

PERFORMANCE AUDIT
OF
FEE ADEQUACY AND DELEGATED AUTHORITY
WITHIN THE AIR QUALITY DIVISION

DEPARTMENT OF ENVIRONMENTAL QUALITY

October 2003

“...The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.”

– Article IV, Section 53 of the Michigan Constitution

Audit report information may be accessed at:
<http://www.state.mi.us/audgen/>



Michigan
Office of the Auditor General
REPORT SUMMARY

Performance Audit
Fee Adequacy and Delegated Authority
Within the Air Quality Division
Department of Environmental Quality

Report Number:
76-143-03

Released:
October 2003

Title V of the Clean Air Act Amendments of 1990 set up a comprehensive permitting system, the Renewable Operating Permit (ROP) Program, that all states are required to implement. The Clean Air Act requires the ROP Program to collect, in the aggregate, an amount not less than \$25 per ton (adjusted for inflation) of each regulated pollutant or such other amount determined to adequately reflect the reasonable costs of the Program.

Audit Objective:

To assess the sufficiency of the statutory fees for the ROP Program to meet the minimum requirements of the Clean Air Act as specified in Section 324.5522(3) of the *Michigan Compiled Laws*.

Audit Conclusion:

We concluded that the statutory fees for the ROP Program were not sufficient to meet the minimum requirements of the Clean Air Act as specified in Section 324.5522(3) of the *Michigan Compiled Laws*.

Although resources applied to monitoring and enforcement appear to have been sufficient, resources applied to permit processing have not been sufficient to allow initial permit issuance to be completed by the U.S. Environmental Protection Agency's (EPA's) unofficial goal of January 2001 and will most likely not meet the December 1, 2003 commitment set by the Department of Environmental Quality (DEQ) with the EPA. This could

result in the EPA issuing a Notice of Deficiency to the DEQ Title V ROP Program.

Also, the Air Quality Division expended State General Fund appropriations (approximately \$2.5 million, \$2.5 million, and \$1.8 million for fiscal years 1999-2000, 2000-01, and 2001-02, respectively) in addition to the statutory fees to fund the ROP Program. Further, expenditures are expected to increase and revenue is expected to decrease through September 30, 2005, when the current fee authorization expires.

~ ~ ~ ~ ~

Audit Objective:

To assess the fiscal integrity of any county that is delegated authority from DEQ to issue ROPs and to administer and enforce the applicable provisions of the ROP Program, including determination of the county's pro rata share of the State's support services for the ROP Program that are attributable to and payable by a county

as specified in Section 324.5523(5) of the *Michigan Compiled Laws*.

Audit Conclusion:

No county in the State has been delegated authority from DEQ.

~ ~ ~ ~ ~

Agency Response:

DEQ agrees with both of the conclusions contained in the audit report.

~ ~ ~ ~ ~

A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: www.state.mi.us/audgen/



Michigan Office of the Auditor General
201 N. Washington Square
Lansing, Michigan 48913

Thomas H. McTavish, C.P.A.
Auditor General

James S. Neubecker, C.P.A., C.I.A., D.P.A.
Executive Deputy Auditor General

Scott M. Strong, C.P.A., C.I.A.
Director of Audit Operations



STATE OF MICHIGAN
OFFICE OF THE AUDITOR GENERAL
201 N. WASHINGTON SQUARE
LANSING, MICHIGAN 48913
(517) 334-8050
FAX (517) 334-8079

THOMAS H. MCTAVISH, C.P.A.
AUDITOR GENERAL

October 14, 2003

Mr. Steven E. Chester, Director
Department of Environmental Quality
Constitution Hall
Lansing, Michigan

Dear Mr. Chester:

This is our report on the performance audit of Fee Adequacy and Delegated Authority Within the Air Quality Division, Department of Environmental Quality.

This report is issued pursuant to Section 324.5522(3) of the *Michigan Compiled Laws*, which states that the Auditor General shall conduct a biennial audit of the federally mandated operating permit program required by Title V of the Clean Air Act, including a recommendation regarding the sufficiency of the fees required under subsection (2) to meet the minimum requirements of the Clean Air Act. In addition, this report is issued pursuant to Section 324.5523(5) of the *Michigan Compiled Laws*, which states that the Auditor General shall annually submit to the Governor, the Legislature, and the Department an independent report regarding the fiscal integrity of a county delegated authority under this section, as well as a determination of the county's pro rata share of the State's support services for Title V programs attributable to and payable by a county.

