

Title V Operating Permit Program Evaluation

Florida Department of Environmental Protection
Division of Air Resource Management

2025 Evaluation Report



United States Environmental Protection Agency, Region 4

Air and Radiation Division

Atlanta, Georgia

Acknowledgements

The U.S. Environmental Protection Agency Region 4 would like to acknowledge the dedication and commitment of the staff and management of the Division of Air Resource Management (DARM) within the Florida Department of Environmental Protection (DEP or the Department). DARM 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 have had considerable engagement with DARM this year including the conducting of this program evaluation, developing the annual oversight strategy between DARM and the EPA, targeted reviews of enhanced New Source Review/title V administrative amendments, quarterly calls to discuss the latest policies and guidance, and the utilization of the EPA's Electronic Permitting System (EPS) database. In every instance, the EPA found DARM management and staff to be very knowledgeable, professional, and dedicated to their mission. The EPA appreciates DARM's cooperation and willingness to respond to our information requests.

Executive Summary

Positive Finding(s)

- DARM typically produces high-quality permits that are clear and easy to follow, and the associated statements of basis (SOB) also prove to be very helpful documents.
- DARM runs a highly effective title V program as evidenced by it having virtually no permit issuance backlog.
- DARM has maintained qualified, experienced staff and management resources, with limited turn-over, for successful implementation of the title V program.
- DARM has a robust training program with designated title V program training coordinators to minimize the effects of employee turnover and requests discretionary “merit pay” funding from Department leadership to financially reward good performers to minimize staff turnover.
- DARM makes permit records and facility air data easily available online, which improves understanding of the permit record and transparency of the permitting process.
- The Department and DARM have established and implemented a directive that ensures all Floridians have an opportunity to participate in Department/DARM activities.

Action Item(s)

- As soon as possible, DARM and Department leadership must develop and implement a strategy to address the shortcomings related to the current fee schedule and to ensure the solvency of the title V program in the future.

Recommendation(s)

- Permit condition RR11 in Appendix RR references the EPA’s “Air, Pesticides & Toxics Management Division”. This reference should be revised to the EPA’s “Enforcement and Compliance Assurance Division” to reflect Region 4’s reorganization. Submittals of 502(b)(10)s should be addressed to the “Air and Radiation Division” to also reflect reorganization (either in RR11 or TV6). We also recommend adding language to this permit condition to indicate that any reports/certifications that need to be submitted to the EPA can be submitted via CEDRI rather than in hard copy form to the Regional Office.

- Another recommendation is to provide more information in the SOB related to the applicability of title V to the source, *e.g.*, a table showing source-wide emissions and detailing the pollutants for which the source is major.

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 (8) state and ten (10) local air permitting authorities with title V operating permit programs. Eleven (11) of these programs have at least 20 title V major sources (the remaining seven (7) programs have ten (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 eleven 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 last evaluation of DARM's permitting program was conducted August 31 – September 1, 2017. The 2017 program evaluation included a review of title V revenue and expenses, permit issuance rates, staffing, public participation and outreach, and reviews of selected permitting files. The final assessment praised DARM's effectiveness as evidenced by its lack of an issuance backlog as well as its ability to retain and train staff. The current DARM program evaluation consisted of a review of staffing resources, title V revenue and expenses, public participation and outreach, permit issuance rates, and a detailed review of ten (10) recently issued permits. This information was gathered through DARM's response to the EPA's program evaluation survey questions, review of selected permit files, an in-person visit with interview and discussion on February 13, 2025, and data for permit issuance rates reported to the federal Title V Operating Permit System (TOPS) through December of 2024. Preliminary results of our review of selected permit reviews were discussed with DARM during the in-person visit mentioned above.

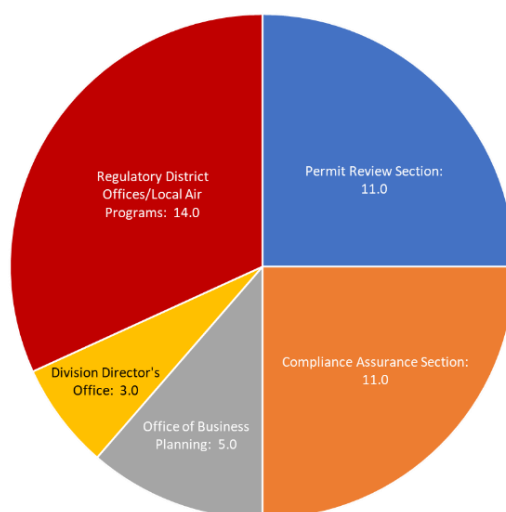
II. Program Overview and Staffing Resources

DARM's mission is to "[e]xercise the duties, powers, and responsibilities of the state under the federal Clean Air Act, 42 U.S.C. ss. 7401 et seq." See Section 403.061(36), Florida Statutes. Section 403.0872, Florida Statutes, requires DARM to implement the title V program in Florida. DARM is

responsible for the permitting of air emission sources throughout the state of Florida. DARM's permitting office is in Tallahassee (Leon County). DARM's air permitting regulations are authorized by [Florida Administrative Code \(F.A.C.\), Chapter 62](#).

