



**Final Report:  
Lane Regional Air Protection Agency  
Title V Program Review**

**EPA Region 10**  
*June 7, 2006*

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## **Executive Summary**

### **Overview**

In response to a 2002 Inspector General audit of EPA's Title V program, EPA is reviewing all state and local Title V programs. The objective of the reviews is to identify good practices that other agencies can learn from, document areas needing improvement, and learn how EPA can help improve state and local Title V programs and expedite permitting. This report documents EPA Region 10's review of the Lane Regional Air Protection Agency (LRAPA) Title V program. Region 10 greatly appreciates LRAPA's cooperation in completing this important effort.

LRAPA is a local air pollution control agency with jurisdiction in Lane County, Oregon. LRAPA promulgates its own suite of air pollution control regulations, supplemented through adoption of state and federal regulations. The agency relies on the State of Oregon Title V regulations through an adoption by reference and also appropriately uses many Oregon Department of Environmental Quality (ODEQ) guidance documents and forms. Title V permits have been issued to all 20 affected sources in Lane County, with the last initial permit issued in December 2001.

EPA's review, which began in December 2003, is based on a questionnaire, permit, form and guidance reviews and on-site interviews. EPA's review of LRAPA's program also included a review of LRAPA's Title V fee management system. The review addresses the following topic areas:

- Permit Preparation and Content
- Monitoring
- Public Participation and Affected State Review
- Permit Issuance/Revision/Renewal
- Resources and Internal Management Support (including program fee management)
- Title V Benefits
- Document Review (Rules/Forms/Guidance)

The "program review" report is formatted consistent with the program review questionnaire. Within each of the topic areas, the report describes good practices, concerns, and other notable observations. A summary of the key observations related to good practices and concerns is provided below.

### **Summary of Title V Benefits Identified**

In response to the program review questionnaire and during the on-site interviews, LRAPA identified a number of benefits that have resulted from the implementation of the Title V program. The notable benefits identified by LRAPA reflect the value that can come from responsible implementation of such a comprehensive air quality program. See Section H of this report for a list of the Title V benefits that LRAPA has realized.

### **Summary of Good Practices**

Each section of this report includes a description of good practices that were identified during the program review pertaining to that particular topic. In general, we included in the report only those good practices that are unique to LRAPA or seem particularly worth noting and passing along to other permitting authorities. LRAPA's implementation of the Title V program includes many other good practices that are not specifically discussed in the report because they are widely used among Title V

permitting authorities. Particularly notable good practices are summarized below.

- § LRAPA issued initial permits in a timely manner, well ahead of many other state/local agencies in the country.
- § LRAPA uses standard terms, guidance, application/reporting forms and monitoring protocols to improve consistency and organization. Their permit format is particularly user-friendly.
- § LRAPA requires compliance certification on a permit term-by-permit term basis.

### **Summary of Concerns**

Each section of this report describes concerns that were flagged by EPA during the program review. Some concerns identified in this review will need to be resolved as LRAPA renews their operating permits; others will need to be resolved as LRAPA updates their Title V program. The following summary indicates concerns that warrant earnest attention. EPA will work with LRAPA to address these concerns and will schedule followup activities as needed.

- § The permit review reports (called statements of basis by EPA) need more detail regarding the legal and technical basis for the permit terms, site specific monitoring, the disposition of air contaminant discharge permit (ACDP) terms, and permit revisions.
- § Some permits need better and more detailed identification of the authority for permit terms.
- § Some LRAPA permits leave out important language regarding the reporting of permit deviations and the ODEQ deviation reporting rules, as written, do not require the prompt reporting of all deviations.
- § Because LRAPA does not currently have delegation of the New Source Performance Standards (NSPS), LRAPA's permits must be clear that permittees must provide NSPS reports and notifications to EPA as well as to LRAPA.
- § Several permit terms allow departure from established permit conditions if an alternative is approved by LRAPA without a permit revision.
- § There may be confusion related to allocation of permitting staff time (labor cost) to Title V and non-Title V budgets.
- § EPA has identified several statutory and regulatory issues in ODEQ's Title V program that also affect LRAPA's Title V program.

## **Introduction**

### **General LRAPA Title V Program Background**

LRAPA is a local air pollution control agency with jurisdiction in Lane County, Oregon. LRAPA promulgates its own suite of air pollution control regulations, supplemented through adoption of state and federal regulations. The agency relies on the State of Oregon Title V regulations through an adoption by reference and also appropriately uses many ODEQ guidance documents and forms. EPA granted LRAPA full approval of its Title V program effective November 27, 1995, 60 FR 50106 (September 28, 1995). At that time, we determined that LRAPA's regulations and the State of Oregon's statutes and regulations met the requirements of the Clean Air Act and EPA's Part 70 regulations. Title V permits have been issued to all 20 affected sources in Lane County, with the last initial permit issued in December 2001. There are two full-time permit writers handling Title V permits and state air operating permits.