This report contains our report summary; description of program; audit objectives, scope, and methodology; comments and agency preliminary responses; and a glossary of acronyms and terms.

Our comments are organized by audit objective. The agency preliminary responses were taken from the agency's responses subsequent to our audit fieldwork.

We appreciate the courtesy and cooperation extended to us during this audit.

AUDITOR GENERAL

This page left intentionally blank.

TABLE OF CONTENTS

FEE ADEQUACY AND DELEGATED AUTHORITY WITHIN THE AIR QUALITY DIVISION DEPARTMENT OF ENVIRONMENTAL QUALITY

	<u>Page</u>
INTRODUCTION	
Report Summary	1
Report Letter	3
Description of Program	6
Audit Objectives, Scope, and Methodology	10
COMMENTS AND AGENCY PRELIMINARY RESPONSES	
Fee Adequacy	12
Delegated Authority	20
GLOSSARY	
Glossary of Acronyms and Terms	22

Description of Program

In 1990, the United States Congress amended the Clean Air Act to include several new approaches to protecting air quality. Title V of the Act set up a comprehensive permitting system, the Renewable Operating Permit (ROP) Program, that all states are required to implement. This Program requires that businesses and institutions obtain an ROP that will consolidate all applicable requirements into a facility-based permit which must be renewed every five years.

Businesses and institutions were required to submit an application to the Air Quality Division or to the Wayne County Department of Environment to obtain an ROP no later than February 1997. At that time, if the application was complete (contained all the required forms), the applicants were issued an application shield* that allowed them to operate legally until they were granted the ROP.

The ROP Program initiated three significant changes to the existing permitting program:

1. The ROP Program consolidates the requirements that apply to a facility or source* that emits air contaminants. The Program is not designed to impose any new emission limitations or standards, but rather it brings them all together into a single document. The Program presents an opportunity for facilities to review old permits, identify inappropriate permit conditions, and plan for the operational flexibility they need for the future.
2. The ROP Program shifts the burden of proof away from the local and State regulatory agencies and places it upon the individual sources of air pollutant emissions. Sources are required to annually report to the Air Quality Division actual levels of emissions, which are used to calculate the fees paid by a source for the ROP Program. In addition, every six months, the source must certify that all the monitoring and associated recordkeeping requirements in its ROP have been met as well as promptly report any deviations during that time period to an ROP condition. Finally, the source must certify annually whether the source was in compliance with all the terms and conditions in the ROP for the previous year.

* See glossary at end of report for definition.

3. The ROP Program established an annual fee system designed to ensure that the local and State regulatory agencies will have the resources necessary to develop and administer the Title V Program.

Only facilities that meet the definition of a major source* of emissions must obtain an ROP. The thresholds considered in determining whether a facility is a major source are based on potential to emit* (PTE), adjacent and contiguous properties, common control of a facility, and standard industrial classification codes*.

Major sources include:

- 1) Sources subject to the federal acid rain program.
- 2) Any stationary source in a source category as designated by the U.S. Environmental Protection Agency in Title 40, Part 70 of the *Code of Federal Regulations*.
- 3) Sources that have a PTE:
 - a) Greater than 100 tons per year of any pollutant regulated by the Clean Air Act, or
 - b) Greater than 10 tons per year of any single hazardous air pollutant (HAP) or 25 tons per year of a combination of HAPs.

If a facility operates processes that are subject to air quality rules, enforcement documents, and/or permit conditions that limit its capacity, those limitations can be used to restrict the facility's PTE. Facilities that operate processes without these restrictions must calculate their PTE based upon the assumption that the processes are operating at their maximum design capacity for 24 hours a day, 365 days per year.

Facilities with major source level PTE, but whose actual emissions can be kept below the major source thresholds, are eligible to engage in "area source deferral*," also known as an "opt out permit*." For example, a facility's PTE can be restricted by accepting permit conditions that restrict the facility's capacity to emit air contaminants.

