

Title V Operating Permit Program Evaluation

**South Carolina Department of Health and Environmental Control
Bureau of Air Quality**

FINAL 2023 Evaluation Report



United States Environmental Protection Agency, Region 4

Air and Radiation Division

Atlanta, Georgia

Acknowledgements

The U.S. Environmental Protection Agency (EPA) Region 4 would like to acknowledge the dedication and commitment of the staff and management of the South Carolina Department of Health and Environmental Control (DHEC). DHEC staff addressed numerous challenges to keep their program operating smoothly during the pandemic, including remote work, public notice and comment, and public meetings and hearings.

The EPA Region 4 permitting staff has had considerable engagement with DHEC in the recent past aside from conducting this program evaluation. Such activities included: reviewing a significant number of both synthetic minor and major source construction permits, reviewing submittals related to insignificant activities and regional haze state implementation plans, and assisting DHEC with its use of the EPA's electronic permitting system. In every instance, the EPA found the management and staff to be very knowledgeable, professional, and dedicated to their mission. The EPA also appreciates DHEC's cooperation and willingness to respond to our information requests in completing this program evaluation.

Executive Summary

Positive Finding(s)

- The EPA commends DHEC for all its hard work and dedication to significantly reducing its title V backlog. The backlog (of title V initial and renewal applications) which once was at 89 (as reported in September 2019) is currently at 38 (as reported in DHEC's April 2023 monthly submittal).
- DHEC has put in place measures (*e.g.*, changing from geographical to sector-based assignment philosophy) and tools (*e.g.*, its **ePermitting** system) to further improve efficiency related to permit issuance.
- DHEC has been proactive in its efforts to retain staff (including those nearing retirement) not only by securing funds to allow for retention/performance increases, but also work life improvements such as flexible work hours/alternative work schedules.
- DHEC's Environmental Affairs has established a Community Engagement Team which works closely with permitting staff to provide consistent approaches for meaningful involvement/engagement beyond the standard public notice process.
- DHEC's permits and statements of basis are generally thorough and well-written.

Area(s) to Monitor

- DHEC currently has a moderate backlog with respect to initial and renewal title V permit applications. The EPA has observed that DHEC has taken measures to address this backlog and expects DHEC to continue working diligently to reduce this backlog while keeping the EPA informed of its progress via its monthly updates.

Action Item(s)

- The EPA recommends DHEC, as soon as practicable, initiate another review of its fee structure to ensure that its title V program remains sustainable beyond FY23. With a trend of expenses outpacing revenue, there is concern that expenses will continue to outpace revenue and that the once sizeable forwarding balance of title V funds will significantly be reduced and eventually go negative. It is particularly crucial to initiate this review soon since it is understood that the process of updating the fee structure must be approved by the General Assembly of the South Carolina legislature via rulemaking, which can take as long as 18 months.

Recommendation(s)

- Based on the EPA's in-depth review of selected permitting actions, the EPA encourages DHEC to ensure all permit terms and conditions include citations of origin and authority, improve the level of detail in permits particularly related to the National Emission Standards for Hazardous Air Pollutants (NESHAP)/Maximum Achievable Control Technology (MACT) requirements, and ensure the practical enforceability of all emission limits.
- The EPA encourages DHEC to undertake/affect/implement those suggestions presented in Section II of this report to improve its chances of filling vacancies with qualified/desired candidates.
- The EPA encourages DHEC to take advantage of the available resources mentioned in Section IV of this report and to seek out more opportunities for community outreach, particularly with respect to affected communities, to address any potential environmental justice (EJ) concerns.

I. Background

In response to the recommendations of a 2002 Office of Inspector General (OIG) audit, the EPA developed an action plan for performing reviews of title V programs for each air pollution control agency beginning in fiscal year (FY) 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 eight 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 seven programs have 10 or fewer sources). Resources allowing, the EPA Region 4 typically commences two title V program evaluations annually, with the goal of reviewing each of these 11 programs on a five to six-year cycle. The purpose of these evaluations is to ensure the ability of the permitting authority 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 the EPA can assist the permitting authority in meeting their title V commitments.

