



Office of Inspector General
Evaluation Report

AIR

**EPA and State Progress
In Issuing Title V Permits**

Report No. 2002-P-00008

March 29, 2002

**Inspector General Office
Conducting the Evaluation:**

**Office of Program Evaluation
Northern Division**

Regions Covered:

Regions 1, 3, 4, 5, 7, 8

Program Office Involved:

Office of Air and Radiation

Abbreviations

Act	Clean Air Act
AFS	Aerometric Information Retrieval System Facility Subsystem
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
MOA	Memorandum of Agreement
OAR	Office of Air and Radiation
OAQPS	Office of Air Quality Planning and Standards
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
State and Local Agencies	State and Local Air Pollution Control Agencies
SIC	Standard Industrial Classification



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March 29, 2002

MEMORANDUM

SUBJECT: Report No. 2002-P-00008
EPA and State Progress in Issuing Title V Permits

FROM: Leah L. Nikaidoh /s/
Audit Manager
Northern Division

TO: Jeffrey R. Holmstead
Assistant Administrator for Air and Radiation

Attached is our final report on EPA and state progress in issuing Title V permits. The objectives of our evaluation were to identify (1) factors delaying the issuance of Title V permits by selected state and local agencies, and (2) practices contributing to more timely issuance of permits by selected state and local agencies.

The report contains findings that describe problems the Office of Inspector General (OIG) has identified and the corrective actions the OIG recommends. This report represents the opinion of the OIG and the findings contained in this report do not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established resolution procedures.

ACTION REQUIRED

In accordance with EPA Order 2750, as the action official, you are required to provide this office with a written response within 90 days of the final report date. The response should address all recommendations. For corrective actions planned but not completed by the response date, please describe the actions that are ongoing and provide a timetable for completion. Where you disagree with the recommendation, please provide alternative actions for addressing the findings reported. This information will assist us in finalizing the report.

We have no objection to the release of this report to the public. We appreciate the efforts of your staff, and the staff in the regions and states we visited, in working with us to develop this report. Should you or your staff have any questions, please contact me at 513-487-2365. Additional copies of this report may be obtained from us or our website, www.epa.gov/oigearth.

Executive Summary

To reduce violations of air pollution laws and improve the enforcement of those laws, Title V of the 1990 Clean Air Act (Act) requires that all major stationary sources of air pollutants obtain a permit to operate.¹ Translating and consolidating the applicable air pollution requirements for major stationary sources into site-specific, legally enforceable permit limits is a complex, time-consuming, and resource intensive process. Nonetheless, in passing Title V, Congress provided the statutory authority, fee collection authority, and expectation that all Title V permits would be issued by November 1997, seven years after it passed the Act. However, over a decade later, only 70 percent of the sources have been issued Title V permits.

Purpose

The Office of Inspector General (OIG) initiated this evaluation at the request of U.S. Environmental Protection Agency (EPA) Region 5 management because they were concerned about the progress state and local air pollution control agencies (state and local agencies) were making in issuing Title V permits under the Act. In planning the evaluation, we expanded the scope to include other EPA regions and states because problems in issuing Title V permits were not isolated to Region 5. The objectives of our evaluation were to identify:

- Factors delaying the issuance of Title V permits by selected state and local agencies, and
- Practices contributing to more timely issuance of permits by selected state and local agencies.

Results in Brief

Lack of State Resources, Complex EPA Regulations, and Conflicting Priorities Contributed to Permit Delays

Nationwide, as of December 31, 2001, state and local agencies had issued 70 percent (13,036 of 18,709) of the required Title V permits. Of 112 state and local agencies approved to administer the Title V program, only 4 state and 17 local agencies had issued all of their Title V permits. In

¹A major stationary source is any non-mobile source of air pollution that meets one or more criteria as defined in the 1990 Clean Air Act. The criteria for major stationary source determinations is listed in appendix 1.

the six states we reviewed, key factors delaying the issuance of Title V permits included insufficient state resources, complex EPA regulations, and conflicting state priorities.

- *Insufficient resources.* Of the six state agencies reviewed, three had problems with resources or staffing. For example, the Massachusetts Department of Environmental Protection collected \$1.3 million in Title V fees in 2000, but program costs were \$1.9 million for the year.
- *Complex regulations and limited guidance.* In each of the six state agencies reviewed, one or more permit writers reported having difficulty understanding and resolving questions on EPA's complex air toxics regulations and reported having difficulty using EPA's limited guidance to establish adequate site-specific monitoring requirements.
- *Conflicting priorities.* In addition to Title V operating permits, each of the state agencies also issue construction permits to new sources and to sources that are making significant changes to their operations — permits that they must act on within specified time limits. Two agencies took deliberate action to ensure that staff were not forced to work on construction permits rather than Title V operating permits.

As a result, many sources do not have the operating permits that were designed to reduce source violations, improve regulatory agency enforcement abilities, establish site-specific monitoring requirements, increase source accountability, and ensure adequate public involvement in the permitting process.

EPA Oversight And Technical Assistance Had Limited Impact

EPA did not provide adequate oversight and technical assistance to state and local Title V programs, and did not use the sanctions provided in the Act to foster more timely issuance of Title V permits.

- *Fee reviews of many state and local agencies not performed.* From January 1998 to December 2001, EPA had only evaluated 28 of 112 state and local agencies regarding how they were assessing and managing Title V fees. These reviews are needed to identify potential resource issues at state and local agencies.
- *Revisions to Title V regulations not completed.* While EPA issued regulations in 1992, due to concerns about selected provisions, EPA has been working to revise them since 1994. State officials indicated that dealing with repeated draft and proposed revisions to

Title V regulations introduced an element of uncertainty that also contributed to delays in issuing Title V permits.

- *Insufficient data collected.* State and local agencies were not required to consistently provide the information EPA identified as being needed to adequately oversee the Title V program. EPA collected information from all state and local agencies on the number of permits issued, but did not maintain an adequate database on specific delays in issuing individual permits.
- *Act's provisions to take action not used.* Although most state and local programs did not issue their permits within three years of EPA approval, EPA has not used the Act's provisions for issuing notices of deficiency, sanctions, and program withdrawal when state and local agencies have missed the Act's deadline for issuing initial Title V permits.

As a result, EPA oversight had little impact on the delays experienced by state and local agencies. The perspective of senior EPA officials is that they face a dilemma in trying to take more stringent actions, such as sanctions against state and local agencies, while adhering to agency policies to work with state and local agencies as partners in environmental protection to the maximum extent possible. Also, they believe that the Title V program has limited incentives for both states and industries to proactively address the existing permit backlog.

Management Support, Partnerships, and Site Visits Contributed to More Timely Issuance of Title V Permits

In the six states we reviewed, three practices that contributed to the progress that agencies made in issuing Title V operating permits were:

- State agency management support for the Title V program.
- State agency and industry partnering.
- Permit writer site visits to facilities.

Each of these practices contributed to the writing and issuance of Title V operating permits on a more timely basis. Employing one or more of these practices, along with sufficient resources, contributed to Florida and Pennsylvania completing most of their permits before other states. However, EPA has not taken a leadership role in collecting and disseminating information on practices that show promise of helping agencies issue permits on a more timely basis.

Recommendations

We recommend that the Assistant Administrator for Air and Radiation:

- Require EPA regions to conduct fee protocol reviews.
- Revive agency efforts to make air toxics standards easier to incorporate into Title V permits.
- Complete the revisions to the Title V regulations.
- Identify and collect information from regions, states, and local agencies to adequately oversee the Title V program.
- Develop and execute a national plan for addressing implementation deficiencies in Title V programs, including specifying the actions EPA will take to address missed milestone dates for issuing the initial permits.
- Develop a plan for identifying, collecting, and disseminating promising practices on the implementation of Title V programs.

Detailed recommendations are contained at the end of chapters 3 and 4.

Agency Actions

In his March 26, 2002 response to the draft report, the Assistant Administrator stated that while state and local agencies have made good progress in issuing initial Title V permits, there is still more work to do. He stated that many of the sources remaining to be permitted are the more complex facilities and that the problems identified in the report continue to be of concern. The Assistant Administrator agreed with the conclusion that more can be done to help this effort and will follow up, within 90 days of issuance of the final report, with an action plan based on the report's findings and recommendations.

The Assistant Administrator also provided comments to several recommendations, which are summarized at the end of chapter 3, and some suggested clarifications that were incorporated into the final report.

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Chapter 1

Introduction

Purpose

The Office of Inspector General (OIG) initiated this evaluation at the request of U.S. Environmental Protection Agency (EPA) Region 5 management. These officials were concerned about the progress state and local air pollution control agencies (state and local agencies) were making in issuing Title V permits under the Clean Air Act (Act). In planning the evaluation, we expanded the scope to include other EPA regions and states because problems in issuing Title V permits were not isolated to Region 5. The objectives of our evaluation were to identify:

- Factors delaying the issuance of Title V permits at selected state and local agencies, and
- Practices contributing to more timely issuance of permits at selected state and local agencies.

The report presents lessons learned from issuing the initial Title V permits. The findings and recommendations can benefit:

- State and local agencies that have not completed their initial permits, to help them address roadblocks to permit issuance.
- EPA, to improve its overall management and oversight of the Title V program.
- EPA, state and local agencies, and industries as lessons learned that can be used in dealing with permit renewals.

Background

Congress' main goal in establishing the Title V program in the Act was to achieve a broad-based tool to aid effective implementation of the Act and to enhance enforcement. Title V requires operating permits for every major source of a regulated air pollutant and any

other source covered by a current permit program. Prior to 1990, there was no federal requirement that existing sources of air pollution have a federally enforceable operating permit. Congress also intended the program to be self sufficient, and included provisions in the Act for EPA and approved state and local agencies to assess and collect fees for the permitting program. The purpose and key requirements of Title V are shown in table 1.1.

PURPOSE:	<i>Reduce violations of air pollution laws and improve enforcement of those laws.</i>
Key Requirements	<ul style="list-style-type: none"> Recording in one document all the air pollution control requirements that apply to a source.
	<ul style="list-style-type: none"> Requiring the source to make regular reports on how it is tracking its emissions and the controls it is using to limit emissions.
	<ul style="list-style-type: none"> Requiring monitoring, testing, and record keeping, where needed, to ensure that the source complies with its emission limits or other air pollution control requirements.
	<ul style="list-style-type: none"> Requiring the source to certify each year whether or not it had met the air pollution control requirements in its Title V permit.
	<ul style="list-style-type: none"> Making terms of the Title V permit federally enforceable.

Table 1.1: Purpose of the Title V Program and Key Requirements

The Act provided a schedule for EPA, state and local agencies to develop their Title V programs and issue the initial permits. The schedule was based on when the amendments were passed, which was in November 1990. If EPA and the state and local agencies met the schedule in the Act, all of the initial Title V permits would have been issued by November 1997, as shown in figure 1.1.