* See glossary at end of report for definition.

These restrictions are legally enforceable and, if exceeded, the facility may be subject to enforcement action.

Although a facility may receive a permit to opt out of the ROP Program, it may still be subject to the fee. Fees are assessed for facilities based on the following categories:

Category I

Facilities that have a PTE that exceeds the 100 tons per year for non-HAP pollutants or are subject to the federal acid rain program. These facilities pay a flat annual fee of \$4,485 and an emission charge of \$45.25 per ton.

Category II

Facilities that exceed the 10 tons per year of any one HAP or 25 tons per year of a combination of HAPs. This category also includes facilities subject to federal New Source Performance Standards. These facilities pay a flat annual fee of \$1,795 and an emission charge of \$45.25 per ton.

Category III

Area source facilities that are subject to any of the National Emission Standards for Hazardous Air Pollutants (NESHAP). These facilities have a PTE below the emission thresholds for major sources. These facilities pay a flat annual fee of \$250 and no emission charge.

Emission fees apply to a maximum of 4,000 tons of pollutants per facility or 1,000 tons per pollutant, not including carbon monoxide, if the combined total for the facility is 4,000 tons or less.

Municipal electricity-generating facilities subject to Category I have the following fee structure:

- (1) Facilities emitting more than 450 tons but less than 4,000 tons pay a flat annual fee of \$24,816.
- (2) Facilities emitting at least 4,000 tons but less than 5,300 tons pay a flat annual fee of \$24,816, plus \$45.25 per ton in excess of 4,000 tons.
- (3) Facilities emitting more than 5,300 tons but less than or equal to 12,000 tons pay a flat annual fee of \$85,045.

- (4) Facilities emitting more than 12,000 tons but less than 18,000 tons pay a flat annual fee of \$159,459.

Sources subject to the ROP Program will have their existing new source review permits* folded into the sources' ROP. New installations or modifications to existing processes by a facility within the ROP Program will still require a permit to install* from the Air Quality Division. These new permit-to-install conditions will be merged into the facility's ROP. The ROP itself must be renewed every five years. The renewal process is similar to the original application submission process under which the applicant, if the applicant submits an administratively complete application not more than 18 months but not less than 6 months prior to the expiration date of the current ROP, may operate legally under the original permit conditions until the Division takes final action on the renewal permit.

* See glossary at end of report for definition.

Audit Objectives, Scope, and Methodology

Audit Objectives

Our performance audit* of Fee Adequacy and Delegated Authority Within the Air Quality Division, Department of Environmental Quality (DEQ), had the following objectives:

1. To assess the sufficiency of the statutory fees for the Renewable Operating Permit (ROP) Program to meet the minimum requirements of the Clean Air Act as specified in Section 324.5522(3) of the *Michigan Compiled Laws*.
2. To assess the fiscal integrity of any county that is delegated authority from DEQ to issue ROPs and to administer and enforce the applicable provisions of the ROP Program, including determination of the county's pro rata share of the State's support services for the ROP Program that are attributable to and payable by a county as specified in Section 324.5523(5) of the *Michigan Compiled Laws*.

Audit Scope

Our audit scope was to examine the program and other records of the Air Quality Division and its Renewable Operating Permit Program. Our audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included such tests of the records and such other auditing procedures as we considered necessary in the circumstances.

Audit Methodology

Our audit procedures, conducted from January through April 2003, included examination of records and activities primarily for the period September 1999 through April 2003.

Our methodology included conducting a preliminary survey to gain an understanding of the ROP Program activities. This included interviewing personnel and reviewing applicable statutes, administrative rules, policies and procedures, federal regulations, other state audit reports, and Air Quality Division activities and ROP Program records. Also, we reviewed the Division's financial records, including budget projections and workload analysis reports*.

* See glossary at end of report for definition.

To accomplish our first objective, we interviewed Program personnel and reviewed financial records, ROP issuance statistics, and workload analysis reports. We obtained financial data, and we projected revenue and expenditures for the Program through the end of the sunset period (September 30, 2005). We also projected the shift in the level of effort* between the different aspects of the administration of the ROP Program because of the changing requirements of the Program.