The initial evaluation of DHEC's title V permitting program was conducted in December 2003, with the most recent (prior to this evaluation) being July 2016. The 2016 program evaluation included a review of DHEC's title V revenue and expenses, staffing plans, public participation, EJ, permit issuance, and permit files.

The 2023 DHEC program evaluation consisted of a review of staffing resources and internal management support, title V revenue and expenses, public participation, EJ in permitting, permit issuance rates, and a detailed review of 10 issued permitting actions. This information was gathered through DHEC's response to the EPA's program evaluation survey questions, review of selected permit files, a virtual visit with interviews and discussions on March 2, 2023, a fee review based on additional information provided to the EPA for DHEC's FY19-FY23 budget cycles, and permit issuance rates reported to the federal Title V Operating Permit System (TOPS) through December of 2022. Preliminary results of our review of selected permit reviews were provided to and discussed with DHEC on March 2, 2023. DHEC was provided with our draft FY23 program evaluation report on April 26, 2023, as an opportunity to provide feedback.

II. Program Overview and Staffing Resources

DHEC’s Bureau of Air Quality (BAQ) is responsible for implementing state and delegated federal air quality regulations through-out the state of South Carolina. The BAQ office is in Columbia, South Carolina, with jurisdiction covering the entire state. The permitting regulations under which BAQ implements the state minor source, title V, Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs can be found in SC Regulation 61-62 Air Pollution Control Regulations and Standards ([here](#)). South Carolina has a long history of attaining the National Ambient Air Quality Standards (NAAQS) and is currently designated attainment for all NAAQS.

The Division of Air Permitting (DAP) has recently reorganized and moved from a geographical-based assignment system to sector-based assignments. BAQ believes that this change will enable permit writers to become more efficient as they become more knowledgeable about the processes and regulations applicable to the specific sector they are focused on. It is noted that they will work to ensure knowledge transfer between staff to ensure that, if a staff member from one sector leaves, they will not be taking all the institutional knowledge with them. Additionally, they have created a training position which will provide continuous improvement training for existing staff as well as help train new permit writers.

DHEC is currently responsible for regulating 268 title V sources (based on the latest semi-annual TOPS submittal for July-December 2022). The number of staff members that DHEC requires in each of the positions that support title V work to support the current title V workload are included in the Table I, below. DHEC currently has seven permit writing vacancies, who will be working on title V as approximately 50 percent of their job duties.

Table I: DHEC Staff Funded with Title V Fees

Functional Unit	FY2022 FTEs*
Permitting Division	22.51
Compliance/Enforcement	22.95
Region (inspectors and support staff)	7.54
Air lab (monitoring)	8.90
Other	19.30
Total Title V FTEs	81.20

*FTEs = Full Time Equivalents

In addition to their work on title V permits, DAP staff also issue construction permits, registration and general state operating permits, and conditional major permits. The time that permitting staff spends on title V permits varies depending on their assignments and priority is given to construction permit applications to ensure economic growth within South Carolina.

In the past three years, BAQ has lost 14 permit writers, some of whom were promoted to managers and some of whom took jobs either in other Bureaus or outside of the agency. To help retain staff, BAQ requested and received over the past two budget cycles some additional state appropriations funds to offer small retention increases to critical positions such as Environmental Engineering Associate (E/EA I, II, and III) and Environmental Health Manager (EHM I, II, and III) positions. It is the EPA's understanding that BAQ has requested additional funds as part of the current budget process to do the same for additional critical positions with high turnover and where salaries are less than state averages or other standards. In addition to these retention increases, BAQ management is prioritizing increasing the annual number of opportunities for staff to receive performance increases and reclassifications. BAQ also offers telecommuting up to three days a week as well as flexible work hours and alternative work schedules to attract and retain staff.

A long-term concern of DAP is that approximately 35 percent of their staff could potentially retire within the next five years. In addition, they have had a difficult time attracting qualified applicants to fill their vacant permit writer positions. DHEC has attended college career fairs to attract talent. However, it is noted that once permit writers are hired, it still takes time to onboard and train them before they can efficiently write quality permits.

