

Title V Operating Permit Program Evaluation

**Georgia Environmental Protection Division
Division of Air Pollution Control**

2023 Evaluation Report



United States Environmental Protection Agency, Region 4

Air and Radiation Division

Atlanta, Georgia

Acknowledgements

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

The EPA Region 4 permitting staff have had considerable engagement with EPD this year through this program evaluation, as well as engagement on a case-by-case Maximum Achievable Control Technology (MACT) permit. In every instance, the EPA found the management and staff to be very knowledgeable, professional, and dedicated to their mission. The EPA appreciates EPD's cooperation and willingness to respond to our information requests.

Executive Summary

Positive Finding(s)

- EPD has a good record of timely issuance of title V initial permits and significant and minor permit modifications, issuing 12 significant modifications in the first half of the 2023 calendar year.
- EPD excels at clearly identifying changes to the permit within the statement of basis (SOB), making it easy to follow the history of the facility and understand what has been updated in each revision. SOBs also provide thorough justification for monitoring and rule applicability with helpful summary tables.
- EPD's title V permits are comprehensive and easy to understand with state-only requirements clearly identified. The detailed conditions to ensure practical enforceability of avoidance limits, including equations to calculate emissions, specific emission factors, and recordkeeping and reporting requirements, improve permit quality.
- EPD makes permit records easily available online which improves understanding of the permit record and transparency of the permitting process.
- EPD has worked to find creative ways to ensure that its title V operating permits program remains sustainable, particularly considering diminishing billable emissions and increased costs. This includes the use of base fees, the option of being billed for actual and/or allowable emissions, and the periodic adjustment of the fee structure based on an annual financial review and stakeholder involvement.

Area(s) to Monitor

- While the current backlog of title V renewal permits is high, EPD has implemented strategies to reduce it, such as increased hiring. EPD and the EPA will continue to monitor progress on the backlog and discuss any significant changes in the number of backlogged permits on quarterly permit calls with the EPA.

Action Item(s)

- The EPA recommends EPD continue to conduct annual financial reviews of its fee structure to ensure that its title V program remains sustainable beyond fiscal year 2023 (FY23). If there is a concern that expenses will continue to outpace revenue and that the once sizeable forwarding balance of title V funds will significantly be reduced, EPD should initiate the process of updating the fee structure via state rulemaking.

Recommendation(s)

- Based on the EPA's in-depth review of 10 selected title V permits, the EPA recommends editing general condition 8.8.2, which directs the permittee to submit information to the EPA's Air and Radiation Division. This type of information should be submitted to the EPA's Enforcement and Compliance Assurance Division, Air Enforcement Branch. Also, the EPA recommends adding language to this permit condition to indicate that any reports/certifications that need to be submitted to the EPA can be submitted through [CEDRI](#), rather than being sent directly to the Regional Office.
- The EPA encourages EPD to take advantage of available resources mentioned in Section IV of this report and to seek out more opportunities for community outreach, particularly with respect to affected communities, to address any potential environmental justice (EJ) concerns.

I. Background

In response to the recommendations of a 2002 Office of Inspector General (OIG) audit, the EPA developed an action plan for performing reviews of title V programs for each air pollution control agency beginning in FY03.

Following the initial title V program reviews, the EPA committed to conduct ongoing periodic title V program reviews for state and local programs that have at least 20 title V major sources within their jurisdiction. These follow-up evaluations may target specific areas of the program, follow-up items from previous evaluations, or overall implementation. In addition, at the request of the OIG, the EPA formally added a title V fee audit component in 2018.

The EPA Region 4 oversees eight (8) state and 10 local air permitting authorities with title V operating permit programs. Eleven (11) of these programs have at least 20 title V major sources [the remaining seven (7) programs have 10 or fewer sources]. Resources allowing, the EPA Region 4 typically commences two (2) title V program evaluations annually, with the goal of reviewing each of these 11 programs on a five to six-year cycle. The purpose of these evaluations is to ensure the ability of the permitting authority to carry out its duties and responsibilities, as required, to effectively run the title V program, to document good practices and to identify if there are any ways the EPA can assist the permitting authority in meeting their title V commitments.

