

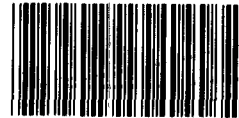
GAO

Report to the Chairman, Committee on
Energy and Commerce, House of
Representatives

February 1993

AIR POLLUTION

Difficulties in Implementing a National Air Permit Program



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United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-251088

February 23, 1993

The Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we review the Environmental Protection Agency's (EPA) efforts to implement a national air permit program. The report discusses EPA's progress in implementing title V of the Clean Air Act Amendments of 1990 and future resource needs for EPA's oversight of the title V permit program.

As agreed, unless you publicly release its content earlier, we will make no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Administrator, EPA; the Director, Office of Management and Budget; and other interested parties. We will make copies available to others upon request.

This work was performed under the direction of Richard L. Hembra, Director, Environmental Protection Issues, who can be reached at (202) 275-6111. Other major contributors to this report are listed in appendix I.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'J. Dexter Peach'.

J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

Factories, refineries, and other stationary industrial and commercial facilities emit millions of tons of pollutants annually. The Clean Air Act Amendments (CAAA) of 1990 established requirements aimed at enhancing air quality. Title V of the CAAA requires industry to obtain operating permits and pay the costs incurred by state air pollution control agencies in approving and administering these permits. Title V charged the Environmental Protection Agency (EPA) with issuing a permit rule by November 15, 1991, that would identify the minimum elements of state permit programs and govern the implementation of state programs. Disagreement among EPA, the Office of Management and Budget (OMB), and the Council on Competitiveness over certain requirements in the final rule delayed its issuance for 8 months.

Concerned about progress in implementing the title V permitting requirements, the Chairman, House Committee on Energy and Commerce, asked GAO to determine (1) the status of efforts by EPA and states to implement an effective operating permit program and (2) the adequacy of resources budgeted by EPA to manage the title V permit program and the sufficiency of permit fees assessed by state agencies to cover the costs of their programs.

Background

The title V permit program, which represents EPA's most ambitious effort to regulate air quality, significantly expands an earlier federally required permit program that applied only to major new construction or modifications of existing major sources of pollution. Title V, which requires existing and new sources to obtain operating permits, is expected to affect about 35,000 major and 350,000 nonmajor pollution sources. Title V, modeled after EPA's water permit program, is designed to serve as a vehicle for EPA and state agencies to reach agreement with pollution sources on emission limits, control measures, and monitoring requirements. It also requires state agencies to assess fees on permitted sources sufficient to cover the costs of their programs.

EPA is responsible for providing guidance to states on what is required for title V programs, overseeing these programs, and reviewing plans for state programs as well as permits issued by the states. EPA is also responsible for implementing permit programs in any states that do not implement their own programs. States are responsible for implementing their permit programs, issuing permits to pollution sources, collecting fees to cover the costs of their programs, and ensuring that sources comply with permit requirements.

Results in Brief

EPA submitted its draft final permit rule to OMB in October 1991, but discussions with OMB and the Council on Competitiveness delayed issuance of the final rule until July 21, 1992—8 months after the deadline established in the CAAA. The delay in issuing the final permit rule has delayed federal and state implementation of title V's requirements. While waiting to learn what the final rule would require, EPA and states postponed some efforts to implement title V. Furthermore, some state legislatures deferred action on bills authorizing agencies to implement permit programs and collect permit fees. For example, while EPA has provided some guidance on implementing title V to states, additional program and fee guidance that it planned to provide to states in 1992 has not been issued. Consequently, some states will find it difficult to meet the November 1993 deadline set by the CAAA for submitting their permit program plans to EPA. Any delays in meeting the milestones for implementing the permit program will slow efforts to improve air quality, such as adopting control measures, determining emission levels, monitoring emissions, and other requirements.

Evidence suggests that resources for title V permit programs may not be adequate. For example, OMB cut EPA's fiscal year 1992 budget request for 88 staff-years to 60-staff years. In addition, comparison of the staffing proposed for oversight of the air permit program with the staffing currently allocated for comparable oversight of the water permit program indicates that EPA may have understated its fiscal year 1992 air permit needs. Furthermore, although states are directed to assess fees to cover the costs of their permit programs, some states are setting their permit fees below estimated costs in order to make the states more attractive to industry. Such efforts to gain competitive advantages could result in permit programs not meeting all title V requirements because of less than adequate resources.

Principal Findings

EPA and State Agencies Face Problems in Implementing the Title V Permit Program

The 8-month delay in issuing the final permit rule has hindered implementation of the title V permit program. While EPA has provided some guidance and assistance to states on implementing their title V programs, the delay has hampered EPA's efforts to provide more definitive guidance and assistance to states. EPA's guidance for setting permit fees, which was scheduled to be issued in early 1992, will not be available until

1993. The delay also stalled EPA's development of a federal permit program, which some states had planned to use as a model for their own programs. Finally, the delay slowed EPA's development of procedures for assessing the adequacy of state permit programs and the appropriateness of state and local fees.

The delay in issuing the final permit rule has also limited states' implementation of title V programs. Some states waited for the final rule to be issued before developing their program plans. Similarly, certain state legislatures waited for the final rule to be issued before enacting legislation authorizing agencies to fully implement programs and assess fees to cover program costs. Because the final rule was issued after many state legislatures had adjourned in 1992, many agencies will have to wait until 1993 to obtain authority from their legislatures. While some states believe that they may be able to submit their program plans to EPA by November 1993, others doubt that they will be able to meet the deadline.

Certain provisions in the final permit rule have generated controversy that the rule is not consistent with the requirements of the CAAA. For example, the Natural Resource Defense Council and others have sued EPA over the provisions that allow sources to increase emissions above the permitted levels without prior approval or public review. Furthermore, some state title V programs are likely to include more stringent requirements than the title V permit rule requires, and other states will probably include only what the permit rule requires. Because of the lawsuits and the increased time that EPA will need to approve diverse state programs, the implementation of a national permit program may be further delayed.

EPA and State Agencies May Not Have Adequate Resources to Implement the Title V Permit Process

For fiscal year 1992, EPA allocated 60 staff-years to its title V permit program, 40 of which went to regional office permit activities. Agency staffing projections remain at this level through fiscal year 1994, even though the regions' work load for overseeing state programs and reviewing state-approved permits will increase significantly. Officials in EPA's headquarters believe that staff can be redeployed from program guidance and assistance to oversight roles once state programs have been fully implemented. However, regional officials believe that significantly more staff will be needed to implement and manage the title V permit program than will be available from this strategy.

The number of staff-years allocated to EPA's water permit program at the regional level is significantly higher than the number estimated for the air

permit program, even though the projected number of air permits is greater than the number of water permits. Furthermore, some EPA officials believe that oversight of the title V program will be more time-consuming because the permit requirements will be more complex. Although EPA may have to implement permit programs in states that do not implement their own programs, EPA's budget does not provide resources for the agency to assume this responsibility.

