

Clean Air Act Title V Fees: U.S. EPA Office of Inspector General Report



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The United States Environmental Protection Agency (“EPA”) Office of Inspector of General (“OIG”) issued a January 12th report titled:

EPA’s Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight (“Report”)

See *Report* No. 22-E-0017.

Congress in 1990 added Title V to the Clean Air Act to assure stationary sources were subject to a comprehensive air permit. All major stationary sources of air pollution are required to apply for Title V Operating Permits. These permits include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the Clean Air Act.

The Title V operating permit program generally does not impose new substantive air quality control requirements. The intent of a Title V permit is to organize in a single document the air requirements which apply to the permit holder. It requires that Title V permits contain adequate monitoring, recordkeeping, reporting, and other requirements to assure sources’ compliance with applicable requirements.

States are provided the opportunity to develop their own Title V programs and submit them to the EPA for approval. For example, Arkansas’s Title V operating program was approved by EPA many years ago.

A state permitting authority is required to collect fees from sources required to obtain Title V Operating Permits. These fees must be sufficient to fund all reasonable permit program costs. Specifically, EPA’s 40 CFR Part 70 regulations require that permitting authorities assess Title V sources annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs.

The Title V permit fees are used for:

- Implementing and enforcing the permitting program
- Reviewing new permit applications
- Reviewing revisions or renewals of existing permits
- Monitoring facility compliance
- Undertaking enforcement actions for noncompliance
- Performing a monitoring, modeling and analysis
- Tracking facility emissions
- Preparing emission inventories

OIG states it prepared the January 12th *Report* to determine the extent to which EPA has conducted evaluation of state/local Title V programs to identify insufficient collection or misuse of fees. EPA is

supposed to ensure that the state/local programs are collecting the fees necessary to meet applicable statutory and regulatory requirements.

OIG states it interviewed EPA staff and managers as part of its evaluation. Further, 31 EPA Title V fee and program evaluations were stated to have been conducted from 2018 through 2020 to assess fee oversight activities.

EPA is stated to have indicated concerns about:

. . . the decline of Title V program revenue and the use of non-Title V revenue to fund Title V programs.

For example, nine of the 10 EPA regions are stated to have cited declining revenues as a “key challenge that permitting authorities were facing.” Another challenge cited by the regions was Title V funds diverted by state legislatures for purposes unrelated to the Title V program. An example cited was the use of Title V funds to address a deficit in the state budget.

OIG concludes that EPA region reviews of Title V fee issues “varied significantly.” The Report notes:

. . . for example, some regions conducted fee evaluations that reviewed financial data, while others relied solely on a few fee-related questions.

OIG states that EPA staff lacked awareness of Title V fee requirements and the resources needed to conduct evaluations.

OIG recommends that the EPA Assistant Administrator for Air and Radiation coordinate with the EPA regions to provide recurring training to permitting authorities on title fee laws and regulations. It also recommends that EPA:

- Develop and implement a plan to address declining Title V revenues
- Update the 2018 EPA guidance to establish timeframes for completing corrective actions
- Establish criteria for when regions must conduct fee evaluations
- Train EPA regional staff on the updated fee guidance
- Collaborate with regional staff to identify the regional resources and expertise needed to conduct fee evaluations

A copy of the OIG Report can be downloaded [here](#).