Prior to Title V, ODEQ and LRAPA had state operating permit programs, which were approved as part of the Oregon State Implementation Plan (SIP). These federally enforceable state operating permits were referred to as Air Contaminant Discharge Permits (ACDPs). The ACDP permit system has been retained for non-major sources, and modified to accommodate 40 CFR Part 70 (Part 70) requirements and EPA policies for major sources. Various types of ACDPs are issued depending on the size and type of the source. ODEQ and LRAPA rules require that a plant site emission limit (PSEL) be established for certain facilities via the ACDP. Permits issued by ODEQ and LRAPA under the authority of Part 70 are referred to as Title V air operating permits, rather than ACDPs. New and modified Title V sources are issued an ACDP for the project and after the project is completed, the terms of the project ACDP are added to the Title V permit through permit revisions.

### **Review Objective**

In response to recommendations in a 2002 Office of Inspector General audit, EPA has re-examined ways it can improve state and local Title V programs and expedite permit issuance. Specifically, EPA has developed an action plan for performing reviews of state and local Title V programs and has committed to continuing the Title V fee reviews begun in 1998. The objective of the broader program reviews is to identify good practices that other agencies can learn from, document areas needing improvement, and learn how EPA can help improve state and local Title V programs and expedite permitting. EPA has set an aggressive national goal of reviewing all state and local Title V programs by the end of fiscal year 2006. LRAPA is the second program review in Region 10.

We would like to acknowledge and express EPA's appreciation for the cooperation and patience of LRAPA management and staff throughout all stages of our review of the Title V program. Receiving the timely and complete questionnaire response in advance of the on-site interviews was very helpful, allowing EPA to narrow the focus of our on-site interviews. LRAPA's efforts to make management, staff, and a room available to EPA for the interviews also helped make the on-site time very productive.

### **Review Basis**

The program review is based on information provided by LRAPA, other available information, and interviews with LRAPA representatives during a site visit on January 28-29, 2004. This information was analyzed with regard to Part 70 regulations and policies, LRAPA and ODEQ regulations, and results from a joint ODEQ-EPA Title V program review conducted in 1999 (e.g. the ODEQ model permit). The original letter kicking off the review is included as Attachment I. A questionnaire, developed by EPA

Headquarters with input from the Regions, was sent to and completed by LRAPA in advance of Region 10's on-site visit to the agency. Included with the questionnaire was a three-page table titled State/Local Title V Program Fiscal Tracking Evaluation Document, which is the protocol developed by EPA in 1997 and used in previous Title V fee program reviews. We reviewed the completed questionnaire and fee protocol (Attachment II) prior to the on-site visit. We also reviewed LRAPA's forms for applications and reporting, as well as five permits issued by LRAPA and the related statements of basis. The permits reviewed were:

Kingsford Manufacturing Company (# 204402)  
Monaco Coach Corporation - Springfield (# 205168)  
SFPP - Eugene Terminal (# 207506)  
SierraPine, Ltd, Springfield (# 208866)  
Weyerhaeuser Containerboard-Springfield (# 208850)

While on site at the LRAPA office, we interviewed the director of the agency and three permit writers, including the lead engineer/manager who had been closely involved in most aspects of LRAPA's Title V program during the last few years. We discussed LRAPA's Title V fee program with finance management and staff. The purpose of the interviews was to confirm and clarify what we learned from our review of the permits and questionnaire and to ask questions that developed during our pre-visit review.

EPA's review team included six Region 10 staff members, including legal and engineering support. Key elements of each individual's observations, as well as observations from the on-site interviews, are highlighted and discussed in the report. The report addresses the following topic areas:

- A. Permit Preparation and Content
- B. General Permits
- C. Monitoring
- D. Public Participation and Affected State Review
- E. Permit Issuance/Revision/Renewal
- F. Compliance
- G. Resources and Internal Management Support
- H. Title V Benefits
- I. Document Review (Rules/Forms/Guidance)

The fee protocol information is addressed in the Resources and Internal Management Support section of this report. Each section of the report highlights and discusses good practices, concerns, and other general observations. In general, we included in the report only those good practices that are unique to LRAPA or seem particularly worth noting and passing along to other permitting authorities. LRAPA's implementation of the program includes many other good practices that are not specifically discussed in the report because they are widely used among other Title V permitting authorities.

A summary of concerns is also provided that identifies those issues that will need to be addressed by LRAPA. Several identified concerns relate to both LRAPA and ODEQ because both agencies utilize the same Title V regulations (Oregon Administrative Regulations) and many of the same forms, policies and monitoring guidelines. EPA has completed the review of the ODEQ Title V program and will be working ODEQ and LRAPA simultaneously on these concerns.