Finding(s): DHEC's DAP has recently reorganized to assign permits based on sector, which it believes will enable permit writers to become more efficient as they will be more familiar with the industries they focus on.

DAP currently has seven vacancies and has recently had difficulties recruiting qualified applicants. Additionally, approximately 35 percent of its staff will have the potential to retire within the next five years. To retain current staff, DHEC has been working to offer flexible working schedules and telework opportunities as well as retention increases and additional performance increases.

Recommendation(s): DHEC's BAQ should continue working to find ways that promote staff retention and attract new talent. It is noted that Georgia's Environmental Protection Division had success in significantly increasing the number of applications they received by sharing their job postings on job websites like *Indeed* and *Monster*.

In addition to participating in college career fairs, it could be helpful to reach out to professional organizations and clubs at South Carolina colleges/universities to introduce students to the idea of working for DHEC prior to career fairs. An example is the American Academy of Environmental Engineers and Scientists, which is a professional organization for students that brings professional resources and opportunities to students and fosters community between environmental engineers and scientists. Many of these organizations, along with some classes, will invite speakers from different industries to give talks to students, even as young as freshmen. DHEC giving talks like these would highlight the possibilities of working for the state government, which students may not be exposed to otherwise.

Additionally, working with colleges to propose and sponsor senior design projects would give DHEC an opportunity to further highlight its work and to mentor students at the same time. Offering internship or co-op positions to college students would also be a good introduction to DHEC career opportunities.

Overall, any work with colleges/universities will help to share the mission of DHEC and emphasize the direct impacts of its work, which is a good way to encourage environmentally focused students, who may have gone into their field of study to help communities and the environment, to apply to DHEC jobs. Lastly, a potential solution to address upcoming retirements and transfer of knowledge (something that North Carolina recently began doing) is to offer retirees an option to come back to work on a part-time basis to help train new staff and assist with the workload.

The EPA's Follow-Up: Along with our final report, the EPA Region 4 plans to provide DHEC with Region 4's permit training checklist, based on the EPA's draft Learning Management System (LMS) air permitting curriculum, as well as a list of recommended air permitting fundamental and core courses. The EPA's Office of Air Quality Planning and Standards retired the Air Pollution Training Institute (APTI) website in May 2021 and opened the new Learning Management System (LMS) website last year for state and local agencies. Permitting is one of the focus areas of the new curriculum.

The old APTI content is still available for use by permitting authorities and Metro 4, Inc. and Southeastern States Air Resource Managers, Inc. (Metro 4/SESARM) to conduct in-person and web-based training. The new LMS site has a training calendar and registration portal for Metro 4/SESARM. Per the LMS training plan and permitting curriculum developed with the assistance of states/local agencies and the multijurisdictional air pollution control organizations, such as Metro 4/SESARM, the EPA is reworking old content and developing new content for the site. Courses currently available include *Introduction to Title V Permitting* (PERM102-SI), *Air Pollution Control Orientation* (BASC124-SI), *Setting Enforceable Potential to Emit Limits in New Source Review Permits* (PERM203-SI), and *EPA Air Pollution Control Cost Manual* (PERM210-SI). New courses in NSR/PSD applicability, Best Available Control Technology (BACT), and plantwide applicability limits are expected soon.

The EPA provides Clean Air Act (CAA) section 105 pass-through grants to Metro 4/SESARM, which decides which in-person courses are offered. If BAQ would like a specific course offered, such as the intro to title V course offered by Metro 4/SESARM in 2020, the EPA suggests that BAQ let Metro 4/SESARM know, so that the necessary courses are prioritized on the training agenda.

III. Title V Fees

Title V permitting authorities are required by section 502(b)(3) of the CAA, and the corresponding title V regulations at 40 CFR § 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 CFR § 70.9(d). Accordingly, air agencies (or state legislatures, as applicable) 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: inflation, implementation costs, salary and healthcare cost increases, changes in the number of sources required to obtain part 70 permits, declining emission rates (especially reductions in coal-fired emission sources); complexity of permitting actions being performed; and promulgation of new emission standards, such as new MACT standards, New Source Performance Standards (NSPS), and waste incineration rules under CAA sections 111, 112, or 129 respectively.

