



North Carolina Department of Environment and Natural Resources

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

MEMORANDUM

TO: ENVIRONMENTAL REVIEW COMMISSION
The Honorable David Rouzer, Chair
The Honorable Mitch Gillespie, Co-Chair
The Honorable Ruth Samuelson, Co-Chair

FISCAL RESEARCH DIVISION
Mark Trogdon, Acting Director

FROM: Kari Barsness *KKB*
Director of Legislative and Intergovernmental Affairs

SUBJECT: Title V Accountability Report

DATE: November 8, 2012

Pursuant to G.S. 143-215.3A, the department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the Title V Program on or before November 1st of each year. Please see the attached report to satisfy this reporting requirement.

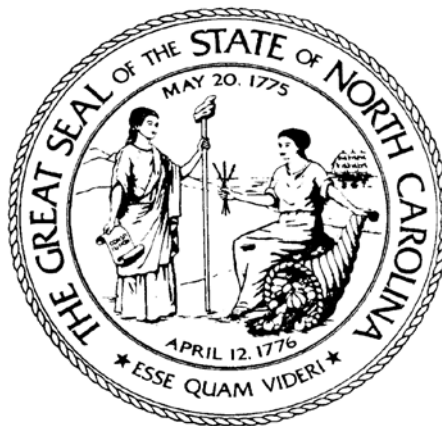
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STATE OF NORTH CAROLINA
TITLE V AIR QUALITY PERMIT PROGRAM
ACCOUNTABILITY REPORT

**A Report to the
Environmental Review Commission and the
Fiscal Research Division**

**Submitted by the
North Carolina Department of Environment and Natural Resources
Division of Air Quality
Sheila Holman, Director**



NOVEMBER 2012

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**Submitted by the North Carolina Department of Environment and Natural
Resources
Division of Air Quality**

**This report is submitted pursuant to the requirement of NC G.S. 143-215.3A(c) and
15A NCAC 2Q .0206(f)**

NOVEMBER 2012

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EXECUTIVE SUMMARY

The Federal Clean Air Act Amendments of 1990 established the Title V operating permit program (referring to “Title V” of the Act). The Title V operating permit program consolidates all federal and state air quality regulations for a particular facility into a single air permit. North Carolina’s largest facilities emitting air pollution are subject to the Title V permits program. The Division of Air Quality (NCDAQ) received approval from the EPA to implement the Title V program in North Carolina.

The federal Clean Air Act requires the Title V program to be funded entirely by fees collected from permitted facilities. The enclosed annual report discusses the costs and other aspects of North Carolina’s Title V permit program, required under North Carolina General Statute (G.S.) 143-215.3A (Appendix A) and 15A NCAC 2Q .0206(f).

ACRONYMS

BACT	Best Available Control Technology
CAIR	Clean Air Interstate Rule
CAM	Compliance Assurance Monitoring
CAMR	Clean Air Mercury Rule
CFR	Code of Federal Regulations
NCDAQ	North Carolina Division of Air Quality
DENR	Department of Environment and Natural Resources
EMC	Environmental Management Commission
EPA	United States Environmental Protection Agency
ERC	Environmental Review Commission
FTE	Full Time Equivalent
FFY	Federal Fiscal Year
GACT	Generally Available Control Technology
GHG	Greenhouse Gas
HAP	Hazardous Air Pollutant
MACT	Maximum Available Control Technology
NAAQS	National Ambient Air Quality Standard
NESHAP	National Emissions Standards for Hazardous Pollutants
NO _x	Nitrogen Oxide
NO ₂	Nitrogen Dioxide
NOV	Notice of Violation
NSPS	New Source Performance Standard
NSR	New Source Review
PSD	Prevention of Significant Deterioration
RACT	Reasonably Available Control Technology
SFY	State Fiscal Year
SIP	State Implementation Plan
SO ₂	Sulfur Dioxide

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
ACRONYMS	ii
INTRODUCTION	1
CURRENT STATUS AND RECENT ACCOMPLISHMENTS	2
Staffing Levels.....	2
Permitting and Compliance Actions.....	3
PROGRAM CHALLENGES.....	4
Increased Federal Regulatory Programs	4
MACT/GACT Standards	4
New/Revised National Ambient Air Quality Standards (NAAQS).....	4
Greenhouse Gas Regulation.....	5
Decline in Title V Revenue	6
TITLE V REVENUES AND EXPENDITURES	7
APPENDIX A: N.C. GENERAL STATUTES ON THE TITLE V PERMIT PROGRAM	10
APPENDIX B: EPA’S 2010 REVIEW OF NC TITLE V PROGRAM.....	12

INTRODUCTION

North Carolina state law requires that the Department of Environment and Natural Resources (DENR):

“... shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the Title V Program on or before 1 November of each year. The reports shall include, but is not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly.” (G.S. 143-215.3A, attached as Appendix A)

This report describes the Title V Permit Program in North Carolina as carried out by the Division of Air Quality (NCDAQ). The report focuses on funding and staffing issues. It does not cover Title V permit programs under the jurisdiction of local air pollution control programs in Buncombe, Forsyth and Mecklenburg counties.