To accomplish our second objective, we interviewed Program personnel and reviewed financial records.

* See glossary at end of report for definition.

COMMENTS AND AGENCY PRELIMINARY RESPONSES

FEE ADEQUACY

COMMENT

Background: Title V of the Clean Air Act Amendments of 1990 set up the Renewable Operating Permit (ROP) Program, which all states are required to implement. Sections 324.5501 - 324.5542 of the *Michigan Compiled Laws* (excerpt from Act 451, P.A. 1994, as amended) established the State's ROP Program. This audit is mandated by Section 324.5522(3), which requires that the Auditor General conduct a biennial audit of the federally mandated operating permit program required by Title V of the Clean Air Act, including a recommendation regarding the sufficiency of the fees required under subsection (2) to meet the minimum requirements of the Clean Air Act. In addition, Section 324.5523(5) of the *Michigan Compiled Laws* requires that the Auditor General annually submit to the Governor, the Legislature, and the Department of Environmental Quality (DEQ) an independent report regarding the fiscal integrity of a county delegated authority under this section, as well as a determination of the county's pro rata share of the State's support services for Title V programs that are attributable to and payable by a county.

The Clean Air Act requires the ROP Program to collect, in the aggregate, an amount not less than \$25 per ton (adjusted for inflation) of each regulated pollutant or such other amount determined to adequately reflect the reasonable costs of the Program. The Clean Air Act does limit the billable tons to 4,000 per year of any regulated pollutant. DEQ developed a fee package that incorporated a flat fee-per-facility component and placed a cap on the billable regulated pollutants of 4,000 tons per facility.

In May 1999, the Air Quality Fee Task Force, consisting of individuals from the regulated community, a local unit of government, the Michigan Economic Development Corporation, consulting firms, and environmental groups, convened to help establish changes in the fees that were to expire on September 30, 2001. The Task Force determined that an increase in fees was necessary in order to continue to support the ROP Program.

The Task Force report was presented to the Legislature, which enacted Act 49, P.A. 2001. The Act increased the flat fee for Category I facilities from \$3,375 to \$4,485; Category II facilities from \$1,350 to \$1,795; and municipal electricity-generating facilities from \$18,675 to \$24,816 through \$159,459 (based on tons emitted) effective October 1, 2001 and continuing through September 30, 2005. The per ton fee also increased from \$34.00 to \$45.25 per emission ton. These increased fees generated approximately \$338,000 (3%) more revenue in January 2003 than the minimum provided for in the Clean Air Act.

Audit Objective: To assess the sufficiency of the statutory fees for the ROP Program to meet the minimum requirements of the Clean Air Act as specified in Section 324.5522(3) of the *Michigan Compiled Laws*.

Conclusion: We concluded that the statutory fees for the ROP Program were not sufficient to meet the minimum requirements of the Clean Air Act as specified in Section 324.5522(3) of the *Michigan Compiled Laws*:

1. Although resources applied to monitoring and enforcement appear to have been sufficient, resources applied to permit processing have not been sufficient to allow initial permit issuance to be completed by the U.S. Environmental Protection Agency's (EPA's) unofficial goal of January 2001 and will most likely not meet the December 1, 2003 commitment set by DEQ with the EPA. This could result in the EPA issuing a Notice of Deficiency to the DEQ Title V ROP Program.
2. The Air Quality Division expended State General Fund appropriations (approximately \$2.5 million, \$2.5 million, and \$1.8 million for fiscal years 1999-2000, 2000-01, and 2001-02, respectively) in addition to the statutory fees to fund the ROP Program. Further, expenditures are expected to increase and revenue is expected to decrease through September 30, 2005, when the current fee authorization expires.

Rationale: Section 324.5521(1) of the *Michigan Compiled Laws* establishes the Emissions Control Fund and Section 324.5521(2) allows for the funds to carry forward to subsequent years and to not lapse to the State General Fund at the end of the fiscal year. As air quality fee revenue is collected, the Division deposits it into the Emissions Control Fund.