## A. Title V Permit Preparation and Content

### Good Practices

1. LRAPA uses the permit format, standard terms, guidance, application/reporting forms and monitoring protocols established by ODEQ. This package of resources was established through workgroups and discussions with EPA. Standardization like this improves consistency and organization. LRAPA's permit format is very consistent from permit to permit and seems well-designed to assist inspectors and plant staff in assessing compliance with permit terms. The summary tables for emission units, emission limits and requirements are particularly helpful for quick reference and navigating the permit.
2. LRAPA and affected sources worked to resolve compliance issues during the Title V permit development process, but LRAPA did not allow that work to unduly delay issuance of permits.
3. LRAPA issued initial permits in a timely manner, well ahead of many other state/local (S/L) agencies. This timeliness was achieved through management emphasis on permit issuance, use of organized work goals, and cooperation with the ODEQ Title V program. The fact that LRAPA had a state operating permit program before Title V may have also contributed to timely permit issuance.
4. Many permit provisions are appropriately standard from permit to permit, such as provisions in the facility-wide requirements section of the permit and the general provisions section of the permit. Consistency in language among permits, where appropriate, better ensures equity among permittees, simplifies permit review for regulators and the public, and reduces the risk of unintended changes in the meaning of provisions.
5. The format of the permit, indicating the applicable requirements, monitoring, testing, recordkeeping and reporting for a single emission unit in a single place, is a good approach. Keeping all of the requirements that pertain to a single emission unit in a single location in the permit allows for easy field use - less page turning to review requirements for a particular emission unit. The summary tables of requirements provides a quick cross-reference for finding a particular requirement.
6. The "Information relied on" provision on the permit cover page is a good way of clearly identifying what information from the permittee LRAPA relied on in issuing the permit and emphasizes the point that LRAPA's decisions are made based on information provided by the permittee.
7. In general, permit terms are clearly written and closely follow the regulatory provisions on which they are based. It is obvious from review of the permits and interviews with permit writers that LRAPA technical staff have a good understanding of air pollution standards and air pollution engineering.
8. LRAPA's statements of basis generally follow the permit format, providing specific explanations for many portions of the permit (see concerns noted below for suggested improvements to the statements of basis).

## Concerns

1. All Title V permits must be accompanied by a statement that sets forth the legal and factual basis for the draft permit conditions. LRAPA refers to the statement of basis as the review report. Aside from documenting the technical and legal basis for permit conditions, the review report should be used to document the agency's decision process for use by future permit writers, enforcement staff, the company and the public. LRAPA should work to improve the content of the review report for its permits when LRAPA issues permit renewals and new permits. Some specific EPA concerns in this regard are:
  - a. More detail is needed in the review reports. In some cases, review reports do not have a date or list the street address of the subject facility, making linkage to the permit version or facility difficult to figure out. In some cases there are discrepancies among the permit application, the permit and the review report that are not explained in the review report.
  - b. LRAPA review reports often simply recite the requirements of the permit rather than explaining the basis for creating the requirement or how monitoring terms assure compliance. This issue is discussed in more detail below in Section C, Monitoring.
  - c. Better discussion in the review report is needed regarding carry over and/or modification of terms from ACDPs. This is especially important because ODEQ has interpreted its regulations to mean that the Title V permit replaces the ACDP and that ACDPs expire once a Title V permit is issued. The review reports specify the ACDP terms that were carried over into the Title V permit, but do not explain under what authority conditions in ACDP's were created, what procedures apply to revisions to those ACDP conditions when they are later housed only in Title V permits, and if the procedural and substantive ACDP and/or Title V permit revision procedures were followed. For example, the Weyerhaeuser review report (Pg. 42-43) has a discussion of why LRAPA did not carry over permit terms from the ACDP to the Title V permit. The discussion does not indicate whether the ACDP was revised in a separate process and then carried over into the Title V permit or whether the ACDP permit in effect was revised in the Title V permit issuance process. The review report should make that clear. In addition, if the latter (Title V permit issuance is revising the ACDP), the review report needs to show that LRAPA met the procedural and substantive requirement for revising the ACDP. This is especially important for conditions created under new source review (NSR) authority, which requires an air quality analysis and sometimes a technology review to create and revise the requirements. In addition, because permit term numbers change during the permit revision process, it is difficult to track the origin of and changes to ACDP permit terms backwards in time. A detailed record of change is necessary.
  - d. Review reports do not adequately explain the basis for revisions to the Title V permit and what terms of the permit are being revised. This issue is discussed in more detail below in Section E, Permit Issuance/Revision/Renewal.
2. The permits should better identify the authority for the permit terms. This is done well in many cases, but EPA also identified several concerns:
  - a. In some cases, no authority is identified (for example, Kingsford, conditions 7, 13, 18, 19, 23, 24, 29, 31, 32, 34, 35, 37, 40).
  - b. In other cases, a high level citation is used for a section of the permit. For example,



NSPS requirements in the SFPP Eugene Terminal permit were, in many cases, broadly cited, even though the detailed language from the NSPS was included in the permit. Each permit condition should identify the authority for the condition.