Title V requires state agencies to pass on the costs of operating their title V programs to permitted sources through fees based on the number of tons of pollution emitted. Although EPA presumes that fees of \$25 per ton will cover states' program costs, detailed work load analyses by three states show that fees of between \$30 and \$40 per ton will be needed to fully implement their permit programs. However, most states have set their fees at or near \$25 per ton without performing detailed cost analyses. State leaders and industry are applying pressure to keep fees low to give their states a competitive advantage in attracting new industry. State limits on the amount of fees may preclude some states from setting fees high enough to recover program costs. Agencies that do not recover their costs through fees may have to seek additional resources or operate understaffed programs.

Recommendations

To ensure more timely implementation of the title V permit program by states, GAO recommends that the Administrator, EPA, (1) expedite efforts to provide additional guidance for states to use in implementing their title V programs and increase efforts to assist states in obtaining new or additional legislative authority for implementing their programs and assessing fees sufficient to cover their program costs and (2) develop, for inclusion in future budgets, resource estimates that will allow EPA to fulfill its long-term role for overseeing the title V program.

Agency Comments

GAO discussed the information in this report with the Director of EPA's Office of Air Quality Planning and Standards and other EPA officials responsible for title V. They generally agreed with the facts presented. As requested, GAO did not obtain written agency comments on a draft of this report.

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Abbreviations

CAAA	Clean Air Act Amendments of 1990
EPA	Environmental Protection Agency
GAO	General Accounting Office
MACT	Maximum Achievable Control Technology
NRDC	Natural Resource Defense Council
NSR	New Source Review
OAQPS	Office of Air Quality Planning and Standards
OAR	Office of Air and Radiation
OMB	Office of Management and Budget
PSD	Prevention of Significant Deterioration
STAPPA/ALAPCO	State and Territorial Air Pollution Program
ALAPCO	Administrators and Association of Local Air Pollution Control Officials

Introduction

Even though air pollution has been reduced since the passage of the Clean Air Act in 1970, commercial and industrial facilities in the United States continue to emit millions of tons of pollutants into the air annually. Air pollution brings about or aggravates health problems ranging from eye, nose, and throat irritation to bronchitis, emphysema, and other serious lung diseases. Air pollution also causes environmental problems ranging from impaired visibility in many areas of the country to damaged crops, forests, and lakes. Concerned about the effects of air pollution, the Congress enacted the Clean Air Act Amendments (CAAA) of 1990, which expanded the regulatory and control requirements of previous clean air legislation. Title V of the Amendments contained new requirements for EPA and state and local agencies to establish a national permit program.

Before the enactment of title V, federal requirements for obtaining air pollution permits were initiated only by the construction of major new pollution sources or modifications to existing major sources that increased emissions. The requirement for these permits was contained in the Clean Air Act Amendments of 1977. These permits were referred to as New Source Review (NSR) permits in areas that have not attained the national air quality standards and Prevention of Significant Deterioration (PSD) permits in areas that have attained the standards. In contrast to the broad reach of the title V program, existing major sources (generally those with annual emissions of 100 tons or more) did not have to obtain permits unless they were subsequently modified and increased their emissions. Table 1.1 compares the requirements of these federal permit programs with the requirements of title V.

Table 1.1: Comparison of the Title V Permit Program With the New Source Review and Prevention of Significant Deterioration Permit Program

Characteristic	NSR & PSD permits	Title V permits
Permitted facilities	Major new facilities Modifications to major existing facilities	Major sources Affected sources under title IV NSR and PSD sources Sources regulated under sections 111 and 112 Other sources designated by EPA
Purpose of permit	To identify and control emission increases for new sources or modifications of existing major sources	To enforce: Emission standards Control measures Monitoring requirements
Permit renewal	None	Every 5 years
EPA duties	Implement and operate permit programs in non-participating states Exercise oversight of state-administered programs	Assist states with implementing their programs Oversight of program Develop and operate permit programs for states without their own programs Impose sanctions on states that fail to implement their own programs
State duties	Incorporate permit program in State Implementation Plan Issue permits for major new sources and modifications of existing major sources Monitor and enforce permit requirements	Develop permit program Issue permits to sources Monitor and enforce permit requirements
Funding for programs	Funded from section 105 EPA grants, state appropriations, or permit fees	Permit fees required to be collected to cover all program costs

Title V significantly expands the number of sources requiring federal permits by stipulating that all major pollution sources, as well as other designated sources, obtain operating permits which EPA and state and local agencies will use to ensure that sources comply with the requirements of CAAA, that their emissions do not exceed pollution standards, that they use monitoring equipment to determine emission levels, and that they report

monitoring results, as well as meet a number of other requirements. In addition to the federally required permits before enactment of the CAAA, over half of the states had their own operating permit programs ranging from comprehensive programs that permitted most pollution sources in the states to very limited programs that required only a few facilities to be permitted. The remaining states had no permit programs before title V except for federally required NSR and PSD permits.

The title V air permit program was modeled after EPA's ongoing water permit program. However, according to EPA officials, the permits issued to sources under title V will generally be more difficult to administer than water source permits because they are larger, more complex, and oftentimes emit numerous pollutants. Title V permits will also provide a mechanism for incorporating and enforcing all provisions of State Implementation Plans—key documents that set forth EPA's and states' strategies for improving air quality—that are applicable to stationary pollution sources. Title V further requires states to submit plans for implementing their permit programs to EPA, and it requires EPA to approve and oversee these programs. State agencies are, in turn, required to develop their own permit programs, issue permits to thousands of individual pollution sources, ensure compliance with permit requirements, and collect permit fees to cover the costs of their programs.

Even though implementation of title V is in the early phases of a multiyear effort, EPA and state agencies have begun to develop a national air permit program that will initially require about 35,000 major pollution sources to be permitted. Permits for nonmajor sources are also required, but the time frames for them have not yet been established. Implementing title V will also affect three other titles under the CAAA by requiring permits for sources regulated under these titles. It will also augment efforts by EPA and state and local agencies to implement the requirements of these titles. Specifically, title I sets specific dates and goals for reducing pollution levels in all areas that have not yet attained national air quality standards; title III requires EPA to establish emission control standards for 189 toxic substances; and title IV requires significant reductions in pollutants that contribute to acid rain.

Implementing a National Air Permit Program

Title V required EPA to issue an operating permit program rule by November 15, 1991. This rule was to identify the minimum elements of a state permit program. The rule was published in the Federal Register on July 21, 1992, as part 70 of title 40 of the Code of Federal Regulations.

