

Title V Operating Permit Program Evaluation

Kentucky Energy and Environment Cabinet
Division for Air Quality

2026 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 Quality (DAQ) of the Kentucky Department of Environmental Protection within the Kentucky Energy and Environment Cabinet (DEP or the Department). DAQ 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 Clean Air Act (CAA) permitting staff had considerable engagement with DAQ this year including conducting this program evaluation, developing the annual oversight strategy between DAQ and the EPA, and the utilization of the EPA's Electronic Permitting System (EPS) database. In every instance, the EPA found DAQ management and staff to be very knowledgeable, professional, and dedicated to their mission. The EPA appreciates DAQ's cooperation and willingness to respond to our information requests.

Executive Summary

Positive Finding(s)

- DAQ typically produces high-quality permits that are clear and easy to follow, and the associated statements of basis (SOBs) also prove to be very helpful documents.
- DAQ has maintained qualified, experienced staff and management resources, with limited turnover, for successful implementation of the title V program.
- DAQ has implemented an adaptive fee structure that essentially ensures that its title V program will remain financially viable.
- DAQ makes permit records readily available online, which improves understanding and transparency of the permitting process.
- DAQ efforts help ensure all Kentucky residents have an opportunity to participate in the permitting process.
- DAQ operates an effective title V program.

Recommendation(s)

- *See those recommendations specific to the findings detailed in Section VI, Selected Permit Reviews.*

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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 CAA 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) states 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 review 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.

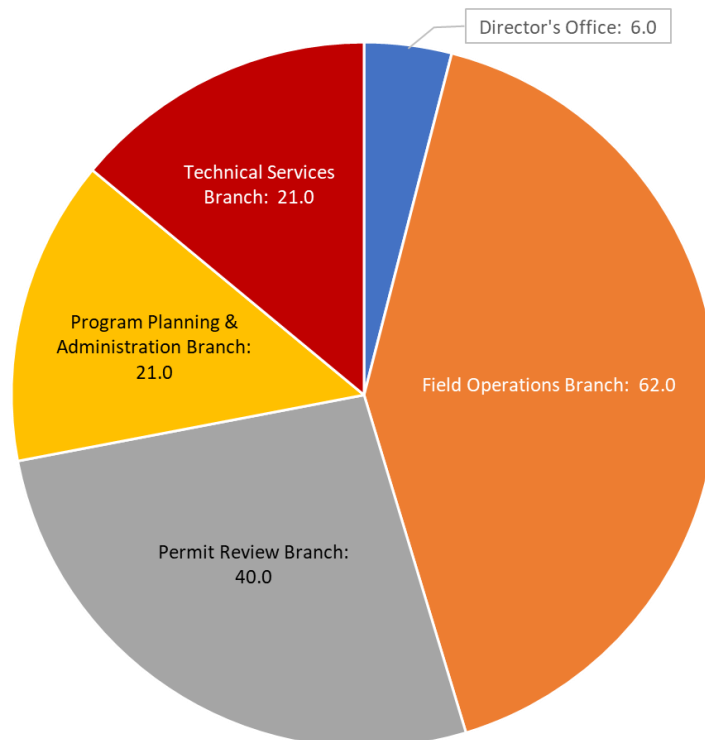
The last evaluation of DAQ's permitting program was conducted August 21-22, 2019. The 2019 program evaluation included a review of title V revenue and expenses, permit issuance, staffing, public participation, and selected permit files. The final assessment praised DAQ's effectiveness as evidenced by its lack of a permit issuance backlog at that time. The current DAQ 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. Information was gathered through DAQ's response to the EPA's program evaluation survey questions, review of selected permit files, an in-person visit with interviews and discussions on September 10, 2025, and an evaluation of permit issuance rates reported to the federal Title V Operating Permit System (TOPS) through June 2025. Preliminary results of our review of selected permit reviews were discussed with DAQ during the in-person visit mentioned above.

II. Program Overview and Staffing Resources

DAQ’s mission is “[t]o protect human health and the environment by achieving and maintaining acceptable air quality”. Subchapters 10 and 20 of [Chapter 224 of the Kentucky Revised Statutes](#) provides the authority for DAQ to implement the title V program in Kentucky. DAQ is responsible for the permitting of air emission sources throughout the Commonwealth of Kentucky except for Jefferson County, which is under the jurisdiction of Louisville Metro Air Pollution Control District. DAQ’s permitting office is in Frankfort (Franklin County). DAQ’s air permitting regulations are authorized by [Chapter 52 of Title 401 of the Kentucky Administrative Regulations \(KAR\)](#).

