



**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY**

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SENT VIA ELECTRONIC MAIL

October 3, 2022

Jay Hollingsworth
Air Permitting & Engineering Acting Section Chief
Vermont Agency of Natural Resources
Department of Environmental Conservation
Davis 4, One National Life Drive
Montpelier, Vermont 05620-3802
Jay.Hollingsworth@vermont.gov

Dear Mr. Hollingsworth:

Title V of the Clean Air Act, as amended in November of 1990, requires each state to develop and implement an operating permit program for stationary sources of air pollutants. As provided for in 40 CFR 70.10, and as a continued part of the EPA's obligation to oversee and review title V programs, the EPA conducted a virtual program review of Vermont's title V operating permit program on September 6, 2022.

Enclosed please find EPA's results from our recent review. We appreciate the time and effort in providing Vermont Department of Environmental Conservation's responses to our inquiries prior to the evaluation. The EPA is pleased with Vermont's implementation of its operating permit program. In particular, we applaud VT DEC for its timely issuance of permits and maintaining a zero backlog for its title V permit program. EPA did not identify specific areas for improvement during the program evaluation.

The EPA appreciates your time and cooperation and looks forward to continuing to work with you in implementing the title V operating permit program. If you have any questions, please call me at (617) 918-1287 or Eric Wortman at (617) 918-1624.

Sincerely,

PATRICK BIRD Digitally signed by PATRICK BIRD
Date: 2022.10.03 17:40:56 -04'00'

Patrick Bird, Manager
Air Permits, Toxics, and Indoor Programs Branch

Enclosure

2022 EPA Region 1 Title V Operating Permit Program Evaluation

Vermont Department of Environmental Conservation

Participating in the program evaluation were:

Patrick Bird, US EPA Region 1
Eric Wortman, US EPA Region 1
CareyAnne Howlett, US EPA Region 1
Jay Hollingsworth, VT DEC
Phillip Cannata, VT DEC
Tony Mathis, VT DEC

The following sections contain the Vermont Department of Environmental Conservation's (VT DEC's) responses to EPA questions received on August 12, 2022. Where specific findings or commitments were made during the program review conducted on September 6, 2022, EPA has provided an additional response.¹

Title V Program and Regulatory Updates

1. Please describe any significant changes your agency has made to the following aspects of your title V program in the last 6 years. What prompted the changes and how have the changes impacted the permitting process? If no changes have been made, write "N/A":

- a. Organizational structure/reorganization;

VT DEC Response: Long-time staff and manager retired January 1 and February 1, 2022. We are currently a staff of three.

- b. Title V application forms;

VT DEC Response: None

- c. Permit and Statement of Basis development and templates;

VT DEC Response: None

- d. Public notification and participation procedures;

VT DEC Response: We have developed an Agency-wide Environmental Notice Bulletin for noticing draft permits. Has increased consistency and transparency.

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

- e. Waivers, exemptions, general permits and permits by rule;

VT DEC Response: None

- f. Permit process in general, including any streamlining efforts;

VT DEC Response: We have developed source category pages

EPA Response: VT DEC reports that these source category webpages save permitting staff a lot of time in working with applicants. These pages enable applicants to prepare themselves on what is needed in the application process for particular source categories before reaching out to DEC staff. The initial workload to develop these pages is significant, but the benefits are worth those upfront effort.

- g. Internal guidance, including any updates made to internal guidance on a) periodic monitoring, b) streamlining, and c) practical enforceability of title I limits.

VT DEC Response: We continue to develop and maintain a permit template which has increased efficiency and consistency in permit issuance.

EPA Response: VT DEC also noted their merged pre-construction and operating permits program creates efficiencies in having to only issue one permit for new major sources, although permitting of new major sources in Vermont is rare.

- h. Other - please describe.

VT DEC Response: None

- 2. Have any revisions been made to your agency's title V regulations within the last 6 years, including fee requirements, public notice requirements and judicial review? If yes, what is the nature of these revisions?

VT DEC Response: The most recent amendments to the Vermont permitting regulations were in 2016. These changes were necessary to achieve EPA approval of Vermont's State Implementation Plan, address the need for numerous administrative revisions, remove outdated and superseded regulations, and take delegation of several provisions of law under the Clean Air Act.

