



# OFFICE OF INSPECTOR GENERAL U.S. ENVIRONMENTAL PROTECTION AGENCY

CUSTOMER SERVICE ★ INTEGRITY ★ ACCOUNTABILITY

*Improving air quality*

## EPA's Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight

Report No. 22-E-0017

January 12, 2022



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**Abbreviations:** CAA Clean Air Act  
C.F.R. Code of Federal Regulations  
EPA U.S. Environmental Protection Agency  
OIG Office of Inspector General

**Key Definitions:** Stationary Source Generally, any building, structure, facility, or installation that emits or may emit any air pollutant, except emissions directly from vehicles and nonroad engines.  
Title V Permit A permit that outlines the federal and state regulations—as well as provisions for monitoring, reporting, and record keeping—that apply to a Title V facility to ensure it complies with applicable air pollution laws and regulations.

**Cover Image:** Regulated entities pay fees to Title V permitting authorities. These fees may only fund Title V program activities. (EPA OIG image)

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# Office of Inspector General U.S. Environmental Protection Agency **At a Glance**

22-E-0017  
January 12, 2022

## Why We Did This Evaluation

The U.S. Environmental Protection Agency's Office of Inspector General conducted this evaluation to determine the extent to which the EPA has conducted evaluations of state and local Title V programs and has identified insufficient collection or misuse of fees.

The Title V permit program requires certain sources of air pollution to obtain permits. These permits help to ensure that such sources comply with environmental regulations. The Clean Air Act requires each entity implementing a Title V program, also known as a *permitting authority*, to collect fees from Title V sources sufficient to fund all reasonable Title V program costs. These fees cannot be used to pay for non-Title V activities.

To ensure that the programs are implemented correctly, EPA regions conduct Title V evaluations to determine whether permitting authorities are complying with applicable statutory and regulatory requirements.

**This evaluation supports an EPA mission-related effort:**

- *Improving air quality.*

**This evaluation addresses a top EPA [management challenge](#):**

- *Mitigating the causes and adapting to the impacts of climate change.*

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[List of OIG reports.](#)

## ***EPA's Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight***

### What We Found

EPA regions generally met their goal to conduct one Title V program evaluation per year. As part of a larger program evaluation or as a separate fee evaluation, each region reviews Title V fees to determine whether the collection of fees meets the applicable statutory and regulatory requirements.

**Lack of consistent oversight and persistent Title V fee challenges may undermine Title V program implementation.**

We interviewed EPA staff and managers and reviewed reports for 31 EPA Title V fee and program evaluations conducted from 2018 through 2020 to assess the extent of the EPA's fee oversight activities. The EPA noted concerns about the decline of Title V program revenue and the use of non-Title V revenue to fund Title V programs. Nine (or 90 percent) of the ten EPA regions cited declining revenues as a key challenge that permitting authorities were facing. Further, some regions reported having had excess Title V funds diverted by state legislatures for purposes not related to the Title V program, such as eliminating a deficit in the state budget.

The extent to which EPA regions reviewed Title V fees varied significantly. In response to OIG Report No. [2015-P-0006](#), issued October 2014, the EPA issued guidance in 2018 to the regions on conducting fee evaluations; however, the guidance was discretionary. In addition, it did not clarify when to conduct fee evaluations or establish a minimum standard of review for fee evaluations. For example, some regions conducted fee evaluations that reviewed financial data, while others relied solely on a few fee-related questions. EPA staff lacked awareness of Title V fee requirements and resources to conduct these evaluations. Insufficient and misused Title V fees may lead to unsustainable Title V programs with such adverse outcomes as permit backlogs and staffing issues. The EPA's ability to ensure that Title V facilities comply with Clean Air Act regulations is hindered by not addressing these problems.

### Recommendations and Planned Agency Corrective Actions

We recommend that the assistant administrator for Air and Radiation coordinate with EPA regions to provide recurring training to permitting authorities on Title V fee laws and regulations; develop and implement a plan to address declining Title V revenues; update the 2018 guidance to establish time frames for completing corrective actions; and establish criteria for when regions must conduct fee evaluations, train EPA regional staff on the updated fee guidance, and collaborate with regional staff to identify the regional resources and expertise necessary to conduct fee evaluations. The Agency agreed with our findings and proposed corrective actions for all six of our recommendations. Recommendations 1, 3, 4, and 5 are resolved with corrective actions pending. The Agency's planned corrective actions for Recommendations 2 and 6 did not meet the intent of our recommendations, which remain unresolved.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

January 12, 2022

**MEMORANDUM**

**SUBJECT:** EPA's Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight  
Report No. 22-E-0017

**FROM:** Sean W. O'Donnell

A handwritten signature in blue ink that reads "Sean W O'Donnell".

**TO:** Joseph Goffman, Acting Assistant Administrator  
Office of Air and Radiation

This is our report on the subject evaluation conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. The project number for this evaluation was [OE-FY21-0156](#). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. Final determinations on matters in this report will be made by EPA managers in accordance with established resolution procedures.

The Office of Air and Radiation is responsible for the issues discussed in this report.

In accordance with EPA Manual 2750, your office provided acceptable planned corrective actions for Recommendations 1, 3, 4, and 5. These recommendations are resolved with corrective actions pending.

**Action Required**

Recommendations 2 and 6 are unresolved. The resolution process, as described in EPA's Audit Management Procedures, begins immediately with the issuance of this report. Furthermore, we request a written response to the final report within 60 days of this report. Your response will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at [www.epa.gov/oig](http://www.epa.gov/oig).

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# Chapter 1

## Introduction

### Purpose

The U.S. Environmental Protection Agency’s Office of Inspector General [initiated](#) this evaluation to determine the extent to which the EPA has conducted evaluations of state and local Title V programs and identified insufficient collection or misuse of fees in accordance with two guidance documents published in 2018: *Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V*, hereafter referred to as the *2018 Updated Guidance of Fee Schedules*, and the *Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70*, hereafter referred to as the *2018 Program and Fee Evaluation Guidance*.

#### Top Management Challenge Addressed

This evaluation addresses the following top management challenge for the Agency, as identified in OIG Report No. [22-N-0004](#), *EPA’s Fiscal Year 2022 Top Management Challenges*, issued November 12, 2021:

- Mitigating the causes and adapting to the impacts of climate change.

### Background

#### *Title V Permits and Fees*

The Clean Air Act, or CAA, established the Title V operating permit program, which helps to ensure that stationary sources of air pollution—such as factories, refineries, boilers, and power plants—comply with applicable laws and regulations. The Title V program requires major stationary sources and certain minor stationary sources to obtain Title V permits to operate within the United States. Major stationary sources emit or have the potential to emit pollutants over regulatorily defined levels. A Title V permit:

- Outlines the federal and state regulations that apply to the source.
- Includes provisions for monitoring, reporting, and record keeping.
- Must be renewed every five years.

For the purposes of this report, a stationary source that requires a Title V permit is referred to as a *Title V facility*. In fiscal year 2015, there were 10,259 Title V facilities in the United States. By September 30, 2020, the number of Title V facilities had increased to 12,726.

#### Key Terms

- **Stationary source:** Generally, any building, structure, facility, or installation that emits or may emit any air pollutant, except emissions directly from vehicles and nonroad engines.
- **Major source:** Stationary sources that emit or have the potential to emit regulated pollutants over certain levels, referred to as major-source thresholds. Major-source thresholds may differ by permitting program.
- **Regulated pollutant:** As defined by the CAA, a (1) volatile organic compound, (2) pollutant regulated under Section 7411 or 7412 of the CAA, and (3) pollutant for which a national primary ambient air quality standard has been promulgated (except carbon monoxide).

Most Title V permits are issued by state, local, tribal, or U.S. territory permitting authorities whose Title V programs were approved by the EPA. Each permitting authority is required by CAA section 502(b)(3)(A) to establish and collect sufficient fees from Title V facilities to fund all reasonable Title V program costs. In addition, the EPA's implementing regulations, 40 C.F.R. part 70, require that Title V:

- Fees not be used to cover the costs of non-Title V activities. Title V activities include:
  - Issuing and renewing Title V permits.
  - Implementing and enforcing Title V permit terms.
  - Monitoring ambient air quality.
  - Preparing emissions inventories.
- Programs establish a fee schedule that results in the collection and retention of revenues sufficient to cover the program costs. There is flexibility in the type of fees that permitting authorities can collect as Title V revenues, including emissions, application, and service-based fees.

#### Key Terms

- **Permitting authority:** An authorized entity responsible for issuing permits, conducting inspections, and enforcing permit requirements at Title V facilities. State and local air permitting and pollution control agencies often serve as Title V permitting authorities.
- **Emissions-based fee:** A fee imposed by a state program on a facility's emissions that are generally represented in dollars per ton of emissions.

According to the CAA, the fees collected must either be (1) an emissions-based fee that is no less than \$25 per ton of each regulated pollutant that a Title V facility emits or (2) another amount or rate set by the permitting authority that the EPA determines reflects the reasonable costs of the Title V program. The CAA emissions-based fee is called the *presumptive minimum* and is adjusted annually for increases in the Consumer Price Index. Through August 2021, the Part 70 presumptive fee rate was \$52.79 per ton. In accordance with 40 C.F.R. § 70.9, for a permitting authority to obtain EPA approval for its Title V program, it must submit an initial accounting, which includes demonstrating that the permitting authority will collect fees at or greater than the presumptive minimum. Alternatively, the permitting authority can also show that collecting an amount less than the presumptive minimum will be sufficient to cover the costs of the program.