Under title V, EPA is further responsible for implementing title V permit programs for the state agencies that do not implement their own programs. In anticipation of having to implement some state programs, EPA plans to develop and publish a federal permit program rule by November 1994 as part 71 of title 40 of the Code of Federal Regulations. Title V also requires EPA to (1) review and approve state permit program plans, (2) maintain oversight of these programs, and (3) review permits issued by the states and veto ones that do not meet the requirements of the Clean Air Act.

Title V requires state agencies to issue permits to all major sources within 3 years after EPA approves the agencies' permit programs and to reissue the permits every 5 years thereafter. In issuing permits, states are to (1) ensure that the permits comply with applicable CAAA standards and control measures, (2) give the public an opportunity to comment on each proposed permit, and (3) ensure that sources report monitoring results. Furthermore, state agencies are required periodically to inspect permitted facilities to ensure they are complying with all requirements in the permit.

Resources for Implementing Air Permit Program

The budget process of the Office of Air Quality Planning and Standards (OAQPS) begins with meetings of its Long-Range Planning Committee, which is comprised of OAQPS, regional, and state officials who rank air program responsibilities and estimate future resource needs for these programs. Subsequently, top EPA managers decide what overall resources EPA will include in its budget request to the Office of Management and Budget (OMB), and OMB subsequently decides what overall resources EPA will include in its budget request to the Congress for programs such as permitting. Even though EPA will need significant resources to adequately implement and oversee the national air permit program, the program must compete for funding with other EPA programs.

Title V requires state agencies to collect fees from all permitted pollution sources sufficient to cover the full cost of implementing and administering the agencies' permit programs. State fees can vary, but aggregate revenues generated by these fees must cover all of the costs of state title V permit programs. While title V suggests a fee of \$25 per ton, states can set lower fees if they can demonstrate that the lower fees will cover title V program costs. The fee should cover reasonable costs, including those incurred in preparing regulations, processing permit applications, ensuring compliance with permit requirements, inspecting permitted sources,

preparing modeling and demonstration projects, preparing emissions inventories, and tracking emissions.

Objectives, Scope, and Methodology

Concerned about progress in the implementation of title V permit requirements, the Chairman, House Committee on Energy and Commerce, asked us to evaluate EPA's and state agencies' efforts to implement a national air permit program. Specifically, we were to determine (1) the status of efforts by EPA and state agencies to implement an effective operating permit program and (2) the adequacy of the resources budgeted by EPA to manage the title V permit program and the sufficiency of permit fees assessed by state agencies to cover the cost of their programs.

At the national level, we interviewed EPA officials from OAQPS in the Office of Air and Radiation (OAR) in Durham, North Carolina, and the Office of Program Management Operations in the OAR in Washington, D.C. From officials in these offices we obtained documentation and budget data related to implementing the title V permit program. Specifically, we assessed EPA's progress in (1) meeting title V's milestones and requirements for implementing and overseeing a national permit program and (2) providing guidance and assistance to state and local agencies. We also interviewed officials from the Office of Wastewater Enforcement and Compliance in the Office of Water, Washington, D.C., to obtain information about the water permit program and to discuss the comparability of the air and water permit programs. We obtained information on the number of air permits that are expected to be issued and the number of water permits that EPA currently issues or oversees. We reviewed EPA's process for identifying its resource needs for title V, including the steps in the process and the involvement of EPA top management and OMB. Additionally, we obtained budgeted and projected resource and staffing data for EPA's water permit program.

At the regional level we contacted EPA's Region I in Boston, Massachusetts, and Region IV in Atlanta, Georgia, to obtain program and budget information similar to that which we had acquired from the headquarters offices. We selected Region I because two of the six states in the region did not have permit programs before the enactment of title V. We wanted to determine whether the region would need to do more to assist these states in implementing their programs than for states with existing programs and whether it expected to have to assume responsibility for implementing any of the programs in these states. We selected Region IV because it was the lead region that has worked closely with OAQPS in

implementing title V and in determining what guidance and assistance to provide to state and local agencies. Region IV officials also participated in long-range planning meetings to project EPA's current and future resource needs for implementing title V.

At the state level we interviewed officials of the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) in Washington, D.C., to discuss their views on title V and to obtain an understanding of states' reactions to and progress in implementing title V. STAPPA/ALAPCO has conducted a number of surveys of state and local air pollution control agencies to determine the overall status of their permitting activities. We obtained copies of these survey reports and reviewed responses to the surveys to assess the agencies' progress in implementing permit programs. On the basis of our review of the STAPPA/ALAPCO survey responses and comments from EPA officials, we selected eight states to visit. Four of the states—North Carolina, Mississippi, Texas, and Wisconsin—had existing permit programs whose requirements paralleled many of title V's; four states—Massachusetts, Missouri, Virginia, and West Virginia—had no operating permit program before the CAAA's enactment except for the federally required permits.

In states with programs, we interviewed responsible officials to compare the scope of their programs to that of the title V permit program, to determine what legislative authority they currently have or will need to fully implement title V, and to learn whether they would be able to meet all of the title V requirements by CAAA's deadlines. We also obtained information on the number of permits to be issued and the resources to be expended for their programs. Additionally, we determined what fees the state programs currently charge and whether the states will be able to charge large enough fees to cover the costs of their programs. Finally, we discussed with officials what guidance and assistance they have received from EPA for implementing title V and what additional help they would like to receive.

In the states that did not have state operating permit programs before CAAA's enactment, we interviewed officials who will be responsible for implementing a permit program to determine whether their states have legislative authority to implement title V and, if not, when they are likely to get the authority. We also determined the progress that these states have made in implementing their title V programs and whether they would be able to meet all of the title V requirements by the CAAA's deadlines.

Furthermore, we determined whether the states are currently charging fees and whether they will be able to charge fees large enough to cover the costs of their programs. Finally, we discussed with officials what guidance and assistance they have received from EPA for implementing title V and what additional help they would like to receive.

We contacted the following state agencies:

- North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management.
- Mississippi Department of Environmental Quality, Bureau of Pollution Control.
- Texas Air Control Board.
- Wisconsin Department of Natural Resources, Bureau of Air Management.
- Massachusetts Department of Environmental Quality Engineering, Division of Air Quality Control.
- Missouri Department of Natural Resources, Division of Environmental Quality, Air Pollution Control Program.
- Virginia Department of Air Pollution Control.
- West Virginia Air Pollution Control Commission.

To obtain a broader perspective on states' reactions to specific provisions of the permit rule and an understanding of their progress in implementing their permit programs, we attended workshops and conferences sponsored by EPA and STAPPA/ALAPCO pertaining to implementing title V in San Francisco, California; Cambridge, Massachusetts; and Estes Park, Colorado. Additionally, we attended two workshops sponsored by private organizations in Research Triangle Park, North Carolina, and Vienna, Virginia, to gain a better understanding of states' reactions to specific provisions of the permit rule as well as of industry's reaction to title V and the rule.