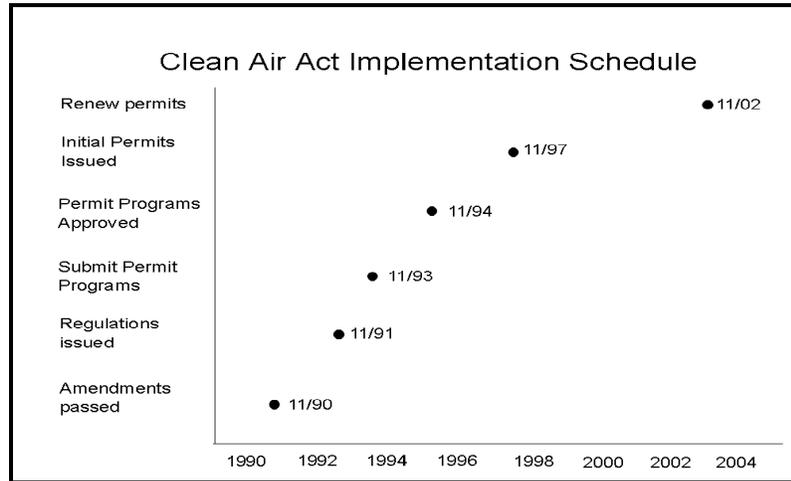


Figure 1.1: Clean Air Act Title V Operating Permit Program Implementation Schedule (assuming all deadlines were met)

As shown in figure 1.1, five years after the state or local agency issues the initial permit, the Act requires that the source’s permit be renewed. Among other things, such permit renewals allow the public another opportunity to comment on and influence the environmental operations of major sources, their permit limits and controls, and the methods of monitoring and reporting on sources’ emissions.

EPA, State, and Local Agency Roles in Permitting Title V Sources

EPA is responsible for promulgating regulations; establishing the minimum elements of a Title V permit program; reviewing, approving, and overseeing permit programs; and reviewing permits issued by the state and local agencies. EPA is also responsible for implementing permit programs for any state and local agencies that do not implement their own programs. As of December 31, 2001, EPA had approved all 112 state and local agencies to implement the Title V program.

Once approved by EPA, state and local agencies are responsible for establishing and implementing their permit programs, issuing permits to major sources of air pollution, collecting fees to cover the cost of the programs—including the initial costs of issuing

permits to sources—and ensuring that sources comply with their permit limits. Under the Act, state and local agencies that do not adequately implement the Title V permit program may lose their authorization to continue administering the program.

Additional information on the Title V program is contained in appendix 3.

Current Status

As of December 31, 2001, state and local agencies had issued 70 percent (13,036 of 18,709) of the required Title V permits. Figure 1.2 below provides an illustration of the permit issuance rate nationwide and among each EPA region.²

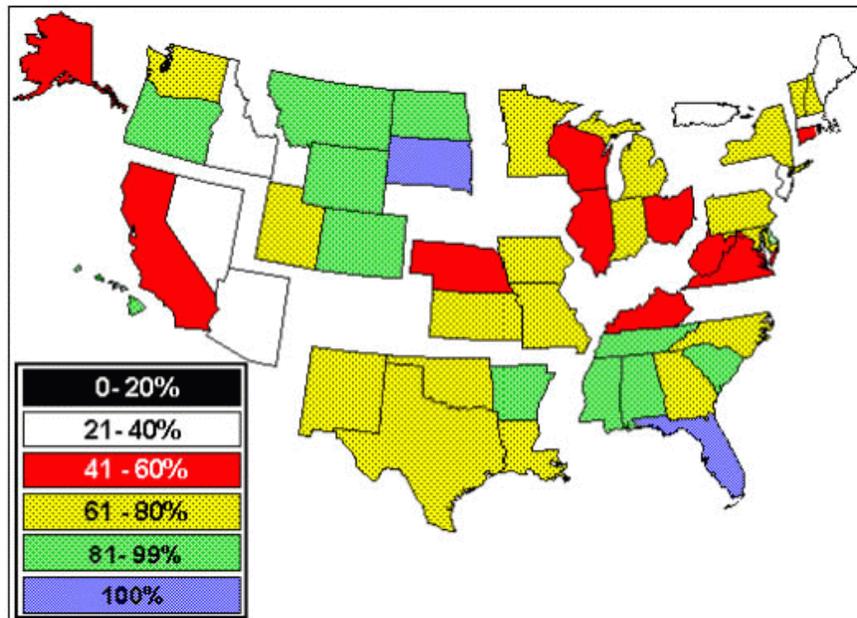


Figure 1.2: Permit issuance as of December 31, 2001 (Source: EPA)

Of 112 state and local agencies approved to administer the Title V program, 4 state and 17 local agencies had issued all of their Title V permits, a total of 2,177 permits. Ten local agencies had not

² Local agency permit completions are included in state totals.

issued any permits; however, these 10 agencies only accounted for 35 permits. A detailed description of the permit issuance status of all 112 state and local agencies is contained in appendix 4.

According to the Act, state and local agencies were to issue the initial permits within three years of program approval. EPA approved 110 of 112 of the programs between 1994 and 1997.³ As such, even considering delays in permit program approval, most state and local agencies should have completed issuing their initial Title V permits by December 31, 2000.⁴ Eighty-nine state and local agencies still had initial permits to issue as of December 31, 2001. According to an EPA survey of state and local agencies, some agencies do not expect to complete issuance of the initial permits until 2004.

Permit Process

The Act's deadline of three years from program approval is the only guideline as to how long state and local agencies should take to issue the initial Title V permits. Since few state and local agencies met that deadline, as part of our evaluation, we analyzed how long it took for six agencies to issue permits. To obtain perspective about how long agencies need to issue a Title V permit, we analyzed a sample of 60 permits to determine how long different phases of the permit process took in order to identify where the agencies were spending the most time issuing permits.⁵

The 6 state agencies had issued permits for 1,744 of 2,686 sources needing Title V permits, or about 65 percent of the required permits. As shown in table 1.2, the 6 agencies took, on average,

³One program was approved in 1998, and one program was approved in 2000.

⁴Analysis of the reasons for delay in approving permit programs was not part of this evaluation. A summary of EPA, state, and local agency compliance with the schedule for implementing Title V is contained in appendix 5.

⁵Details on how we selected the 60 permits are contained in appendix 8. We performed our fieldwork at the state agencies between May and July 2001.

3.2 years to issue a Title V permit.⁶ For the 60 permits we reviewed, the agencies took, on average, 3.6 years to issue the permit.

	Universe ⁷	OIG Reviewed
Number of permits	1744	60
Total elapsed days/years	1,176 days / 3.2 years	1,329 days / 3.6 years
Application to start of review	⁷	723 days
Start to draft permit	⁷	391 days
Draft to final permit	⁷	215 days

Table 1.2: Average time to process permits for six state agencies reviewed

Additional information on permit issuance rates for each of the six state agencies we reviewed is included in appendix 6.

Scope and Methodology

We conducted fieldwork in the states of Colorado, Florida, Massachusetts, Missouri, Pennsylvania, and Wisconsin; at EPA Region 5; and at EPA’s Headquarters air and enforcement offices—the Office of Air Quality Planning and Standards (OAQPS), and the Office of Enforcement and Compliance Assurance (OECA). We obtained information from other EPA regions as needed. We also obtained limited information from Illinois during the planning phase of our evaluation.

We selected these states because of their geographic diversity, varying number of Title V sources, and the diversity of their permitting status. For example, permit completions ranged from 28 to 100 percent among the six states we reviewed. We consulted with OAQPS officials in developing the criteria for selecting the

⁶The 3.2 years represented elapsed days, and does not reflect actual staff time spent on the permit. Most of the six states we reviewed did not track detailed information on the number of staff days spent on specific permits.

⁷The databases for the six state agencies did not have consistent data. Therefore, we were not able to compute average timeframes on the universe of permits.

states. Within each state, we conducted in-depth discussions of the factors impacting permit issuance with state officials. We also held a one-day workshop with senior OAQPS officials to (1) obtain their views on the factors we identified, (2) identify other factors, and (3) assess the likelihood of these factors also impacting permit renewals. Our review did not include an analysis of the internal controls over fee collections or the quality of the permits issued.

The Assistant Administrator for Air and Radiation responded to the draft report on March 26, 2002. An exit conference was held on March 27, 2002. Based on the response and exit conference, revisions were made to the report and a copy of the response included as appendix 2. A detailed discussion of our scope and methodology is provided in appendix 8.

Chapter 2

Lack of State Resources, Complex EPA Regulations, and Conflicting Priorities Contributed to Permit Delays

Key factors that continue to delay state and local agencies' issuance of Title V permits include insufficient state resources, complex EPA regulations, and conflicting state priorities. As a result, many sources did not have the operating permits that were designed to reduce source violations, improve regulatory agency enforcement abilities, establish site-specific monitoring requirements, increase source accountability, and ensure adequate public involvement in the permitting process. According to EPA, many of the continuing problems are also likely to impact permit renewals.⁸

Insufficient Resources and Staffing Contributed to Delays

The Act requires that permitting authorities assess and collect fees from permit applicants sufficient to cover the costs of developing and implementing the permit program. Of the six state agencies reviewed, officials at three agencies – Massachusetts, Missouri, and Wisconsin – stated that they have insufficient resources or staffing to implement the permitting program. We also found that the three agencies with sufficient resources– Colorado, Florida, and Pennsylvania–were further along in issuing Title V permits than the three agencies that had problems with resources or staffing.

Resources and staff for the Title V program come from fees that agencies impose on Title V sources. Fees are generally based on a source's emissions. However, fee collections – and agency resources to administer the Title V program – are impacted by the number of sources, tons of emissions, fee rate per ton, other fees

⁸A table summarizing the factors that have adversely impacted permit issuance in the Title V program is contained in appendix 7.

imposed by the agency, and external factors.⁹ The state legislature provides the authority to assess the fees.

In December 2000, EPA completed a survey of the fees that state and local agencies assessed. For the 59 state and local agencies that responded, permit fees ranged from \$6 to \$81 per ton, with an average of \$28 per ton.¹⁰ These fees were to cover all costs of the Title V program, including:

- Preparing regulations and guidance for the permit program.
- Reviewing and acting on permit applications, revisions, and renewals.
- General administrative costs of running the permit program.
- Implementing and enforcing the Title V permit, up to the point of filing the administrative or judicial action.
- Emissions and ambient monitoring for specific Title V sources.
- Preparing inventories and tracking emissions for specific Title V sources.

Two of six state agencies reviewed were not collecting sufficient fees, which contributed to problems in hiring staff needed to process Title V permits:

- According to officials at Wisconsin's Department of Natural Resources, for the last three biannual budgets, the state legislature did not provide authority to increase fees. Insufficient fees resulted in lower collections, causing Wisconsin to put a freeze on hiring. Wisconsin estimated there were 12 vacancies because of the freeze. Wisconsin spent about \$10 million in 2000, but estimated for 2002 it actually needs \$12.3 million to fully implement the program. In May 1999, the EPA Region 5 Regional Administrator sent a letter to Wisconsin legislature

⁹Some agencies also charge a minimum processing fee for Title V permits.