If the EPA determines that a permitting authority is not adequately administering or enforcing its Title V program, the Agency must issue a Notice of Deficiency, which is published in the *Federal Register*.<sup>1</sup> If the permitting authority has not taken “significant action to assure adequate administration and enforcement of the program” within 90 days after publication of a Notice of Deficiency, the EPA may withdraw approval of the program; apply sanctions; or promulgate, administer, and enforce a federal Title V program.<sup>2</sup> If a permitting authority has not corrected deficiencies within 18 months after the date of the Notice of Deficiency, the EPA will apply sanctions and will begin the process of promulgating, administering, and enforcing a whole or partial federal Title V program. The EPA will take over and operate programs with uncorrected deficiencies after two years.

### **Title V Program Oversight**

To ensure that Title V programs are implemented correctly, EPA regions conduct holistic program reviews, which are called *program evaluations*, or in-depth reviews that focus on fees, which are called *fee evaluations*. Either as part of a larger program evaluation or as a separate fee evaluation, EPA

<sup>1</sup> See 40 C.F.R. § 70.10(b)(1).

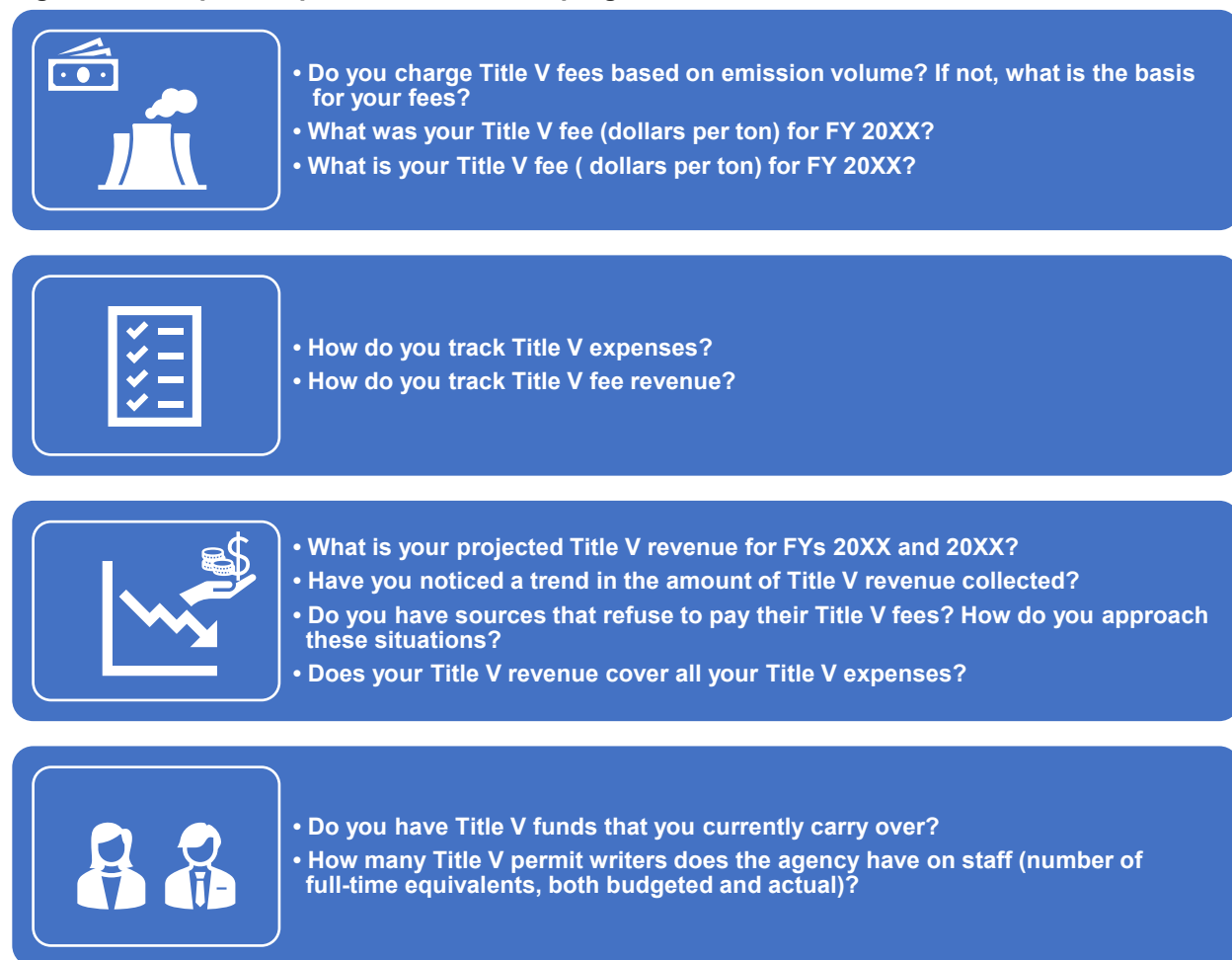
<sup>2</sup> See 40 C.F.R. § 70.10(b)(2).

regions review Title V fees to determine whether the collection of fees met the applicable statutory and regulatory requirements. The EPA has issued several guidance documents that demonstrate how Title V fees are established and that outline how to conduct program and fee evaluations.

## Program and Fee Evaluations

A Title V *program evaluation* is generally a holistic review of a Title V program that determines whether the program complies with 40 C.F.R. part 70 requirements, including adhering to permit processing procedures. A program evaluation may include a fee-review component or address other issues, such as the implementation of the program, the monitoring of compliance, and the changes in relevant state laws. If the program evaluation does contain a fee-review component, the region will typically rely on the permitting authority's responses to a questionnaire to assess the sufficiency of the permitting authority's Title V fees. Figure 1 lists examples of fee questions.

**Figure 1: Example fee questions in a Title V program evaluation**



Source: OIG analysis of an EPA regional program evaluation questionnaire. (EPA OIG image)

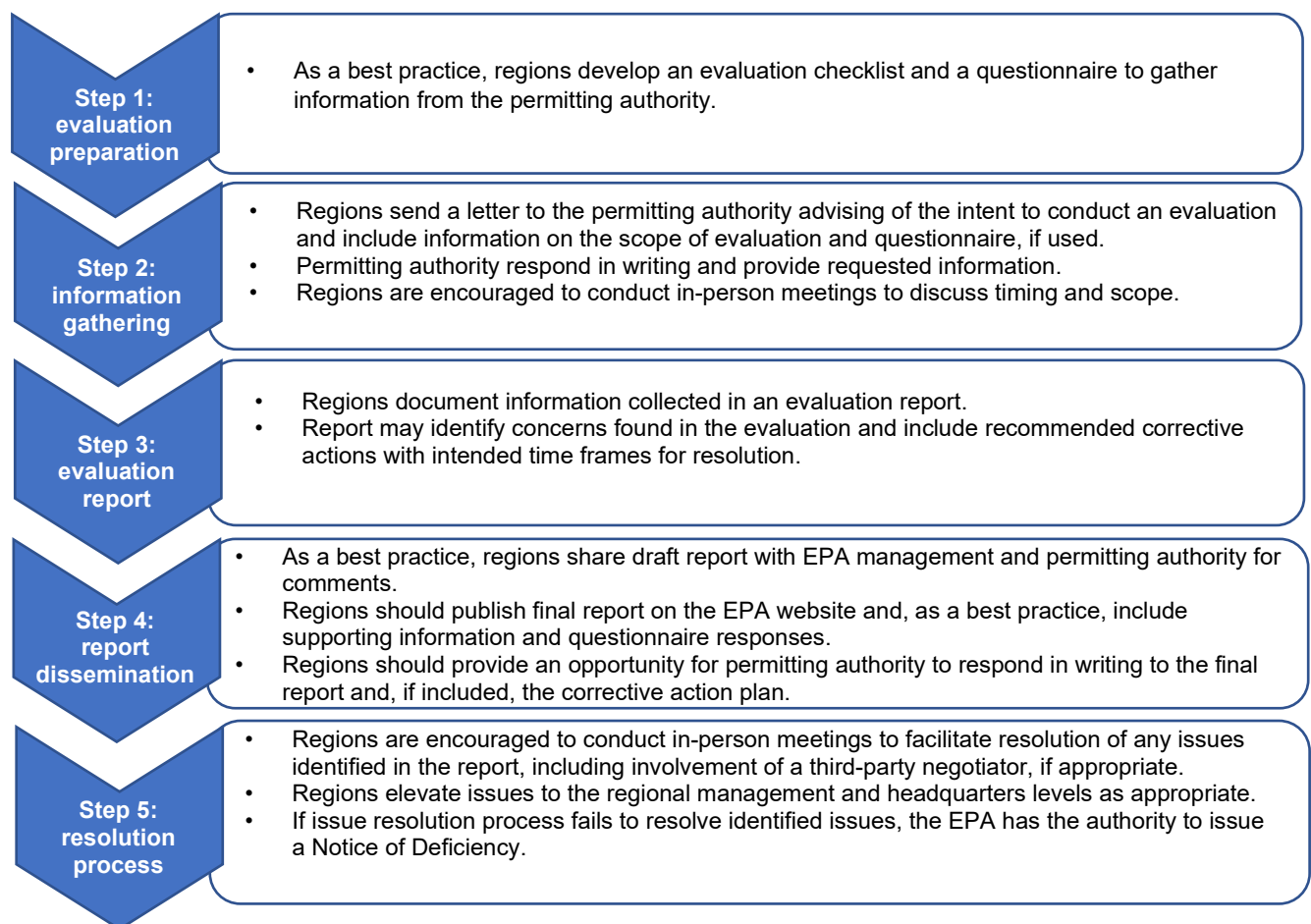
A Title V *fee evaluation* is an in-depth review of Title V fees that focuses on whether the fees collected by a permitting authority are sufficient to cover the costs of the program as required by the CAA and whether the accounting and revenue practices are in compliance with EPA guidance and regulations. EPA regions may conduct a fee evaluation as part of a broader Title V program evaluation or as an



independent evaluation. To conduct a fee evaluation, the region may use Attachment C of the 2018 *Program and Fee Evaluation Guidance* or review equivalent data obtained from the permitting authority. Attachment C is an annual financial reporting form that allows permitting authorities and EPA regions to track fee revenue and program costs and to calculate the presumptive minimum for a permitting authority for a particular year. While the 2018 *Program and Fee Evaluation Guidance* addresses reviewing fee revenue and accounting practices in Title V evaluations, it does not specifically require that the EPA conduct fee evaluations or that regions use Attachment C in their Title V program evaluations.