The latest evaluation of EPD's permitting program prior to this one was completed on September 8, 2015. The 2015 program evaluation included a review of EPD's title V revenue and expenses, staffing plans, public participation, and permit file reviews. The final report found EPD's title V program to be of high quality.

The 2023 EPD program evaluation consisted of a review of staffing resources and internal management support, title V revenue and expenses, public participation, EJ in permitting, permit issuance rates, and a detailed review of 10 issued permits. This information was gathered through EPD's response to the EPA's program evaluation survey questions, our review of selected permitting actions, an in-person interview with EPD on July 28, 2023, a fee review based on additional information provided to the EPA for EPD's FY19-FY21 budget cycles and fee rulemaking process, and observed permits issuance rates reported to the federal Title V Operating Permit System (TOPS) data through December of 2021. Preliminary results of our reviews of selected permitting actions were discussed with EPD during the July 28, 2023, visit. EPD was provided with a draft of this program evaluation report on August 30, 2023, as an opportunity to provide feedback.

II. Program Overview and Staffing Resources

EPD’s Air Protection Branch measures and protects Georgia’s air quality resources through the work of six programs, including the Stationary Source Permitting Program (SSPP). EPD’s primary air permitting office is located near Hartsfield-Jackson International Airport, south of downtown Atlanta, Georgia. With the recent redesignation of ozone to attainment status in Atlanta, the entire state is in attainment of the National Ambient Air Quality Standards (NAAQS). EPD’s air permitting regulations are codified in Georgia Rule 391-3-1-.03 and EPD’s Air Quality Control provisions can be found here in [Rule 391-3-1](#).

The SSPP consists of four industry-specific units: Chemicals, Minerals, NOx, and VOC Permitting. Each section is responsible for issuing construction and operating permits for the facilities that fall into their source categories. As of July 2023, EPD is responsible for regulating 348 title V sources. SSPP is currently fully staffed with 25 full-time equivalents (FTE) after several years of understaffing. Table 1 below shows a breakdown of EPD’s title V funded staffing by functionality.

With significant new staff and potential retirements, EPD has been focusing on training and retention. They implemented full-time optional telework and, with the help of the legislature, were able to raise the salaries of permit engineers by a significant amount (effectively \$11,000 per year as \$5,000 increase for all state employees, \$4,000 increase for EPD employees, and \$2,000 increase for cost of living). These changes have helped retain new employees. The permitting staff work on all types of permits with about 70 percent of their workload being associated with title V permits. Since full staffing is smaller than historic levels, efforts have been made to reduce workload. SSPP has been working to establish baseline completeness reviews for applications to limit subsequent requests for more information from facilities. They have also worked to establish guidelines for modeling protocols and methodology to prevent multiple modeling reruns by applicants. These changes will streamline the permitting process and ease the workload on permitting engineers.

Table I: EPD Staff Funded with Title V Fees

Functional Unit	FTEs
Permitting	25
Compliance/Enforcement	25
Monitoring Operations	13
Monitoring QA/QC	11
Administrative	6
Regulatory Development	7
Data and Modeling	5
Emissions Inventory	8
Total Title V FTEs	100

Recommendation(s): EPD's upper-level staff should continue to develop their training program for permit writers and continue working to encourage staff longevity.