EPA Response: The EPA notes that majority of the regulatory amendments in 2016 were relevant to the State's New Source Review (NSR) program. However, some changes resulted in minor discrepancies between the State's current rules and the approved title V operating permit program. If VT DEC makes further revisions to its title V program regulations, it should consult with EPA to determine if a package of

the changes to the title V operating permit program should be submitted to EPA for review and approval.

Staffing Resources/Management Support

3. How many full-time equivalent (FTE) staff does your agency have dedicated to implementing your title V permit program? Please provide a breakdown in terms of permit writer, compliance, monitoring, etc.

VT DEC Response: Historically, our section has been five FTEs however, since February of 2022 we are now a staff of three. We do not have staff dedicated to title V. We have staff members dedicated to specific facilities and source categories. This allows Vermont to optimize its limited resources by having only one staff person familiarize themselves with a source's operations instead of having several staff people learn the same source operations.

4. Is your title V program currently fully staffed? If not, please describe.

VT DEC Response: As mentioned above, we are currently understaffed 2 FTE's.

EPA Response: EPA recognizes that the three remaining FTE in VT DEC's air permitting program are not working full-time on title V related activities and have other permitting responsibilities such as issuing state-only and federally enforceable New Source Review permits. VT DEC's use of work codes ensure only title V expenses are being billed to the state's title V account. VT DEC shared with EPA that hiring of new permitting staff is a priority of the program, but the timing on when new hires will be brought on board was not known during our program evaluation.

5. Please describe title V staff turnover over the past 3 years.

VT DEC Response: Until January and February of this year, we have not had any staff turnover for the last 3 years.

- a. How does this impact permit issuance?

VT DEC Response: No impact.

- b. How does the permitting authority minimize turnover and/or ensure consistency of implementation when there is turnover?

VT DEC Response: Proper staff training, permit template document and staff training documents ensure consistency.

6. Do your title V permit writers work full-time on title V? If not, please describe the other activities and the approximate percentage of time spent on title V permits.

VT DEC Response: We do not have any staff that work full time on title V.

- Construction permits and program development: 50% of staff time.
- State Operating Permits and program development: 25% of staff time.
- Special projects: 10% of staff time
- Title V permits and program development: 15%

EPA Response: This allocation of staff resources between title V operating permits and other state-issued air permits is common among New England state air permitting programs. EPA stresses the need for accounting of staff time between these programs to ensure a complete and accurate total of time devoted to operating permit activities. VT DEC permitting staff primarily uses title V permits fee to cover appropriate salaries expenses on title V activities. According to VT DEC permitting staff, title V fees are not used for equipment purchases.

7. Are there any competing resource priorities for your title V staff in issuing title V permits? If yes, please describe.

VT DEC Response: Not at this time.

8. Please describe any best practices and internal concerns with respect to staffing resources or management support that affect permit issuance?

VT DEC Response: None at this time.

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

VT DEC Response: Although at this time Vermont's management believes the title V program is currently well staffed with a diverse knowledge base of CAA requirements. This has not always been the case due to staff turnover. High personnel turnover and new staff impede permit issuance due to the technical details of emission sources and nuances of complicated and complex permitting and emission regulations.

10. Is there anything that EPA can do to assist/improve your training? If yes, please describe.

VT DEC Response: Not at this time.

Permit Development and Issuance

Permit Issuance Rates:

11. If one exists, does your program have a plan in place to reduce and eventually eliminate the title V backlog? Please describe or provide.

VT DEC Response: Currently, there is no title V backlog. All title V applications in house are currently under active review and are anticipated to be issued within the year.

EPA Response: The EPA is appreciative of VT DEC's efforts to maintain a zero backlog for its title V permit program.

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

VT DEC Response: None at this time.

13. Please describe any factors that you find affect your ability to issue title V initial, renewal, or significant modification permits within 18 months.

VT DEC Response: None at this time.

Compliance Related Factors:

14. Does your agency verify that the source is in compliance before a permit is issued, and if so, how?

VT DEC Response: Compliance is verified through annual inspections of our title V facilities. If a facility was out of compliance at the time of an application submittal, Permitting would work with Compliance and either pause on issuing a final permit until the violation was resolved or work a compliance schedule into the permit.

15. In cases where the facility is known to be out of compliance, or may be out of compliance (based on pending NOVs, or other evidence suggesting a compliance problem), are specific milestones and dates for returning to compliance included in the permit, or do you delay issuance until compliance is attained?