For the purposes of this document, we collectively refer to these program and fee evaluations as *Title V evaluations*. When we refer to a fee evaluation specifically, the region’s Title V evaluation included a more extensive review of fees—either using Attachment C or equivalent data. In the EPA’s 2018 *Program and Fee Evaluation Guidance*, the Agency outlined general steps for completing a typical Title V evaluation (Figure 2).

**Figure 2: Guidance and best practices for conducting a typical Title V evaluation**



Source: OIG summary of the 2018 *Program and Fee Evaluation Guidance*. (EPA OIG image)

## EPA Guidance on Title V Program and Fee Evaluations

The EPA has issued several guidance documents relevant to Title V evaluations:

- **2016 Best Practices**—In August 2016, the EPA’s *Promoting Environmental Program Health and Integrity: Principles and Best Practices for Oversight of State Permitting Programs* provided that the EPA should strive to conduct Title V program reviews at routine intervals.
- **2018 Program and Fee Guidance Documents**—In response to OIG findings in Report No. [2015-P-0006](#), *Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues*, issued October 20, 2014, the EPA issued the *2018 Program and Fee Evaluation Guidance* and the *2018 Updated Guidance of Fee Schedules*. According to these documents, the Agency may require periodic updates to a permitting authority’s initial accounting of its fee demonstration to confirm that the fees are being used solely to pay for Title V program costs. This periodic update is to be based on records showing that the required fee revenue is retained and used to cover the reasonable direct and indirect costs of the Title V program.
- **2018–2019 National Program Manager Guidance**—The Office of Air and Radiation stated in its *Final FY 2018–2019 Office of Air and Radiation (OAR) National Program Manager Guidance* that its fiscal year 2018 target would be for EPA regional offices to conduct one Title V program evaluation report within the fiscal year.
- **2019 Standard Operating Procedure**—The standard operating procedure contains steps and best practices for regions to perform when conducting Title V program evaluations. These steps and best practices include:
  - Informing the permitting authorities of the type of evaluation the region plans to conduct.
  - Customizing evaluation questionnaires based on past evaluations.
  - Including an *Action Plan* with completion dates for resolution.
- **2020–2021 National Program Manager Guidance**—Although the *National Program Manager Guidance* for fiscal years 2020–2021 did not establish goals for completing Title V program evaluations, all ten regions told us that they continue to strive to complete at least one per year. The Office of Air Quality Planning and Standards within the Office of Air and Radiation also stated that the expectation is that regions complete one Title V program evaluation per year.

## Responsible Offices

The Office of Air and Radiation and the EPA’s ten regions are responsible for overseeing EPA-approved Title V programs. Specifically, the:

- Office of Air Quality Planning and Standards develops and establishes overall Title V program rulemakings, policy, and guidance and performs some Title V fee oversight functions, often in concert with EPA regions.
- EPA regional offices are primarily responsible for overseeing individual Title V permitting authorities. Regional oversight activities related to fees include:
  - Performing periodic reviews of the permitting authorities’ Title V programs.

- Conducting Title V program and fee evaluations.
- Communicating informally with permitting authorities, including participating in periodic phone calls and meetings.
- Making findings of program deficiencies and issuing Notices of Deficiency.

## **Scope and Methodology**

We conducted this evaluation from March to October 2021 in accordance with the *Quality Standards for Inspection and Evaluation*, published in January 2012 by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that we perform the evaluation to obtain sufficient, competent, and relevant evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on our objective. We believe that the evidence obtained provides a reasonable basis for our findings, conclusions, and recommendations.

To address our objective, we reviewed EPA regulations, policies, and guidance related to oversight of Title V programs. We interviewed staff and managers in the Office of Air Quality Planning and Standards and each of the ten EPA regions. We also reviewed evaluation reports for the 31 Title V evaluations conducted from 2018 through 2020 to assess the extent of the EPA's oversight activities. We analyzed information from interviews and evaluation reports to determine the extent to which EPA regions conduct program and fee evaluations in accordance with the EPA's 2018 *Updated Guidance of Fee Schedules* and 2018 *Program and Fee Evaluation Guidance*.

## **Prior Reports**

Appendix A outlines the prior reports relevant to this evaluation.

## Chapter 2

# EPA Conducts Title V Program Evaluations, but Fee Issues Persist

The EPA regions generally met their goal to conduct one Title V program evaluation per year. Whether as part of a larger program evaluation or as an independent fee evaluation, the regions reviewed permitting authorities' Title V fee revenues to determine whether they covered all reasonable costs of the program. The regions generally identified the same fee issues that we identified in prior OIG audits, including the:

- Decline of Title V program revenue.
- Use of non-Title V funds to fund Title V programs.
- Use of Title V funds for non-Title V program activities and the inability of the region to determine whether Title V funds are used solely for Title V programs.

Insufficient and misused Title V fees may lead to unsustainable Title V programs, which could result in permit backlogs, staffing declines, and reduced funding for CAA compliance monitoring and enforcement—all of which may have direct, negative public health impacts.

### EPA Regions Conduct Title V Program Evaluations

The Office of Air and Radiation's *Final FY 2018–2019 Office of Air and Radiation (OAR) National Program Manager Guidance* set the goal for EPA regions to conduct one Title V program evaluation per year for fiscal year 2018. Seven EPA regions accomplished this goal in 2018, 2019, and 2020. One region was able to complete its missed Title V evaluation the following year. The Office of Air Quality Planning and Standards provided two of the remaining regions flexibility because of the regions' workloads.

### EPA Regions Found Title V Fee Revenues in Decline

Despite the CAA's requirement that permitting authorities maintain Title V programs with sufficient funds to cover the costs of the programs, the EPA faces a national trend of declining Title V revenues. Several factors caused this decline, which could hinder the ability of Title V programs to protect human health and the environment. The responses to insufficient fees by the EPA and permitting authorities and the success of those responses have varied. In addition, there has been little communication regarding effective approaches to respond to the decline in fees and revenues.

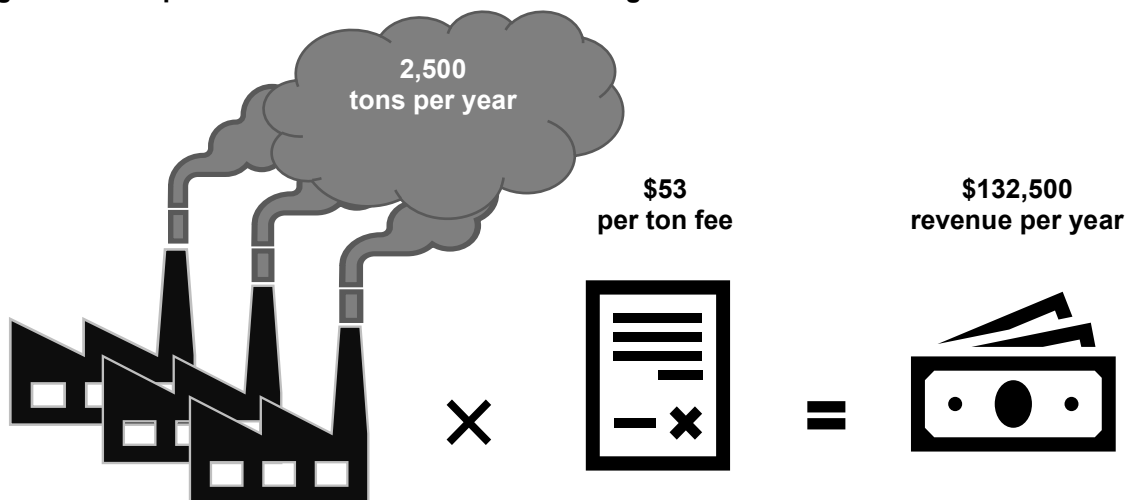
Seventeen (or nearly 55 percent) of the EPA's 31 Title V evaluation reports conducted from 2018 through 2020 contained indicators that the reviewed permitting authority faced declining Title V revenue. Nine (or 90 percent) out of ten EPA regions cited declining revenues as a key challenge that permitting authorities face within their

#### Information Sharing

The Office of Air Quality Planning and Standards and regional offices discuss Title V issues on a regular basis, but there is little evidence of communication or sharing of information specifically regarding approaches to the issue of declining fees and revenues, despite the national trend. Such sharing of information could help correct the overall trend toward unsustainable Title V programs.

jurisdictions. The EPA often attributed these revenue declines to the permitting authorities' reliance on emissions-based fees on Title V sources of air pollution within their jurisdictions to generate annual revenue, as shown in Figure 3.