- c. In some cases, the citations in the permit are out of date. For example, the citations in the Sierra Pine facility permit do not reflect the renumbered OAR sections, even though the permit was revised in 2002.
  - d. In several cases, permits included only the current state-adopted version of an air quality regulation and not the version that was still approved in the SIP at the time the Title V permit was issued. In other words, LRAPA had revised its regulation, but EPA had not yet approved the revised version into the SIP. In such cases, the permit must identify the current state-adopted version as a “state only” provision and must also include the SIP-approved version, although the permit can state that the current state-adopted version will become federally enforceable and the former SIP-approved version will automatically no longer be in effect upon EPA approval of the revised regulation as part of the SIP.
3. The inapplicable requirements (permit shield) section of certain permits (e.g. Kingsford permit condition 102(h)) contains “federal applicable requirements currently determined not applicable to the permittee” but does not identify the rationale for the determination, which is required under Part 70 and ODEQ rules. The Oregon regulations and federal regulations should be discussed similarly, identifying a reason for inapplicability, as indicated in ODEQ’s model permit. The source is not shielded from the provisions in (h) because the permit does not contain a summary of the rationale. Also, the permit shield for the Clean Air Act itself (CAA sections 129, 183(e) and 183(f)) is not appropriate. These statutes require EPA to promulgate regulations and do not directly regulate sources. The shield should be granted for the relevant implementing regulations, not for the authorizing statutes.
  4. Some LRAPA permits leave out important language regarding the reporting of permit deviations. We note that these provisions are included in ODEQ’s model permit. Permits must state that:
    - a. All permit deviations must be promptly reported, including excess emissions. See OAR 340-218-0050(3)(c)(B). “Prompt” must be defined in the permit or in the regulations.
    - b. All instances of deviations from permit requirements must be clearly identified in the semi-annual monitoring report. See OAR 340-218-0050(3)(c)(A).
    - c. All permit deviations must be identified and taken into consideration in the annual compliance certification. See 40 CFR 70.6(c)(5)(iii)(c) and OAR 340-218-0080(6)(c)(C).
  5. Because LRAPA does not currently have delegation of the NSPS standards, permittees must provide NSPS reports and notifications to EPA as well as to LRAPA (because LRAPA has adopted the NSPS as a matter of state law). The Title V permit or review report should make this dual notification obligation clear. Obtaining delegation of the NSPS standards would obviate the need for dual reporting in most cases.
  6. EPA remains concerned that ODEQ and LRAPA interpret ODEQ’s regulations to mean that the Title V permit replaces or “supercedes” ACDPs and that ACDPs expire once a Title V permit is issued. In a May 20, 1999, letter from John Seitz to STAPPA/ALAPCO (referred to as the “Hodanbosi letter”), EPA states that “Title V permits may not supercede, void, replace, or otherwise eliminate the independent enforceability of terms and conditions in SIP-approved permits.” EPA has also issued a notice of deficiency to a permitting authority on a similar issue (see 67 Federal Register 52615, August 13, 2002). If ODEQ rules are or may be interpreted to allow ACDP conditions to lapse upon expiration of Title V permits or to be modified by procedures that do not meet the requirements for modifying ACDPs, then it is a Title V program deficiency that must be corrected. ODEQ has stated that they believe this is an implementation

issue, not a rule deficiency. ODEQ has indicated that they plan to address this issue in all permits by denoting requirements as either state or federal, by identifying the legal basis for each requirement, and by identifying the procedure for revising source specific requirements. EPA believes that a regulatory fix for this issue is important to effectively institutionalize these procedures and ensure that ACDPs remain independently enforceable, notwithstanding the expiration of the Title V permit.

### **Other Observations**

1. The permit standard condition describing what provisions of the permit are federally enforceable and what are state-only would be improved by specifying what “federally enforceable” means, that is, that such provisions are enforceable by EPA and citizens under the Clean Air Act.
2. LRAPA noted in the program review questionnaire that, on occasion, overlapping requirements were streamlined in operating permits. Streamlining is a useful way to simplify permits, but specific procedures must be followed. Notably, the permit must still contain citations for the streamlined requirements, the applicant has to request streamlining, the review report must explain the action, and the streamlined requirements must be flagged in the proposed permit submitted to EPA.

## **B. General Permits**

LRAPA has not developed or issued any general permits.

## C. Monitoring

### Good Practices

3. LRAPA makes use of ODEQ monitoring guidance for permit writers to use in issuing Title V permits. This has been a very effective means of establishing consistent monitoring.
4. In general the site-specific periodic monitoring established in LRAPA permits appears to be reasonable and defensible, although, as discussed below, more detail is needed in the review report to explain the rationale for monitoring decisions.