Estimation of Revenue and Expenditures

The Division manages the number of staff funded by the air quality fee revenue collected to stay within its available resources. Over the four-year period of the current fee structure, DEQ anticipates fee revenue to decline each year. We recognize that, as time passes, some facilities may improve processes to limit emissions or may choose to opt out of the Program by placing legally enforceable restrictions on their emissions. Also, DEQ anticipates that cost rates will increase in response to inflation. Thus, DEQ estimated the level of staffing that can be supported over the four-year period for which the current fee applies. This results in revenue exceeding expenditures annually in the early years of the fee period and expenditures exceeding revenue in the latter years of the fee period.

Level of Effort Determination

Section 5522(10), Act 245, P.A. 1998, required DEQ to convene a task force to review fee adequacy and fee structure and make recommendations to the Legislature as appropriate. In order to provide useful information to the Air Quality Fee Task Force, the Division performed an extensive review of the activities and the level of effort expended in the different components of the ROP Program. The Division was able to provide us with updated information for fiscal year 2001-02 and the following table represents the various components of the ROP Program and the full-time equivalents determined by the Division:

Table 1

Description	Full-Time Equivalents		Difference
	Estimated Level of Effort	Title V Level of Effort Charged to the Fees	
New source review	32.0	22.8	9.2
ROP initial issuance	34.0	29.9	4.1
ROP Program development	3.0	2.0	1.0
Compliance monitoring	28.0	33.7	(5.7)
Enforcement	17.3	13.0	4.3
Emissions Inventory and Fee Program	11.2	7.2	4.0
State implementation plan development	2.9	.3	2.6
Ambient air monitoring	5.1	.2	4.9
Clean Air Outreach	7.0	7.0	0.0
Small Business Clean Air Ombudsman	1.0	1.0	0.0
Total Full-Time Equivalents	141.5	117.1	24.4

In October 2001, the Wayne County Department of Environment discontinued providing ROP services to the facilities in Wayne County. The Division had to staff the Wayne County offices with DEQ employees and it was not until January 2003 that it completely filled all of the vacancies within those two district offices.

Using estimated expenditure data and the workload analysis provided by DEQ, the Task Force prepared a report to the Legislature in October 2000 on the proposed fees. The Task Force suggested that the Legislature renew the fee program and maintain the current fee structure (flat fee and emission fee). The Task Force also recommended that the fee structure collect \$12.8 million from fiscal years 2001-02 through 2004-05 and guarantee the State General Fund support at levels at least equal to fiscal year 2000-01.

Air Fee Collection, Usage, and Carry-Forward

For the fiscal year ended September 30, 2002, the air quality fee revenue collected was \$11,812,000, of which \$77,000 was transferred to the Michigan Department of Career Development leaving DEQ with \$11,735,000. DEQ expended \$8,981,000, consisting of Air Quality Division expenditures (\$8,065,000), rent (\$378,000), and Environmental Assistance Division expenditures (\$538,000). The actual fees collected were approximately \$1 million less than what the fee structure proposed. The Air Quality Division was able to control expenditures by not filling some vacant positions.

The following table summarizes the actual air quality fee collection, usage, and carry-forward from fiscal years 1995-96 through 2001-02 (the amounts representing fiscal years 2002-03 through 2004-05 are estimates provided to us by the Division):

Table 2

Level of Effort Actually Applied Against the Fees Collected

Fiscal Year	Fee, Penalty, and Interest Revenues	Escalated Enforcement* Recoupment	Expenditures	Difference	Carry-Forward
1994-95					\$ 2,009,582
1995-96	\$ 8,955,521		\$ 8,732,353	\$ 223,168	\$ 2,232,750
1996-97	\$ 8,141,764		\$ 8,805,699	\$ (663,935)	\$ 1,568,815
1997-98	\$ 7,993,257		\$ 8,687,816	\$ (694,559)	\$ 874,256
1998-99	\$ 10,299,862		\$ 9,556,381	\$ 743,481	\$ 1,617,736
1999-2000	\$ 9,659,510	\$ 256,242	\$ 9,968,840	\$ (53,088)	\$ 1,564,648
2000-01	\$ 9,073,036	\$ 462,866	\$ 10,169,478	\$ (633,576)	\$ 931,072
2001-02	\$ 11,735,664	\$ 161,315	\$ 8,980,679	\$ 2,916,300	\$ 3,847,372
2002-03*	\$ 11,339,371		\$ 10,350,000	\$ 989,371	\$ 4,836,742
2003-04*	\$ 10,844,117		\$ 12,365,925	\$(1,521,808)	\$ 3,314,935
2004-05*	\$ 10,392,457		\$ 13,465,234	\$(3,072,777)	\$ 242,157

* Historically, the Division has been charging the Program at 80%. The Division's estimated budget data for fiscal years 2002-03 through 2004-05 presumes higher charge rates.