We conducted our work between November 1991 and October 1992 in accordance with generally accepted government auditing standards. We discussed the factual information in the report with EPA officials including, the (1) Director, Office of Air Quality Planning and Standards, Office of Air and Radiation; (2) Director, Office of Program Management and Operations, Office of Air and Radiation; (3) Director, Air Management Division, EPA Region I; (4) Director, Air, Pesticides, and Toxics Management Division, EPA Region IV; and (5) Director, Permit Division, Office of Wastewater Enforcement and Compliance, Office of Water. They generally agreed with the facts presented. In some cases, the officials

provide additional details which we have included, as appropriate. However, as requested, we did not obtain written agency comments on a draft of this report.

EPA and States Face Problems in Implementing the Title V Permit Program

The 8-month delay in issuing the final permit rule was caused by EPA's discussions with OMB and the Council on Competitiveness on the content of certain provisions of the final permit rule. The provisions at issue caused controversy between EPA, state and local agencies, affected sources, and environmental groups and also resulted in lawsuits being brought against EPA. More importantly, however, the delay in issuing the final permit rule has hindered the development of a national air permit program. It has slowed EPA's efforts to provide guidance and assistance to states, establish procedures for assessing state programs, and develop a federal permit program for EPA to use in implementing permit programs in states that do not implement their own programs. It has also delayed the development of state permit programs in some states that waited for EPA to provide guidance and to design a federal program that they could use as a model for their state programs. According to state officials, the delay in issuing the final rule also caused some state legislatures to defer action on legislation authorizing states to implement title V programs and to assess fees to cover program costs. In states whose legislatures adjourned without enacting authorizing legislation before the final rule was issued, further action to obtain the necessary legislative authority will not occur until 1993. For some or all of these reasons, some states are likely to miss the November 1993 deadline for submitting their program plans to EPA for approval.

Also, as a result of states' dissatisfaction with the minimum federal requirements in the final permit rule, some state title V programs are likely to vary in the requirements they include; some may have more stringent requirements than the title V permit rule requires. Because diversity in state programs will likely require more time and effort for EPA to oversee these programs, the implementation of a national permit program may be further delayed.

Discussions About the Permit Rule Delayed Its Issuance for 8 Months

Title V required EPA to issue the permit rule by November 15, 1991. EPA submitted a draft of the final rule to OMB for review on October 21, 1991. Discussions were held among EPA, OMB, and the Council on Competitiveness over a number of provisions in the rule. The final permit rule was published in the *Federal Register* on July 21, 1992, as part 70 of title 40 of the Code of Federal Regulations—8 months after it was due.

Two of the more controversial provisions of the draft permit rule were the requirements for permitted sources to (1) obtain prior approval before increasing emissions and (2) provide an opportunity for public review

before making such changes. However, after numerous meetings with OMB and the staff of the Council on Competitiveness, EPA decided to change these provisions in the final rule to allow sources to increase emissions above the permitted levels in certain instances without (1) prior approval or (2) public review of the proposed emissions increases. Because of the controversy over these provisions, EPA sought and received a legal opinion from the Department of Justice, which supported EPA's discretion to make these changes to the final permit rule.

These provisions in the final permit rule generated controversy among environmental groups, state and local agencies, affected sources, and others. Environmental groups have challenged the provisions as being inconsistent with certain requirements of CAAA. On August 11, 1992, the Natural Resource Defense Council and two other environmental organizations filed suit asking the court, among other things, to invalidate the rule because it allows sources to increase emissions without public notice. For the same reason, states are also dissatisfied with the rule. Additionally, an organization representing 25 major corporations has sued EPA over the permit rule. EPA is hopeful that these suits will not affect its efforts to help states implement their permit programs. However, some EPA officials believe that responding to the suits may further delay EPA's efforts to assist states in obtaining adequate legislative authority to implement title V permit programs and to provide assistance and guidance in implementing their programs.

EPA Faces Difficulties in Implementing the Title V Permit Program

The 8-month delay in issuing the final permit rule had adverse effects on EPA's and states' efforts to implement the national air permit program. Because of the delay EPA has been hampered in its efforts to provide guidance to state and local agencies on implementing their title V programs. Furthermore, EPA has postponed its plans to develop a federal permit program for implementing title V programs in the states that elect to not implement their own programs. Additionally, the delay has slowed EPA's development of procedures for reviewing and approving title V permit programs submitted by state and local agencies.

EPA Has Been Hampered in Providing Guidance to States

The delay in issuing the final rule slowed EPA's development and provision of definitive guidance to states, although EPA has provided them with some assistance. For example, even before the final rule was issued, EPA helped states determine what legislative authority they would need to implement their title V permit programs. EPA also commented on the adequacy of

states' legislative proposals for obtaining new or additional authority to implement programs or charge fees for permits.

Shortly after the final rule was issued, EPA provided some implementing guidance to agencies through conferences and workshops. In conjunction with STAPPA/ALAPCO, EPA sponsored three conferences between August and October 1992 to explain the requirements of the final permit rule to state and local agencies and to provide guidance on implementing permit programs. EPA also met with state and local officials in September 1992 at the annual STAPPA/ALAPCO meeting to explain the final permit rule. In addition, two private organizations, with assistance from EPA permit staff, sponsored workshops on the requirements of the permit rule and steps for implementing permit programs: The Air and Waste Management Association¹ sponsored two 2-day workshops in August and October 1992, and the Air Quality Week² sponsored a 2-day conference in September 1992. Each workshop addressed the major topics related to implementing and managing a title V permit program. EPA regional officials also plan to hold workshops and training courses for state officials. Although EPA has reviewed legislative and administrative requirements with some states and has begun to identify eligible program costs, its plans to develop and issue more guidance have been postponed. According to OAQPS officials, EPA had planned to provide formal program and fee guidance to agencies early in 1992, but because of the delay in issuing the final permit rule, it still has not done so. In late 1991, however, two EPA regions issued the results of two studies to help states within their jurisdictions determine which air program costs would be allowable under title V permit fees and the costs associated with these activities. One study classified the costs of air program activities as (1) required for inclusion, (2) eligible for inclusion, or (3) ineligible for inclusion under title V. The second study identified permit tasks that could be included in a title V program and a method for estimating the number of staff hours needed to accomplish these tasks. As of September 24, 1992, officials that we contacted in another region were unaware of the studies. Furthermore, the results of the studies had not been widely disseminated to the states that we contacted. However, according to OAQPS officials, EPA plans to consider the information from these two studies when it develops formal fee guidance for states in 1993.

¹The Air and Waste Management Association is a nonprofit technical and educational organization that provides a neutral forum for all viewpoints related to environmental issues.

²The Air Quality Week is a weekly publication on issues related to air quality for federal, state, and local air program managers, regulated industries, and others.