### Concerns

1. Review reports should better document the monitoring imposed in the permit. For example, condition 28 in the Kingsford permit indicates that periodic monitoring relies on a test once per permit term (Conditions 29 and 87), and relies on opacity monitoring (Condition 31) between tests to assure the source continues to operate as well as during the test. The review report does not explain if there is a correlation between the testing and opacity to confirm that opacity will assure compliance or otherwise explain the basis for this monitoring decision. If monitoring is selected from guidance in ODEQ documents, then the review report should indicate that and explain why the selection is appropriate.
2. The permit(s) have requirements concerning minimum data availability for continuous emissions monitoring systems. For example, condition 151 in the Weyerhaeuser Springfield permit sets minimum data availability requirements for continuous emission monitoring systems (CEMs) and continuous opacity monitoring systems (COMs) required. The permit does not contain a specific statement of authority for this condition (the permit refers generally to OAR 340-218-0050(1), which requires permits to contain emission limitations and standards, including operational requirements that assure compliance with applicable requirements). Nor does the review report discuss the basis and purpose of this condition. It is, therefore, difficult to determine if this condition is based on an applicable requirement or whether it is created under the Title V permit. If the latter, Part 70 permits can contain narrowly drawn exceptions to monitoring requirements created under the authority of Title V and Part 70 under certain conditions. Importantly, such provisions cannot apply to any monitoring provision that is itself an “applicable requirement.” For example, no such general relief from monitoring requirements exists for NSPS monitoring provisions and neither the permitting authority nor EPA has the authority to create such an exemption absent Federal rulemaking. Similarly, if the requirement to have a CEM is imposed by an LRAPA rule or in a permit to construct, the Title V authority cannot be used to create data availability requirements. Rather, the underlying applicable requirement must first be revised to include such a data availability requirement. Title V authority can be used to create data availability requirements only for monitoring that is itself created under Title V authority. ODEQ has recognized this in its discussion in ODEQ’s August 5, 1999, Title V Program Review (see page 18-19, item 12). As indicated above, however, it is difficult to tell from the LRAPA permits and review reports whether this condition applies to CEMs required only by the Title V permit, or whether the CEMs are otherwise required by applicable requirements (e.g. an existing ACDP or SIP requirement).

### Other Observations

None

## **D. Public Participation and Affected State Review**

### **Good Practices**

1. Public notices are published in newspapers of general circulation, as well as on the LRAPA website. LRAPA also sends public notices to persons who have expressed interest in Title V permits. LRAPA uses its web site to post press releases, legal notices, Title V permits, review reports, and documents archived after completion of the public comment process.
2. When LRAPA anticipates the need or interest for a public hearing on a Title V permit, LRAPA schedules a public hearing at the same time it puts the draft permit out for public comment. This can result in a more expeditious overall process than waiting to schedule a hearing until one is requested during the public comment period because 30 days advance notice is required for all public hearings.

### **Concerns**

1. Several permit terms allow departure from established permit conditions if an alternative is approved by the LRAPA. For example, Weyerhaeuser permit condition 151(a) authorizes LRAPA to allow backup or standby monitoring that differs from the backup/standby monitoring specified in the permit if LRAPA approves the alternative in writing. This effectively allows the permittee and LRAPA to change an enforceable permit condition through an off-permit process and is contrary to the permit revision procedure of Part 70 and ODEQ's rules. Such a change would typically be processed as a minor permit modification (unless it is a relaxation in reporting or recordkeeping, which must be processed as a significant modification). Another example from the Kingsford permit (condition 26), includes a statement that LRAPA can waive testing. This type of requirement would reduce the stringency of the permit without going through any public review. Generally, the permit itself should describe the criteria by which testing can be reduced, making the option transparent.
2. The Kingsford facility review report (Items 67 and 68) states that no comment was received, but the public will have 105 days (45-day EPA review period plus 60 days) from the date the proposed permit is sent to EPA to appeal the permit with EPA. To have standing to petition EPA on a permit, generally, the public must first raise the issue in the public comment period. Then if EPA does not object to a permit during the 45-day review period, the public can petition EPA within 60 days after the 45-day review period ends. LRAPA should revise this language in the review reports to be clear about the EPA petition (appeal) process.
3. Public involvement is an important part of the Title V process. The Clean Air Act requires states to solicit public comment on draft permits and to provide public commenters the right to challenge permits in state court. Although Oregon and LRAPA law meets these requirements, LRAPA does not provide outreach to the public on how the Title V program works or how the public can participate in the review and issuance of Title V permits. By providing basic training to the public on how the Title V program works and how the public can participate in the review and issuance of Title V permits, LRAPA could help ensure a more meaningful public participation process in Lane County.
4. LRAPA provides the permittee with a pre-draft permit for review and comment before the draft permit goes out for public comment. Soliciting the permittee's input on the factual aspects of the

permit can help to reduce errors in the permit and help educate the permittee on its obligations under the permit. Working with the permittee on developing the substantive requirements of the permit, however, can create the impression that the permit issuance process is not an open process. LRAPA should carefully balance these interests as it works with permittees during the development and issuance of Title V permits.

### **Other Observations**

1. LRAPA does not have any programs focused on environmental justice to help ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws and policies. EPA is currently offering environmental justice training opportunities.