VT DEC Response: As noted above, a compliance schedule could be drafted and integrated into the permit.

16. Have any unresolved permit violations created a delay in issuing title V renewals? If so, please describe.

VT DEC Response: None that I am aware of.

17. What practice or guidance does your agency use to ensure that each limitation of PTE of a source is enforceable as a practical matter? (e.g., inclusion of throughput limits, short-term averaging periods, etc.).

VT DEC Response: Emission limits are clearly designated and outlined, for each respective emission point, in the Emission Limitations section of each permit.

Depending on each emission limit, compliance is determined through record keeping and reporting requirements. Monitoring and testing requirements may also be put in place to verify emission limits are being met.

Other Questions Related to Permit Development

18. Describe the process by which the permit writers ensure all requirements from applicable construction permits are incorporated into the title V permit.

VT DEC Response: Vermont incorporates all conditions from construction permits directly into a combined permit to construct and operate.

19. Are synthetic minor limits specifically identified in title V permits, and if so, how?

VT DEC Response: When calculating HAPs, the default of less than 1 ton/year, or up to 8 tons/year, is used whenever possible. If HAPs are greater than 8 tons/year combined, we specify individual/total in our “Allowables” table using <8/20 (keeps them a synthetic minor SM) or <10/25 (keeps them a SM80). A footnote is used to clarify individual/total combined such as: Potential emissions of each individual HAP are less than 8 tons per year and total combined HAP emissions are less than 20 tons per year.

20. Does your agency have a formal process for quality assuring permits before issuance? What are the steps in the typical review process for the final permit before it is issued (*i.e.*, attorney, inspector, technical expert, compliance, manager, or peer review)? Does the involvement in review differ based on whether comments were received?

VT DEC Response: Yes, draft permits are first peer reviewed within the engineering services section. Drafts are then reviewed by our Compliance section. Once a revised draft is developed taking into account all internal comments and corrections, it is then presented to the permittee for review prior to noticing the draft.

EPA Response: EPA reviewed two draft title V permit renewals and one proposed title V permit renewal from VT DEC during 2022. EPA found the permit to be clear, contain all applicable requirements, and appropriate citations. The administrative records for these permits were also complete and well structured.

21. What do you believe are the strengths and weaknesses of the format of your agency’s permits (*e.g.*, length, readability, compliance certifications, etc.)? Why?

VT DEC Response: Our permits are well organized have a very robust findings table at the beginning of the permit outlining all equipment and specifications permitted to operate at the facility.

Public Participation & Community Engagement

22. What media (web, email, mail) and methods does your agency use for public noticing initial and renewal permits? Modifications?

VT DEC Response: Our agency no longer utilizes newspapers for noticing permit milestones. All projects are now noticed on Vermont's Environmental Notice Bulletin (ENB). The development of the ENB has increased transparency and consistency across the agency in terms of noticing permits and meetings.

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

VT DEC Response: As mentioned above, our ENB.

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

VT DEC Response: All notices including title V permits and federal major PSD permits are published in Vermont's online ENB for which there is no fee.

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

VT DEC Response: \$0.00. Historically, the cost was \$550 per publication for which we had in our fee schedule as an additional application processing fee if a notice was required.

26. Does your agency maintain mailing lists of people you think might be interested in the title V permits you propose?

VT DEC Response: Yes, we do on a project specific basis if there is interest. Typically, the ENB is used for this. Interested parties can set up a notification within the ENB for any projects within a particular area or anywhere in the state for a particular type of permit.

27. How does a person or group get on the list (e.g., by calling, sending an email or other written request, filling out a form on the website)?

VT DEC Response: Any way they would like. We don't make interested parties fill out a form.

28. Does your agency provide notices in languages besides English? If yes, please list the languages.

VT DEC Response: No. None at this time.

29. What information does your agency post on your website during the public notice period? How long is this information available on the website?

VT DEC Response: The ENB provides the following for all in house applications and is not limited to only those out to draft: facility name. Project ID, brief project description, location, staff contact info, permit application status, date received, date noticed, date for end of public comment period, date of final action if issued, permit appeal period if issued. Projects remain on notice for 30 days following issuance. The state also notices draft title V permits and draft federal PSD permits on their own website with links to all draft documents.