III. Title V Fees

Title V permitting authorities are required by section 502(b)(3) of the Clean Air Act (CAA), and the corresponding title V regulations at 40 CFR § 70.9, to collect permit fees from sources subject to title V sufficient to cover all costs necessary to develop and administer their title V permit programs. Permitting agencies must collect part 70 fees that are sufficient to cover both direct and indirect part 70 permit program costs. These fees must be used solely to cover the costs of the title V program and states must provide periodic demonstrations that they meet these fee requirements. 40 CFR § 70.9(d). Accordingly, air agencies (or state legislatures, as applicable) may need to revise fee schedules periodically to remain in compliance with the requirement that permit fees cover all part 70 permit program costs. Changes in costs over time may be due to many factors, including but not limited to: inflation, implementation costs, salary and healthcare cost increases, changes in the number of sources required to obtain part 70 permits, declining emission rates (especially reductions in coal-fired emission sources); complexity of permitting actions being performed; and promulgation of new emission standards, such as new MACT standards, New Source Performance Standards (NSPS), and waste incineration rules under CAA sections 111, 112, or 129 respectively.

The EPA established a 2023 presumptive minimum fee of \$58.55 per ton of regulated pollutant. States may charge less than the presumptive minimum, and use alternative fee structures, if they provide a demonstration that they have adequate fees to fully cover the direct and indirect costs of adequately implementing and enforcing the title V program. 40 CFR § 70.9(b)(2) & (3). The title V regulations at 40 CFR § 70.9(b)(2)(i) indicate that the Administrator will presume that the fee schedule meets the fee schedule requirements of part 70 if the program would result in the collection and retention of an amount not less than the presumptive minimum. 40 CFR § 70.9(b)(1) & (2).

EPD collects significantly less than the presumptive minimum allowed by 40 CFR § 70.9(b)(2). Last reported, EPD charges an emissions fee of \$37.34 per ton for coal-fired electrical generating units and \$35.50 per ton for all other sources, with a minimum charge of \$4500. However, EPD has established a relatively expansive fee structure. Permit fees are structured in two (2) forms: application fees and annual fees. Application fees were initially introduced on March 1, 2019, at half the proposed rate and then increased to the full rate two (2) years later (on March 1, 2021). Current applications fees range from \$0 for generic minor/synthetic minor permits and title V renewals to \$15,000 for nonattainment new source review permits. Current annual fees include a part 70 maintenance fee of \$650 per year and a fee of \$1,900 per year for NSPS-subject sources. There are some exemptions for certain NSPS. EPD also charges fees for expedited/priority service. Such fees currently range from \$1250 for a true minor generic concrete batch plant permit to

\$37,500 for a prevention of significant deterioration (PSD) permit subject to NAAQS/PSD increment modeling and impacting a class I area. A complete list of EPD’s current air permit fees may be found at <https://epd.georgia.gov/air-protection-branch-technical-guidance-0/types-air-quality-permits/air-permit-fees>.

As with other permitting authorities within Region 4, EPD reports a steady decline in billable emissions as new rules, cleaner fuels, and use of control technologies have reduced emissions. In addition, regulatory complexity of numerous sources, inspection requirements, and public engagement have increased. To counter this, EPD meets annually (around March) with the Department of Natural Resources (DNR) board as well as an established stakeholder group (*i.e.*, representatives from industry) to determine what changes, if any, need to be made to EPD’s fee structure. If changes are needed and approved by the DNR board, they are typically implemented that May/June via rulemaking without legislative involvement.

From the completed survey, Table II was created to summarize EPD’s annual title V revenues, expenses, and rollover amounts.