DAQ is currently comprised of the following organizational units: Permit Review Branch (PRB), Field Operations Branch (FOB), Program Planning & Administration Branch (PPAB), Technical Services Branch (TSB), and the Director’s Office. A breakdown of the total number of full-time equivalent (FTE) staff that support Kentucky’s current title V workload is shown in Figure 1 below. As of June 2025 (per latest TOPS report), DAQ is responsible for regulating 235 title V sources. A considerable portion of the FTE in DAQ apply time to the title V workload (*e.g.*, permit engineers spend approximately 83 percent of their time on title V facility permitting). DAQ currently has six (6) vacancies; the break-down is as follows: two (2) each in PRB and FOB and one (1) each in PPAB and TSB.

Figure 1: DAQ FTEs By Program Area



DAQ has experienced minimal turnover in the past several years. With these minimal staff changes, DAQ has been able to implement the title V program with consistency. To encourage and promote staff retention, DAQ has increased salaries, promoted telework opportunities and flexible work hours, provided educational assistance and career advancement opportunities as well as additional employee benefits.

Finding(s): DAQ has relatively stable staffing in its title V program.

Recommendation(s): None.

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 (part 70 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 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 ; complexity of permitting actions being performed; and promulgation of new emission standards, such as new Maximum Achievable Control Technology (MACT) standards through National Emissions Standards for Hazardous Air Pollutants (NESHAPs), 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 \$65.38 per ton of regulated pollutant for the 12-month period of September 1, 2025, through August 31, 2026.¹ 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).

¹ See https://www.epa.gov/system/files/documents/2025-09/fee70_2026.pdf

DAQ collects title V fees from each title V source permitted to operate in the Commonwealth through a per-ton emissions fee based on actual emissions for subject pollutants. 401 Kentucky Administrative Regulations (KAR) 50:038 defines ‘subject emissions’ as actual emissions, as recorded in the Kentucky emissions inventory system, of sulfur dioxide, oxides of nitrogen, PM₁₀, lead, volatile organic compounds, hazardous air pollutants listed in 401 KAR 57:061 for which a standard applies, or a pollutant subject to a standard contained in section 111 of the Act, from a title V air pollution source. For FY 2024, the per-ton emissions fee was \$142.23.

Title V sources emitting less than 25 tons of subject emissions are charged a minimum emissions fee of \$150. Additional funding may also come from penalties paid by those sources which fail to pay the original fee amount due within 90 days after receiving notification. These fees are comprised of an additional 50 percent of the original amount due, plus interest.² DAQ is statutorily prohibited from collecting more in emissions fees than is budgeted. Any leftover funds that are not spent are rolled over into the next fiscal year and deducted from the projected costs prior to the per-ton fee being calculated. Currently, DAQ collects fees at a rate 217 percent above the presumptive minimum allowed by 40 CFR § 70.9(b)(2).

As has been noted with other permitting authorities within Region 4, DAQ reports a steady decrease in emissions. As the emissions fee is calculated annually based on the amount of billable emissions, the emissions fee has steadily increased over the last five years as the decrease in emissions is paired with increasing program costs. However, a recent change passed in the 2025 state legislative session removed the 4,000-ton emissions cap per pollutant that had been in place since 1993. Due to the removal of the emissions cap, DAQ anticipates a decrease in the emissions fee from 2025 to 2026 due to the increase in billable emissions.

Table I: DAQ Annual Title V Program Revenues, Expenditures and Rollover Amounts

	FY2022	FY2023	FY2024
Total Program Revenue	\$15,922,216.96	\$16,914,534.69	\$18,518,688.32
Total Program Costs	\$15,298,245.32	\$15,544,355.71	\$17,428,828.34
Rollover Amount	\$623,971.64	\$1,370,178.98	\$1,089,859.98

² Interest is computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986

As illustrated in Table I above, program revenue has consistently remained slightly above program costs for the past three fiscal years. Due to the consistent budget surplus and annual emissions fee recalculation, the EPA has determined that the current fee schedule utilized by the Commonwealth of Kentucky is sufficient to fund its title V program.

Finding(s): The EPA commends DAQ for its adaptive fee structure and consistent budget sufficiency.

Recommendation(s): None currently.

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 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.