¹⁰Details on the fees for state agencies we reviewed are included in appendix 6.

supporting increased fees necessary for Title V, but the fee increase was not approved.

- Massachusetts' Department of Environmental Protection's 2000 revenue for the Title V program was \$1.3 million but the agency's costs were \$1.9 million. Massachusetts' fee regulation package identified that the agency had 12 less staff than it needed to fully implement the Title V program.

Even when a state or local agency is collecting sufficient fees, it may not be able to hire sufficient staff to implement the program. The Missouri Department of Natural Resources had sufficient revenue from fees to support the Title V program but, according to agency officials, was unable to fill a supervisory position because the level of wages allowed by the state was not sufficient to attract qualified personnel to accept the position.

**Complex EPA
Regulations and
Guidance
Contributed to
Delays**

According to state officials, obtaining answers from EPA on writing specific permits can be difficult and not very timely for state and local agencies. In several instances, resolving state questions on EPA's complex air toxics regulations added several months to permit issuance. Similarly, the lack of guidance from EPA on how to implement the agency's periodic monitoring requirements led to uncertainty about the type and amount of monitoring requirements that permit writers should include in Title V permits, also delaying permit issuance. EPA continues to promulgate new regulations that state and local agencies need to incorporate into Title V permits, often resulting in precedent-setting decisions. EPA needs to ensure that the regulations and guidance are written to facilitate incorporation into Title V permits by permit writers at the state and local agencies.

*Understanding
EPA's Air Toxics
Regulations*

Permit writers told us that they frequently have difficulty understanding EPA's air toxics regulations, which extended the time needed to issue Title V operating permits. Air toxics regulations can be very complex and lengthy (sometimes over 200 pages). As a result, permit writers had difficulty identifying the portions of the standards to include in a permit. In each of the

six state agencies reviewed, at least one Title V operating permit was delayed because the staff had difficulty determining the portions of the air toxics regulations to be included in a source's permit. For example:

- A Wisconsin Department of Natural Resources permit engineer had difficulty understanding how to incorporate air toxics regulations into the permit. The engineer requested guidance from EPA but had to wait several months for a response.
- In Missouri, determining the appropriate portions of the air toxics regulation to be included in the permit for an organic chemical manufacturer added from 7 to 12 months time to write the permit, according to the permit writer.

Periodic Monitoring Requirements

Permit writers also told us that the lack of guidance from EPA on how to implement the agency's periodic monitoring requirements led to uncertainty about the type and amount of monitoring requirements they should include in Title V permits, which also delayed some permits. Title V added new requirements for major sources to conduct periodic monitoring of pollutants—monitoring that had not been required in the past. If the current EPA regulation (or state or local agency regulations) for a pollutant did not require adequate monitoring sufficient to assure compliance, under Title V—for the first time ever – the permit writer would need to add a requirement to ensure adequate monitoring when writing the permit. However, the Act did not define “adequate monitoring,” according to EPA staff. As a result, many state and local agencies independently developed what monitoring was needed for each permit, sometimes through negotiation with the permittee. This activity also added to the time needed to write permits.

Although EPA issued guidance on periodic monitoring in 1998, the U.S. Court of Appeals for the District of Columbia set aside EPA's guidance in 2000. The court's decision was that EPA's periodic monitoring guidance was, in effect, a regulation, and that EPA could not create regulations through guidance. EPA recognized

that it needed to further define periodic monitoring requirements, and plans to include this as part of their planned revisions to the Title V regulations. However, according to an EPA operating permit program official, it may be several years before these revisions are completed.

New Regulations

According to EPA officials, state and local agencies will continue to face the challenge of incorporating new EPA regulations into Title V permits in the future. EPA is under statutory mandate to issue many new air toxics standards. Additionally, EPA's permitting regulations require that all Title V permits meet stringent new compliance assurance monitoring regulations when they are renewed. It is important that EPA ensure that the regulations and guidance it issues are written to facilitate incorporation into Title V permits. The following illustrations indicate the magnitude of the tasks permit writers will face in the future:

- EPA estimated for fiscal years 2001 and 2002 that it would publish in the Federal Register 40 new air toxics regulations that will need to be incorporated into existing Title V operating permits when the permits are renewed.
- The 1990 amendments authorized EPA to develop regulations requiring sources to monitor the performance of their emission control equipment. Although EPA issued these regulations in 1997, in order to reduce the burden on industry and state and local agencies, EPA decided that incorporating compliance assurance monitoring into Title V permits would not be required until permit renewal.

Conflicting Priorities with Other Air Permits Delayed Permits

In addition to Title V operating permits, state and local agencies also issue construction permits to new sources and to sources that are making significant changes to their operations. By law, state and local agencies often have a limited amount of time to issue these permits. Therefore, such construction permits have a higher priority than operating permits.

Several state agencies found that when the same staff were responsible for issuing both construction and operating permits, operating permits were not being issued. The Missouri Department of Natural Resources and one of the Florida Department of Environmental Protection's district offices resolved the issue by having different staff responsible for issuing construction and operating permits. Both agencies found that the reorganization of responsibilities increased the rate of operating permit issuance. Conversely, in Wisconsin Department of Natural Resources district offices, permitting staff had to choose between working on these higher priority construction permits or working on their Title V permits. This was a contributing factor to the length of time required to issue Title V permits in Wisconsin. As shown in appendix 6, Wisconsin averaged over 3 years (1,135 days) from receipt of the permit application to start of the review process.

**One-time,
Non-continuing
Delays in Issuing
Title V Permits**

Our review found that some factors had one-time impacts on state and local agencies' issuance of permits, but generally were no longer having an impact. These factors included:

- *Infrastructure development.* State and local agencies had to develop new laws and regulations to implement their Title V program, and often obtain the approval of their state legislature. State and local agencies also had to develop the organizational structure needed to support Title V, recruit and train staff on the Title V program, and carry out myriad other tasks associated with establishing a new program.
- *Volume of permits.* There are more than 18,000 sources subject to Title V nationwide, and all were required to submit applications within one year of the state or local agency receiving program approval from EPA. In several of the states we reviewed, state regulations required sources to submit applications toward the end of the one year period for submittals, forcing agencies to prioritize applications for processing. For a large source, the

application could be as large as one file box, or about 15 inches of paper.

- *Synthetic minors.* In addition to Title V permits, state and local agencies also had to issue operating permits with federally enforceable emissions limits to all sources with sufficient potential to emit to be considered a major source, as well as those sources that requested them. Known as “synthetic minors,” these sources can opt out of the Title V program by installing pollution control equipment or limiting their hours of operation so that their actual emissions—after controls—would be below the threshold for needing a Title V permit. About 17,000 sources nationwide needed such non-Title V operating permits. According to a 1999 Congressional Research Service Report, many state and local agencies decided to issue these permits before starting on the Title V permits.
- *EPA’s delayed Title V guidance.* EPA issued guidance in 1995 and 1996 on Title V. The guidance, while beneficial, was issued too late for many states, since about 38 percent of the state and local agencies already had interim or final program approval prior to July 1995, when EPA issued the first guidance document, which was commonly referred to as a “white paper.” Since the Act required industry to submit applications within 1 year of program approval, these state and local agencies had already developed their applications, and some had begun training on the Title V permit process. In the guidance, according to state agency officials, EPA changed how it previously interpreted the Title V regulations. As a result, Colorado’s Department of Public Health and Environment had to change some of its final permits. In Florida, industry wanted to wait until the guidance was issued to see if the revised guidance would provide a more liberal interpretation of the regulations.
- *Lack of experience.* According to a 1998 EPA survey of state and local agencies, dealing with EPA regional staff who lacked Title V permitting experience also delayed the

issuance of some permits. State and local agency staff found this was a problem during the early years of the Title V program, but as regional staff gained experience, there were fewer problems.

Conclusion

State and local agencies encountered many factors that impacted their ability to issue Title V permits. The primary factors that continue to impact permit issuance are insufficient resources, complex regulations, and conflicting priorities. As a result, many sources did not have the operating permits that were designed to reduce source violations, improve regulatory agency enforcement abilities, establish site-specific monitoring requirements, increase source accountability, and ensure adequate public involvement in the permitting process. According to EPA, many of the continuing problems are also likely to impact permit renewals.

Chapter 3 discusses EPA's efforts to work with state and local agencies to address the problems of insufficient resources and complex regulations, as well as our recommendations for EPA actions to improve Title V permit issuance. Chapter 4 discusses promising practices that state and local agencies might use to overcome conflicting priorities, and EPA's opportunity to enhance its leadership role in collecting and disseminating information on promising practices.

Chapter 3

EPA Oversight and Technical Assistance Had Limited Impact

EPA did not provide adequate oversight and technical assistance to state and local Title V programs, and did not use the sanctions provided in the Act to foster more timely issuance of Title V permits. EPA oversight and technical assistance are important factors in helping state and local agencies follow through on their commitments to issue Title V permits in a timely manner. As discussed in Chapter 2, many state and local agencies have not met the timeframes for issuing their initial Title V permits. EPA has taken a number of technical assistance and oversight actions to help state and local agencies, such as conducting a survey of roadblocks to permit issuance. However, we found that EPA generally did not provide adequate technical assistance to, nor oversight of, state and local Title V programs. For example, EPA did not:

- Complete the needed revisions to Title V.
- Continue efforts to make air toxics standards more usable for permit writers.
- Collect sufficient data on the status of permit issuance.
- Conduct fee reviews of many state and local agencies.
- Develop protocols for reviewing other aspects, besides fees, of Title V programs.
- Use the Act's provisions to take action when state and local agencies did not issue Title V permits.

As a result, EPA oversight had little impact on state and local agencies' efforts to make better progress in issuing initial Title V permits. The perspective of senior EPA officials' is that they face a dilemma in trying to take more stringent actions, such as sanctions against state and local agencies, while adhering to EPA policies to work with these same agencies as partners in environmental protection to the maximum extent possible. They also noted that the Title V program has limited incentives for both states and industries to proactively address the permit backlog.

Without adequate oversight, state and local agencies' practices can delay Title V permit issuance. For example, EPA allowed the Massachusetts Department of Environmental Protection to suspend permit review efforts if a source said it was considering a change in any of its operations. Massachusetts had a practice of putting the application on hold while a source was deciding whether to make a change in its operations, and did not follow up to determine whether the changes were actually being made. As of June 1, 2001, 75 of the 143 sources—or 52 percent—in Massachusetts still needing a Title V permit were on hold.

**EPA Oversight and
Technical Assistance**

Under the Act, one of EPA's responsibilities is to ensure that state and local agencies administer and enforce their Title V programs appropriately. EPA also provides assistance to the state and local agencies in understanding and implementing its regulations and guidance through a combination of continuing and specific activities. Specific actions EPA has taken include the issuance of regulations and guidance, establishment of a tracking system, and conducting reviews of state programs. As shown in table 3.1, EPA has taken a number of actions over the years in an effort to promote the more timely issuance of Title V permits.