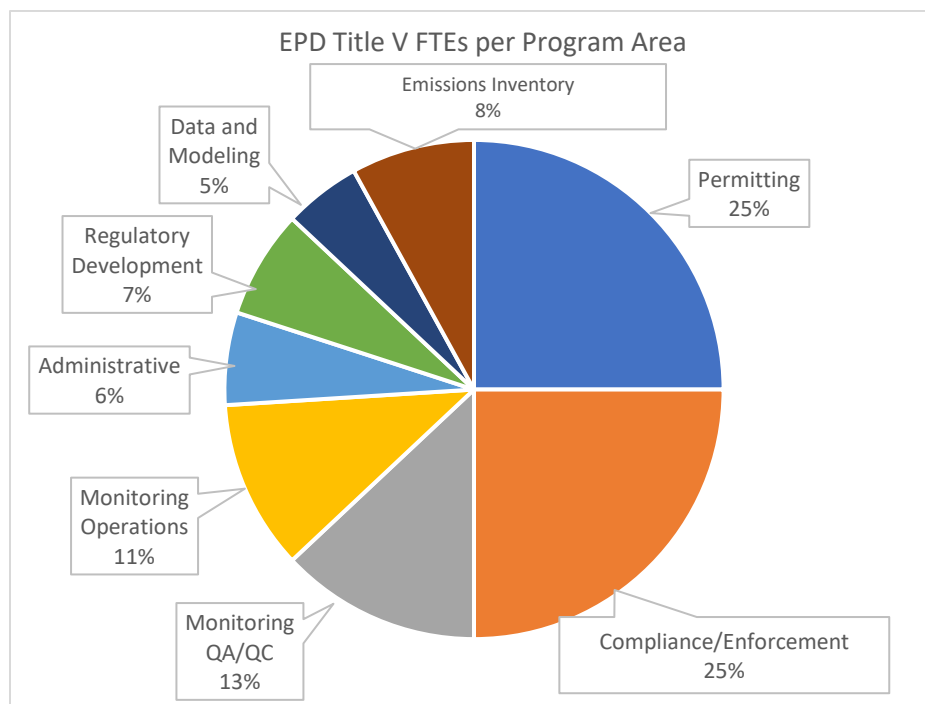
Table II: Summary of FY20-FY24 Title V Fee Revenue and Expenditures

	FY20	FY21	FY22	PROJECTED FY23	PROJECTED FY24
TOTAL REVENUES (\$)	9,814,155	10,424,553	10,264,557	10,100,000	9,640,000
TOTAL EXPENSES (\$)	8,794,241	9,156,332	8,948,269	9,920,000	9,920,000
TOTAL TITLE V ACCOUNT FUNDS REMAINING (\$)	5,191,962	6,370,183	7,686,470	7,866,470*	7,586,470*

*Values calculated using the projected values provided by EPD.

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A breakdown of EPD's title V-funded FTEs is shown below:



From: EPD's completed *Title V Program Evaluation Questionnaire*, submitted to EPA on December 1, 2022.

Finding(s): The EPA commends EPD for its creative and rather robust fee structure. The current fee structure takes full advantage of the flexibility provided by 40 CFR § 70.9(b)(3) so as to not rely solely on a fee rate tied to billable emissions. To date, the EPA Region 4 has not observed another fee structure as robust as EPD's within the region.

Recommendation(s): The EPA is aware that EPD has projected an operating deficit for FY24 (*see* Table II above) and encourages EPD to, as soon as practicable, meet with the DNR board and stakeholders to discuss potential remedies, including beyond FY24. Obviously, this does not pose a dire concern for the EPA at this point because EPD maintains a significant rollover balance.

IV. Public Participation & Community Engagement

Title V public participation procedures apply to initial permit issuance, significant permit modifications, and permit renewals. Adequate public participation procedures [*see* 40 CFR § 70.7(h) and Georgia Rule 391-3-10.03(10)(e)8.] must provide for public notice, including an opportunity for public comment and public hearing on the draft permit. Draft permit actions may be noticed through email and on a website (e-notice) or through a newspaper of general circulation.

The permitting authority must keep a record of the public comments and respond to the significant issues raised during the public participation process.