The EPA established a 2023 presumptive minimum fee of \$58.55 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 CFR § 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 CFR § 70.9(b)(1) & (2).

DHEC collects the presumptive minimum allowed by 40 CFR § 70.9(b)(2) that is in effect at the time of billing, *i.e.*, at the start of its fiscal year (July 1)¹. In addition to a billable emissions fee, DHEC charges a maintenance fee between \$500 and \$10,000 (depending on the level of billable emissions) to each subject facility. DHEC also charges set fees for expedited processing of construction permits. Funding for the DHEC's title V program is also supplemented by appropriations approved annually by the General Assembly of the South Carolina legislature.

As with other permitting authorities within Region 4, DHEC reports a steady decline in billable emissions as new rules, cleaner fuels, and use of control technologies have reduced emissions. In addition, regulatory complexity of numerous sources, inspection requirements, and public engagement have increased. To counter this, DHEC has over time increased its billable emissions rates. However, recent efforts to increase DHEC's overall fee structure have not received support from stakeholders or the General Assembly.

From the completed survey and subsequent submittal of additional information, Table II was created to summarize DHEC's title V expenses, revenue, and billable emissions.

¹ As an example, see [Calculation of the Part 70 Presumptive Minimum Fee Effective September 1, 2022, through August 31, 2023](#).

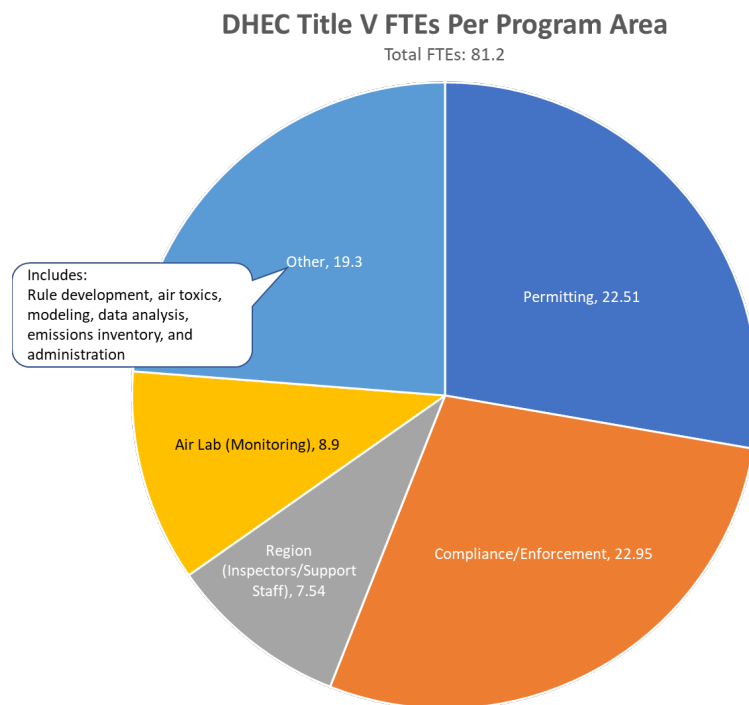
Table II: Summary of FY19-FY23 Title V Fee Expenditures, Revenue and Billable Emissions

	FY19	FY20	FY21	FY22	PROJECTED FY23*
TOTAL REVENUE (\$) **	5,932,378	6,033,369	6,196,075	5,315,391	5,533,539
TOTAL EXPENSES (\$)	5,729,074	5,260,545	5,956,513	6,027,169	5,987,904
TOTAL TITLE V ACCOUNT FUNDS REMAINING (\$)	2,570,583	2,654,899	2,204,268	895,046	(181,842)
TOTAL BILLABLE EMISSIONS (Tons)	101,306	100,296	103,240	87,103	97,515

*Values estimated as of 03/15/2023 per email sent by DHEC.

**Total revenue includes supplemental funding appropriated annually by the General Assembly in addition to title V fees collected.