Congress established the Title V Permit Program under 1990 amendments to the federal Clean Air Act primarily as a way to consolidate all air regulations affecting major emitters of certain air pollutants (as defined in Section 501 of the Clean Air Act) into a single document. Under the Clean Air Act, Title V permits are required for certain industry groups designated by the U.S. Environmental Protection Agency (EPA) and for any facility with the potential to emit at least:

- 100 tons per year of any regulated criteria pollutant, or
- 10 tons per year of any hazardous air pollutant (HAP), or
- 25 tons per year of any combination of HAPs.

This Accountability Report contains:

- A discussion of program accomplishments and goals,
- A discussion of current issues affecting the Title V program,
- A summary of actual revenues and expenditures for years 2003-2012,
- A detailed list of Title V expenditures for state fiscal year 2012, and
- Appendices

Note that this year's annual report provides revenue and expenditures based on the state fiscal year while previous reports included a mixture of calendar year and fiscal year data.

CURRENT STATUS AND RECENT ACCOMPLISHMENTS

The Title V permit program encompasses the full range of activities associated with implementing the program, including:

- Reviewing applications for issuance, modification and renewal of Title V permits,
- Advising the regulated community on applicability issues,
- Routinely inspecting permitted facilities,
- Soliciting and responding to citizens' concerns and suggestions,
- Gathering emissions inventory data and submitting the data to the EPA,
- Issuing invoices and collecting fees to operate the Title V permitting program,
- Operating a network of air monitors,
- Performing public outreach, including issuing daily air quality advisories to citizens,
- Long-range planning (including computer modeling) to achieve and maintain healthful air quality for future generations,
- Working with legislators and appointed officials to ensure adequate statutory and regulatory authority to carry out the NCDAQ's mission, and
- Taking enforcement actions against violators, including assessing penalties, revoking permits and taking legal action when necessary.

Staffing Levels

The NCDAQ has a total staff of 259 managers, engineers, scientists, technicians and administrators. About 10 percent of the positions are vacant at any time due to turnover. Although almost every position in the division has some Title V responsibility, the full-time equivalent (FTE) staff dedicated to the Title V program is about 108. The remaining FTEs are responsible for non-Title V air quality permits (for facilities that do not trigger the Title V permit requirement); area sources of air pollution (such as open burning); motor vehicle emissions control (through programs to ensure proper functioning of vehicle emissions control equipment and reduce emissions from diesel engines); enforcement and regulation of toxic air pollutants. These activities are funded with receipts outside of the Title V program and are not the subject of this report.

The NCDAQ staff size has decreased by 35 positions over the past five years. NCDAQ is planning for the possibility of additional reduction in workforce due to lower receipts (in part because of the current economic downturn) or other reductions in state and federal funding. As discussed later, fees received from permitted facilities are declining and this trend is expected to continue as major sources are required by regulations to reduce emissions and change to lower emitting fuels in order to achieve compliance with state and federal requirements.

In addition to the core functions listed above, the Title V program, as required by the Clean Air Act, also funds DENR's Small Business Assistance Program, employs a Small Business Ombudsman and appoints a Compliance Advisory Panel to conduct citizen overview of small business activities.

Permitting and Compliance Actions

For the 2012 state fiscal year the NCDAQ performed the following Title V permit specific related activities:

- Reviewed and processed 264 permit applications for Title V facilities.
- Performed 283 inspections of permitted Title V facilities
- Issued 40 Notices of Violations (NOV) to 34 different Title V facilities, and
- Completed four enforcement actions against four Title V facilities, resulting in penalties of \$87,120 (per general statute, penalties collected are transferred to local schools).

PROGRAM CHALLENGES

In order to maintain a federally approved Title V operating permit program, North Carolina's permit program must be adequately funded by the regulated sources. See Clean Air Act (CAA) §502; 40 CFR §70.10. Specifically, CAA §502(b)(3)(A) requires a state program to collect revenue "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements." As a result of an overall downward trend in emissions of air pollutants and a dramatic increase in new federal regulations, Title V program revenues have decreased, while the resources necessary to implement the program have increased.