According to EPA, a significant amount of program and fee guidance is already available in the preamble of the final permit rule and other guidance will soon be available to states. For example, EPA believes that the preamble to the final permit rule is a good source of guidance for developing permit programs and setting fees. EPA also believes that its model EPA-state implementation agreement, which it plans to finalize in early 1993, will help to formalize its guidance to state agencies. Moreover, in addition to the formal fee guidance that EPA had planned to issue in early 1992 and now plans to issue in 1993, EPA is preparing a number of guidance documents, which it plans to issue in 1993, including model permits and checklists for states to use in reviewing permit programs and permit applications.

**EPA Postponed
Development of a Federal
Permit Program**

Under title V, EPA must implement and manage federal permit programs by November 1995 in state agencies that do not have approved programs. To prepare for assuming this responsibility, EPA had planned to develop a federal permit program rule and issue it in May 1992 as part 71 of title 40 of the Code of Federal Regulations. However, agency officials postponed action on this rule because they did not believe that they could commit themselves to a federally administered program until they knew all of the final permit rule requirements. EPA officials also stated that they did not need to develop the federal program rule at this time, since EPA will not have to assume responsibility for implementing state programs until 1995 at the earliest.

According to OAQPS officials, although the need for EPA to assume responsibility for implementing a title V program will be minimal even after the November 1995 deadline, they plan to issue a federal permit program rule by this date. Some EPA officials see a need for a federal permit program in the future. OAQPS' Long-Range Planning Committee estimated in January 1992 that between 5 and 10 states would not have approvable title V programs by fiscal year 1996. Other EPA officials believe that EPA will not have to implement and manage state programs because a combination of incentives and sanctions will motivate states to establish their own programs. For example, these officials noted that states can cover the cost of their title V programs by assessing permit fees. Furthermore, EPA has the authority under the CAAA to withhold highway funding and impose restrictions on the construction or modification of major stationary sources if states do not implement the required permit programs. EPA officials believe that state agencies will implement their own programs to avoid such sanctions.

If EPA implemented a federal permit program before states are required to develop their own programs, it could serve as a model for state and local agencies. According to some EPA regional and state officials, the existence of such a model would expedite states' development of permit programs and also promote consistency among state programs. EPA regional officials also believe that state programs modeled after the federal program would be easier to review than programs developed independently by state agencies.

EPA Has Been Slowed in Developing Review Procedures

EPA has not yet developed procedures for determining the adequacy of agencies' permit programs and approving their program plans because of the delay. Whereas state agencies are responsible for implementing and managing their own permit programs, EPA is responsible for overseeing the entire title V program. Hence, EPA is required to approve each agency's permit program plan to ensure that it meets all title V requirements. Additionally, EPA is required to review permits and veto those that do not meet the requirements of CAAA or state implementation plans. As of October 1992 EPA was drafting procedures for reviewing and approving state and local permit program plans. According to EPA officials, these procedures will not be needed until 1993, when states begin submitting their plans for EPA's approval. However, state officials believed that procedures such as these would be useful to them in preparing their permit program plans. Furthermore, EPA has requested that states submit their permit program plans earlier than the November 1993 deadline so that EPA will not be overwhelmed by all program plans being submitted at one time. Given EPA's desire to have states submit their program plans early, it becomes even more important for EPA to finalize its procedures for reviewing state programs as soon as possible.

Good procedures for reviewing program plans are necessary to ensure that agencies establish good programs that issue permits consistent with the requirements of the permit rule. According to EPA, ensuring that states establish good permit programs will limit the need for EPA oversight. OAQPS officials estimate that 75 percent of the state agencies will implement good, viable programs whose permits will generally require less detailed review than permits issued by states without good programs. Furthermore, EPA issued a draft of its EPA-State Implementation Agreement guidance in October 1992 that establishes the policies, responsibilities, and procedures for EPA and state agencies to follow in administering title V. According to EPA, the final guidance should be issued during the spring of 1993.

States' Implementation of Title V Programs Has Been Delayed

Some states waited to develop their permit program plans until the final permit rule was issued. Some states also waited for guidance from EPA to begin responding to title V's requirements. In addition, many state legislatures waited to enact authority for agencies to implement programs until the final rule was issued and all requirements were known. Now, for a variety of reasons—including the complexity of the permit rule, the demands of state administrative requirements, and the timing of legislative sessions—some states doubt that they will meet the November 1993 deadline for submitting their permit program plans for EPA's approval.

Delays Have Hampered States' Efforts

Delays in EPA's preparation and provision of guidance and development of a federal permit program have hampered states' implementation of permit programs. Some state officials have expressed concern about EPA's delays in providing guidance on designing their programs and determining program costs and have cited the impact of these delays on their efforts to meet title V's requirements. Even though EPA believes that the preamble to the final permit rule is an important source of program and fee guidance, some state officials have found the preamble complicated and confusing. State officials have indicated that they would like to have more definitive guidance, including step-by-step procedures and checklists of the requirements for a complete program. This definitive guidance appears to be what EPA plans to provide in 1993. Furthermore, some state officials said that it would have been good to model their own programs after the federal permit program. They still believe that EPA's completion of the federal program would assist their efforts. EPA and some states differ in their views of what constitutes adequate guidance.

Some States Do Not Expect to Meet the 1993 Deadline

Even before the final permit rule was issued, some states began to develop title V programs. However, two of the four states we contacted that have existing permit programs are doubtful that they will meet the November 1993 deadline for submitting their program plans to EPA. Texas and Wisconsin, for example, began developing their title V programs months before the final rule was issued but doubt that they will meet the deadline. Texas officials estimated that the final permit rule would have to be issued by May 1992 because they must comply with lengthy state administrative requirements for finalizing a regulation, including requirements for soliciting public comments and conducting public hearings. North Carolina faces similar requirements in finalizing its permit regulations, but officials are hopeful that they will meet the deadline.

States that did not have operating permit programs before title V generally waited for the final permit rule to be issued before starting to develop their permit programs. Officials whom we contacted from four states believed that it would be very difficult for them to meet the November 1993 deadline. West Virginia, for example, waited for the final permit rule, and as of July 1992 a state air quality official did not know when the state's program plan would be ready for submission to EPA, but he was certain that it would not be by November 1993. Massachusetts and Virginia officials also wanted to wait for the final permit rule to be issued, but with the continued delay, they started developing a title V program in April 1992 and June 1992, respectively. Officials in both states still believe that they will have difficulty meeting the November 1993 deadline.

Delays in states' meeting the November 1993 deadline for submitting their programs to EPA will further delay EPA's approval of their title V programs. EPA has stated that if it does not receive some state program plans before November 1993, it will have difficulty reviewing and approving all state plans by the November 1994 deadline. EPA has encouraged states to submit their program plans early, but the delays in EPA's issuing the final rule and providing guidance, as well as the delays in states' obtaining legislative authority, have increased the possibility that states will be unable to comply with EPA's request. Furthermore, delays beyond the November 1994 deadline for EPA to approve all state programs will further postpone implementation of the national permit program.