As of October 2024, DARM is responsible for regulating 348 title V sources. DARM is currently comprised of the following: Permit Review Section (PRS), Compliance Assurance Section (CAS), Office of Business Planning, and the Division Director's Office. DARM's implementation of the title V program is also supported by six (6) Regulatory District Offices and six (6) approved Local Air Programs. A breakdown of the total number of full-time equivalent (FTE) staff that support Florida's current title V workload is shown in Figure 1 below. A considerable portion of these positions' time is applied to the title V workload (e.g., permit engineers spend approximately 70 percent of their time on title V facility permitting). DARM is currently fully staffed with respect to title V workload.

Figure 1: DARM FTEs By Program Area



DARM has experienced minimal turnover in the past several years; four (4) FTEs within PRS and one (1) FTE within CAS, respectively, have turned over. With these minimal staff changes, DARM has been able to maintain the title V program with consistency. To encourage staff retention, DARM awards discretionary "merit pay" increases to reward financially good performers with the intent to minimize staff turnover. DARM also maintains a robust training program with designated title V program training coordinators within PRS and CAS to minimize the effects of employee turnover.

Finding(s): DARM has relatively stable employment regarding its title V program.

Recommendation(s): None currently.

III. Title V Fees

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 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. See 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 Maximum Achievable Control Technology (MACT) requirements for National Emissions Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), and waste incineration rules under CAA sections 111, 112, or 129, respectively.

The EPA established a presumptive minimum fee of \$63.69 per ton of regulated pollutant for the 12-month period of September 1, 2024, through August 31, 2025. States may charge less than the presumptive minimum, and use alternative fee structures, if they provide a demonstration that they have adequate fees to fully cover the direct and indirect costs of adequately implementing and enforcing the title V program. See 40 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. See 40 CFR § 70.9(b)(1) & (2).

DARM currently collects title V fees from each title V source permitted to operate in the state using a \$30 per ton emissions fee (which has been in effect since 2014) based on actual emissions for pollutants with numerical emission limits (except for carbon monoxide and greenhouse gases) up to 4,000 tons per pollutant per calendar year. The minimum emissions fee charged is set at \$250. Title V sources without numerical emission limiting standards are charged this minimum fee. Revenue also comes from late payments of the emission fee through a penalty of 50 percent of the unpaid fee, plus interest. Currently, DARM collects at a rate 51 percent below the presumptive minimum prescribed by 40 CFR § 70.9(b)(2).¹

As has been noted with other permitting authorities within Region 4, DARM reports a steady decline in billable emissions. To counter this, DARM annually reassesses title V revenue and costs as part of the Department's annual regulatory fee review. DARM also reviews monthly the Florida Air-Operation License Fee Account as title V program expenses are incurred. The revenue from title V sources is deposited into the Florida Air-Operation License Fee Account, which also serves as a surplus account for title V budget rollovers.

¹ [Part 70 presumptive minimum fees.](#)

As illustrated in Table I below, program costs exceeded revenue in four (4) out of six (6) years from FY2018 to FY2023. During this period, the Florida Air-Operation License Fee Account incurred a total budgetary deficit of \$1,987,583, averaging an annual loss of \$317,454. In FY2023, the deficit resulted in a substantial loss (\$756,196), representing 18 percent of the 2022 surplus carried into the year. If losses to the surplus account are like the deficit reported in FY2023, the surplus account could be depleted as soon as FY2028. Therefore, the EPA has determined that the current fee schedule utilized by DARM is insufficient to fund the title V program long term, and it is critical to address this as soon as practicable.

As the current fee schedule is insufficient to support DARM's title V program, the Department intends to develop and implement a strategy to address the shortcomings related to the current fee schedule. The EPA recommends that DARM provide updates to the EPA on the progress toward a revision of the fee schedule within one calendar year of this final report. Effective October 25, 1995, the EPA granted the Department the authority to operate its title V program² with assurances that Florida will raise fees as needed, "Florida has assured EPA that it will seek legislative action to raise the fee amount above the \$35 per ton limit if it becomes necessary."³ The EPA appreciates that DARM intends to make changes to the fee schedule to address this evolving deficiency. Should DARM not be able to provide evidence of adequate progress toward addressing this issue, the EPA will follow up with a fee audit and consider the sustainability of the program with that updated information and provide further recommendations to DARM.