However, as will be discussed next, there are additional actions EPA needs to take to both facilitate and compel better progress by state and local agencies in issuing Title V permits.

Date	Description of EPA Action
1992	Title V regulations published in 40 Code of Federal Regulations (CFR) Part 70.
1995	First guidance document issued--"White Paper for Streamlined Development of Part 70 Permit Applications."
1996	Second guidance document issued--"White Paper Number 2 for Improved Implementation of the Part 70 Operating Permit Program."
1998	Survey conducted of state and local agencies to identify roadblocks to permit issuance.
1998	Protocol issued for conducting reviews of state fees.
1999	Database established on the status of permit issuance and permit information published on the EPA web site.
2000	Memorandum issued by Assistant Administrator for Air and Radiation seeking state and local agency assistance in meeting goal of getting all permits issued by January 1, 2001.
2000	Request made to state and local agencies to develop plans for completing the initial permits.
2001	In response to public comment on some Title V programs, EPA required some state and local agencies to submit a letter detailing how they will complete their permits by December 2003.

Table 3.1: Summary of EPA actions to promote permit issuance, 1992 to 2001.¹¹

Revisions to Title V Regulations Not Completed

EPA first issued regulations for Title V in 1992. Since then, EPA has issued various proposed revisions, and made draft revisions available to the public four times. However, according to OAQPS officials, the revisions may not be completed for several years. While the proposed and draft revisions did not directly impact issuance of Title V permits, state officials indicated that dealing with repeated revisions introduced an element of uncertainty which can be time consuming for the state and local agencies and hinder performance of other work.

¹¹Table lists major actions EPA took to address the timeliness of permit issuance. It does not identify all actions EPA has taken in the Title V program.

The procedures and circumstances under which Title V sources must revise their permits before changing their operations to accommodate changing business conditions has been one of the more controversial provisions of Title V. Known as the “operational flexibility” provisions, key disagreements have centered on (1) whether sources could increase emissions above permitted limits without need of a permit revision, and (2) whether public notice and/or prior regulatory approval of such changes would be required. EPA issued the regulations for Title V in July 1992 and was sued by state, environmental, and industry groups in August 1992. About one-third of the issues in the lawsuit related to the operational flexibility provisions; i.e., those provisions that determine when and how a source must revise its permit to account for changes that could affect emissions. Subsequently, EPA issued two proposed revisions, and made two draft revisions available for public comment. These revisions were to primarily address various stakeholders’ concerns that the operational flexibility provisions were too vague, failed to provide for public participation, or inadequately provided for state and local agency review.

No additional draft revisions have been issued in the Federal Register, as either proposed or final, since 1998. As of February 2002, the package for Part 70 was complete, but, according to OAQPS officials, with the change in administration and competing priorities, there has been little progress on sending the revised package to the Office of Management and Budget for review.

**Toxics Standards
Not Title V “Friendly”**

As described in chapter 2, difficulty in understanding EPA’s air toxics standards delayed the issuance of permits. In 1997, EPA officials initiated an effort to address the problems permit writers were having with air toxics standards. OAQPS staff developed a set of standard drafting principles that included thinking from the permit writers viewpoint, providing for flexibility, and minimizing permitting transactions, or revisions. OAQPS officials did not provide us with an explanation as to why the drafting principles were not being used when writing air toxics standards. According to one state official, because EPA was under pressure to issue the

air toxics standards quickly to meet the Act's deadlines, the agency did not continue with this effort.¹² According to an OAQPS official, EPA needs to resume its efforts to ensure air toxics regulations are written so as to facilitate their incorporation into Title V permits.

**Data Collection
Limited**

In a 1994 memorandum, OAQPS identified the information it needed to (a) measure the progress state and local agencies had made and where they were having problems issuing Title V permits, (b) ensure program consistency, and (c) respond to reasonable requests for information regarding implementation of the Title V program. At a minimum, OAQPS needed the following information from state and local agencies on all Title V permits:

- Source identification number
- Permit number
- Date regional office received the proposed permit
- Date EPA's 45 day review period ends
- Date permit was issued

State and local agencies were instructed to enter the requested information into EPA's Aerometric Information Retrieval System Facility Subsystem (AFS). However, many state and local agencies generally disregarded EPA's desire for such data because the AFS database was not user friendly, according to an OAQPS official. This led to concerns that state and local agencies were inconsistent in entering their data into AFS, eventually causing EPA officials to question the reliability of the Title V status reports generated from AFS. Subsequently, OAQPS developed its own system to track only the number of sources and permits issued.¹³ According to OAQPS officials, the information collected on the number of sources and permits issued provided top management with sufficient information on the overall status of the program.

¹²An analysis of EPA's approach to developing air toxics regulations was outside the scope of this review.

¹³EPA also collects information on the number of synthetic minors and permits issued to these sources.

However, it did not provide other managers and staff working in the Title V program with the information needed to adequately monitor the progress of specific sources. In our opinion, the information OAQPS identified in its 1994 policy would allow managers and staff to adequately oversee the Title V program and better monitor progress.¹⁴

**Regions
Not Performing
Fee Protocol Reviews**

As noted in chapter 1, Congress intended for the Title V program to be self sufficient, and included provisions in the Act for state and local agencies to collect the fees needed to carry out the program. In 1998, OAQPS issued a protocol for EPA regions to use in conducting reviews of Title V permit fees. The fee protocol identified a series of questions to determine whether the state or local agency:

- Could demonstrate that Title V resources are being billed in accordance with its fee requirements, and that sources are paying the fees as required.
- Was appropriately classifying expenses between Title V and non-Title V programs.
- Had integrated features into its financial system that would identify Title V revenue and expenditures.
- Could confirm that the fees collected from sources were only used to pay for the Title V program.

However, from January 1998 to December 2001, EPA regions had only performed 28 reviews of state and local agencies, with some regions not performing any reviews. As a part of the fiscal years 2001-2002 Memorandum of Agreement (MOA) between the Office of Air and Radiation (OAR) and the regions, most regions

¹⁴In February 2002, we found that AFS contained information on a substantial number of specific sources to which state and local agencies had issued Title V permits about – 14,000 permit records. However, this information--obtained from OECA officials – still did not comprehensively address the over 18,000 sources seeking Title V permits. At the time of our review, OAQPS was not relying upon AFS data for tracking specific permits.

committed to fee oversight reviews of at least two of their permitting authorities. However, there are 112 approved state and local agency Title V programs, 84 of which have not been evaluated using the fee protocol. If each of the 10 regions performed two reviews per year, it would take over 4 years to conduct fee reviews of the 112 state and local agencies.¹⁵

As discussed in chapter 2, our review found that insufficient resources was a primary contributor to delays in issuing permits. Fee protocol reviews can be beneficial to EPA and the state or local agency. The fee protocol provides EPA with one method for assuring that states have sufficient controls over their resources and that the resources are devoted to Title V. In addition, in Massachusetts, a fee review helped the agency to justify the need for a fee increase, and the fees subsequently were increased.

**Protocol for
Other Reviews
Not Developed**

When OAQPS issued the fee review protocol in 1998, according to permitting officials, it also intended to develop one or more protocols to review other aspects of Title V implementation. OAQPS never developed these additional protocols because, due to resource constraints, the EPA regions had only conducted the higher priority fee reviews in a small portion of the state and local agencies. Consequently, OAQPS officials told us they decided to defer development of additional protocols. As an illustration of the need for and benefits of other protocols, Region 5 developed its own protocol for reviewing other aspects of the Title V program, which included questions on:

- Efficiency of permit issuance.
- Processing of permit modifications.
- Inclusion of all applicable requirements in permits.
- Internal review procedures.
- Training.
- Public participation.
- Identification of Title V sources.

¹⁵As shown in appendix 4, some regions have more state and local agencies than others. To review all state and local agencies in five years, regions with fewer agencies would need to assist regions with more agencies.

These evaluations would provide EPA and state and local agencies with valuable information on whether Title V programs are being adequately implemented. Adequate implementation of Title V programs contributes to more timely issuance of permits.

**Notices of Deficiency
and Sanctions
Not Used to Address
Implementation Issues**

While the Act provides EPA with the authority to take action when state and local agencies do not adequately administer their Title V program, EPA has rarely used this authority. For example, EPA did not issue any notices of deficiency when state and local agencies did not issue their permits within three years of their program being approved. Although most state and local agency programs were approved by the end of 1997, and should have completed all their permits by December 2000, it was not until December 2001 that EPA issued its first notices of deficiency. In addition, the notices that EPA issued in December 2001 were for deficiencies in state and local agencies' Title V regulations, not for delays in issuing permits. As of February 2002, EPA had yet to issue a notice of deficiency for a state or local agency's failure to issue the required Title V permits.

If EPA finds that an approved agency is not adequately administering its Title V program, the Act provided EPA with the authority to take further action. According to the implementing regulations in 40 CFR Part 70.10, the first step is for EPA to publish in the Federal Register its finding that the state or local agency is not adequately administering its program, along with the reasons why. The state or local agency then has (a) 90 days to take significant action to assure that it will adequately implement the program in the future, and (b) 18 months to correct the deficiency. If the state or local agency does not develop an adequate plan within 90 days, or correct the deficiency within 18 months, EPA can take one or more of the following actions:

- Withdraw approval of all or part of the program.
- Apply sanctions.
- Promulgate, administer, or enforce a federal Title V program.

OAQPS officials provided several reasons why they have not used these provisions to address Title V implementation issues.

- Issuing notices of deficiency may harm the agency's partnering efforts with state and local agencies. EPA officials perceived a dilemma in trying to take more stringent actions against state and local agencies that were not adequately implementing their Title V programs, while simultaneously adhering to agency policies to work with state and local agencies as partners in environmental protection.
- EPA was reluctant to withdraw approval because of the expense incurred in running the program itself. The Act provides for EPA to collect fees to cover the cost of a federal program, but Congress would have to approve the appropriation of additional funds. Even without the appropriation from Congress, if EPA withdraws approval, the agency would have to implement the federal program. According to the Act, under such circumstances, the fees EPA collected would be deposited in the U.S. Treasury, where they would be available for appropriation by Congress. The fees may not be immediately available for EPA to use in implementing a federal Title V program. In addition, even though EPA is implementing all or part of the Title V program, state and local agencies could still collect fees from sources, if they chose to do so.
- EPA's Office of General Counsel has interpreted the Act as requiring that the agency develop regulations using notice-and-comment rulemaking procedures as a pre-condition to applying the Act's sanctions. As of January 2002, EPA did not have the regulations in place to impose such sanctions on state and local agencies for noncompliance with Title V. The Act allows EPA to impose sanctions of either (a) withholding of transportation funds, or (b) requiring

emission offsets.¹⁶ According to OAQPS officials, EPA needs to promulgate a rule identifying the order in which the two options for sanctions would be imposed. Once this rule is effective, the sanctions will apply automatically in the sequence prescribed in the rulemaking in all instances where EPA determines that the applicable criteria for using the sanctions has been met.