**Figure 3: Example of Title V fee revenue raised using emissions-based fees**



Source: Formula derived from EPA fee evaluation report. (EPA OIG image)

Note: The price per ton for the period in which we conducted our work was \$52.79. For the purposes of this figure, the price per ton has been rounded to \$53.00.

The purpose of the CAA is to lower the concentration of regulated pollutants in the air, which is achieved by regulating and reducing emissions from facilities. For some pollutants, this goal has been successful. From 1980 through 2020, total emissions of the six principal air pollutants dropped by 73 percent.<sup>3</sup> The EPA attributes this success to the reduction of emissions from and capacity of high-polluting facilities, such as coal-fired power plants, and the use of more efficient emission-control technology. However, many Title V programs use emissions-based fees, and as these emissions decline each year, the revenues based on these emissions also decline. At the same time, the number of permits that the permitting authorities issue remains relatively constant, which means that the cost of the permitting program may not necessarily decrease even though emissions and emissions-based revenues supporting the program may decrease.

At least three Title V programs that are not self-sufficient have inappropriately supplemented their Title V revenue from other sources. Section 502(b)(3)(A) of the CAA requires Title V programs to sufficiently fund all their "reasonable (direct and indirect) costs" through fees collected from Title V sources. Of the 31 Title V evaluation reports that we reviewed, three indicated that the permitting authority used non-Title V fees to fund its Title V activities.

<sup>3</sup> According to EPA's website, the six principal air pollutants are carbon monoxide, lead, nitrogen oxides, ozone, direct particulate matter, and sulfur dioxide.

In contrast, other permitting authorities found more appropriate fee-based solutions (see sidebar). However, all ten regions have at least one permitting authority that must receive approval for fee changes from its legislature or other governing body. Legislative approval can be difficult to obtain. For instance, Region 9 staff told us that one of the region’s permitting authorities faced political resistance when it needed to increase fees. Region 8 similarly noted that it is difficult for some of its permitting authorities to convince state legislatures to increase fees.

**Solutions to Declining Revenue**

Permitting authority solutions to declining Title V emission-based revenues include:

- Charging companies for time and materials for permit work.
- Establishing application fees.
- Linking annual adjustments to fees based on the Consumer Price Index.
- Acquiring industry support for fee increases.

The national trend toward decreasing Title V revenues undermines the sustainability of Title V programs and their ability to protect human health and the environment. Frequent annual deficits can diminish Title V program account balances built up in previous years. Unless permitting authorities increase their emissions-based fees or diversify their revenue streams, these Title V programs may become unsustainable.

As part of their oversight role, EPA regions have tools available to support fee increases, such as issuing Notices of Deficiency and publishing letters explaining why Title V fee increases may be necessary. Our interviews and review of Title V evaluation reports showed that the EPA’s responses to findings of current or predicted insufficient fees tended to vary among regions, as demonstrated in Table 1.

**Table 1: How EPA regions have responded to findings of insufficient Title V program fees<sup>a</sup>**

EPA action	Region									
	1	2	3	4	5	6	7	8	9	10
Did not have findings of insufficient fees						X				
Offered specific recommendations <sup>b</sup>		X	X	X			X			
Issued letter of support		X		X						X
Imposed requirements with deadline			X							
Facilitated collaborative discussions between states about solutions					X					

Source: OIG analysis of Title V evaluation reports, other documents, and Agency staff interviews. (EPA OIG image)

<sup>a</sup> Table contains examples of actions taken by EPA regions and is not inclusive of all actions taken.

<sup>b</sup> Specific recommendations include incorporating different types of fees; assessing higher fee rates for hazardous air pollutant and Title V emissions; consulting with other Title V fee programs for fee revenue ideas; and imposing new fees, such as for applications, permit maintenance, time, and materials.

Regions 2 and 3 expressed reluctance to either issue or express their intent to issue Notices of Deficiency, despite fee-related deficiencies within the Title V programs. Three other EPA regions have supported the fee-raising process in the past by issuing letters of support for their permitting authorities’ requests to increase fees. For example, Region 10 staff told us that they issued such a letter of support, noting that a failure to increase fees could lead to Title V program deficiencies, which could ultimately require the Agency to take over the program. According to Region 10 staff, the letter generated industry support, ultimately convincing the permitting authority’s state legislature to increase

fees. While these tools may or may not work in any particular jurisdiction for a variety of reasons, some regions had not even considered using these tools.

## **EPA Regions Identified Misuse of Funds**

From 2018 through 2020, the EPA found that states spent Title V funds in a manner that violated CAA requirements and undermined the sustainability of the Title V programs. In some cases, the EPA could not determine whether these funds were properly spent because the permitting authority did not track Title V and non-Title V revenues and expenses separately. In addition, the EPA found that permitting authorities often faced staffing shortages and high turnover rates. These issues may indicate that permitting authorities are not always aware of Title V fee requirements. Further, in its Title V evaluation reports, the Agency did not always establish a timeline for achieving compliance with the CAA, despite the Agency's guidance documents listing the use of such timelines as a best practice. The lack of a compliance timeline may result in the permitting authority not acting on the EPA's recommendations in a timely manner.

While 17 permitting authorities had or were projected to have insufficient revenue, 14 others collected revenue in excess of their Title V program costs. Excess funds can be rolled over to fund Title V program costs in subsequent years, but pursuant to 40 C.F.R. part 70, Title V fees can be used only for Title V program costs and cannot be spent on any non-Title V activity.

To determine whether Title V funds are being used only for Title V purposes, the EPA assesses whether permitting authorities separate and track Title V funds from other funds. The EPA identified two states—Minnesota and Arizona—that did not separately track their Title V funds, preventing the Agency from determining whether the funds were properly spent. Additionally, five (roughly 16 percent) of the 31 Title V evaluations conducted from 2018 through 2020 found that the reviewed Title V programs may have spent funds on non-Title V activities. For Delaware, West Virginia, and New Mexico, the Agency found or was informed that the state legislatures redirected Title V funds for purposes not related to the Title V program, such as eliminating a deficit in the state budget.

In the case of New Mexico, Region 6 learned about the misuse of Title V funds from the permitting authority outside the evaluation process. Other examples of improper spending include a staff member's participation in an Adult Use Cannabis Task Force and waste and hazardous substance regulations meetings.

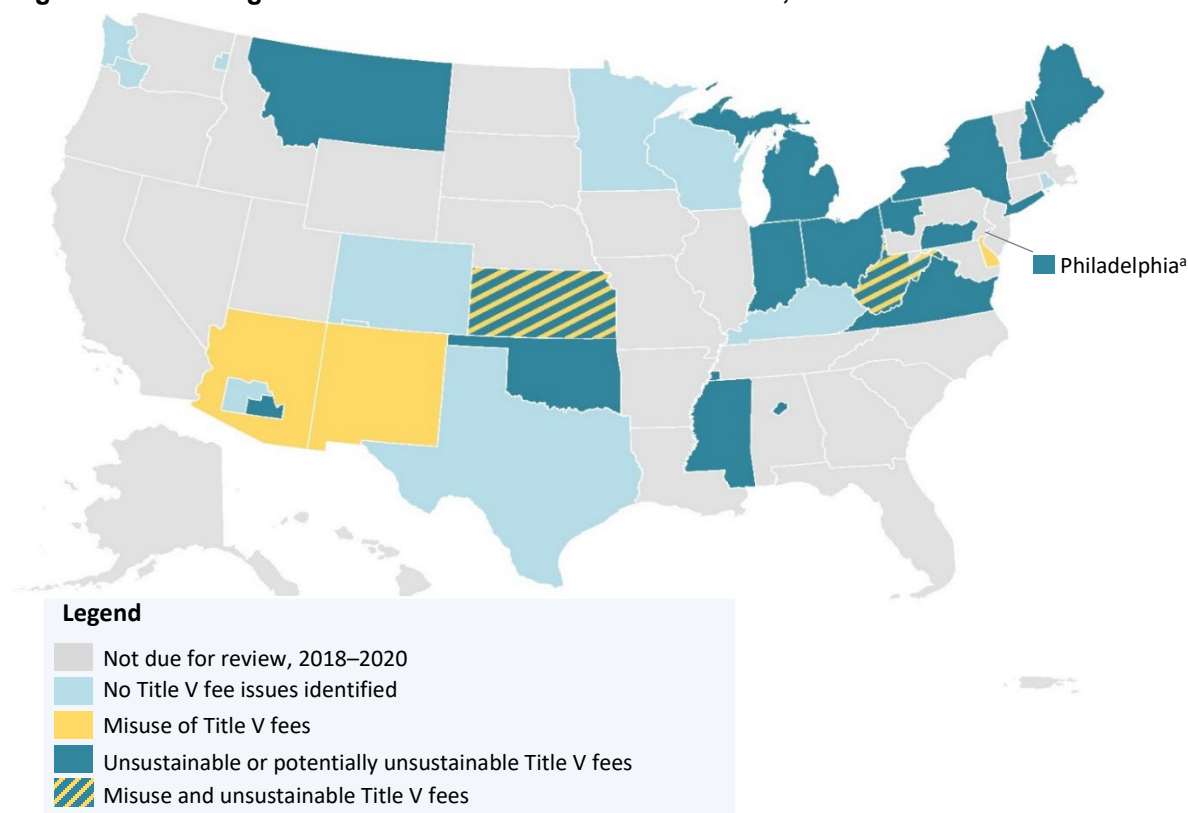
In Region 7, Kansas used its Title V fees to fund non-Title V activities. During the Title V evaluation of the Kansas Title V program, Region 7 staff determined that, in the long run, Kansas's Title V revenue stream was not sufficient to fund its Title V program and recommended that Kansas comply with the requirement to fund only Title V activities with Title V funds, in accordance with 40 C.F.R. part 70. In the Title V evaluation report, Region 7 did not establish a timeline for achieving compliance with this requirement or for restoring misspent funds to the Title V program.