Table I: DARM's Title V Revenues, Expenses, and Rollover Amounts by Fiscal Year (US\$)

	2018	2019	2020	2021	2022	2023
Program Expenses	3,636,423	3,538,936	3,893,153	3,314,356	3,262,081	3,529,806
Revenues Collected	3,719,286	3,267,010	3,090,659	3,372,133	3,047,337	2,773,610
Surplus	5,293,701	5,021,775	4,219,282	4,277,059	4,062,314	3,306,118

Finding(s): As evidenced by the rapidly dwindling surplus of title V monies, DARM's current title V fee structure is not adequate for the continued support and operation of its title V program in the long term.

Recommendation(s): It is critical that DARM work with its Department leadership in the very near future to address the inadequacy of the current title V fee schedule to fund its title V program. The most obvious first step toward program solvency would be to close the significant gap between the current billable emissions rate and the current presumptive minimum. In addition, the EPA urges DARM to take advantage of the flexibility provided by 40 CFR § 70.9(b)(3) so as not to rely solely on a fee schedule tied to billable emissions. The EPA would view any effort to raise the minimum annual fee as a step in the right direction. Some other examples of potential revenue

² See 60 FR 49343

³ See 60 FR 32292

streams could be a schedule of varying fees for different types of applications and/or implementing additional fees based on a source's complexity, *e.g.*, higher fees for being subject to NSPS, NESHAP, MACT, Compliance Assurance Monitoring (CAM), etc. The EPA recommends that DARM provide an update to the EPA within one calendar year of this final report.

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.

DARM utilizes several applications to provide public access to information related to permitted facilities and air permits, including air permit applications received by the Department. These include:

- *Permit Application Subscription Service* (or [PASS](#));
- [Air Permit Document Search](#);
- [Airinfo](#);
- [DEP Information Portal](#); and
- [OCULUS](#)

OCULUS is the Department's official public document management tool providing access to public records associated with permitted facilities and activities, including draft permits, supplemental information, public notices, and all other relevant support materials (*e.g.*, permit application, statement of basis, preliminary/final determinations, compliance plan, monitoring reports, and required compliance statements).

DARM also maintains several other publicly available mapping applications through which any user may obtain information regarding air permitted facilities, including data specific to ambient air quality and ambient air quality monitoring. These include:

- [Air Quality Today](#);
- [Map of Air Permitted Facilities: 10 Important Source Categories](#); and
- [Map of Active Facilities with Current Air Permits](#)

In addition to the above-mentioned resources, any person may request to be included on mailing lists maintained by DARM to keep persons apprised of facility-specific permitting activities, applications, or related information. Persons may be added to a particular mailing list simply by emailing or calling DARM directly.

In the spirit of the Florida Civil Rights Act of 1992, the Department developed and established (and made effective May 6, 2024) a *Limited English Proficiency (LEP) Guidance and Plan* to ensure that all Floridians, including those with LEP needs, can participate in the Department's programs, services, and activities. It is available at <https://floridadep.gov/sites/default/files/DEP%20220%20-%20LEP%205-6-24.pdf>. Pursuant to this directive, the Department provides both verbal and written translation services. The Department also designates an LEP Coordinator who is responsible for the coordination of LEP services across the Department, including District Offices, and ensures compliance with LEP policy. Each District Office also employs a local liaison who reports back to the LEP Coordinator. The Department requires that public notices and project information documents include statements regarding the availability of LEP services.

Furthermore, beyond standard public notification processes, and pursuant to Rule 62-110.106(6), F.A.C., the Department is authorized to require a permit applicant to publish a *Notice of Application* "for those projects that, because of their size, potential effect on the environment or natural resources, controversial nature, or location, are reasonably expected by [DEP] to result in a heightened public concern or likelihood of request for administrative proceedings."

Finding(s): The EPA commends the Department and DARM for its establishment and implementation of the LEP directive to ensure that all Floridians can participate and provide input with respect to Department activities.

Recommendation(s): None currently.

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." See 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 DARM's title V program permit issuance rates as reported per the questionnaire (and corroborated with semi-annual TOPS reports) to ensure that permits are issued in a timely manner and renewed on a five-year cycle. At the time of this program review, DARM has issued 45 title V permit renewals in the previous 12-month period and has a backlog of only one (1) title V permit renewal application (*i.e.*, applications that have been "in-house" for more than 18 months after having been deemed complete). Typically, a backlog of greater than or equal to 20 percent of a permitting authority's entire title V universe is the point of concern for the EPA as it relates to effective permit issuance. DARM's backlog amounts to only about one-quarter of one percent.