## **E. Permit Issuance / Revision / Renewal**

### **Good Practices**

1. LRAPA made good progress issuing initial air operating permits.

### **Concerns**

1. The Sierra Pine permit review report explains that numerous changes were made to ACDP conditions. ACDP term numbers were referenced. Presumably the ACDP numbering is changed every time a term is rescinded, or even when a modification to a term occurs. The review report should reference the date of the subject ACDP along with the term that is being addressed. Without the date, or another identifier, it is nearly impossible to track the changes made.
2. The review report for a particular permit action, such as a permit modification, should explain the basis and authority for the action. In ODEQ's August 5, 1999, Title V Program Review, August 5, 1999, pp. 26, ODEQ stated that the introduction to the review report would identify the reason for the current permit action, which may be a new Title V permit, administrative amendment, minor permit modification, significant permit modification, or permit renewal. The Kingsford permit, however, was revised through a significant permit modification and reissued in 2003. The language in the beginning of the review report, however, refers to this as a permit action for a new Title V source, which is not correct. Although there is a statement on page 10 of the review report regarding the context of this permit action, discussing it at the beginning of the review report would have better explained the context of the action. In addition, the review report does not clearly identify how the permit, after the significant permit modification, differs from the permit before the modification and under what authority the changes were made.

### **Other Observations**

None



## F. Compliance

### Good Practices

1. One of the goals of the Title V program is to improve compliance at permitted facilities and thereby reduce air emissions. LRAPA noted that the permit development process resulted in resolution of a number of compliance issues.
2. We strongly support LRAPA's compliance certification form to the extent it requires the permittee to certify its compliance status on a permit term-by-permit term basis. Requiring a permittee to show the permitting authority more detail of the process the permittee went through to review the compliance status of the facility will minimize the likelihood that potential noncompliance issues are overlooked. We believe this effort will in turn improve compliance overall. It is difficult to argue that this approach imposes a greater burden on permittees because permittees, as part of their obligation to conduct a reasonable inquiry into their compliance status, should be going through this same process even with a shorter, blanket certification form.

### Concerns

1. Title V, in 40 CFR 70.6(a)(3)(iii), requires the prompt reporting of all permit deviations. ODEQ's Title V rules require prompt deviation reporting in OAR 340-218-0050(3)(c)(B) for deviations that do not cause excess emissions. Deviations that do cause excess emissions are to be reported in accordance with ODEQ's excess emission provisions in OAR 340-214-0300 thru 0360. Section 0300, however, limits the scope of excess emission reporting to only those emissions resulting from breakdown of control or operating equipment, process upset, startup, shutdown, or schedule maintenance. ODEQ's rules, therefore, do not require reporting of deviations that cause excess emissions if they are not associated with one of those events. For example, deviation reporting is not required where an emission unit is not meeting an emission limit, but the control equipment and source are operating normally - a situation that can occur, particularly when a source is subject to a new requirement or tested for the first time. Furthermore, ODEQ's rules, in OAR 340-214-0340(4), require an upset log be kept and, in OAR 340-218-0050(3)(c)(A), included with the annual report; but, the log also appears to only be required for the listed events in OAR 340-214-0300. EPA will work with ODEQ to ensure their rules are adequately revised to capture the reporting of all permit deviations as provided in 40 CFR 70.6(a)(3)(iii).<sup>1</sup>
2. Title V, in 40 CFR 70.6(a)(3)(iii), requires "prompt" to be defined in relation to the degree and type of deviation likely to occur and the applicable requirements. In OAR 340-218-0050(3)(c)(B), ODEQ's rules require all deviations which do not cause excess emissions to be reported promptly within seven days of the deviation. For sources that have pre-approved procedures for startup/shutdown or scheduled maintenance, ODEQ's rules require, in OAR 340-

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<sup>1</sup>Although ODEQ's general excess emission reporting rules are found in Division 214 (Stationary Source Reporting Requirements) rather than Division 218 (Oregon Title V Operating Permits), our concerns about excess emission reporting in items 1 and 2 above are Title V concerns because ODEQ relies on Division 214 to meet the Title V permit deviation reporting requirement. EPA is addressing here only Title V concerns and not any concerns EPA may have with ODEQ's general excess emissions rules for purposes of meeting requirements for SIPs.

214-0340(4) and 340-218-0050(3)(c)(A)(ii), excess emissions caused by those events to only be reported annually. In OAR 340-214-0340, LRAPA may require a written report within 15 days for any excess emission event, but they may also waive the written report based on the severity of the event. It is difficult to believe that ODEQ/LRAPA intended that deviations such as failing to keep a record, must be reported within seven days, whereas an excess emission event need only be reported at the end of the six-month reporting period. LRAPA should also be aware that on October 24, 2005, the 2<sup>nd</sup> Circuit U.S. Court of Appeals issued a decision holding that prompt must be at least more frequent than biannual because deviations pose greater urgency than general monitoring. EPA will work with ODEQ to ensure their regulations are revised to adequately require prompt reporting of all deviations.

3. The compliance schedule specified at permit condition 161 in the Weyerhaeuser Springfield permit is not adequate. LRAPA sought to resolve compliance issues prior to permit issuance and this one was the only compliance schedule established in a final operating permit. The required elements of compliance schedules are specified by 40 CFR §70.6(c)(3) and OAR 340-218-0040(3)(n)(C)(iii) and 340-218-0070(4). Condition 161 does not contain an enforceable sequence of actions with milestones leading to compliance. The permit term is vague and it is unclear what the permittee is required to do. Simply stating that the permittee shall meet the applicable requirement by a date six years in the future is not adequate. The review report also does not explain what is required or why the permitting authority determined a compliance schedule of several years was appropriate. The ODEQ model permit indicates the kind of information that should be included in a compliance schedule.