A Region 3 Title V evaluation of Delaware's Title V program contained findings, including the lack of a compliance schedule within the report. In one case in which the EPA found Title V funds were diverted by the state legislature, Region 6 told us that it sent a letter of support to help the permitting agency seek to have the state legislature return the funds. According to Region 6, the funds were expected to be returned in 2021.

The EPA’s 2019 *Standard Operating Procedure for Title V Program Evaluations* states that regions should, as a best practice, implement a predictable post-evaluation process that includes developing an action plan to address any issues identified during a Title V evaluation and to track progress on the implementation of the action plan. The EPA recommends that regions post this action plan with the Title V evaluation report on the EPA’s and permitting authority’s websites to make it available for public review. The 2018 *Program and Fee Evaluation Guidance* provides that the Title V evaluation report may include recommended corrective actions with intended time frames for resolution. The EPA’s guidance documents should be updated to require an action plan that provides a predictable time frame for completing corrective actions.

Figure 4 provides an overview of the Title V fee issues identified in the 31 Title V evaluations conducted from 2018 through 2020. We discovered misuse of funds in approximately 16 percent of the Title V programs that we reviewed, which indicates that permitting authorities may not be aware of Title V fee requirements and that training may be insufficient. Based on our review of the reports for these 31 Title V evaluations, we identified more than 42 percent of the permitting authorities as having significant staff turnover, including the loss of experienced staff. The Office of Air Quality Planning and Standards stated that the EPA could provide better training to help permitting authorities address the loss of institutional knowledge. States have also expressed interest in the EPA providing training. Providing regular and frequent training about Title V fee requirements to permitting authority staff and leaders could help prevent the misuse of Title V funds.

**Figure 4: Permitting authorities with known Title V fee issues, 2018–2020**



Source: OIG analysis of EPA Title V program and fee evaluation reports and EPA correspondence. (EPA OIG image)

<sup>a</sup>Philadelphia is labeled because it is the only permitting authority with identified Title V fee issues not otherwise visible.



Similar to the decline of Title V revenues, the improper use of Title V revenues undermines the sustainability of Title V programs and their ability to protect human health and the environment. Relying on non-Title V funds to fund Title V programs constitutes a lack of adherence to the 40 C.F.R. part 70 regulations requiring fee schedules that are sufficient to cover the permit program's costs, as provided for in the CAA, and creates a risk of a deficit if outside funding is no longer available.

## **Title V Fee Issues Risk Undermining Program Effectiveness**

Title V funds are used for a variety of activities that help ensure that major and certain minor sources of air pollutants comply with the CAA. These activities include the:

- Permitting of new Title V facilities.
- Modification of existing Title V permits.
- Training of staff.
- Compliance and enforcement of terms and conditions in Title V permits.
- Ambient air monitoring.
- Preparation of emissions inventories.

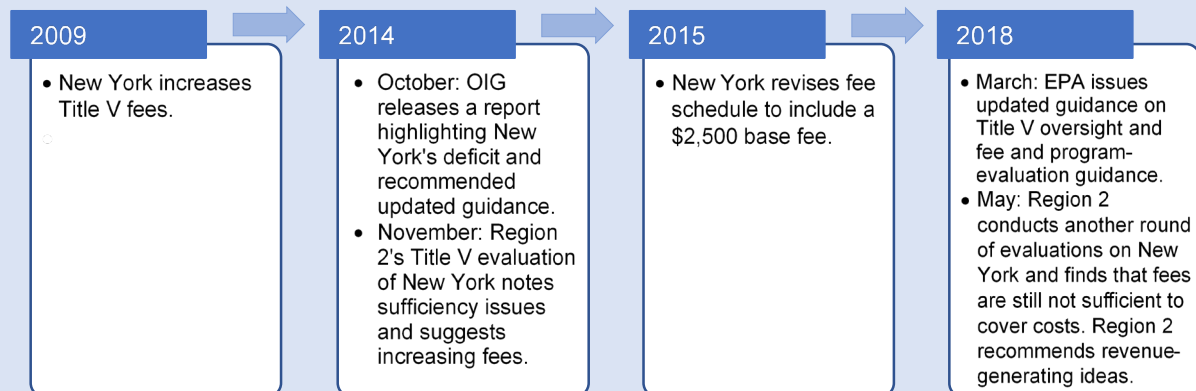
Title V funds also support a permitting authority's staff salaries, which directly relate to the permitting authority's ability to issue permits in a timely manner. As such, insufficient and declining fees may lead to permit backlogs and staff-retention challenges. More than 42 percent of the 31 Title V evaluations that the EPA conducted from 2018 through 2020 revealed that the reviewed permitting authorities faced staffing shortages, with some authorities noting an inability to find qualified staff. Approximately 42 percent of the Title V programs that we reviewed faced permit issuance backlogs (Figure 5), with staffing issues often cited as the reason for the backlogs. For example, three permitting authorities in Region 3 had workloads that exceeded staffing levels or had difficulties filling vacancies. Two permitting authorities in Region 1 did not have sufficient staff levels or had high staff turnover rates and had new hires who had less experience with Title V programs. A lack of adequate and qualified Title V program staff undermines a permitting authority's ability to conduct Title V activities and, thus, increases the risk of noncompliance with Title V regulations.

### Case Study: New York State Department of Environmental Conservation

In Report No. [15-P-0006](#), *Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues*, we found that the New York State Department of Environmental Conservation did not have sufficient annual Title V revenue to cover annual Title V program costs from 2008 through 2012. As part of a Title V evaluation that it conducted in 2014, Region 2 recommended that New York “explore ways that may allow the Title V program to be funded solely with Title V fee revenues.” In 2015, New York revised its fee structure to require a \$2,500 base fee.

Region 2 conducted its next Title V evaluation of the New York State Department of Environmental Conservation in May 2018 and published its Title V evaluation report in 2019. In this report, Region 2 noted that the state’s Title V program had a \$20.3 million cumulative deficit as of the end of the state fiscal year 2017 and, despite a fee increase in 2015, was not collecting enough to sufficiently fund its program. A New York state audit report noted that this deficit did not include almost \$50.4 million in Title V program expenses that were paid primarily from the department’s general fund appropriations. Including these additional figures, the New York State Department of Environmental Conservation’s Title V program operating deficit was \$70.7 million as of March 31, 2017.

According to EPA staff, the department does not have sufficient funds to run its Title V program and uses the state’s general fund to supplement its program, despite having the highest Title V fees in the country. This issue is compounded by the fact that the state legislature must approve all Title V fee increases and that the department loses revenue because of its reliance on emissions-based fees, since the overall emissions produced are declining. While the requirement to use only Title V funds to cover Title V program costs has been a point of contention between the New York State Department of Environmental Conservation and the EPA, Region 2 recommended that the department consider alternative revenue-generating ideas.



## Conclusions

While the EPA regions generally met the goal to conduct one Title V program evaluation per year, many of the fee issues identified in prior OIG audit reports persist. The decline of Title V fee revenues is a significant challenge facing the EPA and Title V permitting authorities. We also found instances of permitting authorities using non-Title V funds to fund Title V programs with insufficient funds, as well as instances of Title V revenue being used for non-Title V activities. When there is insufficient Title V

funding or misuse of funds, permitting authorities are limited in their ability to conduct Title V activities—such as issuing permits, monitoring facilities, and training staff—which, in turn, undermines the sustainability of Title V programs and their ability to protect human health and the environment.

## Recommendations

We recommend that the assistant administrator for Air and Radiation:

1. Coordinate with EPA regions to provide recurring training on Clean Air Act Title V fee laws and regulations to permitting agencies.
2. In collaboration with EPA regions, develop and implement a plan to address declining Clean Air Act Title V revenues.
3. Update the EPA's guidance documents to require regions to establish time frames for permitting authorities to complete corrective actions in program and fee evaluation reports and clear, escalating consequences if timely corrective actions are not completed.

## Agency Response and OIG Assessment

The Office of Air and Radiation concurred with our findings. The Agency proposed planned corrective actions and estimated completion dates for all recommendations. The proposed corrective action for Recommendation 2 did not meet the intent of the recommendation, however.

In response to Recommendation 1, the Office of Air and Radiation committed to coordinating with regional offices to develop training on Title V fee laws and regulations to present to permitting authorities. The Office of Air and Radiation notes that this development could involve preparing, presenting, and recording webinar training to efficiently disseminate the information consistently to permitting authorities on a recurring basis. This corrective action meets the intent of our recommendation; therefore, this recommendation is resolved with corrective actions pending.