To ensure that title V funds are used solely for the title V program, DHEC maintains a separate title V-specific account. Staff self-report their activities into a database known as Personnel Cost Accounting System (PCAS) as work is completed. PCAS differentiates between title V, non-title V, and split activities. DHEC funds title V rule development, planning, emissions inventory, compliance, and monitoring with title V fees. A breakdown of DHEC’s title V FTEs per program area provided by DHEC in its completed survey and verified during the March 2, 2023, interview, is shown below:



From: DHEC’s completed *Title V Program Evaluation Questionnaire*, submitted to EPA on May 11, 2022.

Finding(s): Based on Table II, there appears to be a trend of expenses outpacing revenue such that a once sizeable forwarding balance of title V funds will significantly be reduced and eventually go negative by the end of FY23. The concern here is that expenses will continue to outpace revenue and that the fee schedule moving forward from FY23 (in combination with the supplemental funding) will no longer meet the part 70 program requirements at 40 CFR § 70.9, *i.e.*, a self-sufficient title V program. Another concern of the EPA that has surfaced (because of this program evaluation) is related to South Carolina statute 48-2-80. Pursuant to 48-2-80, the total amount of revenue that can be generated by DHEC’s various programs is capped at “thirty-three and one third percent” of the total funds appropriated to the “Office of Environmental Quality Control” by the State on an annual basis, thus, effectively limiting the title V revenues that can be collected to a fraction of this total amount. Nonetheless, it appears to the EPA that changes to the current fee structure (*e.g.*, increasing billable emissions fee beyond the presumptive minimum, implementing additional fees such as one based on a source’s complexity, etc.) as well as increased supplemental funding may be necessary to maintain DHEC’s title V program’s financial viability beyond FY23. DHEC has made a request to the legislature to increase state appropriations to cover the projected title V fee deficit. As of May 18, 2023, it appears the program will receive some additional funding that will extend the life of the title V program funding for at least another year. DHEC expects these funds to be approved before July 1, 2023.

Recommendation(s): The EPA recommends DHEC, as soon as practicable, initiate another review of its current fee structure in combination with the State’s supplemental funding to ensure that its title V program remains fiscally sustainable beyond FY23. This is particularly crucial since it is understood that the process of updating the fee structure must be approved by the South Carolina legislature via rulemaking and can take up to 18 months.

IV. Public Participation & Community Engagement

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. Draft permit actions may be noticed through email and on a website (*e*-notice) or through a newspaper of general circulation. The permitting authority must keep a record of the public comments and respond to the significant issues raised during the public participation process.

DHEC as a whole, including BAQ, offers a searchable online records depository where the public and regulated community can access electronic versions of documents related to air permitting actions at <https://apps.dhec.sc.gov/Environment/PermitCoverage/>.

Additionally, since the last program evaluation, BAQ has incorporated posting public notices for draft/proposed permitting actions along with the relevant air permitting files (statement of basis,

permit applications, modeling analyses, etc.) on BAQ's [Public Notice web site](#), instead of posting public notices in the newspaper. On this page, the public can view all permit-related files and submit any comments (electronically) directly to BAQ during the public review period. The website allows the notice to be available for the entire 30-day public notice period. On a case-by-case basis, BAQ also places a notice in a newspaper of local circulation. Once the permit is no longer on notice, all permitting documents will need to be requested through BAQ. For certain projects, facilities, and permits that may be of heightened interest to the public, BAQ permanently posts all relevant permitting files online for public access at <https://scdhec.gov/environment/environmental-sites-projects-permits-interest>.

Current air permit applications being processed by BAQ are included in DHEC's [Environmental Application Tracker](#). This tracker provides information on the status of any air permit applications that are currently in-house with BAQ. However, with BAQ's recent transition to the new **ePermitting** system, this application tracker has become outdated and is no longer providing updated information. DHEC is working to either repair the current application tracker so that it can pull from the **ePermitting** data base or replace it with a similarly functioning application. This will be done as soon as practically possible so that the public can continue to easily get updated information.

