

Title V Fees

WEBINAR FOR PERMITTING AUTHORITIES

JUNE 29, 2023

Agenda

Title V Fee Background and Requirements

Direct, Indirect, and Other Costs

Fee Evaluations

Fee Deficiencies and Consequences

Q&A

Background and Requirements

Title V of the Clean Air Act establishes an operating permit program for major sources of air pollutants. EPA promulgated regulations under 40 CFR part 70 to establish the minimum elements for operating permit programs to be administered by permitting authorities.

Permitting authorities with approved permit programs under part 70 must comply with minimum permit program requirements, which includes collecting fees sufficient to fund the program.

- Permit fees must cover all “*reasonable (direct and indirect) costs*” of the permit program.

Background and Requirements

Any title V fee revenue must be used solely for permit program costs and may not be diverted for non-part 70 purposes.

Nothing in part 70 restricts air agencies from collecting additional fees beyond the minimum amount needed to cover program costs.

- Surplus fees collected must still be used for part 70 purposes.

Misuse of fees, i.e. improperly diverting fees outside of the title V program, is not consistent with the Act and part 70.

- West Virginia: WVDAQ recovered \$1 million after the state legislature authorized the fund transfer to cover a state budget deficit.

(https://www.epa.gov/sites/default/files/2019-08/documents/wv_title_v_permit_fee_evaluation_report_8_5_19.pdf)

Direct and Indirect Costs

Direct costs - attributed to the development, implementation and enforcement of the part 70 program.

- “Reviewing and acting on any application for a part 70 permit” and “implementing and enforcing the terms of any part 70 permit.”
- Note: Enforcement costs are counted for part 70 purposes prior to the filing of a complaint or order.

Indirect costs - typically determined based on an indirect rate or a proportional share of the expenses of a larger organization.

Permitting authority accounting practices vary in how they nominally categorize costs, the important principle is that all reasonable direct and indirect costs of the program must be represented in the costs reported to EPA, regardless of how the costs are categorized.

Direct and Indirect Costs

Direct Costs	Indirect Costs*
Labor Costs - Salaries/Wages (incl. Fringe Benefits)	Costs for Utilities/Rent
Materials/Equipment	General Administrative Support
Professional Services	Data Processing Charges
Official Travel (e.g. Transportation, Food, Lodging)	Training and Staff Development
Public Notices and Hearings	Budget and Accounting Support
Contracted Services	Supplies and Postage

Costs and Activities Included in Part 70

Program Administration: program infrastructure, program integration, data system implementation, operating local or regional offices, interfacing with EPA.

Determinations of which sources are subject to part 70 requirements

Program revisions

Reviewing part 70 permit applications and acting on part 70 permits

- Developing part 70 permit terms and conditions
- Public participation and review

Revising, reopening, and renewing part 70 permits

Portions of the Small Business Assistance Program attributable to part 70 sources

Can include ambient monitoring or emission inventories **necessary** to implement the part 70 program

Costs Related to “Other Permits”

Part 70 costs must include the cost of implementing and enforcing any term or condition of a non-part 70 permit required under the Act that is incorporated into a part 70 permit and meets the definition of "applicable requirement" in part 70.

The cost of implementing and enforcing any term or condition of a consent decree or order that originates in a non-part 70 permit that has been incorporated into a part 70 permit must be included as a part 70 cost.