Delays Have Hampered Efforts to Obtain Legislative Authority

The delay in issuing the final rule has hampered some states in obtaining adequate legislative authority to fully implement title V programs because legislatures were reluctant to enact legislation without knowing all of the requirements of the final rule. Such states will need to enact additional legislation to ensure that they can meet all of the requirements of the final rule. According to an August 1992 EPA survey of state agencies, 37 states need new or additional legislative authority to adequately implement their title V programs. Furthermore, a February 1992 STAPPA/ALAPCO survey of state and local agencies showed that 58 percent of the state agencies and 54 percent of the local agencies that responded needed legislative authority to assess permit fees. According to EPA officials, the regional offices have been working actively with states to identify and obtain any additional legislation that they need.

Although EPA encouraged states to pass general legislative authority to implement title V programs and assess fees, some legislatures were

reluctant to enact permitting legislation until the final rule was issued. Therefore, some states will still need to obtain additional legislative authority before they can implement title V. North Carolina, for example, had much of the legislative authority that it needed but had to obtain some additional authority to satisfy all of the title V requirements. Specifically, North Carolina's legislation had to be amended to allow third parties to appeal permitting decisions made by the state, grant EPA veto authority over permits issued by the state, and give the state more than 90 days to review permit applications. However, North Carolina delayed asking the state legislature for the additional authority until after the final permit rule was issued, because changes to the proposed rule might have resulted in the need for additional legislative changes. Therefore, by the time the final rule was issued, it was too late in the 1992 legislative session for the legislature to consider these changes to the state statute. North Carolina officials said that they would ask the state's 1993 legislature to enact additional legislative authority in these areas.

Provisions in the Final Permit Rule May Result in Diverse State Programs and Increase the Need for EPA Oversight

Like environmental organizations, some states are dissatisfied with the final permit rule and will therefore, according to the Executive Director of STAPPA/ALAPCO, include in their permit programs more stringent requirements than the final permit rule specifies. Some state officials whom we contacted confirmed that they would implement programs whose requirements were more stringent than those in the final rule. According to state officials, the changes would lead to diverse state programs. Because of this, EPA will need more time to review and oversee the programs than if all state programs included similar requirements.

The creation of diverse state programs would also work against the establishment of a uniform national air permit program, which industry envisioned as a benefit of title V. However, since the issuance of the final rule, industry officials have expressed concern about the possibility of inconsistencies among state and local programs and the extra work required for similar plants to comply with different state standards. For example, a representative responsible for preparing permit applications for one industry with facilities in nine states expressed his concern about the diversity of the permit program requirements among the nine states.

Title V required EPA to issue minimum requirements for a state permit program, but it also specifically authorized states to establish additional program requirements. Thus, according to agency officials, states would have developed different programs, regardless of what requirements were

included in the final rule. EPA regional officials acknowledge, however, that different state programs will require more time to review and oversee than consistent programs that generally include the same requirements.

Conclusions

While title V established objectives and milestones for implementing a nationwide permit program, a time-consuming debate within the executive branch over the final permit rule's requirements hampered EPA's implementation efforts. The 8-month delay in issuing the final rule slowed EPA's development and provision of guidance to state and local agencies, as well as EPA's development of a federal permit program that agencies could use as a model for their own programs. The controversial provisions in the final permit rule will result in diverse state programs that will require EPA to perform more extensive reviews of programs to ensure that they comply with all title V requirements.

The delays in issuing the final permit rule and providing guidance to agencies are more likely to affect the implementation of permit programs in states that do not have existing permit programs than in those that do because these states lack permit programs to build upon or the experience of operating such programs. Additionally, these states are less likely to meet the November 1993 deadline for submitting their programs plans. Therefore, EPA is very unlikely to complete its review and approval of all state permit programs by November 1994. Furthermore, states that do not obtain the legislative authority to issue permits and assess fees will not be able to implement their own programs, and EPA will have to assume this responsibility in November 1995. Overall, the longer it takes for EPA and states to implement a national title V permit program, the more impact the delay will have on efforts to improve the nation's air quality.

Recommendations

We recommend that the Administrator, EPA, expedite efforts to provide additional guidance for state agencies to use in implementing their title V permit programs. Furthermore, EPA should increase its efforts to assist states in obtaining additional legislative authority for implementing their permit programs and for assessing fees sufficient to cover the costs of their programs. We also recommend that EPA give priority to issuing the federal permit program rule earlier than November 1994 to provide a model for state and local agencies that are implementing new programs.

EPA and States May Need Additional Resources to Implement Title V Permit Programs

Even though EPA has increased funding for the title V air permit program and projects some increases in future years, it appears that the projected funds will fall short of the resources needed to implement and oversee the national program. The shortfall will limit EPA's ability to oversee state permit programs; as a result, potential improvements in the nation's air quality may not be realized. Furthermore, EPA has not considered the resources that it will need if some states do not implement their title V programs and it has to assume responsibility for implementing programs in these states. While state agencies recognize that the cost to implement and manage their title V programs will be significant, some state agencies have made little or no progress in identifying costs for inclusion in their permit fees or in quantifying these costs. Additionally, political and economic constraints may prevent state and local agencies from recovering the full cost of their permit programs through fees.

Resource Estimates for EPA's Role in Title V May Be Understated

OAQPS develops current and long-term resource estimates for implementing and overseeing the title V program, which it submits to OAR. Subsequently, on the basis of its ranking of all of its program requirements and anticipation of what OMB will allow, OAR adjusts these estimates and submits its budget estimates to OMB. OMB has generally reduced these estimates before submitting them to the Congress. Even though title V is modeled after the water permit program, EPA has not drawn upon its experience with this program to project resource needs for the title V program. Furthermore, EPA has not taken into account the significant increase in the number of air toxic sources that will need operating permits beginning in 1994 and will, in turn, increase EPA's work load for overseeing state and local permit programs. Additionally, the uncertainty of how many state permit programs EPA will have to implement also raises concerns about the adequacy of resource estimates for future years.

Shortfalls in EPA Resources for Implementing the Title V Permit Program

Budget estimates by EPA officials responsible for the agency's permit program have generally been reduced by top EPA management and OMB. For example, OMB cut EPA's title V budget request for fiscal year 1992 from 88 to 60 staff years. According to OAQPS officials, EPA top management usually reduces its budget estimates before submitting them to OMB. If similar cuts by OMB occur in future years, EPA will face significant problems in adequately overseeing state title V permit programs.