#### **Other Observations**

4. The focus of this Title V program review was on LRAPA's implementation of its Title V program. Accordingly, in conducting this Title V program review, EPA reviewed LRAPA's compliance certification and semiannual monitoring report forms, but did not review completed forms submitted by Title V facilities to determine the extent of compliance with Title V requirements in LRAPA's jurisdiction and whether LRAPA is taking appropriate enforcement actions in response to noncompliance. EPA also conducts periodic reviews of state and local Clean Air Act enforcement programs. These enforcement reviews look at, among other things, whether the state or local agency is taking timely and appropriate enforcement response to significant violations, including violations at Title V sources; whether the agency is adhering to its compliance monitoring strategy regarding the frequency and scope of inspections; whether the agency imposes clear and enforceable requirements in enforcement actions; and whether the agency's reporting of compliance activity to the national data base is complete and accurate.

## **G. Resources and Internal Management Support**

### **Good Practices**

1. The LRAPA permits team compiles facility information used by the accounting staff to prepare facility billing. The accounts receivable system tracks outstanding payments and flags late payment. The LRAPA system includes facility notification when payments are late, an automatic 1.5% per month late fee, and issuance of notices of violation. To date all Title V fee payments are current. Timely issuance of permits and successful completion of air program obligations indicates that the LRAPA Title V program is likely adequately funded.
2. LRAPA uses a custom time tracking/internal billing system to track Title V expenditures. Staff track their time each day and submit the information to the comptroller each month. EPA guidance (fee matrix) was used to develop the tracking system.
3. The accounting software used by LRAPA is set up to keep the Title V budget separate from budgets associated with grants and other (non-Title V) permit fees. Charge codes are used to identify Title V and non-Title V activity. The LRAPA accounting database system appeared to be effective and user-friendly. The system is flexible so corrections can be readily made and accounting files were easy to access.

### **Concerns**

1. On-site interviews indicated that there may be confusion related to allocation of permitting staff time (labor cost) to Title V and non-Title V budgets. Note that activities associated with NSR permit preparation are not Title V fundable activities, even if the project is at a Title V source. Title V permit revisions to accommodate new source review permit terms, and agency activities related to implementation of NSR requirements contained in Title V permits are examples of activities that may be billed to Title V. However, establishing or revising site specific NSR permit terms may not be billed to Title V. LRAPA permitting and accounting staff should examine that aspect of their internal billing system and change it accordingly if need be.

### **Other Observations**

1. The accounting system charge codes and account names are displayed separately and the account names are not very descriptive. To reduce the potential for error, the charge codes and category names should be listed together and be more specific.
2. We note that accounting staff did not have a current version of the ODEQ fee rule. This is an important resource that should be at hand.

## H. Title V Benefits

### Benefits Identified by LRAPA

In response to the program review questionnaire and during the on-site interviews, LRAPA identified a number of benefits that have resulted from implementation of the Title V program. We note that program improvements attributable to full implementation of Title V in Oregon may be less than what other state/local agencies experience because Oregon and LRAPA had comprehensive state operating permit programs before the advent of Title V.

3. Protocols developed through the Title V program are being used in non-Title V permits (e.g., periodic monitoring).
4. Drafting and issuing Title V permits resulted in more complete information and knowledge about the universe of facilities. LRAPA staff and facility operators gained a better understanding of a number of programs that are folded into Title V permits, including NSPS, SIP requirements, and minor and major NSR.
5. The self-auditing features of the Title V program changed the focus from agency detection of compliance problems to facility attention to compliance obligations and resolution of problems.
6. Permit writers improved their skills in devising monitoring terms that assure compliance and writing enforceable permit terms, as well as their knowledge of applicability criteria for NSPS, NSR, and other Clean Air Act programs.
7. In some instances the reviews conducted during permit preparation uncovered compliance issues that were subsequently resolved.
8. Permittees are devoting more resources (staff, environmental management systems, and controls) and attention (compliance monitoring and maintenance) to assuring compliance with their permits and the applicable requirements. The facility owners and operators became more aware of the requirements and elevated environmental concerns to something they must contend with on a daily basis.
9. Improved compliance, resulting from the issuance of Title V permits, has resulted in emission reductions. Emission reductions have also resulted from facility efforts to avoid Title V applicability.
10. Title V fees have improved support of the agency permitting/compliance staff through funding of training and required supplies (e.g. computers, printed regulations, and technical literature).
11. Overall, the Title V program has resulted in more structured air programs at the agency and at the affected facilities.