In response to Recommendation 2, the Office of Air and Radiation committed to convening a workgroup and developing strategies to address declining Title V fee revenues. Although Chapter 2 of the draft report recommended the development and implementation of a plan to address revenues, the implementation language was not reflected in the "Status of Recommendations" section of the draft report on which the Agency relied for its response. Following a discussion with the Agency, we have corrected the recommendation language in the "Status of Recommendations" section of the final report and coded this recommendation as unresolved because the Agency response only agreed to convene a workgroup and develop strategies and was silent as to implementation. Therefore, this recommendation is unresolved.

In response to Recommendation 3, the Office of Air and Radiation committed to updating the 2018 Title V fee guidance to set expectations for completion of corrective actions agreed to as a result of a fee evaluation. This corrective action meets the intent of our recommendation; therefore, Recommendation 3 is resolved with corrective actions pending.

Appendix B contains the Agency's response to the draft report, which includes technical comments. We have updated the report where appropriate in light of this response.

## Chapter 3

# EPA's Title V Fee Oversight Is Inconsistent

EPA oversight of the fee-review component of program evaluations was inconsistent and not always sufficient to identify fee-related issues that may undermine the health of a Title V program. Further, some regions are not conducting fee evaluations. EPA oversight of Title V fees is hampered by a lack of:

- Criteria regarding when a region must conduct a Title V fee evaluation.
- Minimum standards of review for conducting Title V program or fee evaluations, such as how many and what type of fee-related questions to ask and whether and what types of financial information should be reviewed.
- Access to financial expertise or other resources.

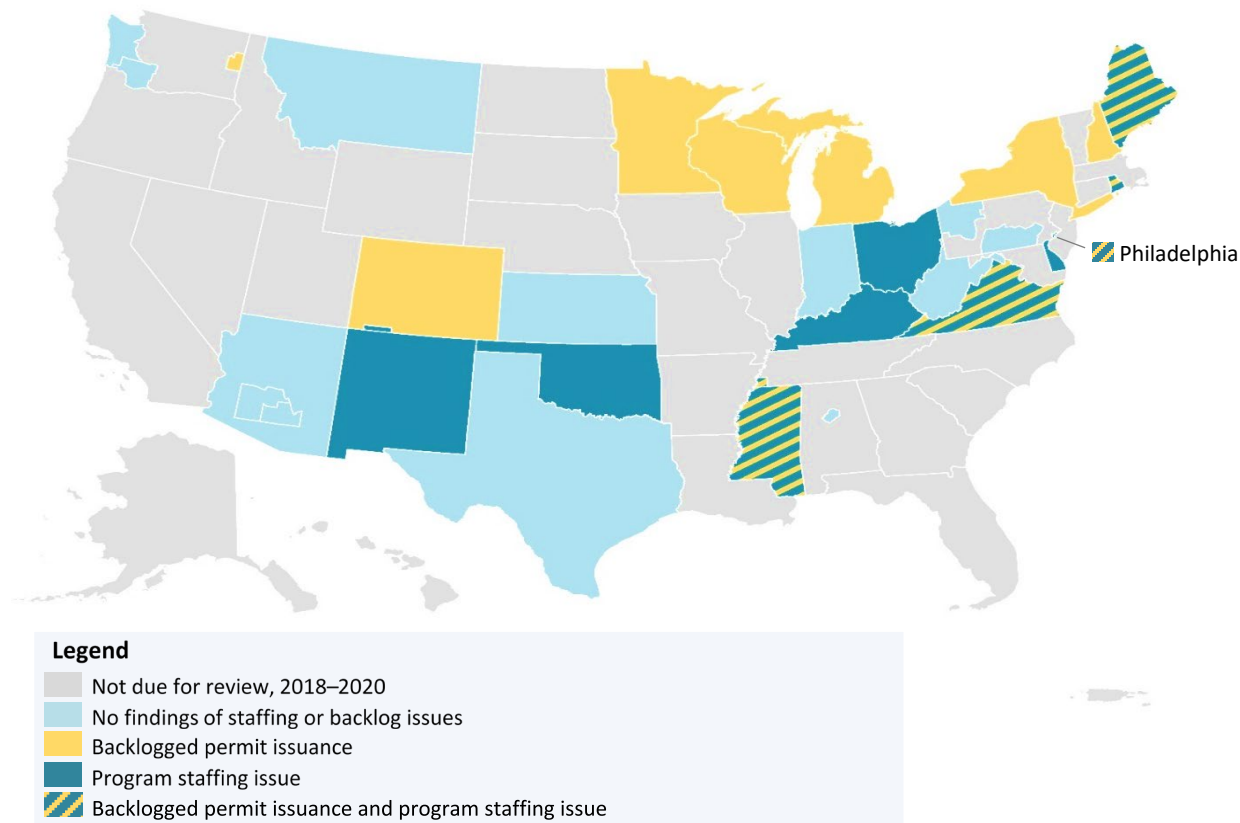
Title V fee evaluations help provide assurance that Title V revenues are properly spent and are sufficient to fund the Title V program. Without this oversight, regions may not identify and resolve Title V fee issues, which would hamper the permitting authority's ability to carry out the program. As a result, there may be an increased risk of noncompliance with federal air quality laws and regulations.

### **EPA Fee Guidance Is Discretionary, and Some Regions Were Unaware of Fee Evaluation Tools**

There are few EPA requirements related to Title V fees after a permitting program's initial submission of its fee schedule to the EPA. The Title V fee evaluation is an oversight tool that the EPA uses to assess whether the program is collecting sufficient revenue to cover program costs. Title V program evaluations can encompass any element of the Title V program, including the whole program or particular aspects of the permitting authority's implementation or enforcement of the Title V program.

The EPA's 2018 *Program and Fee Evaluation Guidance* considers it a best practice to conduct a Title V fee evaluation as part of an overall program evaluation but is not clear on when a region must include a fee evaluation. For example, staff in the Office of Air Quality Planning and Standards informed us that it expected regions to conduct Title V fee evaluations when certain indicators—such as a permit issuance backlog—are identified. These types of criteria are not included in the Agency's guidance. Of the 31 Title V evaluations we reviewed, seven were fee evaluations. However, 20 of the Title V evaluation reports identified permit backlogs, staffing issues, or both as problems. Further, two regions appeared unaware of the tools that they could use to properly evaluate Title V fee programs. Of the 31 Title V evaluation reports we reviewed, approximately 42 percent of the reviewed Title V programs faced permit issuance backlogs (Figure 5), with staffing issues often cited as the reason for such backlogs. A high turnover rate and other staffing issues may indicate that a Title V program does not have sufficient resources.

**Figure 5: Permitting authorities with known backlogged permit issuance and staffing issues, 2018–2020**

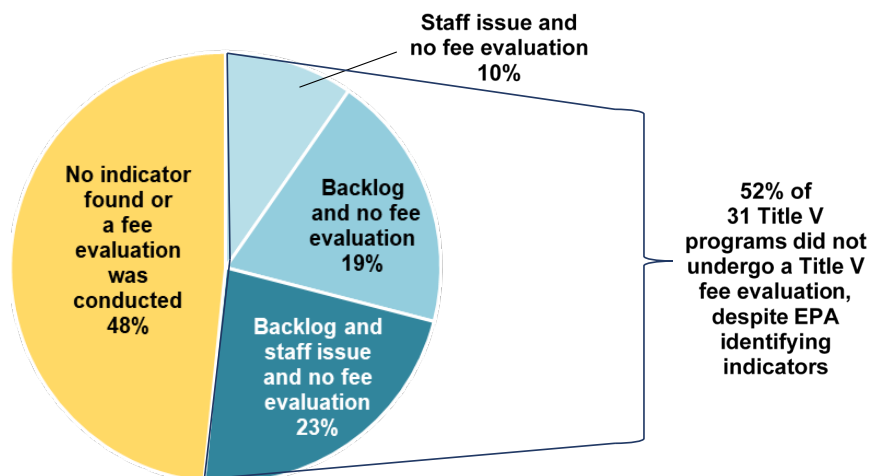


Source: EPA OIG analysis of EPA Title V program and fee evaluation reports. (EPA OIG image)

<sup>a</sup>Philadelphia is labeled because it is the only permitting authority with identified Title V fee issues not otherwise visible.

As shown in Figure 6, of the 31 Title V programs evaluated from 2018 through 2020, more than half (52 percent) did not undergo a Title V fee evaluation, despite having indicators that should have triggered such a fee evaluation.

**Figure 6: EPA does not always conduct fee evaluations when indicators are present**



Source: OIG analysis of 31 Title V evaluation reports. Values are rounded. (EPA OIG image)

Staffing issues for permitting authorities included the retention of employees, the hiring of qualified workers, and the loss of experienced staff and institutional knowledge. Not all regions conducted fee evaluations for Title V programs, despite seven regions noting that permit backlogs were indicators related to the financial health of a program. These findings suggest that regions are not meeting the expectation of the Office of Air Quality Planning and Standards that they conduct a Title V fee evaluation when certain indicators of fee issues are present.

The 2018 *Program and Fee Evaluation Guidance* also contains an “Example Annual Financial Data Form for 40 CFR Part 70” in Attachment C. This form contains information that regions can collect during a Title V evaluation and explains how to calculate the presumptive minimum rate and to assess whether the Title V fees are sufficient to cover the Title V program costs. Based on OIG interviews, staff in two regions were not aware of Attachment C or that it could be used as a template for Title V fee evaluations.