EPA Response: VT DEC began using the ENB in 2018 to enable a consistent platform to provide online access to Department documents. The system allows for users to sign up for specific programmatic updates and activities, including notice of draft and final title V permit operating permits. VT DEC reports the system works well, and there were no issues in going to a fully electronic public notice platform.

30. What is your agency's process for the public to obtain permit-related information (such as permit applications, draft permits, deviation reports, monitoring reports, compliance certifications)?

VT DEC Response: Just a phone call or email. Any draft permit documents such as draft permits and application materials are available through a hyperlink on the ENB.

31. What criteria does your agency use to determine whether an informational meeting or public hearing will be held on a draft title V permit?

VT DEC Response: We base this on public interest. If there is a request for an informational meeting, we hold it.

Does your agency reach out to specific communities beyond the standard public notification processes? If so, how does your agency determine if a community will receive enhanced public outreach?

VT DEC Response: As required by 40 CFR part 70, the state maintains a list of interested parties that are notified when permits are issued draft for public comment. The ability for someone to be added as an interested party for any project is advertised on the states website. The state has enhanced the ENB to enable interested parties, once they sign up, to receive automatic email notifications of project changes based on a subscription service that they can sign up for. EPA supports Vermont's efforts to enhance public involvement when issuing title V permits and simplifying the process for involving the public.

32. What do you believe is going well with respect to your agency's public notice procedures?

VT DEC Response: The ENB has become a very effective tool for public notice procedures.

EPA Response: EPA applauds VT DEC for its efforts to ensure adequate public participation in its title V operating permit program. VT DEC's ENB sufficiently meet the programs public notice requirements. As discussed during the program review, public participation is likely increased as a result of the ENB process because the bulk of relevant permitting information can be accessed online.

33. What do you believe could be improved with respect to your agency's public notice procedures?

VT DEC Response: None at this time.

Title V Fees FINANCE

34. What was your title V fee (dollars per ton) for FY 2020?

VT DEC Response: \$77.13

35. What is your title V fee (dollars per ton) for FY 2021?

VT DEC Response: \$77.08

EPA Response: EPA notes Vermont's title V program fees, measured in dollars per ton of pollution, is above EPA's current presumptive minimum title V operating permit fee of \$58.09 dollars per ton. See https://www.epa.gov/system/files/documents/2022-09/FEE70_2023.pdf

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

VT DEC Response: Our collected title V revenue has been consistent for the last four years. Please see below:

<u>Year</u>	<u>Cost/Ton Criteria</u>	<u>Total Annual Registration Revenue</u>
2018	\$79.53/ton	\$157,344.55
2019	\$76.66/ton	\$160,605.24
2020	\$77.13/ton	\$147,854.56
2021	\$77.08/ton	\$151,175.75

37. Does your title V revenue cover all your title V expenses? question for Finance. What are our expenses charged to title V?

VT DEC Response: Yes

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

VT DEC Response: Yes, and we do.

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

VT DEC Response: Yes

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

VT DEC Response: \$142,820

40. Describe the design of your title V program fee schedule, such as, fees based on allowable emissions or actual emissions; include any fixed fees for specific permit-related processes, complexity, application fees, etc.

VT DEC Response: We have a single fee for new major sources or major modifications of \$15,000.

41. Describe your agency's process for revising the title V fee schedule. Discuss if the schedule is automatically updated based on previous year's expenditures and revenues.

VT DEC Response: The title V fee is codified in state law. The schedule is not automatically updated annually. However, the agency can regularly request updates to the schedule from the legislature. Typically, the Agency considers updates at least every three years.

42. Provide a citation to your current title V fee rules and attach a copy of any state issued fee guidance.

VT DEC Response: **Vermont Statute: 3 V.S.A. 2822(j)(1)(A) (Permit Fees): Vermont Statute: 3 V.S.A. 2822(j)(1)(B) and 2822(k) and (l) (Registration Fees)**
<https://legislature.vermont.gov/statutes/section/03/051/02822>

Permitting Fee Schedule:

<https://dec.vermont.gov/air-quality/permits/permit-fees>

Vermont Air Pollution Control Regulations:

https://dec.vermont.gov/sites/dec/files/aqc/laws-regs/documents/AQCD%20Regulations%20ADOPTED_Dec132018.pdf

- 5-504 Permit Fees
- 5-806 Fees
- 5-807 Determination of Fees

43. Does your agency collect at least the presumptive minimum as defined in part 70? If not, please discuss why.

VT DEC Response: Vermont does not currently use the presumptive minimum fee approach.

