provided to EPA for ADEM's FY18-FY20 budget cycle, and permits issuance rates reported to the federal Title V Operating Permit System (TOPS data) through June of 2020. Findings from our review in these areas are given below. Preliminary Findings were provided to ADEM on December 11, 2019 and discussed with ADEM in January 2020. As applicable, EPA has added notes related to our subsequent follow-up to the initial review.

Program Overview and Staffing Resources

ADEM's Air Pollution Control Program, located in Montgomery County, AL, seeks "to assure for all citizens of the State a safe, healthful, and productive environment," (FY20 survey response). ADEM has jurisdiction over the permitting of air emission sources throughout Alabama with the exception of Jefferson County and the City of Huntsville; facilities in these areas receive permits issued by the Jefferson County Department of Health and the City of Huntsville Department of Natural Resources, respectively.¹

ADEM's Air Division is divided into three branches, two of which are responsible for permitting: *Chemical* and *Energy*. The *Chemical Branch* is subdivided into two sections covering the sectors of *Industrial Chemicals* and *Natural Resources* with a unit dedicated to *Agriculture/Gas* under the latter. The *Energy Branch* is also subdivided into two sections to cover the sectors of *Industrial Minerals* and *Construction Materials* with a unit dedicated to *Petroleum* under the latter. For 2020, the two permitting branches have a total of 41 full-time positions (FTE) dedicated to the issuance of both construction and operating permits (both major and minor, Prevention of Significant Deterioration, etc.). ADEM is responsible for issuing, modifying, and renewing 296 Title V permits, which are distributed among 15 FTEs dedicated to Title V; these 15 FTEs are shared by 36 employees.

ADEM reports that they have staff turnover as opportunities for experienced permit writers has increased in the private sector. At the time of their survey response, the Title V program had two (2) vacancies, which were in the process of being filled. Staff turnover was raised as a concern impacting the Air Division in the 2013 evaluation. ADEM has addressed the loss of employees through a pay scale increase and periodic cost of living pay increases.

Title V Revenue and Expenses

Title V permitting authorities are required by section 502(b)(3) of the Clean Air Act (CAA), and the corresponding Title V regulations at 40 C.F.R. § 70.9, to collect permit fees from sources subject to Title V sufficient to cover all costs necessary to develop and administer their Title V permit programs. Permitting agencies must collect part 70 fees that are sufficient to cover both direct and indirect part 70 permit program costs. These fees must be used solely to cover the costs of the Title V program and states must provide periodic demonstrations that they meet these fee requirements. 40 C.F.R. § 70.9(d). Accordingly, air agencies may need to revise fee schedules periodically to remain in compliance with the requirement that permit fees cover all part 70 permit program costs. Changes in costs over time may be due to many factors, including but not limited to: changes in the number of sources required to obtain part 70 permits, declining emission rates (especially reductions in coal-fired emission sources);

¹ A program Evaluation for Jefferson County Department of Health was also conducted in 2020. Huntsville is a small program with approximately 10 Title V facilities.

complexity of permitting actions being performed; and promulgation of new emission standards, such as new Maximum Achievable Control Technology Standards, New Source Performance Standards, and Waste Incineration rules under CAA sections 111, 112, or 129 respectively.

EPA established a 2020 presumptive minimum fee of \$52.03 per ton of regulated pollutant. States may charge less than the presumptive minimum, and use alternative fee structures, if they provide a demonstration that they have adequate fees to fully cover the direct and indirect costs of adequately implementing and enforcing the Title V program. 40 C.F.R. § 70.9(b)(2) & (3). The Title V regulations at 40 CFR 70.9(b)(2)(i) indicate that the Administrator will presume that the fee schedule meets the fee schedule requirements of part 70 if the program would result in the collection and retention of an amount not less than the presumptive minimum. 40 C.F.R. § 70.9(b)(1) & (2).

The fee regulations for ADEM's air quality permits are found in Schedule A of Division 335-1 of the ADEM Administrative Code. For Title V major sources, the fee charged, for each ton of pollutant emitted each year, is intended to cover the costs associated with issuing and modifying those permits. The FY20 Title V fee rate set by Alabama was \$69.00 per ton, which is above the presumptive minimum. ADEM reports, consistent with the other state and local agencies in Region 4, that the Title V fee rate has had to increase since FY15, as tons of emissions have continuously decreased (ADEM's fee rate at the time of the FY13 evaluation was \$37.00 per ton).

ADEM does not use the presumptive minimum (with consumer price index increases) in determining its dollar-per-ton fee due to the failure of the presumptive minimum to address the steadily decreasing tons of billable emissions. Instead, to ensure that ADEM's program meets the Title V fee requirements to fully fund the program with Title V revenue, ADEM adjusts the fee rate annually based on actual billable tons of emissions (reported by facilities by June 30th of each year) and the required revenue needed to fully fund the Title V program, based on the previous year's expenses. For example, calendar year 2018 emissions and fiscal year 2019 actual expenses, plus any projected increases or decreases, are used to calculate the FY20 emission rate and fund FY20 program implementation. ADEM's fee schedule carries forward a contingency of approximately 10% to account for uncertainty in revenue needs, such as required salary increases or significant increases in healthcare costs; approximately 71% of ADEM's direct Title V expenses are employee salary and benefits.