The Division reported a large carry-forward during fiscal year 2001-02 mostly because the Wayne County Department of Environment discontinued providing ROP services to the facilities in Wayne County. Previously, Wayne County received the fees paid by facilities located in Wayne County less an amount retained by the Division for Statewide oversight and the new source review program.

The Clean Air Act requires that the fee structure cover all reasonable (direct and indirect) costs needed to administer the ROP Program. We estimated full expenditures for fiscal years 2002-03 through 2004-05 by taking the expenditures for those years projected in Table 2 and adding the amount of State General Fund money that the

* See glossary at end of report for definition.

Division had budgeted to be used in each of those fiscal years. The table below estimates the financial status of the Emissions Control Fund if the air quality fees paid the estimated full cost:

Table 3

Estimated Level of Effort Billable to Title V

Fiscal Year	Fee, Penalty, and Interest Revenues	Expenditures	Difference	Carry-Forward
2001-02				\$ 3,847,372
2002-03	\$ 11,339,371	\$ 12,069,323	\$ (729,952)	\$ 3,117,420
2003-04	\$ 10,844,117	\$ 12,790,668	\$ (1,946,550)	\$ 1,170,870
2004-05	\$ 10,392,457	\$ 13,266,746	\$ (2,874,290)	\$ (1,703,420)

This table indicates that the fees will not support the Program through the end of the sunset period (September 30, 2005).

ROP Activities

More resources are required to process initial operating permits than renewal permits. The Division likely will complete the processing of initial operating permits within two years. After all of the initial ROPs are issued, most of the Division's resources will be available for issuing renewal permits and performing detailed monitoring, inspections, and enforcement investigations. Even though the Division estimates that a renewal permit will take 50% to 66% of the time that it took to issue an original ROP, the resources required to administer the ROP Program will increase because recently implemented compliance monitoring requirements will consume equivalent additional resources.

The EPA issued guidance for its new Compliance Monitoring Strategy (CMS) in April 2001. CMS places more emphasis on evaluating the compliance status of large sources, specifically Title V (ROP) and opt out sources and less emphasis on true minor sources. A major requirement of CMS is the completion of a Full Compliance Evaluation (FCE). An FCE is a comprehensive evaluation of the compliance status of a facility, including a thorough review of all of the facility's applicable requirements. This includes reviewing all required reports and supporting documentation; reviewing the Title V self-certifications, semi-annual monitoring, and periodic monitoring reports; assessing control devices, control equipment, and performance parameters; reviewing

the facility's process of reviewing operating conditions; performing a stack test in which there is no other means of determining compliance; and conducting an on-site visit. The EPA requires that the Division complete an FCE at least once every two years for a Title V major source, once every five years for an opt out source, and once over a three-year period for a megasite*.

Comparison to Other States

DEQ committed to EPA to have all initial ROP applications completed by December 1, 2003. Although the Division believes that meeting the deadline will be a challenge, it is utilizing all available resources. The Division is temporarily borrowing six employees from the new source review program to help review and issue ROPs. Michigan is not the only state behind schedule in issuing ROPs. The following table shows the status of the Region 5 states (derived from the EPA Web site) as of June 30, 2003:

Table 4

Region 5 Title V Permits

State	Applications Received	Permits Issued	Percent Issued	Permits Remaining
Illinois	728	591	81%	137
Indiana	741	566	76%	175
Michigan	470	401	85%	69
Minnesota	336	243	72%	93
Ohio	705	606	86%	99
Wisconsin	606	378	62%	228
Total	3,586	2,785	78%	801

This table shows the number of sources in Region 5 that have submitted Title V federal operating permit applications to state permitting authorities and how many have received Title V permits as of June 2003. Because permitting authorities are continuously receiving new permit applications, the percent issued of Title V permits will never reach 100%.