Finding(s): DARM's timely issuance of title V permits is to be commended.

Recommendation(s): None currently.

VI. Selected Permit Reviews

As an element of the DARM Title V Program Evaluation, the EPA Region 4 selected ten (10) title V permits issued by DARM to review for completeness and consistency with regulatory requirements. These reviews are in addition to the real-time reviews that the EPA Region 4 conducts for targeted permit actions. The ten (10) permitting actions were selected as examples of different types of permitting actions (*e.g.*, initials, renewals, significant revisions), different source categories, varying applicable requirements (*e.g.*, NSPS, NESHAP, case-by-case MACT, CAM, Best Available Control Technology, Prevention of Significant Deterioration (PSD) avoidance, Plantwide Applicability Limits, etc.), and differing compliance history (*e.g.*, notices of violation, consent decrees). The EPA acknowledges that due to the small sample size, our comments may not be indicative of any systemic concerns. In general, the EPA found DARM'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. Practical Enforceability

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. We observed instances where compliance was not entirely clear, including how recorded short-term mass emission rates are to be used to demonstrate compliance with annual PSD avoidance limits (see renewal of Florida Gas Transmission Company – NG Compressor Station No. 16). Additionally, in one case fuel usage and/or fuel sulfur content appeared to be used to demonstrate compliance with sulfur dioxide limits, but there were no permit terms requiring recordkeeping of those parameters (see also

renewal of Florida Gas Transmission Company – NG Compressor Station No. 16).

2. The EPA Address/CEDRI

Permit condition RR11 in Appendix RR references the EPA’s “Air, Pesticides & Toxics Management Division”. This reference should be revised to the EPA’s “Enforcement and Compliance Assurance Division” to reflect Region 4’s reorganization. Submittals of 502(b)(10)s should be addressed to the “Air and Radiation Division” to also reflect reorganization (either in RR11 or TV6). The EPA also recommends adding language to this permit condition to indicate that any reports/certifications that need to be submitted to the EPA can be submitted via [CEDRI](#), rather than in hard copy form to the Regional Office.⁴

3. Statements of Basis

- Language erroneously limiting the scope of public review and comment related to a permit renewal was observed (see renewal of Titan Florida LLC – Pennsuco Complex). All elements of a title V renewal permit are ripe for public review and comment.
- One specific recommendation from the EPA is to provide more information related to the applicability of title V to the source, *e.g.*, a table showing source-wide emissions and detailing the pollutants for which the source is major.

4. Observed Positives

- Generally, permit format is well laid out, thorough, and clear.
- The use of “Permitting Notes” throughout the permit provide clarity with respect to applicability of requirements and streamlining of multiple applicable requirements.
- With respect to engines, permits typically include very informative summary tables with important details for determining applicability/non-applicability of the various engine rules.
- Generally, the SOBs exhibit a good level of detail and completeness.

The above items were presented and discussed in-person with DARM during the interview portion of the program evaluation on February 13, 2025, to ensure our concerns were clear, particularly with respect to the affected permit(s).

⁴ The EPA acknowledges that FDEP has recently begun to direct the EPA notifications to the email of the Air Permits Section Manager. This revised process is acceptable but could also be satisfied with submission via CEDRI.

VII. Conclusion

Based on the completed questionnaire, permits reviewed, TOPS data, fee documents, interview and discussions, and follow-up information received, the EPA concludes that:

- The EPA acknowledges the ongoing nationwide challenge of maintaining a fully funded title V program with significantly declining emissions and revenues. It is critical that DARM work with Department leadership in the very near future to address the inadequacy of the current title V fee schedule. The EPA urges DARM to take advantage of the flexibility provided by 40 CFR § 70.9(b)(3) in revising its current fees.
- DARM typically produces high-quality permits. The layout is such that the permit is clear and easy to follow. The permits make use of “Permitting Notes” throughout the permit provide clarity with respect to applicability of requirements and streamlining of multiple applicable requirements. The associated SOB also proves to be a very helpful document by using a level of detail that allows for better understanding of the facility, its emission units, and applicable requirements.
- The EPA commends DARM on running a highly efficient title V program as evidenced by its lack of a notable backlog with respect to title V permit issuance. DARM’s backlog is currently only about one-quarter of one percent of its total universe of title V sources.
- Aside from the concerns presented regarding fees (and the ability to generate sufficient revenue), the EPA believes that DARM is meeting all other aspects required by title V of the Clean Air Act, including permit issuance and public participation.