Additional details regarding the increased regulatory burden and the decreased revenues are provided below.

Increased Federal Regulatory Programs

Over the last several years there has been a dramatic increase in the promulgation of federal regulations. Every time a new regulation is promulgated, each Title V facility must be evaluated to determine potential applicability of the new regulation and, if applicable, revise the facility's Title V permit to incorporate the necessary emission limits, monitoring provisions, recordkeeping and reporting requirements. In general these new federal regulations fall into one of three areas:

MACT/GACT Standards

The federal EPA is required by the Clean Air Act to promulgate nationally applicable emission standards referred to as Maximum Achievable Control Technologies (MACTs) that apply to major sources of hazardous air pollutants and Generally Available Control Technologies (GACTs) that apply to smaller non-major sources of hazardous air pollutants. Some of the recently established MACTs and GACTs apply to a wide range of emission sources ranging from large coal-fired utility boilers down to 25-horsepower emergency generators. As a result of the recent GACT regulations, the universe of regulated sources has expanded significantly at both Title V and non-Title V facilities. For example, the NCDAQ estimated that there are more than 2,500 individual emergency generators located at facilities that currently hold an air quality permit. These engines are now subject to the EPA's new MACT/GACT standards (e.g. emergency generators, fire pump generators, sump pump engines). Each individual engine must be evaluated for applicability, a determination made as to which specific requirements apply, and in many cases the existing air quality permit must be revised to include highly prescriptive federal requirements. Each MACT/GACT standard is complex and requires considerable resources to implement effectively.

New/Revised National Ambient Air Quality Standards (NAAQS)

In the last two years, the EPA has revised the National Ambient Air Quality Standards (NAAQS) – the level of air pollution in the ambient air considered to

be safe – for several pollutants. Most notably the EPA established new standards for sulfur dioxide (1-hour averaging time) and nitrogen dioxide (1-hour averaging time). The revision of a NAAQS requires the states to design and maintain an ambient monitoring network and develop a regulatory scheme to ensure compliance with the new standard. The NCDAQ is implementing these new standards and expects considerable resources will be necessary to ensure compliance.

Greenhouse Gas Regulation

In 2010 the federal EPA began regulating greenhouse gases (GHGs). While the federal EPA has attempted to design its regulatory program to initially cover only the largest GHG sources, the determination of federal rule applicability is required for every source regardless of size. Moreover, the federal EPA is currently developing GHG regulations that will affect almost every commercial and industrial boiler in the state – thus requiring all permits, including Title V permits, to be reopened to incorporate new emissions standards.

New federal regulatory programs create an issue for the Title V program because new requirements pose continual challenges for air quality engineers, who need to maintain expertise on emerging technologies and regulatory compliance. In addition, communicating the regulatory requirements and drafting the complex permit conditions to implement those requirements can be very challenging and take significant amount of time and resources. Loss of experienced engineers and modelers and the need to train new recruits puts a burden on the division, and can also create delays in permitting new or expanded industrial facilities. Budget restrictions in recent years, including the loss of retention incentives, have created staff shortages while the pressure to increase production remains high. These conflicting requirements have the potential to impact operational efficiency and product quality.

Decline in Title V Revenue

In 1992, the Clean Air Act Advisory Council established by the N.C. General Assembly recommended that half of the total Title V fees should come from a base permit fee (an annual flat fee for each permit). The council recognized that some fixed amount of work is required to permit and provide compliance oversight for every Title V permitted facility without regard to the individual facility's emissions. The other half of the revenue comes from annual per-ton charges imposed on top of the base permit fee. The tonnage fee is referred to as "billable tons." As a direct result of this fee structure, Title V revenues decrease when emissions decrease. Billable tons in North Carolina have decreased over time. The table below provides the most recent four-year period showing billable tons, number of Title V facilities in North Carolina and the number of full-time equivalent positions funded under the program.