An online version of DHEC's current air quality regulations, including the permitting requirements, is available on its web site at <https://scdhec.gov/regulations-table> by selecting "Air" in the dropdown menu for "Bureau". Records of permitting actions taken since April 2020 are also available through the EPA's public dashboard of the national Electronic Permits System (EPS) database and can be viewed at <https://www.epa.gov/caa-permitting/south-carolina-proposed-title-v-permits>.

In addition to being posted on the DHEC web site, BAQ maintains a permit registry where individuals can request to be notified when a permit is placed on public notice. BAQ can add individuals that request to be included on a title V mailing list by calling, emailing, or submitting written requests. Public hearings are held for any sources where significant community interest is expected. BAQ may also choose to have a public meeting instead of (or in addition to) a public hearing.

As a matter of practice, DHEC does reach out to specific communities beyond the standard notification process. DHEC has a dedicated Public Participation Coordinator who serves on the Environmental Affairs' Community Engagement Team (the CET) along with the EJ Coordinator and works with BAQ permitting staff regarding community outreach and engagement. The CET is dedicated to providing consistent approaches for meaningful involvement and engagement beyond the standard public noticing process. The CET's outreach efforts include: educating communities; active listening and participating within the communities; identifying stakeholders and their interests; developing public participation strategies; providing notification of opportunities for engagement; identifying the appropriate tools to best reach the communities (*e.g.*, webpages,

virtual/remote meeting, fact sheets, post cards, flyers, etc.); evaluating trends to measure success and determine areas for improvement; and maintaining relationships with stakeholders, community members, and partners.

Regarding EJ, in 2018, DHEC established “Guiding Principles” to assist community partners with protecting, revitalizing, and sustaining the communities in South Carolina, which can be found at <https://scdhec.gov/environment/environmental-justice-ej/guiding-principles-ej>.

BAQ works closely with the CET early in the permitting process to determine if and what specific EJ outreach is needed for the permitting action. During the permitting process, the permit writer may identify the need for a determination or confirmation of what DHEC terms an EJ area or community. At that time, the permit writer will coordinate with their manager and request guidance from the EJ Coordinator/Public Participation Coordinator. One tool the CET will use in providing that assistance is **EJScreen**.

Additional EJ resources can be found on the EPA’s web site at <https://www.epa.gov/environmentaljustice>. The EPA’s “[Activities To Promote Environmental Justice in the Permit Application](#)” summarizes additional useful tools for community engagement. Also, the EPA recently released “[EPA Legal Tools to Advance Environmental Justice](#)” in May 2022.

Finding(s): The EPA commends BAQ for their enhanced public notice permitting process, including the tools and processes in place (such as the CET) for early and meaningful engagement with the public and communities, with the goal of ensuring that potentially impacted communities are aware of their ability to participate in the permitting process. In addition, the public notice permitting process of posting the notices and all relevant files online and method to submit comments on these actions as a citizen is very simple and efficient.

Recommendation(s): The EPA recommends that BAQ consider including a recommendation on the DHEC web site and with the application instructions that applicants access and make available the mapping tool for use by the public at <https://epermweb.dhec.sc.gov/nsite/map>. In addition, the EPA agrees with BAQ’s finding that virtual opportunities for participation in public meetings and hearing processes (when appropriate) offer increased participation opportunities for communities and that such opportunities can be utilized more for permitting actions of heightened interest to the public.

V. Permit Issuance Rates

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.

As part of the program evaluation, the EPA reviewed BAQ's title V program permit issuance rates submitted by BAQ through the EPA's TOPS reporting database to ensure that permits are issued in a timely manner and renewed on a five-year cycle. BAQ reported timely issuance of one significant permit modification from January to June 2022 and zero significant permit modifications from July to December 2022. Per the latest TOPS report, BAQ currently has only one outstanding significant permit modification application in house (an application that BAQ has not taken final action on within 18 months of receiving the complete application).