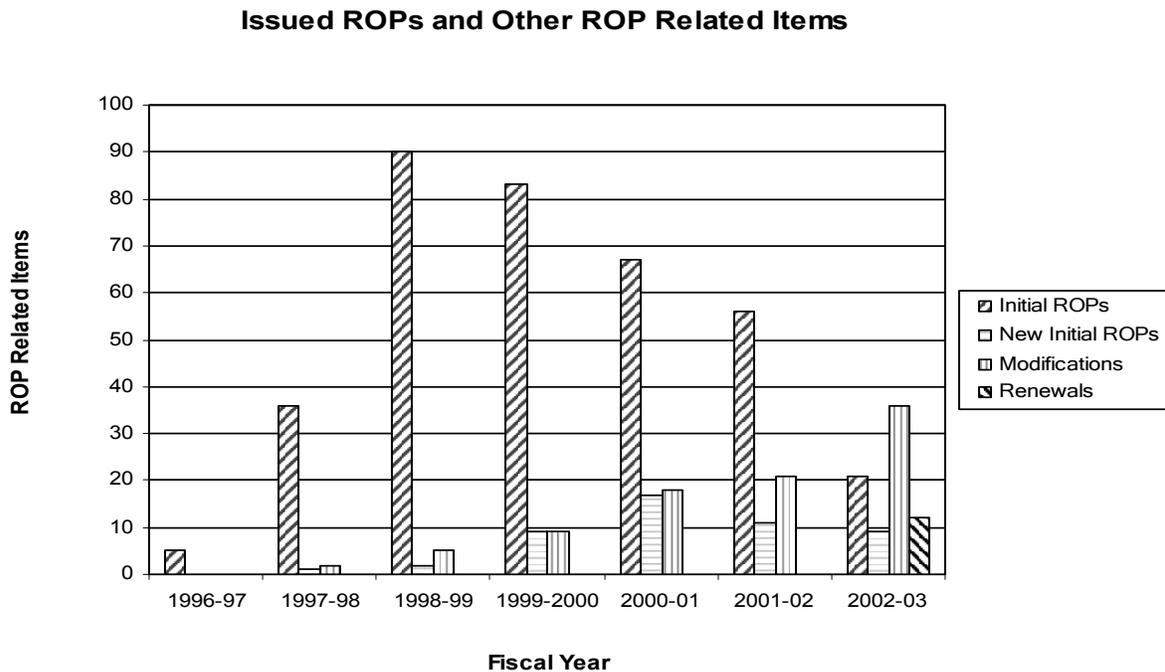
The table does not show various state activities that result in decreasing the number of Title V sources, for example, by including limits in a source's federally enforceable state operating permit (FESOP). In some cases, FESOPs substantially reduced the number

* See glossary at end of report for definition.

of Title V permits needing to be issued by the state. The table also does not show a number of Title V permits previously issued to sources that are no longer subject to Title V requirements. As a result, permit issuance numbers for some of the states may decrease at times.

Historical Output and Remaining Workload

Over the last four fiscal years, the Division has issued an average of 97 ROP related items, including initial ROPs, new initial ROPs (facilities whose applications were received after February 1997), modifications, and renewals. During fiscal year 2002-03 (as of June 30, 2003), the Division had issued 78 ROP related items and had 141 items remaining. If it continues at the same pace, all initial and current ROPs should be issued by September 30, 2005. The following graph represents the work output through June 30, 2003:



ROP Requirements

Although a facility may have initially applied for an ROP, it may later decide to opt out of the Program. Many facilities decide to opt out because after an ROP is issued the requirements can be quite time-consuming and, in many cases, costly. An ROP places the responsibility of identifying applicable rules and regulations and ensuring compliance in the hands of the facility. After an ROP is issued, a source must meet specific requirements for monitoring, recordkeeping, and reporting. For example,

any deviation to a permit condition must be reported promptly. Every six months, the responsible official* must certify that all the monitoring and associated recordkeeping requirements in the permit have been met, and annually the responsible official must certify whether the source was in compliance with all the terms and conditions in the ROP for the previous year. As of January 27, 2003, there were 64 facilities that had not been issued their initial ROPs. Therefore, they were not required to perform the monitoring, recordkeeping, and reporting that a facility that has already received its permit must complete. Although these 64 facilities have not yet been issued their ROPs, they are still required to adhere to the limitations cited in their permit-to-install applications.