Fiscal Year	Billable Tons	Number of Title V Facilities	Actual FTE Funded Title V Positions
2009	274,314	332	125
2010	189,885	311	119
2011	203,550	305	118
2012	194,594	295	108

A myriad of reasons exists for the reduction in statewide emissions and facilities subject to Title V, ranging from decreased economic activity to the implementation of state and federal air pollution reduction programs such as North Carolina's landmark Clean Smokestacks Act (CSA) (Senate Bill 2002-1078). The CSA continues to require reductions in sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions from the state's coal-fired utilities. These reductions have been achieved by installing state-of-the-art pollution control systems on the large coal-fired units and by shutting down certain coal-fired units and replacing them with new natural gas units. Consequently, these reductions in emissions are expected to decrease the NCDAQ annual Title V revenue collected from utilities (based on tons of pollutants emitted) by about 58 percent between 2009 and 2017. Because revenue collected from the coal-fired utilities subject to the Clean Smokestacks Act represent approximately 30 percent of all Title V fees received, this reduction is significant to the NCDAQ's Title V program. The cumulative effect on the funding available to administer the Title V program will be a reduction of about 20 percent between 2009 and 2017.

In anticipation of this projected shortfall, the NCDAQ has assembled a workgroup to evaluate all available options to sustain the Title V program as required by CAA §502 and 40 CFR §70.10. The workgroup's activities consists of examining staffing levels needed to support current and future regulatory activities, reviewing all fee-based revenue streams, evaluating the impact of capital and operating cost-cutting measures, and examining relief offered from future changes to the fee structure.

TITLE V REVENUES AND EXPENDITURES

The federal Clean Air Act (CAA) requires that the entire cost of the Title V Permit Program, including both direct and other related expenses, be funded by facilities' permit fees and that Title V permit fees be used only for the purpose of operating the permit program.

As a benchmark to allow the federal EPA to readily determine whether a state Title V program is collecting enough revenue to cover the cost of the Title V program, the CAA set a presumptive minimum fee of \$25 per ton of air pollutant emissions (1990 dollars). This presumptive minimum fee is adjusted for inflation every year. If a state collects less than the presumptive minimum fee, the EPA may require the state to demonstrate that they are sufficiently funding an effective Title V permit program.

In September 2011, the EPA adjusted the presumptive minimum for inflation to \$45.55 per ton for calendar year 2012. North Carolina's fee has consistently been below the EPA presumptive minimum and has provided, at EPA's request, adequate demonstrations that the program fees collected are sufficient to fund the Title V program. However, as revenues decrease and regulatory programs increase, the required demonstration will be more difficult to make without an increase in fees beyond the statutorily mandated annual CPI adjustment.

Table 1 provides a detailed list of Title V expenditures for fiscal year 2011-12.

Table 2 provides Title V revenue and expenditures for fiscal years 2002-03 – 2011-12.

TABLE 1. TITLE V ACTUAL EXPENDITURES, STATE FISCAL YEAR 2011-12

ACCOUNT DESCRIPTION	ACCOUNT	EXPENDITURE
PERSONNEL SERVICES	531XXX	\$7,377,155.48
PURCHASED SERVICES	532XXX	\$231,328.63
SUPPLIES	533XXX	\$206.97
PROPERTY, PLANT & EQUIPMENT	534XXX	0
OTHER EXPENSES & ADJUSTMENTS	535XXX	0
AID & PUBLIC ASSISTANCE	536XXX	0
INTRAGOVERNMENTAL TRANSFERS	538XXX	\$346,483.25
TOTAL		\$7,955,174.33

**TABLE 2. TITLE V FEES/ASSESSMENTS AND EXPENDITURES, SFY 2002-03 – 2011-12
(IN MILLIONS)**

State Fiscal Year	03	04	05	06	07	08	09	10	11	12
Carried Forward	5.6	4.7	4.1	3.4	1.9	0.8	0.4	0.9	0.6	0.1
Fees	7.7	8.2	7.9	7.8	7.6	7.8	8.9	8.8	8.1	8.0
Salary	6.0	6.2	6.7	7.2	7.7	7.5	7.6	8.2	8.0	7.4
Travel	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0	0.0	0.0
Supplies	0.1	0.5	0.2	0.1	0.1	0.1	0.1	0.1	0.0	0.0
Equipment	0.3	0.1	0.1	0.1	0.1	0.0	0.0	0.0	0.0	0.0
Contracts	0.4	0.4	0.3	0.3	0.3	0.1	0.2	0.2	0.3	0.2
Other (Rent, Utilities, Reg Office fund,etc)	0.9	0.6	0.5	0.4	0.1	0.0	0.1	0.1	0.0	0.0
Small Business Ombudsman's	0.4	0.1	0.1	0.0	0.1	0.0	0.0	0.0	0.0	0.0
Transfer to DENR Agencies	0.3	0.8	0.7	1.0	0.2	0.5	0.5	0.5	0.3	0.4
Total Expenses	8.5	8.8	8.7	9.2	8.7	8.2	8.4	9.1	8.6	8.0
TO BE CARRIED FORWARD	4.8	4.1	3.3	2.0	0.8	0.4	0.9	0.6	0.1	0.2

**APPENDIX A: NC GENERAL STATUTES ON THE TITLE V PERMIT PROGRAM
(G.S. 143-215.3 and G.S. 143-215.3A)**

§ 143-215.3. General powers of Commission and Department; auxiliary powers.