During the January 1992 meeting of OAQPS' Long-Range Planning Committee, concerns were raised about the impact of understated budget

estimates and the adequacy of resources available for the title V permit program. Committee officials questioned the adequacy of EPA's projected resource needs for the next 5 years. Although projections for future years are not actual budget requests and are subject to change, they are the best available information that EPA has at this time. The committee cited a number of tasks that may not have sufficient funding, including developing permit guidance for states; conducting workshops for regional, state, and local staffs; reviewing state and local permit programs and permits; and developing test and monitoring methods for title V permits. Furthermore, because of concerns about the adequacy of resources projected for regional oversight—reviewing permits, enforcing permit requirements, and operating state permit programs—representatives of the Long-Range Planning Committee recommended to EPA a significant increase in the staff years allocated to regional offices beginning in fiscal year 1995. According to OAQPS officials, EPA's strategy for meeting the shortfall in title V program staffing is to redeploy the staff currently involved in planning the program and developing guidance to carry out oversight activities once the program is fully implemented. However, in our opinion EPA's future oversight responsibilities will be significantly greater than its current work load; therefore, the strategy of redeploying staff will not meet these needs.

EPA regional offices will be primarily responsible for overseeing state title V permit programs and reviewing permits approved by state and local agencies. Title V requires states to submit each permit application and state-approved permit for EPA's review and for EPA to veto any permits that do not meet Clean Air Act requirements. EPA is projecting that 65 staff years will be required by the regional offices for the oversight of state title V programs for fiscal year 1996. These resources would provide an average of 6.5 staff years for each of the 10 regional offices. However, regional officials believe that the 65 staff years will allow them to review only a small percentage of the permits. In fact, the air permit program manager in Region IV estimated that 22 staff years will be needed annually in that region for oversight in fiscal years 1994-96.

Permit officials in two regions are projecting that they will be able to review only 5 to 10 percent of the permits in their regions. The Long-Range Planning Committee also estimated that projected resources would allow the regional offices to review only 6 percent of the permits approved by states and questioned whether this level of review would provide sufficient oversight of the state and local permit process. According to OAQPS officials, ensuring that states develop thorough and complete permit programs will make it unnecessary for EPA to review all permits approved

by state agencies. Rather, they believe that 5 to 10 percent of the more complex and controversial permits will need to be reviewed and that the others will need to be screened only for completeness. According to EPA, because of the expected length of most permits, about 1 staff day will be required to screen an average permit; a detailed review would require about 2 weeks. Our computations show that, with the 6.5 staff years projected for fiscal year 1996, Region IV would be able to screen about 1,225 of the estimated 1,500 newly issued permits each year. Therefore, if all of the region's staff time is devoted to screening permits, there would be no opportunity to perform detailed reviews of any of the permits or to perform any of the other regional oversight tasks.

EPA's Air Permit Program
Appears Underfunded
Compared to Its Water
Permit Program

The Congress noted similarities between EPA's air and water permit programs and modeled the air program after the existing water program. However, EPA is projecting significantly fewer resources for the air program than are currently budgeted for the water program. Although the two programs are not identical, EPA's responsibilities for administering the programs are similar. Both require EPA oversight, renewable operating permits, emissions monitoring, and enforcement measures to ensure source compliance. Given these similarities, a permit program official in one regional office we contacted believes that resource and work load information from the water permit program can be used as a basis for projecting resource needs for the air permit program. Water permit program officials also believe that the similarity between the two programs offers an opportunity to use the budget experience of the water permit program to project resource needs for the air permit program.

Some EPA officials disagree about the relative complexity of the air permit program in comparison with the water permit program. EPA officials at the January 1992 meeting of the Long-Range Planning Committee stated that the air program will be more complex than the water program. According to some OAQPS officials, title V permits are expected to be larger, more complex, and more difficult to administer than water permits, principally because permitted air sources will have a larger number of emission points. In contrast, other OAQPS officials believed that the air permits would be less complex, because in many cases a title V permit will consolidate in a single permit all of the existing applicable requirements that apply to a source.

Although EPA officials acknowledge the similarity between the water and the air permit programs, EPA's budget projections for the air permit

program do not appear to consider work load and resource information from the water permit program. According to OAQPS officials, air permit program officials contacted budget officials in the water permit program about the resources dedicated to the water permit program, but budget information was not used in projecting resource needs for the air permit program, because air permit officials believed that air permits would require more oversight than the water permit program. EPA's budget projections for implementing a title V permit program fall significantly short of the current budget for the water permit program. According to EPA's current budget projections for fiscal year 1996, EPA's Region IV would have about 6.5 staff years for overseeing eight state permit programs, reviewing air permits, and ensuring that sources comply with permit requirements. This staffing level represents about one-third of that currently being used to perform a comparable work load for the region's water permit program.

Issuing Permits for Toxic Sources Will Increase EPA's Resource Needs

More than 10 percent of the 35,000 major pollution sources that must be permitted are toxic sources³ that emit or have the potential to emit 10 or more tons of a single pollutant or 25 tons of two or more pollutants. While implementation of the toxics program will be phased in over several years, the permitting of these sources is a significant part of the title V permit program. In June 1991 we reported⁴ that EPA may be unable to develop MACT standards⁵ for all 189 of the toxics identified in title III within the scheduled dates, because its budget requests for the toxics program are significantly lower than what the program office estimates to be needed. Even though permits will have to be issued for these sources, the permit requirements will be very limited until after EPA develops the MACT standards for these toxics. However, as the MACT standards are developed and incorporated into the permits for these sources, EPA's oversight responsibilities will also increase, thus causing increased resource needs.

States are required to establish their own MACT standards if EPA fails to meet the deadlines for setting federal MACT standards. Officials in some of the states we contacted were concerned about the uncertainty of the toxic permitting issue and EPA's ability to issue the MACT standards by the dates

³The Congress identified 189 toxic pollutants in title III of the CAAA for which EPA must establish emission standards to control or reduce the emissions.

⁴EPA's Strategy and Resources May Be Inadequate to Control Air Toxics (GAO/RCED-91-143, June 26, 1991).

⁵Maximum Achievable Control Technology standards identify the types of controls that toxic pollutant sources must use to reduce emissions to the lowest possible amounts.

prescribed in the CAAA. Issuing permits for the thousands of major toxic sources and many of the 350,000 nonmajor sources, many which emit toxics, will have a tremendous impact on EPA's and states' efforts and resources to implement title V.⁶ However, because of states' uncertainty about how many toxic sources will have to be permitted, it is difficult to determine what EPA's resource needs will be for implementing the toxics portion of the title V program. Because MACT standards are just being developed and the emissions and numbers of toxic sources are still being identified by some states, the work load for the activity is not as clear as for other major pollutant permits. Therefore, given the importance of permitting toxic sources, EPA may not be adequately estimating the resources it will need to review and oversee these permits.