EPD offers searchable online databases for all final permits, draft/proposed title V and synthetic minor permits, and all permit applications. Final permits can be accessed at <https://permitsearch.gaepd.org/>, draft/proposed permits can be accessed at <https://epd.georgia.gov/draft-title-v-permitsamendments-other-draft-permits>, and applications can be accessed at https://geos.epd.georgia.gov/GA/GEOS/Public/Client/GA_GEOS/Public/Pages/PublicApplicationList.aspx. Enforcement orders are also searchable at <https://enfo.gaepd.org/>. Additionally, EPD publishes a weekly public advisory that lists applications received and public comment periods for draft permits, available at <https://epd.georgia.gov/permitting-public-advisories-and-public-notices>. The public can also subscribe to the advisory to receive it via email. An online version of EPD's air quality regulations, including the permitting requirements, are on its website at <http://rules.sos.ga.gov/gac/391-3-1>. Records of permitting actions taken since April 2020 are also available through the public dashboard of the EPA's national Electronic Permits System database at <https://www.epa.gov/caa-permitting/georgia-proposed-title-v-permits>.

Other public involvement efforts made by EPD when requested include translation of permitting documents and public hearings. EPD has a community mapping tool available to the public at <https://experience.arcgis.com/experience/056d171fd64241fabffeb189f8fb7c8> that shows the locations of permitted facilities for all environmental media via **ArcGIS**. Considerations such as community outreach and use of **EJScreen** are not part of EPD's permitting process.

Relevant EJ resources that EPD could consider implementing can be found at <https://www.epa.gov/environmentaljustice>. The EPA's "Activities To Promote Environmental Justice in the Permit Application" (<https://www.federalregister.gov/documents/2013/05/09/2013-10945/epa-activities-to-promote-environmental-justice-in-the-permit-application-process>) summarizes additional useful tools for community engagement. Also, the EPA recently released "EPA Legal Tools to Advance Environmental Justice" (<https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>) in May 2022, with an addendum in January 2023, and "Principles for Addressing Environmental Justice Concerns in Air Permitting" in December 2022 (<https://www.epa.gov/caa-permitting/ej-air-permitting-principles-addressing-environmental-justice-concerns-air>).

Finding(s): The EPA commends EPD for the availability of information in its online databases. These databases include permit applications, draft/proposed permits, final permits, statements of basis, and enforcement orders. All this information makes the permit record and the compliance history of the facility readily accessible to the public at any time.

Recommendation(s): The EPA encourages EPD to take advantage of available resources mentioned above and to seek out more opportunities for community outreach, particularly with respect to affected communities, to address any potential EJ concerns.

V. Permit Issuance Rates

The title V regulations require air permitting agencies to “take final action on each permit application, including a request for permit modification or renewal, within 18 months, or such lesser time approved by the Administrator, after receiving a complete application.” 40 CFR § 70.7(a)(2). Ensuring that title V permits are renewed and subject to public review every five (5) years is an important aspect of every title V program. Delayed permit issuance reduces the ability of the public to review and provide comments on a permit and can result in a delay in the incorporation of new applicable requirements.

As part of the program evaluation, the EPA reviewed EPD’s title V program permit issuance rates submitted by EPD through the EPA’s TOPS reporting database to ensure that permits are issued in a timely manner and renewed on a five-year cycle. EPD reported timely issuance of six (6) significant permit modifications from July to December of 2022, and 12 significant permit modifications from January to June 2023. EPD currently has 18 significant permit modification applications in backlog status (*i.e.*, final action has not been taken within 18 months of receiving a complete application). It is important to note that EPD conservatively bases timeliness on when the permit application is received, not when it is deemed complete.

At the time of the FY23 program review, EPD had a backlog of 10 initial title V applications and 93 title V permit renewal applications. This represents about 27 percent of EPD’s title V universe. EPD has a higher than usual backlog due to staff turnover. Inexperienced staff in permitting and compliance have slowed the permitting process temporarily. As the new staff gains knowledge and confidence, the backlog is expected to decrease. Other attempts to reduce the backlog include hiring a former permit writer part time to exclusively work on backlogged permits and developing an application checklist to improve the quality and completeness of permit applications. Since EPD counts the time a permit application is in house but not complete, helping facilities submit more comprehensive applications will reduce the backlog.