To ensure that Title V funds are used solely for the Title V program, staff track and report their hours spent on Title V activities through coded timesheets, and ADEM maintains Title V revenue and expense accounts separate from other program funds. In follow-up to our initial survey, ADEM's accounting office provided EPA with a summary of direct and indirect expenses and revenue from FY17-FY19, per EPA's 2018 fee guidance. Table I, below, includes a summary of ADEM's Title V expenses and revenue.

Table I: Summary of FY17-FY19 Title V Fee Expenditures, Revenue and Fee Rate

REVENUE FOR Title V FUND 350	FY 17	FY 18	FY19
TOTAL EXPENDITURES	9,416,439.51	9,879,006.58	10,149,139.64
TOTAL AIR PERMIT FEES	9,510,059.83	9,406,682.07	10,719,919.83
TOTAL FUNDS REMAINING	1,327,030.10	854,705.59	1,393,485.60
TOTAL BILLABLE EMISSIONS (Tons)	198,561	173,732	155,968
FEE RATE TPY	\$47	\$54	\$69

Recommendation: ADEM’s fee schedule represents a solid approach to ensuring fees are adjusted annually to cover all Title V program costs. If billable emissions continue to decline, EPA suggests ADEM may want to consider including alternative fee revenues that are not tied to annual emissions. A base administrative fee, application fee, or complexity fee, combined with an emissions rate fee, are options used by other permitting authorities in Region 4. In addition, the Air Division should continue to track permitting facilities’ projected emissions totals so that it has the necessary time to determine an appropriate tonnage fee rate for the following fiscal year.

EPA Follow-up: ADEM’s FY20 fee rate was maintained at \$69.00/ton. Region 4 is aware of the impact of declining fees on state permitting programs and affected industrial sources and is actively engaging with states, other Regions, and our Headquarters’ offices on this issue.

Public Participation

Title V public participation procedures apply to initial permit issuance, significant permit modifications, and permit renewals. Adequate public participation procedures (see 40 CFR 70.7(h)) must provide for public notice, including an opportunity for public comment and public hearing on the draft permit, permit modification, or renewal. Draft permit actions may now be noticed on a website and through email (e-notice). The permitting authority must keep a record of the public comments and respond to the significant issues raised during the public participation process.

ADEM has adopted the federal electronic public noticing “e-notice” rule, which allows for online publications to be the consistent notification method for public notices. As a result, ADEM no longer utilizes newspapers as the primary source of notifications for Title V notices. ADEM’s public notices can be found on their website at: <http://adem.alabama.gov/newsEvents/publicNotices.cnt>.

ADEM reports that utilizing e-notice has been a benefit to both the community and ADEM. ADEM has realized a cost savings and believes that utilizing its website for notification is more useful and

accessible to communities. In addition to the on-line public notification, ADEM has developed an extensive email list consisting of those who have requested individual notification for all public notices. ADEM has a well-developed, enhanced outreach strategy that, when combined with its public notice process, ensures communities know that they have opportunity to provide public input. ADEM has community outreach materials on their website including the “Guide for Citizen Participation” and “Community Engagement.” ADEM provides translation services in Vietnamese, Korean, and Spanish. ADEM reports that permit writers receive refresher courses in environmental justice on a periodic basis. While ADEM reported no recent environmental justice concerns raised during permitting, ADEM indicated that their decision to plan public meetings involving industry and the affected communities has shown great promise in ensuring the community is heard and provides industry with an opportunity to be a “good neighbor.”

Recommendation: EPA recommends that ADEM regularly provide permit managers and writers with training and access to tools for meaningful engagement with the public and communities and ensuring that any potential impacted communities are aware of their ability to participate in the permitting process. EPA Region 4 is available to provide training on the use of EJSCREEN (<https://www.epa.gov/ejscreen>). Additional Environmental Justice resources can be found at <https://www.epa.gov/environmentaljustice>. EPA’s *Activities To Promote Environmental Justice in the Permit Application* (<https://www.federalregister.gov/documents/2013/05/09/2013-10945/epa-activities-to-promote-environmental-justice-in-the-permit-application-process>) summarizes additional useful tools for community engagement, many of which ADEM is currently using.

Permit Issuance

As part of the program evaluation, the EPA reviewed ADEM’s Title V program permit issuance rates to ensure that permits are timely issued and renewed on a five-year cycle. ADEM reported timely issuance of 14 significant permit modifications and did not have any significant modifications in backlog status.

At the time of the onsite program review, ADEM had a backlog of twenty-eight (28) Title V permit renewal applications, *i.e.*, older than eighteen (18) months past the Title V permit expiration date. This represents less than ten (10) percent of ADEM’s Title V universe. The applications for these permits were certified by ADEM as being timely, so they are extended and not expired (*i.e.* the facilities may continue to operate in compliance with their permits). Within these 28 Title V permit renewal applications were five (5) utility permits that were extended.