## Extent of Title V Fee Evaluation Varied

The EPA’s 2018 *Program and Fee Evaluation Guidance* does not require a minimum standard of review for fees in program or fee evaluations, such as how many and what type of fee-related questions to ask and whether and what types of financial information should be reviewed. As a result, regions vary in the extent of their focus on fee issues in Title V evaluations. Seven (roughly 23 percent) out of the 31 Title V evaluations conducted from 2018 through 2020 constituted a comprehensive fee evaluation while others contained only a fee-review component using a generic questionnaire and follow-up discussions. In some cases, state governments evaluate permitting authorities’ finances. Two regions told us that they review these government reports when they conduct their Title V evaluations.

Based on our analysis of the associated Title V evaluation reports for these 31 Title V evaluations, three of the ten regions did not consistently review financial documents or data, an activity that one EPA personnel with an accounting background informed us may be necessary to identify the misuse of funds. As shown in Table 2, the number of questions related to fees also varied, with one region asking an average of about two questions and one region asking an average of more than 40.

**Table 2: EPA’s focus on identifying fee issues varies among regions**

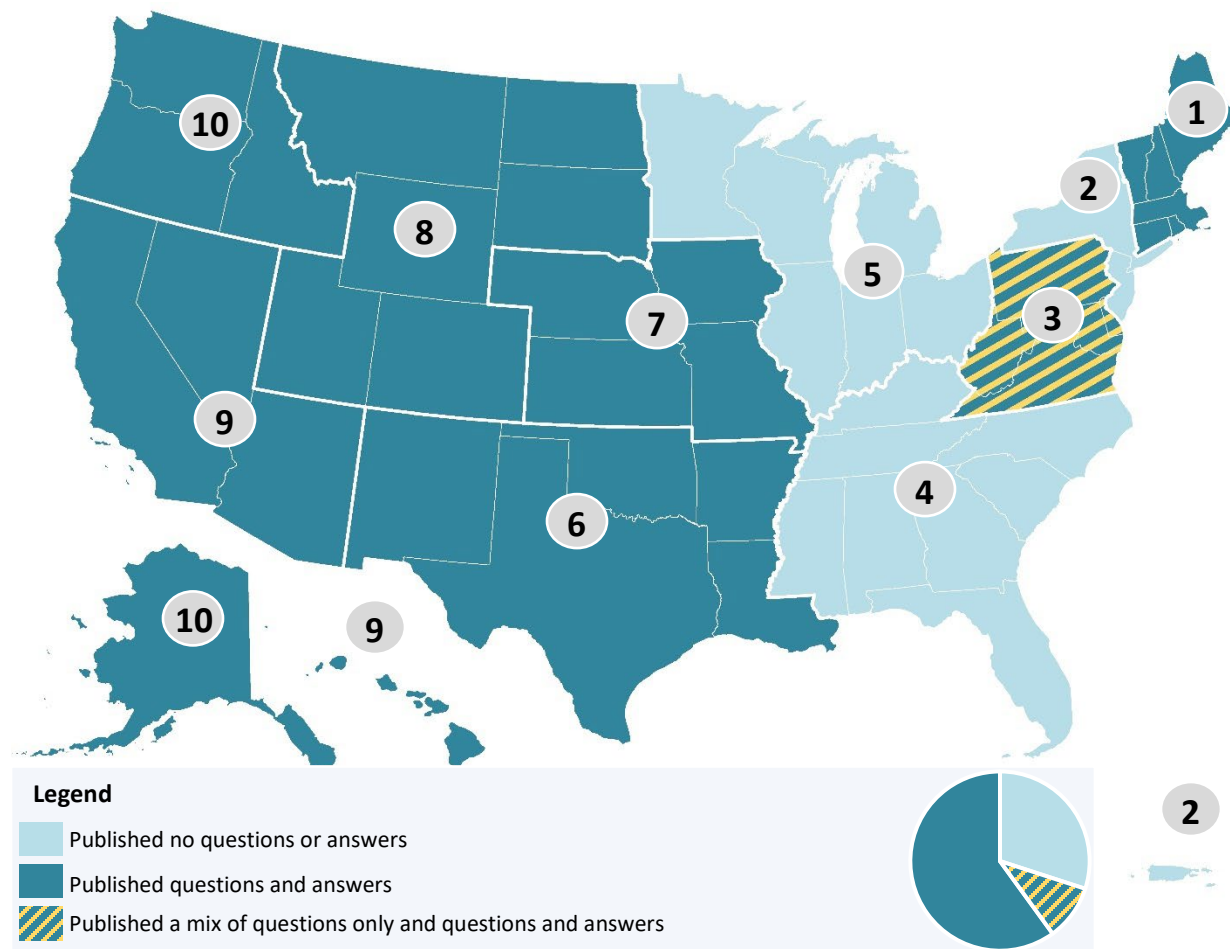
Region	Average number of fee questions asked as part of:	
	Title V fee evaluation	Title V program evaluation
1	Not performed	21.00
2	Not performed	10.00
3	40.50	2.30
4	Not performed	10.75
5	Not performed	12.80
6	43.70	43.60
7	35.00	35.00
8	48.00	27.50
9	Not performed	14.00
10	Not performed	11.50

Source: OIG analysis of 31 Title V evaluation reports, 2018–2020. (EPA OIG table)

Further, the level of detail and transparency of Title V evaluation reports varies widely, with some reports only including the region’s findings and conclusions regarding the evaluated program and others including detailed information, such as the program’s full response to the questionnaire and other

financial reports and documents. Figure 7 shows that six regions published the evaluation questions asked and the permitting authorities’ answers in the Title V reports. Three regions published neither. One region published a mix of evaluation questions and evaluation questions plus the permitting authorities’ answers.

**Figure 7: EPA regions program and fee evaluation reports vary in transparency**



Source: EPA OIG analysis of EPA Title V program and fee evaluation reports. (EPA OIG image)

Note: The numbers represent the EPA region.

The EPA’s 2018 *Program and Fee Evaluation Guidance* states that it is a best practice to include any supporting information related to a Title V evaluation on the EPA’s website with the final evaluation report. Such information promotes public transparency. Staff from the Office of Air Quality Planning and Standards told us that publishing the questionnaire used during a Title V evaluation is not a requirement and whether to do so is sometimes negotiated by the region and the permitting authority.

### **Some Regions Lack Access to Financial Expertise and Other Resources to Assess Title V Fees**

Based on our interviews of EPA staff, only three regions used financial experts to conduct their Title V fee evaluations. Six regions have access to this type of expertise—though not directly within the

respective region's Title V oversight group and some of these financial experts may not be available for future evaluations. Five regions suggested that external financial assistance with such evaluations would aid their review of Title V fees. Two of these regions informed us that they suggested that the Office of Air Quality Planning and Standards provide a central pool of financial experts from which they could draw, but the EPA stated it did not have the resources to establish such a pool. One region stated that training on how to conduct fee evaluations would be helpful.

There are other factors limiting a region's ability to conduct Title V fee oversight activities. For example, the EPA is responsible for implementing federal environmental statutes and programs on tribal lands and in offshore areas, and these activities must often be completed within an established time frame. As a result, Regions 6 and 10 told us that they must balance their resources between direct implementation activities and Title V oversight. Further, each region is responsible for overseeing a different number of permitting authorities. Region 2, for example, conducts oversight of Title V programs for two states and two territories, meaning that each Title V program will be reviewed once every four years. Region 10, on the other hand, oversees 13 Title V permitting authorities, which means—given the stated goal to conduct one Title V program evaluation each year—the region reviews each of its Title V programs once every 13 years. According to regional staff, if the distribution of regional resources does not consider these differences, certain permitting authorities will receive far less oversight than others.

## Conclusions

The nation's Title V permitting authorities continue to face many Title V fee challenges, and EPA regional oversight has varied significantly because of a lack of criteria for when to conduct Title V fee evaluations, as well as a lack of a standard minimum level of review. Further, many regions struggle with a lack of resources and financial expertise. Without adequate fee evaluations, regions may not identify and resolve Title V fee issues, resulting in Title V programs that are not self-sufficient and unable to conduct Title V activities, including permit renewals, compliance monitoring, and enforcement. As Title V activities diminish, there is an increased risk of noncompliance with the requirements of the CAA, which could result in increased pollution and other impacts to human health and the environment.

## Recommendations

We recommend that the assistant administrator for Air and Radiation:

4. Update the Clean Air Act Title V guidance documents to establish criteria for when regions must conduct Title V fee evaluations and require a minimum standard of review for fee evaluations.
5. Provide training to EPA regional staff on the updated Clean Air Act Title V fee guidance and how to conduct fee evaluations.
6. Collaborate with regional staff to identify and make available the regional resources and expertise necessary to conduct fee evaluations.



## **Agency Response and OIG Assessment**

The Office of Air and Radiation concurred with our findings. The Agency proposed planned corrective actions and estimated completion dates for all recommendations. The corrective action for Recommendation 6 did not meet the intent of the recommendation, however.

In response to Recommendation 4, the Office of Air and Radiation committed to updating the 2018 Title V fee guidance to establish expectations for how and when to perform fee evaluations. This corrective action meets the intent of our recommendation; therefore, Recommendation 4 is resolved with corrective actions pending.

In response to Recommendation 5, the Office of Air and Radiation committed to developing and conducting training for EPA regional staff on the updated fee guidance. This corrective action meets the intent of our recommendation; therefore, this recommendation is resolved with corrective actions pending.

In response to Recommendation 6, the Office of Air and Radiation committed to consulting with regions to identify regional resources and expertise for performing fee evaluations. However, the Agency did not discuss how it would make these resources available to the regions; therefore, this recommendation is unresolved.