Recent EPA Actions

In 2001, as a result of a lawsuit, EPA requested and received comments on what the public perceived as deficiencies in the Title V program. EPA received public comments from 34 stakeholders regarding 21 state and local agencies. Where the public comments identified problems with the rate that the state or local agency was issuing permits, EPA required the head of the agency to commit to a written schedule for issuing the remaining permits by December 2003. Thirty-nine state and local agencies provided EPA with commitment letters as of February 2002. The letters included interim milestones for completing permits, and an acknowledgment that the state or local agency could be subject to a notice of deficiency if any of the milestone dates are not met.

The commitment letters from state and local agency management are a positive step in trying to get state and local agencies working toward completing the initial Title V permits. However, as of February 2002, EPA did not have a national plan or approach for dealing with the 39 state and local agencies should they not meet their recent commitments, nor the other 50 state and local agencies that have not issued all the initial Title V permits. In our opinion, continued delays in meeting commitments to issue Title V permits may be an indicator that a state or local agency is not properly administering its program. EPA may find other indications of implementation deficiencies as it continues to oversee and conduct reviews of state and local agencies. EPA needs to develop a national plan for dealing with implementation deficiencies.

¹⁶Emissions offset requirements apply to companies wanting to expand, change production processes, or otherwise increase their emissions. Under offset requirements, such companies must obtain an offset--an emissions reduction by another source--in an amount greater than the company's planned increase in emissions. For example, if Title V sanctions are applied to a state or local agency, sources would have to obtain 2-to-1 emissions offsets.

Other Matters

According to EPA officials, one of the impacts on the issuance of Title V permits is that there is no incentive within the Act for sources to apply pressure on state and local agencies to issue Title V permits. Additionally, there are limited incentives for state and local agencies to issue permits in a timely fashion.¹⁷

After the state or local agency receives a permit application, the agency has 60 days to review the application to determine if it is complete. Unless the state or local agency notifies the source that its application is incomplete, the application is deemed to be complete after 60 days. The Act provides an application shield for sources that have submitted a complete application. The source is allowed to continue operating, and the application shield prohibits affected parties from suing the source for not having a Title V permit. While the application shield is an incentive to sources to submit applications that will pass the completeness review, it provides no incentive for sources to obtain their final permits. Therefore, according to EPA officials, the application shield created an environment where there was a lack of incentives for sources to pressure the state or local agency to issue their Title V permits. Additionally, a potential disincentive may exist in cases where the Title V permit would require additional monitoring activities by the source, which can be costly to the source.

Without pressure from sources for state and local agencies to issue permits, there were limited incentives for agencies to expeditiously issue the Title V permits. The agency could continue to collect fees from sources, no matter what progress the agency was making in issuing permits. State and local agencies could also continue to collect Title V fees, even if EPA were to take over all or part of the Title V program.

Our review of six state agencies did not identify any instances where sources used the application shield as a way to delay the agency in issuing the Title V permits. Therefore, we are not making any recommendation to correct this issue, but are

¹⁷This issue was identified to us by EPA, but not by state agencies we reviewed.

presenting this information in order to provide a balanced view of the factors surrounding Title V permit issuance.

Conclusion

More than a decade after Congress passed legislation requiring all major sources of air pollution to obtain an operating permit, over 4,000 sources—nearly 30 percent of all the permits to be issued—still need to be issued. EPA, state, and local agency officials acknowledge that translating and consolidating the applicable air pollution requirements into site-specific, legally enforceable Title V permit limits is a complex, time-consuming, and resource intensive process. Nonetheless, in passing Title V, Congress provided both the statutory authority and the ability to collect fees to pay for the full cost of the Title V program. Congress also provided that, if state and local agencies fail to administer the Title V program, EPA may step in and administer a federal program.

Many factors have delayed the issuance of Title V permits, most of which can be overcome with more stringent EPA oversight. EPA staff perceive a dilemma in trying to take more stringent actions, such as sanctions, against state and local agencies, while adhering to agency policies to work with state and local agencies as partners in environmental protection to the maximum extent possible. Nonetheless, without a national approach that addresses implementation issues, establishes the expectations and milestones for issuing the remaining permits, and holds state and local agencies to these commitments, the benefits that Title V was designed to achieve – reduced violations, improved enforcement, better monitoring requirements, increased source accountability, and full public involvement in the permitting process – will continue to be delayed. Among other things, EPA also needs to ensure that state and local agencies are adequately implementing the Title V program that EPA approved.

Additionally, the longer state and local agencies take to issue the initial Title V permits, the more likely they will encounter problems processing permit renewals. The Act requires that permits be renewed every 5 years, and some of the initial permits are scheduled for renewal. If the initial permits are not issued, permitting

authorities could be faced with the dilemma of whether to continue to issue initial permits or to focus on renewing existing permits.

Recommendations

We recommend that the Assistant Administrator for Air and Radiation:

- 3-1 Require EPA regions, through the memorandum of understanding, to expeditiously conduct fee protocol reviews. Regions should prioritize fee reviews to initially focus on state and local agencies that have not completed their initial Title V permits. Regions should ensure that state and local agencies take action to address the findings of the fee protocol reviews.
- 3-2 Revive agency efforts to make air toxics standards easier to incorporate into Title V permits.
- 3-3 Complete the revisions to the Title V regulations.
- 3-4 Identify and collect information from regions, states, and local agencies sufficient to:
 - (b) measure the progress of state and local agencies and determine where they are having problems issuing permits,
 - (b) ensure program consistency, and
 - (c) respond to reasonable requests for information regarding implementation of the Title V program.
- 3-5 Develop and implement protocols for reviewing other aspects of the Title V program, including assessing the level of state and local management support and priority given to Title V activities. (See chapter 4 for examples of good practices in these areas.)
- 3-6 Develop and execute a national plan for addressing deficiencies in Title V programs, specifically the action EPA

will take to address missed milestone dates for issuing the initial permits. The plan should specify how EPA will use the provisions of the Act to address continuing Title V program implementation issues, including:

- (a) notices of deficiency that may trigger sanctions and program withdrawal, and
- (b) fee demonstrations.

Agency Actions

The Assistant Administrator for Air and Radiation generally agreed with the findings and recommendations. He also stated that while progress has been made in issuing Title V permits, he agreed with our conclusion that more can be done to help the Title V program. Specific comments were made regarding three of the six recommendations in chapter 3:

Recommendation 3-1. While the proper accounting of fees being collected is an important factor in ensuring sufficient resources for the Title V program, there were other factors that impacted permit issuance. The Assistant Administrator believed it would be appropriate and useful to suggest that regions periodically evaluate the full range of factors, emphasizing fees where resources appear to be the primary barrier to permit issuance.

Recommendation 3-3. EPA recognized that state and local agencies would welcome the completion of the Title V regulations, but believed the states we reviewed may have overstated the extent to which this factor impacted issuance of the initial permits. As such, the Assistant Administrator suggested that the recommendation be modified to recognize that the revisions to the Title V regulations were not critical to the initial permits.

Recommendation 3-6. In response to a lawsuit, EPA required 39 state and local agencies to adopt schedules for completing Title V permits. EPA also required that these 39 state and local agencies acknowledge the possibility of EPA issuing notices of deficiency for failure to meet the schedule and/or intermediate milestone dates. For these agencies, the Assistant Administrator suggested that, in

lieu of specifically pursuing fee demonstrations, the issue of fee adequacy would be better addressed as part of the full program review rather than as a separate requirement.

OIG Evaluation

The Assistant Administrator agreed with the recommendations in chapter 3, except for the comments summarized above. The OIG position regarding specific comments follows:

Recommendation 3-1. We agree that EPA should evaluate the full range of factors that impact permit issuance. However, our review found a strong relationship between lack of resources and delays in initial permit issuance. Therefore, we continue to believe that EPA should implement the fee protocol reviews (recommendation 3-1), and also develop and implement protocols for reviewing other aspects of the Title V program (recommendation 3-5).

Recommendation 3-3. We agree that, as stated in the report, a range of factors impacted permit issuance, including completion of the revisions to the Title V regulations. While this may not be a high priority for EPA in relation to addressing other factors affecting permit issuance, state and local agencies still identified this as a reason for not completing the initial Title V permits. Therefore, we continue to believe EPA needs to develop an action plan for completing the regulations.

Recommendation 3-6. We continue to believe that EPA needs to develop and execute a national plan for addressing the deficiencies in Title V programs. This national plan should address all state and local agencies that have not completed issuing their initial Title V permits, and not just for the 39 agencies that adopted schedules in response to the lawsuit. While we agree that EPA needs to conduct Title V program reviews, EPA also needs to require that state and local agencies conduct fee demonstrations as part of a national plan for addressing Title V program deficiencies.

As agreed in the response to the draft report, the Assistant Administrator will provide an action plan, with milestone dates, for addressing each of the recommendations in this chapter.

Chapter 4

Management Support, Partnerships, and Site Visits Contributed to More Timely Issuance of Title V Permits

Three practices that contributed to the progress state agencies made in issuing Title V operating permits were:

- Management support for the Title V program.
- Regulatory agency and industry partnering.
- Site visits to sources.

Each of these practices contributed to the writing and issuance of Title V operating permits in each of the six state agencies we reviewed.

Management Support Helped Build Strong Programs

Implementation of effective Title V permitting programs was built upon strong management support and commitment to the issuance of Title V permits. Commitment to and support for the program were communicated to staff, industry, concerned citizens, and environmental groups. Our review identified three principles upon which management built support for a strong and effective Title V program:

- Organizational structure and dedicated resources.
- Accessible reporting system.
- Proactive management.

Organizational Structure and Dedicated Resources

An effective organizational structure is one where management has taken action to ensure there are sufficient resources for the Title V program. We identified examples in three of the six state agencies we reviewed where management took deliberate actions to ensure that their Title V programs would have sufficient resources to administer the program in a timely manner. These actions included having the right number of staff and ensuring that the staff were dedicated to issuing Title V permits. For example:

- Missouri's Department of Natural Resources initially had staff working on both operating and construction permits. However, since the construction permit program had a higher priority due to deadlines for issuance, Missouri was not issuing Title V permits. Management solved this problem by implementing a reorganization that split the two functions, and more staff were assigned to the Title V permit program than to the construction permit program. This resulted in increased issuance of Title V permits.
- Pennsylvania's Department of Environmental Protection hired about 180 new employees for implementing the program. Staff were located in six regional offices and were dedicated to various aspects of carrying out the program, such as permit writing, compliance and monitoring activities, and administrative and management functions.
- Colorado's Department of Public Health and Environment made Title V a separate program, and provided funding, a budget, and supervisors for implementing the program. Making Title V a separate program ensured that staff were dedicated to and focused on the program.