The Title V regulations require air permitting agencies to “take final action on each permit application (including a request for permit modification or renewal) within 18 months, or such lesser time approved by the Administrator, after receiving a complete application.” 40 CFR §70.7(a)(2). Ensuring that Title V permits are renewed and subject to public review every five (5) years is an important aspect of every Title V program. Delayed permit issuance reduces the ability of the public to review and provide comments on a permit and can result in a delay in the incorporation of new applicable requirements.

In our *Preliminary Findings*, provided to ADEM on December 11, 2019, EPA requested that ADEM provide a list of the backlogged sources to EPA with a proposed timeline for issuance of these permits, and that these permits be prioritized.

On February 27, 2020, ADEM submitted to EPA a table detailing the proposed timeline for addressing this backlog. The table addressed 19 of the originally identified 28 sources since one (1) was determined to have been erroneously identified as backlogged and eight (8) are landfills, which were reported as delayed due to ADEM not having landfill-specific regulations and due to the EPA's delay in promulgation of revised landfill rules. In the time since ADEM submitted its proposed timeline, the EPA finalized the *National Emission Standards for Hazardous Air Pollutants (NESHAP): Municipal Solid Waste Landfills Residual Risk and Technology Review*, which was effective March 26, 2020 (see 85 FR 17244) and EPA's implementing 111(d) regulations are expected in 2021. With respect to the remaining 19 backlogged sources, the proposed timelines identified all the backlogged permits to be issued in 2020, with three (3) already having been issued.

Action Item: ADEM should begin implementation of the finalized NESHAPs for Municipal Solid Waste Landfills and issue the eight (8) backlogged Title V landfill permits upon adoption of implementing 111(d) regulations. EPA requests that ADEM include an updated timeline for these permits, and any permits older than eighteen (18) months past the Title V permit expiration date with each TOPS report.

EPA Follow-up: Due to COVID-19, adjustment to telework, and concerns with public involvement, ADEM's implementation of the backlog schedule was initially delayed. However, in a truly commendable effort, the agency noticed all the remaining non-landfill backlogged permits (for applications that were not withdrawn or resubmitted) by the end of the year and has since finalized the permits.

Selected Permit File Review

As part of the onsite program evaluation, the EPA reviewed the files of ten (10) preselected Title V permitting actions to ensure consistency with Title V requirements and to ensure that the permitting files were administratively complete. EPA found the permits to be consistent with Title V requirements; they were well-written, thorough, detailed and provided an extensive accounting of the historical modifications and permit revisions for the facility.

In addition, ADEM's web portals (*i.e.*, *Notices and Events* for draft permitting actions and *eFile* for final permitting actions) are complete with respect to readily providing access to the documents typically relevant to the permit issuance process (*e.g.*, application, statement of basis, draft permit, final permit, response to comments). However, these resource tools do not provide easy access to interim documents such as those that are proposed to EPA (*e.g.*, proposed permit, draft Response to Comment document, etc.). The Final RTC is placed on the website when the permit is finalized.

Recommendation: ADEM indicated the Air Division will be moving to a new database Program, *Windsor*. EPA recommends that ADEM consider including access to all relevant permitting documents in one location (examples include Florida's *Oculus* and Kentucky's *TEMPO*-based programs).

EPA Follow-up: In 2020, ADEM began uploading their Title V proposed permit and Statement of Basis to EPA's new Electronic Permitting System (EPS), which automatically posts the public comment and petition periods on EPA Region 4's website at: <https://www.epa.gov/caa-permitting/alabama-proposed-title-v-permits>, and gives the public access to the proposed permit and RTC document.

Conclusion

Based on the files reviewed, Title V survey results, TOPS data, fee documents, site visit interviews, and follow-up information received, the EPA concludes that ADEM has an excellent grasp of the requirements of Title V and is continually working to find impactful ways to increase their staff's ability to meet the varied program elements of Title V. Reviews of ADEM permits noted that they are complete, well-written, providing the detailed historical information on facility modifications.

ADEM benefits from a Title V fee structure that allows for annual updates to the fee rate and a budget process that ensures Title V fees are used solely for the Title V program. EPA acknowledges the ongoing nation-wide impact of maintaining a fully funded program with significantly declining fees.

ADEM is continuing to address the Title V backlog, which is assisted by promptly filling vacancies. ADEM made commendable progress in developing a timeline and issuing all the non-landfill backlogged permits identified to EPA despite the challenges faced by COVID this year. The remaining action item is for ADEM to address/issue the eight (8) identified landfill permits consistent with the finalized landfill NESHAP. EPA will continue to monitor any backlog of extended permits.

EPA Region 4 is committed to providing any needed assistance with respect to permit reviews and public engagement, including environmental justice sensitive permitting matters and training on the EJSCREEN tool. Region 4 is committed to providing prompt feedback to ADEM regarding any rule/guidance interpretation inquiries and any general/specific permitting questions raised, and to keep ADEM informed of any future agency actions, such as rulemaking, that may have an impact on permitting programs.