EPA Has Not Planned for Resources to Implement Unapproved State Programs

EPA's budgeting process has not included resource estimates for implementing federal permit programs in any states that do not implement their own title V programs. Even though EPA will be able to collect fees from permitted sources once it begins issuing permits in these states, it will still have to bear the initial cost of implementing the programs. As noted in chapter 2, EPA officials believe that the opportunity to assess fees and the threat of sanctions will encourage state and local agencies to implement their own title V permit programs. However, in its January 1992 meeting, OAQPS' Long-Range Planning Committee estimated that 5 to 10 states would not have approvable title V programs by the November 1995 deadline, when EPA would have to assume responsibility for implementing such programs. Furthermore, we believe that some states may not implement a permit program because the permit fees that the states would be allowed to collect might be too low to support their permit programs.

Some Permit Fees May Not Cover States' Program Costs

Cost estimates performed by some states indicate that states will also face problems in funding their permit programs. Three of the four states with permit programs that we visited have completed cost analyses showing that their current air programs will need to be expanded significantly to implement title V. However, even these estimates may be low because these states currently have limited toxic source permit programs and cannot accurately project their future needs in this area. Officials from two of these states say that they are under pressure from their legislatures and industry to limit the costs that they include in these analyses. Additionally, many states have not obtained legislative authority to assess fees. Many

⁶Even though EPA will have to issue standards for these nonmajor sources in the next 3 to 8 years, permits for these sources will not have to be issued until the second 5-year cycle, which could begin as early as mid-1998.

state agencies have adopted the \$25 per ton of emissions presumptive fee set by the Congress in title V because of economic and political pressure to keep fees low, even though officials do not consider this fee adequate to fund their programs. As part of its responsibility for approving state permit programs, EPA is responsible for ensuring that states' permit fees are sufficient to support their title V programs.

**States' Costs of
Implementing Title V Will
Be Significant**

EPA has a central role in the implementation of title V; however, individual state permit programs will be the backbone of the national permit program. State agencies will be responsible for issuing permits and ensuring compliance with them. In developing their title V permit programs, states must identify the resources that they will need in order to perform these different tasks. Four of the eight states that we visited have identified the costs of their permit programs. These states have analyzed work loads and projected the resources and staff that they will need for their title V programs, which will greatly expand their current air permit programs. For example, Texas' permit program costs are expected to increase by nearly 300 percent when title V is fully implemented, from the current level of about \$15 million to about \$42 million, or \$30 to \$35 per ton. North Carolina established a Clean Air Act Advisory Council to assist in developing all programs necessary to implement the CAAA of 1990, to include determining the cost of the state's title V program and setting its permit fees.⁷ After 9 months and numerous meetings, the council concluded that the annual cost of North Carolina's title V program would be \$12 million, or \$36 per ton. Wisconsin performed a detailed task analysis showing that title V requirements increased the state's resource needs from \$9 million to about \$18 million. Wisconsin officials estimate that the state's permit fees will need to be set between \$35 and \$40 per ton to generate the necessary revenues.

Some states delayed identifying costs for their permit programs until EPA issued the final permit rule. Three of the four states that we contacted that did not have permit programs before title V had not made detailed cost estimates for their title V permit programs. Even though these three states have not identified the specific resource needs for their permit programs, they believe that their costs will be significant. Furthermore, over half of the 26 states that still need legislative authority to assess fees will have to

⁷The Clean Air Act Advisory Council was established to assist and advise the Secretary of the North Carolina Department of Environment, Health, and Natural Resources and the Environmental Management Commission in developing all programs necessary to implement the CAAA of 1990. Council membership included representatives from industry, environmental organizations, local governments, and state agencies.

wait until their 1993 legislative session to learn what costs they are allowed to include in their fee schedules.

States Are Being Pressured to Keep Permit Fees Low

Despite evidence that program costs will be higher than the Congress anticipated in CAAA, states are under economic and political pressure to keep permit fees as low as possible. Keeping fees low is in industry's economic interest, and state legislatures are also interested in keeping permit fees low to make their states competitive with other states in attracting industry. In two of the four states with permit programs that we contacted, pressure had been brought to keep fees below the amounts necessary to cover projected costs. In North Carolina, for example, the Clean Air Advisory Council reduced certain program cost estimates to keep the state's title V program costs as low as possible. The Council recommended a \$27 per ton fee in place of the \$36 per ton fee indicated by its detailed cost analysis. Similarly, in Wisconsin the Secretary of the Wisconsin Department of Natural Resources appointed a task force to coordinate the activities of the state agencies and the Governor's office pertaining to title V. The task force, which included several industry representatives, was instrumental in persuading the legislature to limit fees to \$25 per ton even though the committee staff's analysis had projected costs at \$35 to \$40 per ton. In Mississippi the state agency adopted a \$25 per ton fee as a compromise, because the legislature was unlikely to approve a higher fee and EPA was unlikely to approve a lower fee. Mississippi's approach to setting fees appears to be a common practice with a number of states. Some states have decided to set their fees at \$25 per ton rather than determine which costs their permit fees should include.

Even though many state permit fees are being set at or near \$25 per ton, the fees may not be sufficient to cover the full cost of some state programs. However, EPA plans to scrutinize the cost basis only for fees that are lower than \$25 per ton. For fees that are \$25 or higher, EPA does not plan to require the states to provide detailed analyses of the program costs nor scrutinize how they determined the fees, unless it has information to show such fees are too low. According to OAQPS officials, the \$25 per ton is a presumptive fee that EPA believes will generate sufficient revenues to meet or exceed resource needs for most state title V programs. However, EPA Region IV officials do not believe a \$25 per ton fee will be adequate in all instances. In cases where \$25 per ton is not adequate to cover resource needs, EPA's lack of scrutiny of the basis for these fees may result in the states' permit programs being underfunded by permit fee revenues.

Conclusions

Budget estimates and projected resource needs for EPA's air and water permit programs indicate that EPA's resource allocations for the title V permit program may not be adequate to allow effective oversight. Future EPA resource projections that are at or near current levels will jeopardize EPA's ability to oversee the national permit program, especially in light of the significant growth in the agency's work load when all state title V programs are fully implemented. Therefore, if current projections are not revised, they are likely to limit the extent to which EPA can ensure improvement in the nation's air quality.

EPA believes that the presumptive \$25 per ton of emissions will generate adequate resources for most state title V programs. However, cost analyses by some states indicate that a \$25 per ton fee will not provide sufficient resources to support their title V programs. Other states are setting their fees at \$25 with little or not cost analyses to determine what fees they should collect. Therefore, unless EPA verifies the basis for states' permit fees, it is likely to allow some states to operate title V permit programs that are underfunded.

Recommendations

We recommend that the Administrator, EPA, develop realistic estimates of the resources needed to fulfill EPA's long-term role for overseeing the title V permit program, including the additional resources that will be required to assume responsibility for implementing permit programs for states that fail to implement their own programs. We further recommend that the Administrator, EPA, when reviewing and approving program plans, evaluate the adequacy of states' permit fee structures in all cases to ensure that the revenues generated from such fees are sufficient to support a title V permit program.

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