*Accessible
Reporting System*

To oversee and run an effective program, some states created a reliable database and reporting system that provided management with timely and accurate information. Using the information, management was able to identify delaying factors before they became problems. For example:

- Pennsylvania's Department of Environmental Protection developed an internal web-based Title V permit tracking system that is accessible and available to all staff on a real-time basis. Managers were able to readily determine the status of any particular Title V permit and monitor the permit issuance rates for the various regional offices.
- Missouri's Department of Natural Resources reported monthly to the state's commission on air conservation on the status of the permits issued. The conservation commission is an independent organization that also serves

as an appeal board for state decisions. Maintaining an accessible tracking system in order to report to this independent group increased accountability for completing Title V permits.

- Colorado's Department of Public Health and Environment developed a database system for tracking the status of Title V permits, allowing management to know its progress in issuing permits.

*Proactive
Management*

Proactive oversight helped management be aware of and avert issues that could potentially become impediments to implementing the program and slow the issuance of Title V permits in three agencies we reviewed. For example:

- Pennsylvania's Department of Environmental Protection specifically made an effort to nurture good communications between its own management and staff, as well as between the state agency, EPA, industry, and other concerned parties. Quarterly staff meetings were held that addressed issues and problems dealing with writing permits. Early in developing the Title V program, Pennsylvania identified training of staff, industry, and other concerned parties as a high priority. As a result, Pennsylvania developed its own expertise and in-house training. Also, Pennsylvania worked closely with EPA in developing general permit conditions and language. Consequently, EPA has not objected to any of Pennsylvania's Title V permits.
- Florida's Department of Environmental Protection sponsored numerous workshops for communities and industry designed to answer their concerns and questions regarding the Title V operating permit process. Topics included agency regulations, permit content, and instructions for completing the permit application. Florida was also more timely in issuing Title V permits.

Agency and Industry Partnering Fostered a Cooperative Program

State or local agency and industry partnering early in the Title V process built mutual respect, cooperation, and trust, which were essential to the implementation of a technical and complex program. Working closely together, agencies and industry were able to overcome conflicts and problems that could have delayed the permitting process. For example, agency and industry partnering helped in the writing and adoption of:

- Model permit language.
- Monitoring, reporting, and record keeping requirements.
- Legislation affecting the permitting program.

These activities helped in developing effective and comprehensive Title V programs with less delays or problems with permits. For example:

- Pennsylvania's Department of Environmental Protection staff worked closely with facility operators in writing specific monitoring, reporting and record keeping requirements for Title V permits.
- Florida's Department of Environmental Protection worked closely with industry, over a period of three years, initiating and affecting legislative and regulatory changes implementing the state's Title V program.

Partly due to these activities, both Pennsylvania and Florida were more timely in issuing Title V permits.

Visits to Sources Saved Time When Writing Permits

Each of the six state programs we reviewed benefitted when permit writers made site visits to sources. For example, the site visits:

- Enabled permit writers to meet with source management and establish good working relationships. This helped writers to address source concerns before a final permit was issued and, in general, enhance cooperation and compliance

and reduce potential source comments to the draft permit. The visit also provided an opportunity to resolve lingering issues and concerns with source management, resulting in better permits.

- Increased the writers' knowledge and understanding on how the sources operate, how the various plant processes work, and what the various emission sources are. Consequently, the writers were able to draw up more complete and comprehensive permits, and the permits were less likely to be challenged and delayed by sources.

EPA Could Improve Its Efforts to Promote the Sharing of Good Practices

One of EPA's leadership roles in the Title V program is providing technical assistance to state and local agencies by facilitating the collection and sharing of promising permitting practices. Promising practices can be identified through regional reviews of Title V programs and suggestions from state agency officials. This information can be disseminated through meetings, written documents, and EPA's internet site. However, EPA has not identified and shared the successful permitting practices of state and local agencies with those behind in issuing Title V permits to determine if these practices would improve the rate of permit issuance nationwide. In our opinion, EPA could improve its efforts to promote sharing information on Title V practices that show promise of helping agencies issue permits on a more timely basis.

Conclusion

Examples of good practices can be helpful to state and local agencies as they continue to issue their initial Title V permits, and start to issue permit renewals. EPA has an opportunity to help state and local agencies improve permit issuance rates by taking a leadership role in collecting and disseminating information on promising practices.

Recommendation

We recommend that the Assistant Administrator for Air and Radiation:

- 4-1 Develop a plan for identifying, collecting, and disseminating good practices on the implementation of Title V programs. Reviews of state and local programs, recommended in chapter 3, would be one source of information on good practices.

**Agency Actions and
OIG Evaluation**

The Assistant Administrator for Air and Radiation agreed with the findings and recommendation. As agreed in the response to the draft report, the Assistant Administrator will provide an action plan, with milestone dates, for addressing the recommendation in this chapter.

Definitions of Major Stationary Sources

Passage of the Clean Air Act Amendments of 1990 also brought new definitions of major stationary sources that varied depending on the type of pollutant, the attainment status of the area where the pollutant is emitted, the synergistic effects of multiple airborne pollutants, the ability of some pollutants to travel long distances, and other factors. As a result, simple definitions of what sources are and are not major sources of air pollution are difficult to find.

Generally, a major source is any source with annual emissions that meet or exceed levels specified in the Act. For example, a steel drum reconditioner located in an area classified as serious for nonattainment purposes that applies paint to the steel drums before selling them, and that annually emits 50 tons or more of volatile organic compound emissions into the air, is a major source. The table below shows the annual emission levels, in tons of pollution, that define a major source of any of the National Ambient Air Quality Standard pollutants under the Act:

Attainment Status of Area Where Source Is Located	Potential to Emit (Tons/Year)						
	Carbon Monoxide (CO)	Lead (Pb) ¹⁸	Nitrogen Dioxide (NO ₂) ¹⁸	Nitrogen Oxides (NO _x)	Particulate Matter (PM-10)	Sulfur Dioxide (SO ₂) ¹⁸	Volatile Organic Compounds (VOCs)
Attainment Areas	100	100	100	100	100	100	100
Nonattainment Areas							
Marginal ¹⁹				100			100
Moderate	100			100	100		100
Serious	50			50	70		50
Severe ¹⁹				25			25
Extreme				10			10
Northeast Ozone Transport Region				50 - marginal 100- moderate			50 - marginal 100- moderate

¹⁸ The Act did not establish additional major source classifications for these pollutants based on an area's attainment status.

¹⁹ Nonattainment areas for carbon monoxide (CO) and particulate matter (PM-10) are classified as either moderate or serious.

The 1990 Act also added new definitions for major sources of hazardous air pollutants, generally referred to as air toxics. The act listed 188 such air toxics, including the airborne emissions of such things as arsenic, benzene, dioxin, formaldehyde, mercury, and perchloroethylene. By definition, any source is a major source if it emits 10 or more tons annually of any one of these 188 air toxics, or 25 or more tons of any combination of these 188 air toxics.

In addition to these 188 air toxics, there are other pollutants, such as asbestos, regulated under the National Emission Standards for Hazardous Air Pollutants, that may cause sources to qualify as major sources. Additionally, engaging in or undertaking certain activities can cause a source to become a major source. These generally involve sources that are subject to one or more of the following:

- EPA's New Source Performance Standards limitations for new sources of pollution.
- Prevention of Significant Deterioration provisions or the nonattainment area New Source Review provisions for expanding or changing sources.
- Selected sources with potential to contribute to acid rain problems.
- Solid waste incinerators.

According to EPA, over 35,000 sources in the United States have the potential to emit pollutants in sufficient amounts to be a major source, and thus be required to obtain a Title V permit. However, as discussed in chapter 2, about 17,000 sources have chosen to limit their hours of operation, install pollution control equipment, or take other actions to avoid being subject to the Title V requirements.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
AIR AND RADIATION

March 26, 2002

MEMORANDUM

SUBJECT: Revised Draft Report
EPA and State Progress in Issuing Title V Permits

FROM: Jeffrey R. Holmstead
Assistant Administrator

TO: Leah L. Nikaidoh
Audit Manager
Northern Audit Division

Thank you for your memorandum of March 12, 2002, transmitting the subject report. I am in general agreement with your findings and recommendations other than the minor exceptions noted in the attached comments. While permitting authorities have made good progress in issuing initial operating permits (70% of those facilities needing a title V permit now have them and 84% have either been permitted or have reduced their emissions below the permitting threshold), there is still work to do. Many of the sources remaining to be permitted are the more complex facilities and the problems identified in your report (e.g., high staff turnover, hiring impediments, competing priorities) continue to be of concern. I agree with your conclusion that more can be done to help this effort and will follow up, within 90 days of issuance of the final report, with an action plan based on the report's findings and recommendations.

Thank you for the opportunity to provide comments on the subject draft. My contact for this effort is Scott Voorhees from OAQPS (919-541-5348).

Attachments

cc: John Seitz
Beth Craig
Bill Harnett

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Note: The original response was signed by Jeffrey R. Holmes

Attachment 1

OAR Comments on the Draft Report Recommendations

Recommendation 3-1: This recommendation should be refocused. While the proper accounting of fees being collected from title V permits is an important factor in ensuring sufficient resources for this program, a primary focus on the adequacy of fees and the conduct of fee audits may not represent the solution to permit issuance. As the body of the audit clarifies, there are a number of factors involved. Fees are just one aspect of a multi-faceted problem that involves competing priorities, hiring and retention difficulties, and training of permit staff. It would be more appropriate, and useful, to suggest Regions evaluate the full range of factors, emphasizing fees where resources appear to be the primary barrier to permit issuance. OAR does agree with the Office of the Inspector General that the Regions should work with their co-regulators to ensure that permit fees collected are allocated to the state Title V permit programs.

Recommendation 3-3: OAR does recognize that permitting authorities would welcome the completion of our current rulemaking on Part 70, but we believe the states may have overstated the extent to which this has impacted issuance of the initial permits. As noted in the report, the changes to the regulations focus primarily on the revision of permits rather than on their initial issuance. As we raised in the cover memorandum, 70% of the title V permits have been issued. OAR recommends that the recommendation be modified to recognize that these revised changes are not critical to the original round of permits.

Recommendation 3-6: This recommendation refers to the permit issuance schedules developed by 39 permitting authorities pursuant to the November 2000 Sierra Club settlement agreement. These schedules (or associated correspondence) acknowledge the possibility of EPA issuing Notices of Deficiency (NODs) for failure to meet the schedule and/or intermediate milestones. The OIG recommends that OAR also pursue fee demonstrations for these programs. Again, as indicated in earlier comments on Recommendation 3-1, the issue of fee adequacy is better addressed broadly under the auspices of a full program review rather than as a separate requirement.

Attachment 2

Other OAR Comments on the Draft Report

Pg 2: In the table, the third bullet refers to “adding” monitoring, etc. A more appropriate description would be “requiring monitoring, testing, and record keeping, where needed...”.

Pg 8: In the six bullets identifying the appropriate uses of Title V fees: the 4th bullet should be clarified at the end with “pre NOV activities”. The 5th and 6th bullets should also be clarified by the addition of “to the extent necessary to determine applicability or to issue the permit”.