(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

- (1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.
 - a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.
 - b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.
 - c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.

§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.

(a) The Water and Air Quality Account is established as a nonreverting account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.125, 105-449.134, and 105-449.43 shall be used to administer the air quality program. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

- (1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.
- (2) Fees credited to the Title V Account.
- (3) Repealed by Session Laws 2005-454, s. 7, effective January 1, 2006.
- (4) Fees collected under G.S. 143-215.28A.

(5) Fees collected under G.S. 143-215.94C shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(a1) The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a), after deducting those monies collected under G.S. 143-215.3(a)(1d), shall not exceed thirty percent (30%) of the total budgets from all sources of environmental permitting and compliance programs within the Department. This subsection shall not be construed to relieve any person of the obligation to pay a fee established under this Article or Articles 21A, 21B, or 38 of this Chapter.

(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the Small Business Environmental Advisory Panel, the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

(b1) The I & M Air Pollution Control Account is established as a nonreverting account within the Department. Fees transferred to the Division of Air Quality of the Department pursuant to G.S. 20-183.7(c) shall be credited to the I & M Air Pollution Control Account and shall be applied to the costs of developing and implementing an air pollution control program for mobile sources.

(c) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the State's environmental permitting programs contained within the Department on or before 1 November of each year. In addition, the Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the Title V Program on or before 1 November of each year. The reports shall include, but are not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly.

APPENDIX B: EPA'S 2010 REVIEW OF NC TITLE V PROGRAM

The EPA typically conducts a review of NCDAQ's Clean Air Act Title V program every five years. The EPA Region IV conducted a review of the NCDAQ's Title V program in March 2005, in Raleigh. The results of the review are kept on file at the EPA Region IV office in Atlanta, Ga. The following findings and recommendations are contained in EPA's Sept. 21, 2010, Program Evaluation Report:

Programmatic Knowledge/Implementation

The EPA and NCDAQ held discussions on a variety of Title V topics including adequacy of Title V resources (staffing and capital), public participation, Title V workload, compliance assurance monitoring (CAM) and renewal of Title V permits. It was apparent during the discussions that the NCDAQ staff had a thorough understanding of the requirements of the federal Clean Air Act regulation.

Resources

NCDAQ's Title V program is organized so that Title V applications are processed in the central office and inspections and enforcement are handled by the regional offices. The NCDAQ has 15 permit engineers dedicated to working on Title V applications. Three of these permit engineers were focused primarily on reducing the backlog in Title V renewal applications. Title V permit renewals can be very time consuming to process. Since a facility is allowed to continue to operate pending renewal issuance, these applications don't receive a processing priority, in some cases resulting in an application backlog. The NCDAQ staff is responsible for responding to all permitting related issues for those assigned facilities. These activities include reviewing permit applications, drafting permits, calculating emissions, reviewing all submitted reports, answering questions, responding to citizens' information requests, and providing necessary compliance assistance. The permit writers also assist with non-Title V work such as issuance of construction permits for certain stationary sources under the federal Prevention of Significant Deterioration (PSD) permitting program; a Clean Air Act permitting program for new and modified major sources of air pollution such as power plants, manufacturing facilities, and other large emitting air pollution facilities; state-only permitting; quarterly stakeholders meetings and multiple workgroups.

The EPA and NCDAQ had minimal conversations about the billing and tracking of Title V expenses. A more extensive review of the NCDAQ's Title V accounting was covered in the Sept. 28, 2006, program evaluation report submitted to the NCDAQ, and in the Nov. 2, 2006, response from NCDAQ. The EPA was pleased to see all of the revisions committed to in the Nov. 2, 2006, response were being implemented effectively.

Conclusion

At the conclusion of the onsite portion of the Title V program review, EPA personnel met with NCDAQ officials to conduct an exit interview. Overall, the EPA believes that NCDAQ is operating the Title V program at a high level of proficiency, and is pleased to note that the protocol by which the NCDAQ is paying for Title V work has been revised to better reflect federal Clean Air Act requirements.