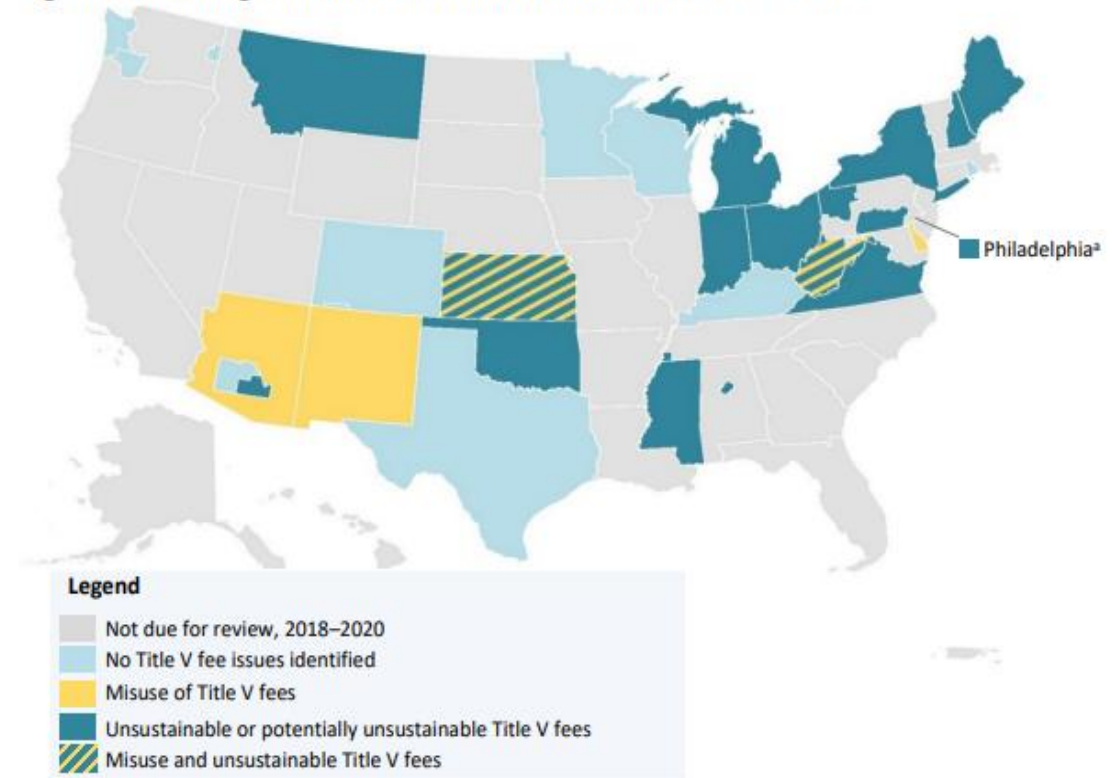
OIG Title V Fee Audit

In 2022, OIG produced a report titled *EPA's Title V Program Needs to Address Ongoing Fee Issues and Improve Oversight* which identified pervasive issues with title V fees:

- Decline of title V program revenue
- Misuse of title V funds

The report also provided six recommendations to be implemented in 2022 through 2023

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



Fee Evaluations

Per recent guidance on EPA's evaluation of title V fees, Regional offices are expected to conduct one "preliminary" evaluation per year.

- Intended to be a basic evaluation to determine if deficiencies are present or identify any concerns.
- If the preliminary evaluation presents concerns the Region is expected to conduct a more in-depth evaluation within one year.

A recommended best practice is to proactively reach out to your EPA Regional office if you have any concerns regarding the sufficiency or sustainability of fees.

Fee Evaluation Tools

EPA has developed tools that regions will use as a minimum baseline for evaluations:

- Example Annual Financial Data Form for 40 CFR Part 70
- Can be found in the 2018 *EPA Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70* (https://www.epa.gov/sites/default/files/2018-03/documents/fee_eval_2018.pdf).

Minimum information to collect/prepare for a fee evaluation:

- Annual Program Revenue
- Current Fee Schedule
- Annual Program Costs – Including Direct and Indirect Costs

Timeliness of Corrective Actions

EPA Regions are expected work with permitting authorities to determine the most appropriate timeframes for addressing corrective actions identified in EPA program and fee evaluation reports.

Permitting authorities are expected to complete the corrective actions as expeditiously as possible but should be afforded flexibility in setting timeframes for completing corrective actions.

- EPA regions are expected to document these timeframes as a schedule of corrective actions with clear milestones. These milestones can be revised as necessary, but failure to meet the milestones should result in outlined consequences.

Consequences for Pervasive Fee Deficiencies

EPA regions are expected take outlined steps after determining that a permitting authority failed to meet its corrective action obligations:

Initiate communication between the EPA Regional Section Chief or Manager and equivalent manager/director within the permitting authority informing it of its failure to complete corrective actions in a timely manner.

Initiate communication between the EPA Regional Air Program Branch Manager and equivalent manager/director within the permitting authority to discuss resolution.

If needed, continue to escalate conversations to EPA Regional Air Division Director, then subsequently to the Regional Administrator and equivalent managers/directors within the permitting authority to discuss EPA's next course of action.

Consequences for Pervasive Fee Deficiencies

If escalating conversations between EPA regional office and air agencies do not result in corrective actions or resolution of fee deficiencies, further actions can be taken pursuant to CAA §502(i) and 40 C.F.R. 70.10(b):

- EPA Administrator will issue a notice of deficiency of the Part 70 program
- If, 90 days after issuing the notice, the air agency fails to take significant action, EPA may take one or more of the following actions:
 - Withdraw approval of the program or portion thereof
 - Apply any of the sanctions specified in section 179(b) of the Act
 - Promulgate, administer, or enforce a federal program under title V of the Act.
 - EPA may collect reasonable fees from sources and those fees shall be designed solely to cover the EPA's cost of administering the provisions of the permit program promulgated by the EPA.

Fee Schedules

Presumptive Minimum

- Some permitting authorities have a higher \$/ton fee

Application Fees

- Initial, renewal, minor modification, significant modification, admin amendment

Complexity Fees

- Based on number of programs covered by permit (NSPS, NESHAP, etc.)
- Number of emission units

Labor-Based Fees

- Based on number of hours spent on processing permits and related title V services

Most permitting authorities use some combination of the above

Resources

Updated Guidance on EPA Review of Fee Schedules for Operating Permit Programs Under Title V (2018) - https://www.epa.gov/sites/default/files/2018-03/documents/fee_schedule_2018.pdf

Program and Fee Evaluation Strategy and Guidance for 40 CFR Part 70 (2018) - https://www.epa.gov/sites/default/files/2018-03/documents/fee_eval_2018.pdf

Part 70 Fee Regulations 40 C.F.R. §70.9 - <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-70/section-70.9>

Fee Evaluation and Oversight Guidance for 40 CFR Part 70 (2023) - <https://www.epa.gov/system/files/documents/2023-06/Final%20Title%20V%20Fee%20Evaluation%20and%20Oversight%20Guidance%205-25-23.pdf>