DAQ utilizes several outlets to provide public access to information related to permitted facilities and air permits, including air permit applications received by the Department. DAQ maintains a searchable online database ([eSearch](#)) for the most current permits/SOBs/summary documents (*i.e.*, if a permit is issued as draft, then the relevant draft documents are available; and once the proposed/final is issued, then the proposed/final documents will replace the draft documents). This helps eliminate confusion regarding which permit documents are relevant at a given time for a facility. For permitting actions undergoing consideration, DAQ maintains a [website](#) of current public notices. In addition to the public notice itself, the draft permit, SOB/summary document, and permit application files are posted as well as details related to the start and end dates of the public comment period. DAQ's public notice protocol goes beyond the basic requirements of [401 KAR 52:100](#). For instance, notices will be published in languages (other than English) that may be spoken in areas near proposed permitting actions whenever the situation presents itself. For enhanced outreach purposes, DAQ will most often issue public notices that include a scheduled public hearing (usually at the request of the facility) and will also utilize newspapers as needed.

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

DAQ also has a dedicated public outreach coordinator. This individual conducts educational outreach usually unrelated to any specific permitting action and typically at schools and other public events such as festivals.

Finding(s): The EPA commends DAQ for its efforts to go beyond the basic requirements to ensure that all Kentucky residents can participate and provide input with respect to permitting activities.

Recommendation(s): None.

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 DAQ’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, DAQ has issued 39 title V permit renewals in the previous 12-month period (for the reported period of May 2024 thru April 2025) and has a backlog of 30 title V permit renewal applications (*i.e.*, applications that have been “in-house” for more than 18 months after having been deemed complete) for the same reporting period. 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. DAQ’s backlog amounts to approximately 13 percent.

Finding(s): Based on 230 active title V permits (per recent TOPS report) and a five-year permit term, the average number of renewals issued annually should be approximately 46 to remain relatively timely. Although the reported number of issued renewals (39) is below this threshold, the backlog rate is still below the threshold of concern for the EPA.

Recommendation(s): None.

VI. Selected Permit Reviews

As an element of the Kentucky title V program evaluation, EPA Region 4 selected ten (10) title V permits issued by DAQ to review for completeness and consistency with regulatory requirements. These reviews are in addition to the real-time reviews that 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, Compliance Assurance Monitoring (CAM), Best Available Control Technology, Prevention of Significant Deterioration avoidance, PALs, 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 DAQ's title V permits to be well written and consistent with title V regulatory requirements. The EPA's findings and general recommendations are:

1. CAM Applicability

There were inconsistencies with how each permit/SOB addressed the applicability of CAM. In some cases, where an emissions unit subject to an emissions limit had a control device, it was unclear whether pre-control emissions were above the CAM applicability threshold and if CAM was applicable. To improve consistency between the SOBs, one recommendation is to update the template language in the SOBs to discuss CAM applicability.

A positive example was found in one of the initial title V permits targeted as part of this assessment. The associated SOB for this permit clearly specified CAM applicability in "Section 3 – Emissions, Limitations and Basis" as well as a listed row in Table B of "Section 4 – Source Information and Requirements."

2. Compliance Certifications

Section F, Condition 9.f., requires annual compliance certifications be submitted as a hardcopy to the "Air Enforcement Branch" at EPA Region 4. The EPA recommends adding language to this permit condition to indicate that any reports/certifications that need to be submitted to the EPA can be submitted electronically via the EPA's Compliance and Emissions Data Reporting Interface (CEDRI)³ rather than in hard copy form to the regional office.

3. Asbestos NESHAP General Condition

The EPA recommends including a reference to the demolition and renovation provisions pursuant to the asbestos NESHAP, 40 CFR 61 subpart M, in the general permit conditions.

³ See <https://www.epa.gov/electronic-reporting-air-emissions/cedri>.

The asbestos NESHAP is an “applicable requirement” for title V purposes. If a facility undertakes a demolition or renovation project, and this provision is already included in the general conditions, then the permit will not have to be revised to include this applicable requirement.

4. Citations of Origin and Authority

Pursuant to 40 CFR 70.6(a)(1)(i) and DAQ’s *Cabinet Provisions and Procedures for Issuing Title V Permits*, permits shall contain the origin and authority for each term or condition in the permit. The EPA observed a number of permit conditions without any citations. Some permits only had a few missing citations in the general conditions. A few permits had missing citations throughout the permit. The EPA recommends correcting any missing citations during the next revision of these permits.

5. Missing Applicable Requirements

One of the permits reviewed did not include the applicable NESHAP requirements, specifically updated in 40 CFR Part 63, Subpart JJ (National Emission Standards for Wood Furniture Manufacturing Operations) as part of the 2011 Risk and Technology Review,⁴ in permit conditions. The EPA recommends including the missing requirements or explaining in the permit record, during the next revision of this permit, why they are not applicable.