Pg 17: First paragraph. The wording of the first sentence suggests that there have been numerous revisions to Part 70 since 1994. A more appropriate wording for this sentence would be: “EPA first issued regulations for Title V in 1992. Since then, EPA has issued various.....”

Pg 24: First full paragraph, second sentence. We are unable to reproduce the figures used. (EPA actually received 34 letters identifying some 350 comments; the 34 letters reflected comments from 20 state and local agencies). Also, the last sentence in this paragraph is misleading as written. While we do plan to continue to encourage these programs to issue their remaining permits, our effort will be based on a broad consideration of Agency and local priorities, rather than focusing solely on formal commitments for a specific number of permits.

Background on the Clean Air Act Title V Program

Title V Program Established in 1990

The 1990 amendments to the Act established the Title V operating permit program. Congress' main goal in adopting the Title V program was to achieve a broad-based tool to aid effective implementation of the Act and to enhance enforcement. Title V requires operating permits for every major source of a regulated air pollutant and any other source covered by a current permit program.

The purpose of the Title V program was to: (1) bring together in one document all the air pollution controls for a source; and (2) require sources to certify compliance with the permit (i.e., all of their air pollution control requirements) every year. The Title V permit should result in:

- A better understanding of the requirement that a source is subject to.
- A basis for determining whether a source is complying with the requirements.
- Increased accountability and enforcement.

The permits include enforceable emissions limits and standards, plus inspection, monitoring, compliance certification, and reporting requirements for the source. Title V permits also provide a ready vehicle for implementing other significant parts of the air program, including efforts to reduce acid rain.

States, Local Agencies Given Responsibility for Implementing Title V

There are 112 state and local agencies in the United States approved by EPA to administer the Title V permitting program. In some states, local agencies are responsible for implementing air pollution control programs, such as Title V. A list of all the state and local agencies is contained in appendix 4.

Each state and local agency is responsible for developing and implementing Title V operating permit programs. To have an approvable program, state and local agencies must be able, through fees, to recoup all reasonable costs of developing and administering the program, including the reasonable costs of emission and ambient monitoring, modeling, and reviewing and acting on permit applications. The objective of the fee is to ensure the state or local agency

has all necessary resources to administer the permit program with a minimum of delay. Other key provisions that must be part of a Title V program before EPA will approve it include:

- Monitoring and reporting requirements.
- Authority to terminate, modify, or revoke and reissue permits for cause.
- Authority to enforce permits, permit fee provisions, and the requirement to obtain a permit.
- Public notification and opportunity for comment for every new permit and when permits are renewed or significantly revised.
- The requirement that sources provide emission reports to their permitting authorities at least semi-annually and certify compliance status annually.

A Title V permit contains all air pollution control requirements that a source must meet under the Act. This includes requirements established by:

- EPA.
- State and local agencies as part of a federally approved program.
- State and local agencies that are not required by the Act and are not federally enforceable.

The permit will sometimes create new requirements. The Act requires that permits contain adequate monitoring to determine whether the source is complying with specific requirements. If the current EPA or state or local agency requirements do not include monitoring, the Title V permit will create new compliance monitoring activities.

EPA Provides Oversight

While state and local agencies primarily implement the Title V program, EPA has an oversight role. EPA reviews and approves each state and local agency's operating permits program; oversees implementation of the program; reviews proposed permits; and, if necessary, objects to improper permits proposed. In addition to approving state or local agency programs, EPA is responsible for ensuring that state and local agencies administer and enforce the programs. If EPA finds a state or local agency is not adequately administering and enforcing a part of the Title V program, EPA is to notify the state or local agency of its finding. If the deficiencies are not corrected, EPA can apply sanctions, withdraw the program, or administer a federal program in that state.

Within EPA's Office of Air and Radiation, OAQPS is responsible for developing national regulations and guidance for Title V and providing technical assistance to EPA regions and the states. Regions are responsible for reviewing proposed permits, assisting state and local agencies in getting initial permits issued, and monitoring permit renewal requirements. Every two years, OAR and the regions negotiate an MOA identifying what activities they will perform. For fiscal years 2001 and 2002, regions were to, among other things: (1) review progress of state and local agencies in meeting their strategy for issuing initial Title V permits, and (2) perform fee protocol reviews on 25 percent of the Title V programs.

Status of Title V Permits as of December 31, 2001²⁰

State/Local Pollution Control Agency	Sources	Permitted	Percent
Region 1			
Connecticut	111	46	41%
Maine	75	30	40%
Massachusetts	206	66	32%
New Hampshire	56	40	71%
Rhode Island	53	18	34%
Vermont	23	17	74%
Subtotal - Region 1	524	217	41%
Region 2			
New Jersey	384	117	30%
New York	573	443	77%
Puerto Rico	54	17	31%
Virgin Islands	7	0	0%
Subtotal - Region 2	1018	577	57%
Region 3			
Delaware	87	76	87%
District of Columbia	34	34	100%
Maryland	161	121	75%
Pennsylvania	810	640	79%
Virginia	314	166	53%
West Virginia	208	115	55%
Subtotal - Region 3	1614	1152	71%
Region 4			
Alabama	263	226	86%
Jefferson County, AL	44	35	80%
City of Huntsville, AL	12	12	100%
Florida	1653	1653	100%
Georgia	393	269	68%
Kentucky	308	142	46%
Jefferson County, KY	41	31	76%
Mississippi	331	308	93%
North Carolina	396	247	62%
Forsyth County, NC	14	14	100%
Western, NC	7	7	100%

²⁰As of March 2002, the most current information EPA had on permit issuance was as of December 31, 2001.

EPA and State Progress in Issuing Title V Permits

**Appendix 4
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State/Local Pollution Control Agency	Sources	Permitted	Percent
Mecklenburg County, NC	14	13	93%
South Carolina	299	280	94%
Tennessee	245	207	84%
Davidson County, TN	14	14	100%
Hamilton County, TN	23	23	100%
Knox County, TN	9	9	100%
Shelby County, TN	38	25	66%
Subtotal - Region 4	4104	3515	86%
Region 5			
Illinois	747	413	55%
Indiana	743	551	74%
Michigan	487	357	73%
Minnesota	335	212	63%
Ohio	726	392	54%
Wisconsin	610	293	48%
Subtotal - Region 5	3648	2218	61%
Region 6			
Arkansas	281	261	93%
Louisiana	1047	678	65%
New Mexico	181	126	70%
Albuquerque, NM	12	11	92%
Oklahoma	469	310	66%
Texas	1707	1262	74%
Subtotal - Region 6	3697	2648	72%
Region 7			
Iowa	294	183	62%
Kansas	370	261	71%
Missouri	418	309	74%
Nebraska	95	29	31%
Lincoln/Lancaster County, NE	17	16	94%
City of Omaha, NE	19	18	95%
Subtotal - Region 7	1213	816	67%
Region 8			
Colorado	138	120	87%
Montana	59	51	86%
North Dakota	50	48	96%
South Dakota	200	200	100%
Utah	92	63	68%
Wyoming	152	147	97%
Subtotal - Region 8	691	629	91%

State/Local Pollution Control Agency	Sources	Permitted	Percent
Region 9			
Arizona	47	38	81%
Maricopa County, AZ	65	4	6%
Pima County, AZ	21	1	5%
Pinal County, AZ	10	10	100%
Amador County, CA	3	3	100%
Bay Area, CA	84	60	71%
Butte County, CA	5	2	40%
Calaveras County, CA	0	0	
Colusa County, CA	5	3	60%
El Dorado County, CA	2	0	0%
Feather River, CA	3	0	0%
Glenn County, CA	1	0	0%
Great Basin United, CA	7	3	43%
Imperial County, CA	7	5	71%
Kern County, CA	6	6	100%
Lake County, CA	5	0	0%
Lassen County, CA	10	5	50%
Mariposa County, CA	0	0	100%
Mendocino County, CA	2	1	50%
Modoc County, CA	1	1	100%
Mojave Desert, CA	30	16	53%
Monterey Bay Unified, CA	18	18	100%
North Coast Unified, CA	8	8	100%
Northern Sierra, CA	3	0	0%
Northern Sonoma, CA	12	12	100%
Placer County, CA	8	0	0%
Sacramento County, CA	15	6	40%
San Diego, CA	27	10	37%
San Joaquin, CA	142	98	69%
San Luis Obispo County, CA	3	3	100%
Santa Barbara County, CA	20	16	80%
Shasta County, CA	10	8	80%
Siskyou County, CA	1	0	0%
South Coast AQMD, CA	800	401	50%
Tehema County, CA	1	0	0%
Tuolumne County, CA	4	0	0%
Ventura County, CA	25	24	96%
Yola/Solano County, CA	18	4	22%

EPA and State Progress in Issuing Title V Permits

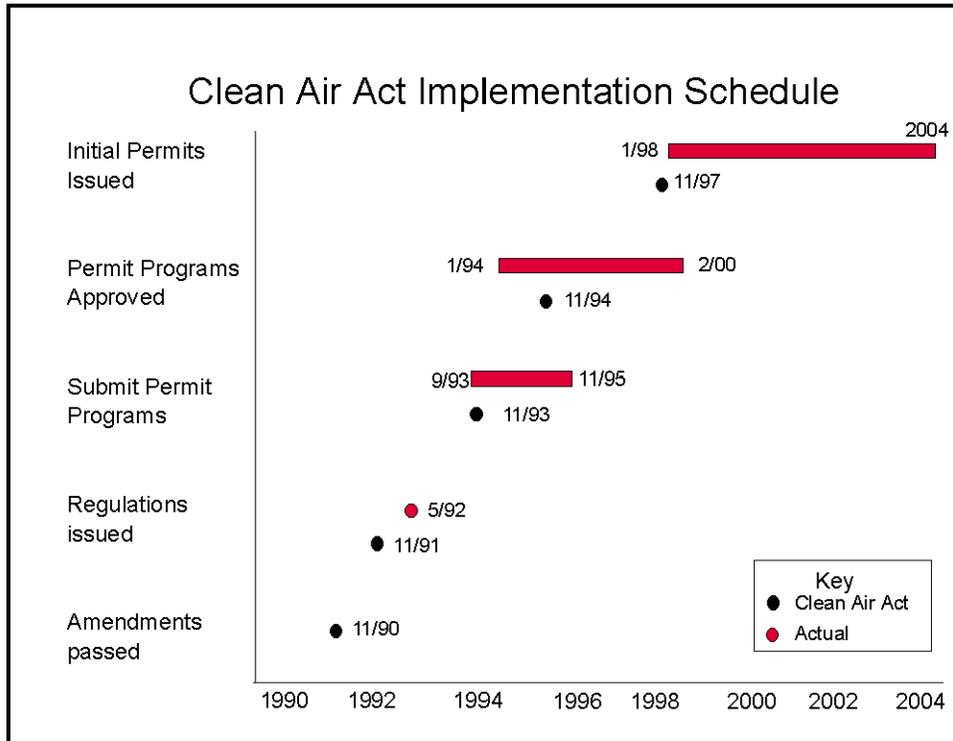
**Appendix 4
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State/Local Pollution Control Agency	Sources	Permitted	Percent
Hawaii	110	107	97%
Nevada	27	9	33%
Clark County, NV	32	6	19%
Washoe County, NV	1	1	100%
Subtotal - Region 9	1599	889	56%
Region 10			
Alaska	256	123	48%
Idaho	63	16	25%
Oregon	130	130	100%
Lane Regional, OR	20	17	85%
Washington	31	22	71%
Benton County, WA	2	1	50%
Northwest, WA	15	10	67%
Olympic, WA	10	10	100%
Puget Sound, WA	50	24	48%
Southwest, WA	9	9	100%
Spokane County, WA	11	10	91%
Yakima, WA	4	3	75%
Subtotal - Region 10	601	375	62%
Totals (112 state and local agencies)			
	18,709	13,036	70%

Compliance With Clean Air Act Schedules

Title V of the Act included a schedule for implementing the operating permit program. The Act's dates were based on when the Act was passed, which was in November 1990. Many of the dates in the schedule were not met. Delays in meeting dates early in the implementation process impacted EPA and state and local agencies ability to issue Title V permits, as shown in the table and graph below.