## I. Document Review (Rules/Forms/Guidance)

### Good Practices

1. Having standard compliance certification and reporting forms greatly improves the quality of compliance certifications and other reports. In general, the forms are comprehensive and the instructions are helpful in providing the source with guidance in how to fulfill their reporting obligations.
2. Form Series MD900-L: The forms are a very useful tool for permittees and regulators and do a good job of explaining what procedure is appropriate for a particular type of change. The chart on pp.4-5 is especially helpful.

### Concerns

1. EPA has recently revised the requirements for compliance certification in 40 CFR 70.6(c)(5)(iii) to identify whether compliance with each permit term and condition that is the basis of the certification was continuous or intermittent during the covered period. ODEQ (and LRAPA) must revise their reporting regulations to reflect this change. We note that LRAPA's reporting forms are consistent with the current Part 70 compliance certification language.
2. LRAPA should submit Title V rule changes to EPA for approval. Rule revisions are required to be approved as program revisions.
3. The regulatory references in the reporting forms need to be updated to reflect the 1999-2001 renumbering and revision of the OAR.
4. In some cases the forms and/or the reporting guidance has text that deviates from the language of the applicable reporting requirements or do not adequately capture the regulatory requirements. For example, forms and guidance related to deviation reporting, permit modifications, compliance certification, insignificant emissions units, and CEMs data availability, need to be re-evaluated with respect to the underlying requirements and policies.
5. In addition to the issues discussed elsewhere in this report, EPA has identified the following statutory and regulatory issues in ODEQ's Title V program that also affect LRAPA's program:
  - a. On November 1, 2005, a number of environmental groups filed a petition requesting EPA to determine that ODEQ's Title V program does not meet Clean Air Act requirements because state law exempts agricultural operations. ORS 468A.020 and OAR 340-200-0020 provide that state air pollution laws, including ODEQ's Title V regulations, do not apply to certain agricultural operations and activities. EPA is currently reviewing the petition to determine whether the agricultural exemption in Oregon raises legal concerns about the status of EPA's previous approval of ODEQ's and LRAPA's Title V program.
  - b. EPA has interpreted Part 70 to allow the "streamlining" of multiple applicable requirements that apply to the same emission unit if the permitting authority determines that compliance with the more stringent limit assures compliance with the overlapping, subsumed limit and certain other procedural safeguards are met. See White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, March 5, 1996, pp. 6 to 17 (White Paper No. 2). The subsumed requirement, however,

must be cited as authority for the streamlined permit term. A source violating the more stringent permit term may be subject to enforcement action for violation of one or more subsumed requirements to the extent that violation of the subsumed limit is documented. OAR 340-218-0050(3)(a)(B) specifically addresses streamlining of monitoring and testing requirements. EPA is concerned, however, that the phrase “monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining” could be interpreted as requiring that only the most stringent requirement be included in a Title V permit when LRAPA is “streamlining.” As discussed above, this would be contrary to Part 70. ODEQ has suggested that OAR 340-218-0050(3)(a)(B) could be revised to strike the last phrase of that provision: “... that are not included in the permit as a result of such streamlining.” Such a rule revision would help to ensure proper streamlining of requirements in permits.

- c. ODEQ’s Title V program (OAR 340-218-0020(4)) exempts non-major sources subject to 40 CFR Parts 60, 61 and 63 (Clean Air Act Sections 111 and 112) unless they are “affected sources” or subject to Clean Air Act Section 129(c). Part 70 now requires permits for some non-major sources subject to the 111 and 112 standards. ODEQ has acknowledged that they must revise their rules to ensure such sources are subject to Title V permitting. Similar language in LRAPA’s guidance and forms should also be revised.
- d. The list of changes that can be made by administrative amendment under ODEQ’s and LRAPA’s Title V programs (OAR 340-218-0150(1)) should be narrowed. ODEQ’s regulations authorize corrections to baseline or PSELs to be made by administrative amendment when more accurate emission data is obtained but the correction does not increase actual emissions. Even though actual emissions may not increase, such a change can affect applicability of air quality control requirements and is not appropriately made through an administrative amendment. ODEQ’s regulations also allow to be made by administrative amendment a change in the date for reporting or source testing for extenuating circumstances. This provision is overly broad.
- e. When most of the public participation requirements were moved to division 209, some inadvertent changes were made. The requirement under Title V to prepare a written response to comments and to keep a record of comments and make them available to the public has been moved from a separate section into the section describing public hearings and meeting procedures (now OAR 340-209-007). These requirements, however, apply to all actions requiring public comment under Title V, not just public hearings. Also, in consolidating the information contained in the public notice for all programs, some of the requirements for the Title V program were lost. OAR 340-209-0040 should more specifically explicitly address several of the Title V requirements in 40 CFR 70.7(h) (description of public comment procedures and the time and place of any hearing and procedures for requesting a hearing). Finally, OAR 340-209 uses the terms “proposed permit” and “proposed permit action” in several places to mean the permit that went out for public comment at the state level [see OAR 340-209-0050(1) and 0080(4)]. Under the Title V program, the permit that goes out for public comment is defined in ODEQ’s and EPA’s regulations as the draft permit. The proposed permit is the permit sent to EPA for review.

## Other Observations

None