As of April 2023 (the latest monthly report submitted), BAQ had a backlog (*i.e.*, applications in-house for 18 months or longer after being deemed complete) of seven initial title V applications and 31 title V permit renewal applications. This represents about 14 percent of BAQ's title V universe. BAQ has a plan in place to reduce their title V backlog which consists of posting a trends chart on DAP's SharePoint page showing backlog progress, having a tracking spreadsheet that includes all title V applications older than 24 months, working with their modeling section to prioritize modeling and review of title V permits that were nearly complete, and developing general title V permits for sources such as boat manufacturing and landfills. In addition, BAQ conducted a trial within one of their sections in which they assigned one permit writer to focus only on title V renewals (the trial ended, however, when the employee assigned renewals took another job; BAQ may revisit this approach in the future). While BAQ has delayed issuing title V permits to sources that are out of compliance in the past, this has contributed to the length of issuance and the title V backlog; so BAQ plans to pursue the use of a compliance plan in the future. BAQ is also looking at other ways to streamline the issuance of renewals associated with the underlying title V templates and revising the application forms for construction permits. On a monthly basis, since the third quarter of 2019, BAQ has been providing the EPA with a spreadsheet containing the status of all backlogged title V permits.

As previously mentioned, BAQ has started using its **ePermitting** system, which just went live internally in February 2023. This system allows for applications to be submitted electronically, and permits will be drafted and issued within the system. In the future, BAQ plans to make the permits available to the public through the **ePermitting** system too.

As discussed earlier, DAP currently has seven vacancies which affect the issuance time of permits, especially as issuance of construction permits is prioritized to ensure economic growth. With salaries lower than those for permit writers at state agencies outside of South Carolina, it is difficult to recruit and retain staff. There is concern that this along with upcoming retirements may lead to more vacancies and associated difficulties in issuing timely permits.

Findings: Although DHEC does currently have a moderate backlog (for reference, the EPA Region 4 historically has used 20 percent as a point of concern), BAQ staff is working diligently to reduce it. The EPA commends the many methods BAQ is using to continue to reduce its backlog and appreciates the monthly updates which keep the EPA informed regarding its progress.

VI. Selected Permit Reviews

As part of the program evaluation, the EPA reviewed 10 relatively recent BAQ title V permitting actions to ensure consistency with title V requirements. These reviews are in addition to the real-time reviews that EPA Region 4 conducts for targeted permit actions. The 10 permitting actions were selected as examples of different types of permitting actions (*e.g.*, initial permits, renewal permits, and significant modifications), different source categories, varying applicable requirements [*e.g.*, NSPS, NESHAP, case-by-case MACT, Compliance Assurance Monitoring, Best Available Control Technology, PSD avoidance, etc.]. The EPA acknowledges that due to the small sample size, the Agency's comments may not be indicative of any systemic inconsistencies. In general, the EPA found BAQ's title V permits to be well written and consistent with title V regulatory requirements. The EPA's findings and general recommendations are below:

1. Citations of Origin and Authority

Pursuant to South Carolina Regulation 61-62.70.6(a)(1)(i), all permit terms and conditions must include citations to origin and authority. The EPA observed permit terms and conditions without any such citations.

2. Level of Detail

Pursuant to South Carolina Regulation 61-62.70.6(a)(1), the permit shall include "Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance". The EPA observed in several permits, particularly with respect to NESHAP/MACT standards (*e.g.*, subparts LL, RRR, WWWW, DDDDD, and PCWP MACT), that some of the permits reviewed do not contain enough information or detailed enough citations to determine how the specific NESHAP requirements apply to the facility.

The requirement to include all applicable requirements in a title V permit can be satisfied using incorporation by reference in certain circumstances. However, the title V permit should contain references that are detailed enough such that the referenced material which applies to the facility is clear and is not reasonably subject to misinterpretation. Any simple high-level citations to NESHAP subparts as being applicable, for instance, would not be

acceptable, in most cases, to ensure that the permit is enforceable as a practical matter.²

3. Practical Enforceability (Algorithm Approach)

For an emission limit to be enforceable as a practical matter, the permit must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit. The EPA observed that several of the permits reviewed included a permit condition that requires an algorithm to be developed outside of the permit to demonstrate compliance with the emissions limit. This algorithm approach does not ensure that the permit limitations are practicably enforceable.³

4. Reporting Requirements to the EPA

- a) Title V Annual Compliance Certification – Permit condition L.4 provides the EPA Region 4’s address for submitting annual compliance certifications. The EPA recommends adding language to this permit condition to clarify that any reports/certifications that are required to be submitted to the EPA can be submitted electronically through [CEDRI](#), rather than the Regional Office.
- b) NESHAP Notifications and Reports - Permit condition E.2 references “Air, Pesticides and Toxics Management Division”. This reference should be revised to “Air and Radiation Division” to reflect the EPA Region 4’s reorganization.