Clean Air Act Schedule	Completion Date If Act Schedule Was Met	Actual Completion Date
Within 12 months promulgate regulations on what is required for a Title V program.	November 1991	July 1992
No later than 3 years after amendments, states develop and submit a permit program to EPA.	November 1993	Of 112 state and local agencies, 53 (47 percent) submitted their programs by the end of November 1993.
No later than 1 year after receiving state program package, take action to approve or disapprove.	November 1994	One program was approved by November 1994. The remaining number of programs were approved in the following years: 1994 - 9 1995 - 65 1996 - 30 1997 - 5 1998 - 1 1999 - 0 2000 - 1
12 months from approval date of state program, sources are to submit application.	November 1995	Unknown. As discussed in chapter 2, EPA does not collect national data on when applications were submitted.
Applications submitted during the first year after program approval are to be completed within 3 years of program approval.	November 1997	Of 112 permitting authorities, only 5 completed their initial Title V permits within 3 years. The total number of permits issued by these authorities was 53, out of 19,000 permits issued nationwide.



Title V Permit Process, Fees, and Expenses

To gain a better understanding of the processes state agencies used to issue Title V permits, we evaluated 60 permits that 6 agencies issued. The following table provides the results of our analysis for the six state agencies we reviewed.

	Colorado	Florida	Massachusetts	Missouri	Pennsylvania	Wisconsin	Total
Number of sources	138	452	206	418	810	610	2,634
Number of permits	120	452	66	309	640	293	1,880
Percent issued as of December 2001	87%	100%	32%	74%	79%	48%	71%
Average elapsed days from permit application to start of permit review	623	484	271	506	1006	1135	723
Average elapsed days from start of review to draft permit	366	195	1211	501	302	446	391
Average elapsed days from draft to final permit	139	268	150	199	268	123	215
Total Elapsed Days	1,128	947	1,632	1,206	1,576	1,704	1,329 Average

We also obtained information on the fees, revenue, and expenses of the six state programs we visited. As shown in the following table, for the states we reviewed, the fee per ton of emissions ranged from about \$18 per ton in Colorado to \$43 per ton in Pennsylvania.

EPA and State Progress in Issuing Title V Permits

Appendix 6
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	Colorado	Florida	Massachusetts	Missouri	Pennsylvania	Wisconsin
Fee per ton of emissions	\$17.97 plus permit processing fees	\$25.00	\$22.00 to \$25.00 ²¹	\$25.70	\$43.00	\$35.71
2000 Revenue	\$3,300,000	\$10,369,654	\$1,295,150	\$4,555,000	\$16,284,893	\$9,833,700
2000 Expenses	\$2,300,000	\$7,872,668	\$1,930,622	\$6,229,455	\$15,819,492	\$10,030,455

²¹ The rate per ton varied based on the total emissions from the source.

Summary of Factors Impacting Title V Permit Issuance

Various factors impacted the issuance of Title V permits. Some factors impacted the permit issuance in the past, while others continued to impact permits. Factors that are continuing to impact initial permit issuance will also likely impact permit renewals. The table below presents the factors we identified during this review, and those that EPA officials identified.

Issue	Description	One-time Impact on Initial Permits	Continuing Impact on Initial Permits	Potential Impact on Permit Renewals	Report Page
Impacting Initial Permits Only					
Infrastructure Development	Effort needed to develop the Title V program, including laws, regulations, and setting up the organization.	X			13
Volume of permits	Large number of permits applications received at one time.	X			13
Synthetic Minors	Priority given to issuing permits to sources that requested enforceable limits in place of a Title V permit.	X			13
Delayed Title V Guidance	Guidance was issued in 1995 and 1996, causing some state and local agencies to revise issued permits.	X			14
EPA regional staff experience ²²	Working with EPA regional staff delayed issuance of some permits.	X			14

²²EPA officials identified these three factors (one shown on this page, and two on the next page) during a survey of state and local agencies in 1998. However, we did not identify these factors in the six states we reviewed.

Issue	Description	One-time Impact on Initial Permits	Continuing Impact on Initial Permits	Potential Impact on Permit Renewals	Report Page
Continuing to Impact Initial Permits and Renewals					
State/Local Agency Resources	Insufficient fees and staffing, high turnover, and training of staff.		X	X	8 - 10
Complex EPA Regulations and Guidance	Complexity of other EPA regulations and guidance, such as air toxics regulations, and periodic monitoring guidance. Also new regulations that need to be incorporated into permits.		X	X	10 - 12
Conflicting Priorities from other permits	Construction permits given priority over Title V permits because they need to be issued within specific timeframes.		X	X	12 - 13
Delay in Completing Title V Regulations	Revisions to the Title V regulations, initially proposed in 1994, have not been completed.	X ²³	X	X	18 - 19
EPA Oversight and Authority ²⁰	EPA's limited oversight of agencies and perceived difficulties in taking stringent actions when states do not issue permits in a timely manner.		X	X	20 - 25
Source Incentives ²⁰	Due to permit shield granted at application stage, sources lack incentives to pressure regulators for final Title V permit.		X	X	25 - 26

²³EPA officials believe that the revisions to the Title V regulations may have had an impact on permit issuance in the past, but should no longer be impacting permit issuance. State agency officials stated that the uncertainty over the revisions continues to impact the program. The table reflects both points of view.

Details on Scope and Methodology

EPA OIG conducted field work in the states of Colorado, Florida, Massachusetts, Missouri, Pennsylvania, and Wisconsin; and at EPA's OAQPS, OECA, and Region 5. We collected information from other regions as needed.

Evaluation Process

The objectives of our evaluation were to identify the factors delaying the issuance of Title V permits at selected state and local agencies, and the practices contributing to more timely issuance of permits at selected state and local agencies. In each of the states, we interviewed:

- Program managers regarding how they developed and managed the Title V program and whether they had sufficient revenue to implement the program.
- Finance staff regarding how they calculated their fees and what controls existed to ensure that the fees were used only for Title V activities.²⁴
- Engineers to discuss the process for issuing specific permits in our sample.

Within EPA, we met with OAQPS and Region 5 staff to gain an understanding of EPA's role in implementing the Title V program. As part of this review, we did not evaluate the quality of the Title V permits or the federal (Part 71) Operating Permit Program.

The evaluation was performed in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States as they relate to economy and efficiency and program results audits. We reviewed internal controls as required by the *Government Auditing Standards*. As a part of this evaluation, we assessed compliance with applicable laws and regulations. Except as noted in this report, we did not identify instances of noncompliance with the Act.

²⁴We did not test or evaluate the adequacy of the controls over fees because the OIG was evaluating this issue in selected states as part of other reviews.

We conducted our fieldwork between January and October 2001. On October 5, 2001, we issued a draft report to the Assistant Administrator for Air and Radiation. After receiving preliminary comments to the report, we held a one-day workshop with senior EPA OAQPS officials to (1) obtain their views on the factors we identified, (2) identify other factors, and (3) assess the likelihood of these factors also impacting permit renewals. We gathered additional information in January and February 2002, and issued a second draft report on March 12, 2002. The Assistant Administrator for Air and Radiation responded to the draft report on March 26, 2002. An exit conference was held on March 27, 2002. A copy of EPA's response is included as appendix 2. For EPA's comments contained in attachment 1 of their response, we summarized them and addressed each comment at the end of chapter 3. For EPA's comments contained in attachment 2 of their response, we made the suggested revisions to the report where indicated.

Sample Selection

Based on information, dated October 2000, from OAQPS, we selected six states to review their processes for issuing Title V permits.²⁵ We judgmentally selected the six states to get a range of: EPA regions, number of permits to be issued, and status of permit issuance, as shown in the table below.

State	Region	Permits to be Issued	Percentage Completed
Florida	4	1,649 ²⁶	100%
Pennsylvania	3	810	65%
Wisconsin	5	626	41%
Missouri	7	418	58%
Massachusetts	1	213	28%
Colorado	8	131	82%

²⁵We visited Illinois during the planning of the evaluation, but did not perform a detailed review in that state, since one of the criteria for state selection was only one state per region.

²⁶Based on data from the state of Florida, EPA reported, as of October 2000, 1,649 Title V sources in the state. However, during our review, we found that 1,197 were general permits for sources such as dry cleaners and chromium electroplaters. General permits contain standard conditions and are not unique to each source. Florida was the only state in our review that reported the general permits to EPA as part of the Title V universe. Our review in Florida focused on the 452 (1,649 - 1,197) Title V sources. The data in chapter 1 and appendix 6 on the permit process are based on the 452 Title V sources. However, for consistency, we used the information reported to EPA in appendix 4.

Using individual state databases, we selected a sample of permits to review. In the 4 states with more than 300 permits to issue, we selected 12 permits, and in the other 2 states, we selected 6 permits. We randomly selected the permits to review within six standard industrial classification (SIC) codes, as shown in the table below. The six SIC codes were chosen based on information from the OECA that indicated that these industries are the six largest contributors to air pollution, in terms of pounds of pollution.

SIC Code	Type of Industry
1300	Oil and Gas Extraction
2600	Paper and Allied Products
2800	Chemical and Allied Products
2900	Petroleum and Refining Products
3300	Primary Metal Industries
4900	Electric, Gas and Sanitary Services

We relied on information in state and EPA databases in selecting our sample of states and cases. However, we did not assess the controls over these systems, since the accuracy of the data systems was not within the scope of our evaluation.

Prior Audit Coverage

EPA OIG Report No. 2000-1-00416, “Grants Management Practices of Rhode Island Department of Environmental Management,” issued on September 21, 2000, reported that Rhode Island did not maintain Title V operating permit fee revenue in accordance with the terms of the Act. The report recommendations included that Rhode Island perform an annual reconciliation of the Title V operating permit fee revenue and program expenses using the state’s official books and records. The reconciliation should also show how any unused revenue will be utilized.

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