44. How often does your agency re-evaluate whether the fees assessed for the title V sources in your program are sufficient to cover the costs of administering the title V program? Please describe the method used.

VT DEC Response: The Agency considers amendments to the fee statute at least every three years.

45. How does your agency track title V expenses and revenue (i.e., separate accounts, work codes, etc.)? Specify how you track staff time allocated to title V activities versus non-title V activities.²

VT DEC Response: Program staff track their time to title V activities with a title V time work code. We keep track of the major source application fees. Registration revenue is differentiated between major and non-major.

46. Does your agency have any plans to update its title V fees or fee calculation methodology in the next 2 years? Please describe.

VT DEC Response: Currently, Vermont is not anticipating a change in our fee calculation methodology in the next two years.

EPA Response: EPA finds VT DEC's title V fee program wholly funds program expenses and provides for carry-over funds should major disruptions in program fee collection occur. These carry-over funds would enable the Department to make necessary amendments to their fee structure while still covering program expenses.

Environmental Justice (EJ)

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

VT DEC Response: The state has very few new significant projects being proposed at this time. Most projects are small or are modifications of existing sources. The state holds all applicants to the same standards regardless of location. In 2022 Vermont statute was changed to include EJ concerns into many of the state's programs (not just ANR). Work is now beginning on how best to implement the new law.

² As a reference, see Appendix C of [EPA's Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70, March 27, 2018](#)

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

VT DEC Response: None at this time.

49. Does your agency have environmental justice (EJ) legislation, policy, or general guidance which helps to direct permitting efforts? If yes, please provide copies or online links to these documents.

VT DEC Response: An EJ law was just passed by the Legislature this session and signed by the Governor. It has definitions for EJ policy and EJ populations, among other definitions. It is still to be determined how this will specifically impact DEC's permitting programs. <https://legislature.vermont.gov/bill/status/2022/S.148>

EPA Response: During the evaluation, EPA noted the recently released EJ Legal Tools document. See <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>. EPA also discussed the interim document entitled *Environmental Justice and Civil Rights in Permitting: Frequently Asked Questions*. This document provides permitting authorities information on their responsibilities to integrate EJ and civil rights into relevant environmental permitting processes. See <https://www.epa.gov/system/files/documents/2022-08/EJ%20and%20CR%20in%20PERMITTING%20FAQs%20508%20compliant.pdf>

Incorporation of MACT Requirements into Permits

50. How does the permitting authority incorporate MACT requirements into the permit?
- Describe the permitting authority's MACT permit content structure and approach for both major and area source standards.

VT DEC Response: The state has few sources subject to major source MACT rules. Where applicable, the state summarizes the requirements of the rule such as "the Permit shall comply with the applicable requirements of 40 CFR 60.xxx including the following: In accordance with 40 CFR 63.xx, the Permittee shall ...".

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

VT DEC Response: The state includes only the compliance option(s) the source is currently using or may likely use in the permit term. Including

unlikely compliance options adds unnecessary confusion and complexity to a permit that is intended to clearly identify the source obligations.

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

VT DEC Response: Although not an issue for Vermont, the state waits until permit renewal unless the new requirements take effect during the first two years of the permit term.

State Feedback

Opportunity for the permitting authority to raise any issues and concerns

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

VT DEC Response: Nothing at this time.

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

VT DEC Response: Nothing at this time.

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

VT DEC Response: Nothing at this time.

54. What are the permitting authority's title V program priorities for the next two years?

VT DEC Response: As of now, we are not anticipating any large new Title V facilities. Our priority will be to continue to process title V renewals and modifications in a timely fashion.

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

VT DEC Response: Nothing additional at this time.

EPA Conclusion: EPA Region 1 appreciates the collaborative partnership with VT DEC. EPA did not identify any areas for improvement or significant program deficiencies during the title V program evaluation. We look forward to assisting the VT DEC in future permitting and rulemaking efforts, as well as providing training and guidance to the program whenever possible. We would like to thank VT DEC for an informative discussion during the program evaluation, and we are open to any feedback from VT DEC and how we can improve the title V operating permit program evaluation process.