5. Observed Positives

- a) BAQ does a good job of clearly identifying changes to the permit within the statement of basis (SOB), making it easy to follow the history of the facility and understand what has been updated in each revision.

² See [ETC Texas Pipeline, Ltd. Waha Gas Plant Order dated January 28, 2022](#), responding to Petition at 18. (“the Petitioners have demonstrated that the Permit is deficient because it fails to identify which potentially applicable provisions in Subpart OOOOa establish applicable emission limitations, standards and/or equipment specifications and which of the various potentially applicable monitoring, testing, and recordkeeping requirements apply...”) See [Exxon Mobil Corp. Baytown Chemical Plant Order dated March 18, 2022](#), responding to Petition at 16-17. (“In 1999, the EPA rejected suggestions that states have the discretion to include high-level citations to an entire NESHAP subpart, stating: “The permit needs to cite to whatever level is necessary to identify the applicable requirements that apply to each emissions unit or group of emission units (if generic grouping is used), and to identify how those units will comply with the requirements. The EPA has also objected to title V permits that have attempted to IBR NESHAP (or NSPS) requirements without providing sufficient detail to determine the specific requirements that apply to emission units at the source.”)

³ See [Piedmont Green Power, LLC Order dated December 13, 2016](#), responding to Petition at 7-8. (“In order for an emission limit to be enforceable as a practical matter, the permit must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit. See, e.g., Hu Honua Order at 10. Thus, limitations must be supported by monitoring, recordkeeping, and reporting requirements “sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action.”)

- b) NSPS requirements are typically clear, and easy to follow within the permit. In general, requirements are well-defined and demonstrate a strong attention to detail.
- c) BAQ provides a concise and helpful summary of all permit requirements in the SOB, making it easier for stakeholders to understand the impact of the permit. In addition, the summary table of emission limits, pollutants, emission units, and basis of limits is a useful tool for tracking compliance with the permit.
- d) BAQ's thorough organization of the SOB, including all applicable recordkeeping and monitoring conditions, shows a commitment to ensuring sources operate in a safe and responsible manner.

VII. Conclusion

Based on the permits reviewed, title V survey results, TOPS data, fee documents, interviews and discussions, and follow-up information received, the EPA concludes that:

- DHEC 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 all the varied program elements of title V. Reviews of DHEC permits noted that they are generally complete and well-written. Based on the EPA's in-depth review of 10 selected permitting actions, the EPA has made recommendations (and provided examples) as to how, moving forward, DHEC ensures that all permit terms and conditions include citations of origin and authority, improve the level of detail in permits particularly related to NESHAP/MACT requirements, and ensure the practical enforceability of all emission limits.
- The EPA acknowledges the ongoing nationwide challenge of maintaining a fully funded title V program with significantly declining emissions and revenues. Analysis of DHEC's recent title V funds show that there appears to be a trend of expenses outpacing revenue such that a once sizeable forwarding balance of title V funds will significantly be reduced and eventually go negative by the end of FY23. The EPA recommends DHEC, as soon as practicable, initiate another review of its fee structure to ensure that its title V program remains sustainable beyond FY23.
- The EPA Region 4 is committed to providing any needed assistance with respect to permit reviews and public engagement, including permitting projects with EJ implications. Specifically, the EPA Region 4 is committed to providing prompt feedback to DHEC regarding any rule and guidance interpretation inquiries and any general or specific permitting questions raised, and to keep DHEC informed of any future agency actions, such as rulemaking, that may have an impact on permitting programs.