Findings: EPD has a good record of timely issuance of initial permits and significant and minor permit modifications. While the current backlog of renewals is high, EPD has implemented strategies to reduce it. EPD and the EPA will continue to monitor progress on the backlog and discuss any significant changes in the number of permits that EPD has intentionally backlogged during quarterly permit calls with the EPA.

VI. Selected Permit Reviews

As an element of the Georgia Title V Program Evaluation, EPA Region 4 selected 10 title V permits issued by EPD to review for completeness and consistency with regulatory requirements. These reviews are in addition to the real-time reviews that EPA Region 4 conducts for targeted permit actions. The 10 permitting actions were selected as examples of different types of permitting actions

(e.g., initials, renewals, significant revisions), different source categories, varying applicable requirements (e.g., NSPS, National Emission Standards for Hazardous Air Pollutants, case-by-case MACT, Compliance Assurance Monitoring, Best Available Control Technology, PSD avoidance, etc.), and differing compliance history (e.g., notices of violation, consent decrees). The EPA acknowledges that due to the small sample size, our comments may not be indicative of any systemic concerns. In general, the EPA found EPD's title V permits to be well written and consistent with title V regulatory requirements. The EPA's findings and general recommendations are below:

1. Citations of Origin and Authority

Pursuant to [40 CFR § 70.6\(a\)\(1\)\(i\)](#) and Georgia Rule [391-3-1-.03\(10\)\(d\)1.\(i\)](#), all permit terms and conditions must include citations to origin and authority. The EPA observed permit terms and conditions without any such citations.

2. Reporting Requirements to the EPA

General condition 8.8.2 directs the permittee to submit information to the EPA's Air and Radiation Division. This type of information should be submitted to the EPA's Enforcement and Compliance Assurance Division, Air Enforcement Branch. Also, the EPA recommends adding language to this permit condition to indicate that any reports/certifications that need to be submitted to EPA can be submitted through [CEDRI](#), rather than being sent directly to the Regional Office.

3. Observed Positives

- a) EPD excels at clearly identifying changes to the permit within the SOB, making it easy to follow the history of the facility and understand what has been updated in each revision. SOBs also provide thorough justification for monitoring and rule applicability with helpful summary tables.
- b) EPD's title V permits are comprehensive and easy to understand with state-only requirements clearly identified. The detailed conditions to ensure practical enforceability of avoidance limits including equations to calculate emissions, specific emission factors, and recordkeeping and reporting requirements improve permit quality.
- c) EPD makes permit records easily available online which improves understanding of the permit record and transparency of the permitting process.

VII. Conclusion

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

- EPD has an excellent grasp of the requirements of title V and is continually working to find impactful ways to increase their staff's ability to meet all the varied program elements of title V. EPD has committed to develop a new program to train new staff. Reviews of EPD permits noted that they are generally complete and well written. Based on the EPA's in-depth review of 10 selected title V permitting actions, the EPA has made recommendations to improve permit completeness and add clarification with respect to general permit terms.
- The EPA acknowledges the ongoing nationwide challenge of maintaining a fully funded title V program with significantly declining emissions and revenues. Although EPD projects a budget shortfall for FY24, the EPA is confident that EPD's apparent commitment to maintaining a robust fee schedule (along with its ability to meet readily with the DNR board and stakeholders to discuss and address fee matters) will not result in operating deficits becoming commonplace for EPD.
- The EPA Region 4 is committed to providing any needed assistance with respect to permit reviews and public engagement, including permitting projects with EJ implications. Specifically, the EPA Region 4 is committed to providing prompt feedback to EPD regarding any rule and guidance interpretation inquiries and any general or specific permitting questions raised, and to keep EPD informed of any future agency actions, such as rulemaking, that may have an impact on permitting programs.