AGENCY PRELIMINARY RESPONSE

DEQ agrees with the conclusion and rationale.

DELEGATED AUTHORITY

COMMENT

Background: Section 324.5523(1) of the *Michigan Compiled Laws* states that a county in which a city with a population of 750,000 or more is located may apply for a delegation from DEQ to issue permits and administer and enforce the applicable provisions of this part, rules promulgated under this part, the Clean Air Act, and the State implementation plan if the county demonstrates compliance with requirements specified in Section 324.5523(1). At the time of our audit, the only county that met the criteria specified in Section 324.5523(1) was Wayne County. Wayne County contains the City of Detroit, which is the only city in the State with a population of more than 750,000.

Audit Objective: To assess the fiscal integrity of any county that is delegated authority from DEQ to issue ROPs and to administer and enforce the applicable provisions of the ROP Program, including determination of the county's pro rata share of the State's support services for the ROP Program that are attributable to and payable by a county as specified in Section 324.5523(5) of the *Michigan Compiled Laws*.

* See glossary at end of report for definition.

Conclusion: No county in the State has been delegated authority from DEQ.

AGENCY PRELIMINARY RESPONSE

DEQ agrees.

Glossary of Acronyms and Terms

application shield	Regulation that allows an air emissions source to legally operate, based on the information in the application, until it receives its ROP. This is given when all the required application information is sent to DEQ by the deadline dates.
area source deferral	A permit that allows facilities to limit emissions to acceptable levels in exchange for required participation in the ROP Program; also known as an "opt out permit."
CMS	Compliance Monitoring Strategy.
DEQ	Department of Environmental Quality.
EPA	U.S. Environmental Protection Agency.
escalated enforcement	A process used when a source does not respond to a cited violation. These cases usually require significant resources to resolve and usually cannot be resolved without entry of an enforceable legal document.
FCE	Full Compliance Evaluation.
FESOP	federally enforceable state operating permit.
HAP	hazardous air pollutant.
level of effort	Amount of resources needed to complete the activities necessary to run the program.
major source	A source having the potential to emit more than 10 tons per year of a single HAP, 25 tons per year of a combination of HAPs, or 100 tons per year of any other pollutant regulated under the Clean Air Act.

megasite	Extremely large, complex facilities.
new source review permit	A permit authorizing a facility to install, construct, reconstruct, relocate, alter, or modify any process or process equipment that may emit an air contaminant; also known as a "permit to install."
opt out permit	A permit that allows facilities to limit emissions to acceptable levels in exchange for required participation in the ROP Program; also known as an "area source deferral."
performance audit	An economy and efficiency audit or a program audit that is designed to provide an independent assessment of the performance of a governmental entity, program, activity, or function to improve public accountability and to facilitate decision making by parties responsible for overseeing or initiating corrective action.
permit to install	A permit authorizing a facility to install, construct, reconstruct, relocate, alter, or modify any process or process equipment that may emit an air contaminant; also known as a "new source review permit."
potential to emit (PTE)	A facility's calculated emissions based upon the assumption that all processes are operating at their maximum design capacity for 24 hours a day, 365 days per year. A facility may incorporate permit conditions to limit a facility's PTE.
responsible official	An individual within the source (usually a president for a corporation; general partner for a partnership; principal executive officer for a municipality) who is in charge of the principal business function.
ROP	renewable operating permit.

source	All of the processes and process equipment under common control that are located within a contiguous area or a smaller group of processes and process equipment as requested by the owner or operator of the source, if in accordance with the Clean Air Act.
standard industrial classification code	Standardized code system used to classify a business by the type of activity in which it is engaged.
workload analysis report	An in-depth study performed by the Air Quality Division on the duties performed for and effort expended on the Title V program.