6. Difference from Applicable Requirements

One of the permits reviewed contained a permit condition requiring that records be maintained for the most recent two years, which conflicts with the five-year retention requirement at Section F.2 as well as the provisions in 40 CFR 63.10(b)(1). The EPA recommends either (1) revising this permit condition during the next revision of this permit to clarify that the two-year period is for keeping records on site and the remaining three years of data may be retained off site, or (2) removing this condition (Section B, Condition 5.c), as the general conditions (Section F, Condition 2) already contains a five-year records retention requirement that would subsume Condition 5.c, as it is more stringent.

7. Use of AP-42 Emission Factors

Most of the targeted permits/SOBs reference AP-42 emission factors for compliance determinations. Please refer to the EPA’s enforcement alert dated November 2020,⁵ regarding the appropriate use of AP-42 emission factors. While not prohibited, the use of AP-42 emission factors to calculate a source’s emissions may not result in accurate emissions estimates. It is noted that AP-42 factors are averages, often based on limited data, and

⁴ See 76 FR 72050 (November 21, 2011).

⁵ <https://www.epa.gov/compliance/epa-reminder-about-inappropriate-use-ap-42-emission-factors>

therefore are not a good representation of the emissions from a defined emissions unit used under different operating scenarios. These factors were designed for large-scale, area-wide attainment demonstrations and inventories, not source-specific assessments. The EPA recommends that the applicant use AP-42 emission factors in the emissions calculations as the last resort or ensure that the estimates are conservative and include associated rationale in the permit record. If the applicant uses AP-42 to determine emissions, the EPA recommends that DAQ include justification in the SOB on the adequacy and rationale regarding the use of the AP-42 emission factors at the source.

8. Potential-To-Emit (PTE) and 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, and the permit should include sufficient monitoring, recordkeeping, and reporting to demonstrate compliance with the avoidance limit. For multiple permits, we identified some concerns with practical enforceability of avoidance limits such as the failure to: 1) address all applicable emissions at the facility;⁶ 2) include specific methods of calculation of emissions from certain emission units; and 3) include adequate recordkeeping requirements to ensure compliance with the applicable avoidance limit. As such, the EPA recommends addressing this in any future permit revisions by clarifying in the permit or permit record how compliance with the avoidance limit will be demonstrated.⁷

The EPA also observed the following positive aspects of the permits targeted for review:

1. Permit Format

Generally, the permit format is well laid out, thorough, and clear. The layout of the permit provides clarity with respect to limits applicable to each emission unit as well as the associated testing, monitoring, and recordkeeping requirements.

2. Unit-Specific Requirements

With respect to emissions units, the SOBs include informative summary tables with important

⁶ Pursuant to 401 KAR 52:030, “[t]he sum of the PTE from all insignificant activities, when added with the source’s other potential emissions, shall not cause the source to exceed a major source threshold or a limit contained in the permit to avoid major source applicability under Title I or Title V of the Act.”

⁷ See Piedmont Green Power, LLC Final 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.’”)

details for determining applicability/non-applicability of the various rules as well as summarizes the non-applicability/applicability concisely.

3. Detailed SOBs

Generally, the SOBs exhibit a good level of detail and completeness. It is well-organized and provides a clear source description, application summary, emissions summary, applicable limits/regulations.

4. State and Federal Regulatory Applicability

With respect to the non-applicability of various state/federal regulations, the SOB is clear and provides rationale for why the regulations are not applicable to the source.

These findings and recommendations were presented and discussed in-person with DAQ during the interview portion of the program evaluation conducted on September 10, 2025, to ensure that the EPA's concerns were clear, particularly with respect to the affected permit(s).

VII. Conclusion

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

- The EPA acknowledges the ongoing nationwide challenge of maintaining a fully funded title V program with significantly declining emissions and revenues. DAQ's adaptive fee structure based on projected billable emissions without caps and projected program costs essentially ensures that DAQ's title V program remains financially viable.
- DAQ has managed to reverse a trend in program turnover detailed in the 2019 final report and has maintained a stable work force with respect to its title V program. The EPA believes this to be essential to operating and maintaining an effective title V program.
- DAQ typically produces high-quality permits. The layout is such that the permit is clear and easy to follow. 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.

- DAQ's efforts to promote and increase public participation of Kentuckians with respect to permitting activities go above and beyond what is required by law.
- The EPA believes that DAQ is meeting all aspects of operating an effective title V program as defined and required by the CAA.