The Agency's response to the draft report is in Appendix B. The response also provided technical comments, and we updated the report where appropriate.

# Status of Recommendations

## RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date
1	14	Coordinate with EPA regions to provide recurring training on Clean Air Act Title V fee laws and regulations to permitting agencies.	R	Assistant Administrator for Air and Radiation	6/30/23
2	14	In collaboration with EPA regions, develop and implement a plan to address declining Clean Air Act Title V revenues.	U	Assistant Administrator for Air and Radiation	
3	14	Update the EPA's guidance documents to require regions to establish time frames for permitting authorities to complete corrective actions in program and fee evaluation reports and clear, escalating consequences if timely corrective actions are not completed.	R	Assistant Administrator for Air and Radiation	3/31/23
4	19	Update the Clean Air Act Title V guidance documents to establish criteria for when regions must conduct Title V fee evaluations and require a minimum standard of review for fee evaluations.	R	Assistant Administrator for Air and Radiation	3/31/23
5	19	Provide training to EPA regional staff on the updated Clean Air Act Title V fee guidance and how to conduct fee evaluations.	R	Assistant Administrator for Air and Radiation	6/30/23
6	19	Collaborate with regional staff to identify and make available the regional resources and expertise necessary to conduct fee evaluations.	U	Assistant Administrator for Air and Radiation	

<sup>1</sup> C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

## ***Prior Reports***

In OIG Report No. [2015-P-0006](#), *Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues*, issued October 20, 2014, we found that EPA oversight of Title V fee programs was insufficient because of a lack of a national strategy, outdated guidance, a lack of financial or accounting expertise among EPA program staff, and a reluctance by some regions to pursue formal corrective actions. The report noted that the EPA regions did not conduct oversight of Title V revenue and expenses or accounting practices on a regular basis. Of the ten EPA regions, only four reviewed Title V program revenues, expenses, or accounting as a part of their program evaluations. Four regions relied on program implementation indicators, such as permit backlogs, to determine whether permitting authorities were collecting sufficient revenues. We recommended that the EPA update Title V guidance; establish a fee oversight strategy; emphasize and require periodic reviews of Title V fee revenue and accounting practices in Title V evaluations; address shortfalls in staff expertise; and pursue corrective actions, as necessary. The EPA agreed with all recommendations and provided corrective actions.

In OIG Report No. [2005-P-00010](#), *Substantial Changes Needed in Implementation and Oversight of Title V Permits If Program Goals Are To Be Fully Realized*, issued March 9, 2005, we identified concerns with five key aspects of Title V permits: permit clarity, statements of basis, monitoring provisions, annual compliance certifications, and practical enforceability. We found that regions had not completed all the program evaluations for the state and local agencies that they oversee and that the EPA had issued a Notice of Deficiency in an instance in which the state or local agency did not collect sufficient Title V fees, among other issues. The Agency reported that it implemented corrective actions.

In OIG Report No. [2003-P-00005](#), *EPA Region 6 Needs to Improve Oversight of Louisiana's Environmental Programs*, issued February 3, 2003, we found that Region 6 staff had not followed headquarters' 1998 guidance for conducting Title V fee audits and were unaware of whether Louisiana employees were properly charging their Title V work efforts as Title V costs. Region 6 disagreed with some aspects of the report findings and did not indicate whether it agreed or disagreed with the recommendations.

In OIG Report No. [2002-P-00008](#), *EPA and State Progress in Issuing Title V Permits*, issued March 29, 2002, we identified key factors, including insufficient resources, that delayed issuing Title V permits by several state and local agencies. The OIG recommended that EPA regions be required to expeditiously conduct fee protocol reviews and to ensure that state and local agencies act on review findings. The EPA agreed with most of the OIG's findings and recommendations and agreed to provide an action plan.

## Agency Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
AIR AND RADIATION

December 7, 2021

### MEMORANDUM

**SUBJECT:** EPA Response to OIG Draft Report titled: “EPA’s Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight” - Project No. OE-FY21-0156, October 28, 2021

**FROM:** Joseph Goffman *Joseph Goffman*  
Principal Deputy Assistant Administrator

**TO:** Patrick Gilbride  
Director, Implementation, Execution, and Enforcement  
Office of Special Review and Evaluation  
Office of the Inspector General

Thank you for the opportunity to review and comment on the Office of Inspector General’s (OIG’s) draft report titled, “*EPA’s Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight*” (Project No. OPE-FY21-0156) (Draft Report). The OIG has identified some issues regarding EPA’s oversight of fee programs implemented by EPA approved operating permit programs as well as several issues with insufficient and misused title V fees, which were identified and resolved through EPA’s existing oversight framework.

As a general matter, EPA agrees that persistent fee issues may lead to unsustainable title V programs, particularly if permitting authorities perceive barriers to using their existing authority to raise fees. While the decline in fee revenue is an indicator of the success of Clean Air Act programs in reducing air pollution, we agree that there is benefit to additional guidance and training so that there is consistent oversight of title V fees by regions, and a common understanding of expectations related to title V fees among permitting authorities.

Overall, we agree with the findings of the draft report. Below are responses from the Office of Air and Radiation (OAR) to the OIG’s specific recommendations, as well as a

correction provided by EPA Region 6 for the state of Oklahoma and a comment from EPA Region 1. Recommendations 1 and 5 as well as recommendations 3 and 4 have been combined into one response each due to overlap in subject matter.

**Recommendation 1: “Coordinate with EPA regions to provide recurring Clean Air Act Title V fee laws and regulations trainings to permitting agencies.”**

**Recommendation 5: “Provide training to EPA regional staff on the updated Clean Air Act Title V fee guidance and how to conduct fee evaluations.”**

**Response to Recommendations 1 and 5:** The OAR, specifically the Office of Air Quality Planning and Standards, will develop and conduct training for EPA regional staff on the updated fee guidance developed to address recommendations 3 and 4. Additionally, the OAR will coordinate with regional offices to develop training on title V fee laws and regulations to present to permitting authorities. This could involve preparing, presenting, and recording a webinar training to efficiently disseminate this information consistently to permitting authorities on a recurring basis.

**Planned Completion Date:** Fiscal Year (FY) 2023, Quarter (Q) 3

**Recommendation 2: “In collaboration with the regions, convene a workgroup and develop strategies to address the national trend of declining Clean Air Act Title V revenues.”**

**Response 2:** The OAR will collaborate with regions, convene a workgroup, and develop strategies to address declining title V fee revenues. We plan to conduct consultation with permitting authorities (through the Associate of Air Pollution Control Agencies and the National Association of Clean Air Agencies) to determine the scope of fee deficiencies and fee structures and identify current best practices which will be a time consuming, but important aspect of responding to this recommendation.

**Planned Completion Date:** Fiscal Year (FY) 2023, Quarter (Q) 4

**Recommendation 3: “Update the EPA’s guidance documents to require regions to establish time frames for permitting agencies to complete corrective actions in program and fee evaluation reports and clear, escalating consequences if timely corrective actions are not completed”**

**Recommendation 4: “Update the Clean Air Act Title V guidance document to require a minimum standard of review for fee evaluations and establish criteria for when regions must conduct Title V fee evaluations.”**

**Response to Recommendations 3 and 4:** The OAR will update the 2018 title V fee guidance to establish expectations for how and when to perform fee evaluations and set expectations for completion of corrective actions agreed to as a result of a fee evaluation.

**Planned Completion Date:** Fiscal Year (FY) 2023, Quarter (Q) 2 (or approximately 1 year after the finalization of the audit report)

**Recommendation 6: “Collaborate with regional staff to identify and make available the regional resources and expertise necessary to conduct fee evaluations.”**

**Response 6:** The OAR will consult with regions to identify the regional resources and expertise for performing fee evaluations.

**Planned Completion Date:** Fiscal Year (FY) 2023, Quarter (Q) 1

**Correction from Region 6 for the state of Oklahoma**

Region 6 has indicated that Figure 4 on Page 12 titled “*Permitting authorities with known Title V fee issues, 2018-2020*” is incorrectly labeled. The state of Oklahoma is shaded to indicate “Unsustainable Title V fees,” but Region 6 is unaware of this issue. Region 6 believes that the state should be shaded as “No Title V Fee Issue Identified.” Region 6 provided a copy of their 2019 Audit Report to the OIG as reference for Oklahoma Department of Environmental Quality meeting the requirements for adequate title V fees.

**Comment from Region 1**

Page 13 of the report cites two Region 1 states that “did not have enough staff or had high turnover of staff,” (i.e., issues with staff resources). However, Figure 4 cites Maine and New Hampshire for “Unsustainable Title V fees,” something that our program evaluations did not determine. Both programs were fully funded with sustainable funding mechanisms in place. The OIG may be making an inference that not enough staff or high turnover of staff is an indicator of unsustainable title V fees, but that may not always be the case. State hiring freezes impede a state permitting authority’s ability to hire new staff and is beyond the control of the permitting authority. New Hampshire, for example, has had state-wide hiring freezes for several years.

We recommend the OIG explain in greater detail the rationale for its findings in Figure 4 and consider the myriad reasons why permitting authorities may experience staffing issues, which can extend well beyond issues related to title V fees.

If you have any questions regarding this response, please contact Scott Mathias, Director, Air Quality Policy Division in the Office of Air Quality Planning and Standards at (919) 541-5310 or [mathias.scott@epa.gov](mailto:mathias.scott@epa.gov).

## ***Distribution***

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